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

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**EVIDENCE**

**Tuesday, October 23, 2012**

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**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

Tuesday, October 23, 2012

•(1100)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** I call the meeting to order. We are in public today with our Chief Electoral Officer, Monsieur Mayrand.

Welcome. It's great to have you here.

We're here pursuant to the order of reference of Tuesday, October 2, for Bill C-21, An Act to amend the Canada Elections Act.

Our witnesses today are all from Elections Canada, and we have a two-hour session with lots of questions, I hope.

Monsieur Mayrand, I'd like you to lead off and introduce the guests with you today. We'll have lots of questions for you after you're finished.

[Translation]

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

I am pleased to appear before your committee today to contribute to your review of Bill C-21. Appearing with me are, on my far right, Sylvain Dubois, recently appointed to the position of Deputy Chief Electoral Officer, Political Financing. To my immediate right is Stéphane Perrault, Deputy Chief Electoral Officer, Legal Services, Compliance and Investigations. To my left is François Bernier, the outgoing Deputy Chief Electoral Officer, Political Financing.

Bill C-21 builds on the 2004 and 2007 political financing reforms by seeking to curtail the undue influence that can arise from loans to political entities. To do so, it proposes a series of three measures. First, it provides that only individuals, financial institutions, and political entities authorized to transfer funds under the act, may make loans to political entities.

Furthermore, in the case of individuals, it places a \$1,200 overall limit on contributions, loans, guarantees and suretyships. Furthermore, it requires the provision of more detailed information on such loans. Lastly, it makes electoral district associations or, if none exist, the political party, liable for candidate loans that are written off by the lender.

It requires the association or the parties to assume the liability for repaying these loans as if they had guaranteed them. Although the principle of the bill is laudable, I must, at the outset, note that the measures proposed raise a number of concerns.

First of all, the bill proposes an overly complex regime that will be very difficult to apply for political entities and their supporters.

Second, the proposed regime does not succeed in adequately eliminating loopholes to the political financing rules. Lastly, the bill does not bring closure to the management of political entities' finances.

I would like, as a first step, to expand on these three concerns, which are actually closely interrelated. I will then speak to the elements that, in my opinion, should form the basis of a more effective reform.

First, I would like to express my concerns regarding the complexity of the proposed regime and the increased regulatory burden it would impose on all stakeholders, whether these be political entities, those wanting to provide loans and make contributions, or even Elections Canada, which would need to administer the regime.

This complexity arises mainly from one specific feature of the proposed regime, namely the method of calculating the limit on individual loans, guarantees and contributions. Under the bill, all loans, guarantees and contributions made by an individual cannot exceed, at any time during a calendar year, that individual's contribution limit. Excluded from this calculation are the amounts of a loan that were repaid during the year in which the loan was issued, as well as the amounts for which the individual has ceased to be liable in the year the guarantee was given.

This will create considerable uncertainty for political entities, as they will need to determine, at any given moment, whether an individual's limit has been reached. The amount of allowable loans and contributions will fluctuate over the course of the calendar year, depending on the amounts that have been given, repaid or loaned. This situation will be even more complex when limits are for contributions and loans made to a "family of entities" during a calendar year (for example, all of a party's candidates, nomination contestants and registered associations).

This level of complexity is equally problematic for both political entities and individuals wishing to provide them with financial support. There is also a risk that this would lead to a proliferation of cases of non-compliance and create an incentive to find ways to circumvent the rules. And that is my second concern.

•(1105)

[English]

By limiting loans of more than \$1,200 to financial institutions, the regime seeks to curtail the influence of individuals who finance political entities through loans, and to eliminate the use of loans as a means to skirt contribution limits. That being said, since the bill in no way affects credit sales, an individual could sidestep the new rules on loans by becoming a supplier of goods and services. For instance, while no longer able to lend \$10,000 to the campaign, an individual or the candidate himself or herself would still be able to acquire goods and then sell them on credit to the campaign. This transaction would not be governed by the new restrictions on loans.

I also note, unlike the current provisions dealing with contributions, that nothing in the bill specifically prevents loans from being funnelled through other individuals. In addition, in order to be effective, the regime should bring closure to the management of political entities' finances by precluding the possibility of loans remaining unpaid for extended periods. However, and this is my third concern, the bill does not allow for this closure to be achieved.

As I already pointed out, the bill proposes a new provision whereby the registered association or, if there is none, the candidate's political party would assume liability for the unpaid portion of the candidate's loan that has been written off by the creditor. I welcome this type of measure. Unfortunately, it is too often missing from the current law, which is based almost entirely on criminal sanctions. The intent is to ensure compliance with the new three-year statutory deadline for candidates to repay their loans, but we must point out that the riding associations or the parties may only become liable for the unpaid loans of candidates and not for those of leadership contestants or nomination contestants.

In addition, that liability will take effect only in cases where a loan is written off, but not in all cases of loan default within the statutory deadline. It is difficult to predict the likelihood of loans being written off so as to trigger the liability of the electoral district association, or EDA. For the 39th and 40th general elections, according to the information reported by candidates after the 18-month statutory period, none of the \$2.6 million in unpaid loans was written off by a creditor. This was also the case for the remaining \$1 million in other unpaid claims.

Furthermore, the proposed regime for loans would latch onto the existing, and significantly flawed, regime for unpaid claims. I pointed out these flaws in my June 2010 recommendations report. This remains a complex and cumbersome regime that affords neither transparency nor closure.

The authorizations currently provided for to pay beyond the statutory deadline are largely unnecessary, except to allow the Chief Electoral Officer to impose as a condition the requirement to report financing sources and thus address certain shortcomings in the existing statutory regime. Currently, a candidate or leadership contestant who pays campaign debts after the filing of his return, but before the end of the statutory period, is not required to file an amended or updated return disclosing the source of funds.

Also, the current provision whereby a claim that remains outstanding after 18 months is deemed to be a contribution is a

major source of confusion. Adopted at a time when the law did not limit contribution sources or amounts, this deeming entails no civil, administrative, or penal consequences. Deemed contributions do not, in and of themselves, entail a violation of the rules on contributions. Enforcement of the contribution rules and the imposition of criminal sanctions requires an assessment based on the facts of each case. They cannot simply stem from the mechanical application of a statutory fiction.

By continuing to subject loans to the flawed regime governing unpaid claims, Bill C-21 serves only to perpetuate these difficulties.

•(1110)

Even in the unlikely event that a riding association were made liable for a loan written off by the creditor, the unpaid claims regime would offer no reasonable guarantee that these loans would be repaid with diligence by the association.

These concerns lead me to suggest broad strokes of what I view as more effective legislative reform. First of all, such a reform must address not just loans, but also rules governing unpaid claims. Some of the key elements for reform can be found in my June 2010 recommendations report, while others are already part of Bill C-21; however, they should not be enacted piecemeal, independently of one another.

On the one hand, we must simplify the regime of unpaid claims by eliminating the current presumptions and authorization mechanisms. The law should also give the Chief Electoral Officer the power to obtain documents—as I recommended in 2010—and to examine entities that may have relevant information concerning a transaction. On the other hand, in order to ensure closure, political parties should be liable for repaying any outstanding claim, including any loan that remains outstanding after 36 months. This measure would be modelled after Bill C-21, while at the same time deviating from it in several respects.

First, parties should be liable for the outstanding debts of all their affiliated entities, with the possible exception of leadership contestants. Second, the parties should be liable, whatever the reasons or circumstance, for the payment default. Moreover, the parties should have a relatively short period—for example, six months—in which to pay the outstanding debt; otherwise the sum would fall due to the Receiver General and could be deducted from the public financing given to the party.

To be effective, political loan reform should also propose rules that are simple enough to be understood and followed by both the political entities and the electors supporting them. In this respect, I think it is absolutely essential to shelve the idea of a combined loans contribution limit for which implementation would fluctuate in step with repayments and contributions made. One solution would be to follow Ontario's lead and do away with individual loans, since the benefit the political entities would derive would be, for all intents and purposes, dwarfed by the severe regulatory burden imposed on them.

If individual loans must be allowed, they should be subject to a limit that is separate from the contribution limit and, above all, applicable for one calendar year regardless of the amounts repaid during the year. This change could no doubt be made in the current bill, but I think a more in-depth revision is necessary, and I doubt that this could be done within the limited framework of this bill.

Thank you, Mr. Chair. My colleagues and I would be pleased to answer any questions.

**The Chair:** Thank you very much.

We'll start with a seven-minute round.

Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you, Chair, and thank you, Mr. Mayrand, for being here.

I think the chair is right, we're going to have a lot of questions. You've given us a lot of information to consider.

I note that your predecessor, Mr. Kingsley, had recommended to this committee back in 2007 that a number of changes be made to the loans regime, which we have done, and which are contained in Bill C-21. I hope you agree that those changes, generally speaking, address the concerns that Mr. Kingsley had. But I'd like to focus on one possible recommendation that you made. As opposed to individuals being allowed to contribute only up to their maximum contribution limit on a yearly basis, you felt that we might want to consider an exemption so that candidates could loan themselves any kind of money on a one-time basis.

I'd like to ask if you could clarify that, going into a little bit more detail. While one could certainly argue that this would violate the spirit of the individual contribution limits, a more serious consequence could be that if you had a particularly well-heeled candidate who was able to lend himself \$5 million or more, he might not ever have to go and seek loans or contributions again, because this one-off loan would be sufficient to run his entire leadership contest.

So my questions to you would be: do you still feel this would be an appropriate qualification to put into this bill, and if so, what should the limits be on a candidate loaning himself money?

• (1115)

**Mr. Marc Mayrand:** I think there are two ways to go in this regard: the Ontario model, which prohibits loans entirely, or, alternatively, I think we need to recognize that candidates need a bit of seed money when they launch their campaigns.

Our data shows that about \$4,000 is the loan needed for a candidate. That allows them to set up their office and get going. I think it's important also to note—so \$4,000 or an amount of that nature may be a matter for consideration.

The other thing we should not lose sight of is that repayment has to come from legitimate contributions. I think that would provide better accessibility for candidates.

**Mr. Tom Lukiwski:** Thank you for that. So you're not talking about allowing unlimited money—

**Mr. Marc Mayrand:** Absolutely not.

**Mr. Tom Lukiwski:** The other area I want to focus on before we go into some of your detailed recommendations is what we've seen currently. We've been focusing on the 2006 Liberal leadership campaign, because a number of those candidates still have outstanding loans, unpaid, and it's been going on slightly over six years now.

I know you've been quite critical because of the complexity and the unenforceability of the act we currently have to deal with, but to your knowledge, have there been any sanctions against a political entity or a leadership contestant for the refusal or the inability to repay loans after a certain period?

**Mr. Marc Mayrand:** On the inability to repay in time, I'm not aware of any cases. It's interesting. What I hear is that for the 39th and 40th GEs, there are still significant amounts outstanding. We're talking about an election that took place five to six years ago, just as a matter of fact.

The issue we're facing is that, yes, the act provides a statutory period for repayment. However, the next provision in the statute, which is repeated in the bill, is that the period no longer applies when there's been an extension made either by the Chief Electoral Officer or by the court.

When the Chief Electoral Officer is seized of a request for an extension, our approach is to see whether there's a desire to pay, whether it's desirable that the claims or the loan be reimbursed, and whether, again, it would better serve transparency. If those extensions are turned down, one thing that would happen is that you lose sight of what's going on with those loans. There's no requirement to file returns after that point. So that makes it a little complex to administer.

• (1120)

**Mr. Tom Lukiwski:** Thank you for that. I understand, and I think you're right.

In your earlier intervention to us you said, "First, parties should be liable for the outstanding debts of all of their affiliated entities, with the possible exception of leadership contestants." Now, to me, it would seem that if we want to clean up the system and ensure that all loans are repaid in a timely fashion, it should apply to leadership contestants as well as candidates.

Why are you suggesting that we might want to make an exception for leadership contestants?

**Mr. Marc Mayrand:** My hesitation there is that there's a general principle in the act that the party must treat all contestants in the same manner. I'm not sure how to resolve the issue where a leadership contestant would have higher loans. I think we need to look more broadly at how the financing for a leadership contest takes place.

**Mr. Tom Lukiwski:** It's quite obvious that each political party sets their own rules for leadership contests—

**Mr. Marc Mayrand:** Exactly.

**Mr. Tom Lukiwski:** However, we're talking about the big picture: the potential abuse of the electoral system. So whether it's a leadership contest or whether it's a general election or a byelection, whatever, if a candidate or a leadership contestant is representing a particular political party, either through candidacy in a GE or through a leadership contest, would you not agree that we have the ability to amend the act to ask those leadership contestants to follow the same rules as a candidate would?

**Mr. Marc Mayrand:** One of the suggestions I put forward in 2010—and that's for the consideration of the committee—is whether a candidate who has failed to reimburse debts from a previous election should be allowed to run in the next one. That could be an effective remedy to ensure that, again, candidates do not carry debt loads from election to election. There may also be other options in that regard.

**Mr. Tom Lukiwski:** Thank you.

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

Madame Latendresse, for seven minutes.

[*Translation*]

**Ms. Alexandrine Latendresse (Louis-Saint-Laurent, NDP):** Thank you, Mr. Chair.

Thank you, Mr. Mayrand. It is very interesting to hear your opinion. It gives us cause to reflect on how useful committees like this are.

I want to go back to what Mr. Lukiwski was saying about leadership campaigns. Among the recommendations your predecessor made in 2007, there was a mention of an upper limit to spending during a party's leadership race. But that is not part of Bill C-21.

Do you think it should be included in the Canada Elections Act?

**Mr. Marc Mayrand:** It is always possible, but we have to decide to what extent we want to regulate a party's internal affairs. That is a public policy decision that belongs to parliamentarians, in my view.

In the past, we have always been hesitant to consider those measures because they put constraints on the parties' internal management. However, perhaps the time has come to look at matters like that.

**Ms. Alexandrine Latendresse:** Okay.

In terms of the combined ceiling, could you tell us what you would see as the ideal solution? Your explanation was really very clear. You said that the system proposed in Bill C-21 makes the process much too complicated if it combines loans, gifts and so on.

What would you recommend as a priority? What is the ideal solution? Doing away with it entirely?

**Mr. Marc Mayrand:** As I mentioned, we can take good ideas from various models. There are several in the country. We can simply ban loans to individuals, or, as I said earlier, we could consider it normal to allow a candidate to borrow enough money to launch his campaign—with a limited ceiling, of course.

Earlier, I mentioned \$4,000 or \$5,000. That is about the average amount of a loan to launch a candidate's campaign. The amount

could be different. We would have to see what an analysis would show.

● (1125)

**Ms. Alexandrine Latendresse:** In Bill C-21, loans have to be guaranteed by individuals. For example, if someone wants to get a \$10,000 loan from a financial institution, he has to find 10 people to guarantee it for \$1,000 each.

Do you think that is a good idea, or do you think that we should continue to let people guarantee their own loans?

**Mr. Marc Mayrand:** The problem is that we would be moving away from the objective of the bill, which is to limit the influence of individuals or companies on the operation of the electoral process. Yet in Ontario, there are no limits on guarantees, even if they are provided by corporations or unions.

It could be looked at, but I think that would be moving some distance away from the objective of the bill, which is to limit the influence of money. In my opinion, if we allow guarantees to be unlimited, we would be indirectly permitting the very thing we wanted to directly prohibit.

**Ms. Alexandrine Latendresse:** Thank you.

[*English*]

**The Chair:** Mr. Scott—

**A voice:** Mr. Cullen.

**The Chair:** I'm sorry, Mr. Cullen. There are three minutes left.

**Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP):** Thank you, Mr. Chair.

Very quickly, is there a consideration in your recommendations for retroactive application of this to the previous general elections? Is there some concern about or knowledge of retroactively applying any changes to financing and loans to previous elections? Is this a contemplation that your office has had?

[*Translation*]

**Mr. Marc Mayrand:** First of all, it is actually the government's responsibility to state that approach in its bills.

My understanding of this bill is that there will be no retroactivity. That means that loans made before it comes into effect remain subject to the former rules. But the other provisions in the bill will apply when it comes into effect, including the change allowing contributions for leadership races. Any contribution made after the act comes into effect could be made annually for leadership races.

[*English*]

**The Chair:** Mr. Scott, you have two minutes left.

**Mr. Craig Scott (Toronto—Danforth, NDP):** Mr. Mayrand, if I may follow up on that, we had some discussion with the minister on one particular component. His advice to the committee was that there is a degree of retrospection, in the sense that, at least for leadership candidates, the fact of a person still being a contestant by virtue of not yet having paid off their loans means that past contestants—for example, in the Liberal leadership race, or another one that we've had—can still benefit from the provision that allows for annual contributions as opposed to per event contributions.

On that particular semi-retroactive point, I want to clarify whether you are in agreement or not, because there is nothing in the bill that makes that clear. It simply has a very generic transition provision that would suggest that nothing is retroactive.

**Mr. Marc Mayrand:** That's my understanding—I think it's clause 34 in the bill. There is no retroactive impact; therefore, legislation will apply as of its coming into force. The contribution regime will change for a leadership contestant; therefore—

**Mr. Craig Scott:** For future campaigns.

**Mr. Marc Mayrand:** No, for any campaign that is open. The act doesn't make the difference here.

**Mr. Craig Scott:** It's still open. Okay.

**Mr. Marc Mayrand:** So any contribution made after the coming into force could be made to any leadership contest that is still open.

**Mr. Craig Scott:** As long as it's still open. That's an important clarification.

Thank you.

**Mr. Marc Mayrand:** Yes.

**The Chair:** Thank you.

There are about eight seconds left, so I'll go to Monsieur Garneau. You'll get an extra eight seconds today.

[*Translation*]

**Mr. Marc Garneau (Westmount—Ville-Marie, Lib.):** Thank you for your presentation, Mr. Mayrand.

You have pointed out a number of shortcomings in this bill. You mentioned that it is too complex, that it has loopholes, and that the process lacks closure. That concerns me greatly, of course. I have some questions for you about that lack of closure in the bill.

Your suggested model is that political parties should be responsible for outstanding debts when the process is all over. You said, in fact, that parties should be responsible for the unpaid debts of all its affiliated entities, except perhaps for leadership candidates. Do you have a proposed model for leadership candidates?

• (1130)

**Mr. Marc Mayrand:** I have to admit that I have not yet found the perfect solution, without interfering in a party's internal affairs.

My difficulty in making parties responsible for candidates' debts is that there is a danger of making them indebted in a different way, of putting the party in a position of appearing to give one candidate an advantage over another, if it were responsible for higher debts.

One of the solutions to the problem is the Quebec one, as I understand the current system. In a leadership race, if candidates have not paid by a certain time, they become responsible for the debt personally. Perhaps that is something that could be looked into. So, in Quebec, it is also my understanding that the party is not responsible for the debts of leadership candidates.

[*English*]

**Mr. Marc Garneau:** *Merci.*

My second question has to do with the perceived democracy of the process that's being advocated here in Bill C-21.

We're talking about loans coming from banks or financial institutions. Do you think the process is inherently fair? For example, because banks are concerned about somebody's credit rating and credit history before they make a loan to them, do you think there is going to be a perceived disadvantage to somebody who wants to run in some way but does not have a well-established credit rating—for example, in some cases, women who have not built up a credit rating during the course of their lives, or perhaps very young candidates who might want to run. Are they at a disadvantage in this process because of those factors?

**Mr. Marc Mayrand:** I cannot speak for the financial institutions and how they will look at these matters, but my understanding of the legislation is that the personal credit rating of a candidate will not be a matter of relevance. The reason for that is that the only source of funds that can reimburse the bank are funds that flow through the political entities in the form of contributions, in the form of transfers from the party, and from various legal sources of funds.

Whether you're wealthy or not, the bank should be looking—and I'm sure you will be asking them a similar question—at what your capacity is to raise contributions, whether you are affiliated with an EDA and what the financial situation of the EDA is, what the financial position of the party you are affiliated with is, and whether you can expect to have transfers of funds from your EDA or from your party. Of course, I'm sure the other thing that will be considered is the likelihood of you receiving a rebate for your expenditures, meaning the likelihood of achieving 10% of the vote.

I think those are basically the only factors a financial institution should be considering, because if there's a failure to repay, the bank cannot turn to your assets to secure repayment. That would be illegal under these provisions.

**Mr. Marc Garneau:** The reasons are what the banks should be looking at, as you've just described it there—for example, the health of your association and those kinds of things. Do you think that places certain people at a disadvantage with respect to others? Do you think that, in itself, is undemocratic, or is it simply a reality that everybody has to accept?

• (1135)

**Mr. Marc Mayrand:** I think the minute we rely on private institutions to fund loans, they will take a business approach to this. They're not in the business of subsidizing campaigns. The more we rely on private funding for political activities, and limiting access in terms of recovery, we can expect that it may impact different players differently.

It comes to my mind that the situation of independent candidates in this context may be even more difficult than it is now, and I think that would militate for at least allowing them to get a seed loan from a financial institution, because the bank, looking at a candidate, cannot rely on any financial position of the association or the party.

[*Translation*]

**Mr. Marc Garneau:** You are saying that we should perhaps not allow individual loans up to \$1,200 per individual and that the other model would be the one you have just described. Saying that it is an option is very tactful of you.

Would you prefer individual loans to be prohibited and, instead, the option would be a system whereby the candidate gets a loan in order to launch a campaign?

[English]

A seed loan.

[Translation]

**Mr. Marc Mayrand:** As I just mentioned, my concern would be accessibility, especially for independent candidates who really do not have the means as long as they remain unconfirmed as candidates. It would put them at a clear disadvantage. I would rather tend to propose a separate limit on loans made so that candidates are able to get their campaigns underway.

[English]

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

For five minutes, Mr. Reid.

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

Thank you for being here, Mr. Mayrand.

I have a few questions, one of which stems from your presentation. I'm looking at page 7 of the English edition of your presentation. The first sentence on that page reads:

I also note that, unlike current provisions dealing with contributions, nothing in the bill specifically prevents loans from being funnelled through other individuals.

I marked at the end of that a question mark and the word “how”. Could you explain what you mean by that? What does the word “funnelled” mean?

**Mr. Marc Mayrand:** I think there's been a fair bit of media coverage in other jurisdictions about a system of *prête-noms*—sorry, I'm not sure how you translate that—where an individual wishing to support a candidate or a party could split the amount and fund individuals to extend the loans to the candidate or the entity.

**Mr. Scott Reid:** Oh, I see. Where it's not legal for me to give some money to someone on the condition that they donate it, it is legal for me to give someone the money on the condition that they loan it. Is that the point you're making?

**Mr. Marc Mayrand:** That's my reading of the legislation after Bill C-21.

**Mr. Scott Reid:** As things stand now, as the status quo exists, would that be unlawful under the current legislation?

**Mr. Marc Mayrand:** Loans are legal, so....

**Mr. Scott Reid:** No, no, but....

Oh, I see. Right. Of course.

But if I were to give somebody some money and say now go out and loan it to whoever for whatever reason, would that actually be unlawful at this point?

**Mr. Marc Mayrand:** At this point? No.

**Mr. Scott Reid:** Of course, if I can just make the loan myself, anyway, there'd be no point in doing it.

**Mr. Marc Mayrand:** Yes, exactly.

**Mr. Scott Reid:** Okay. I see.

**Mr. Marc Mayrand:** There are no limits on loans right now.

**Mr. Scott Reid:** So the point you're really driving at is that as the bill attempts to close off various loopholes, it may have simply left one that was unanticipated.

Okay. I just wanted to get my head around what you were saying there. Thank you for that.

You suggested, and I have a feeling it's not a very firm suggestion, \$4,000 as a possible amount that a person could loan to themselves for a nomination in a riding. Was that—

**Mr. Marc Mayrand:** No. For a candidate. If I were to put my mind around a nomination contest, I suspect it would be lower for a nomination contest.

**Mr. Scott Reid:** Oh, I see. So that's for a national leadership candidate?

• (1140)

**Mr. Marc Mayrand:** It's for a candidate in an election.

**Mr. Scott Reid:** Right. Okay.

I'm not trying to pin you down to \$4,000. As I said, I think you simply pulled that number out as an example. I just want to make sure I get a sense of what you're proposing here.

One of the things that strike me is that when one tries to raise funds, one faces fundraising costs. If, for example, candidate X decides to run for the leadership of....

Well, we're going to have a leadership race for the Liberal Party. Let's imagine that the law was already in place and candidate X seeks to hold a fundraising event. There are costs associated with that.

Are you thinking that those would be counted as part of this, or do you regard these as being separate things and as not being limited under the proposed bill?

**Mr. Marc Mayrand:** In the current regime, it would be part of it. That's why I'm suggesting, especially for candidates, that there be a bit of an allowance for a seed loan to run those events.

There's a cost to hosting those funding events. Often they have to be paid in advance. That seed money would allow them to at least get going.

**Mr. Scott Reid:** Right.

I'm thinking primarily, when I raise these things, about payables, carrying costs. What can happen sometimes is that these can carry on for some length of time. It's not just difficult to get bills and turn them over that quickly; there are also cashflow issues.

I'm anxious to make sure that whatever comes out of the mill, after we deal with this bill, we don't create a situation where people who are candidates for the leadership of a party, or for a nomination, are technically running afoul of the law when really there's no intent to run afoul. I particularly don't want to face the danger where it becomes impossible to conduct a normal campaign without running afoul of the law. That's a real concern, I think.

I'm wondering if you could comment on that.



**Mr. Marc Mayrand:** That's a concern I would share, especially with the \$1,200 contribution limit that's proposed by the bill. Someone could extend a loan, maybe get a repayment, and attend a funding event for another EDA during the year. It can become very difficult for the political entities to track those down and easy for the contributor to lose sight of where they stand exactly with regard to their limits.

**Mr. Scott Reid:** Yes.

As a final question—

**The Chair:** Maybe on the next round.

**Mr. Scott Reid:** All right. I'll have time to work on it and make it extra good.

Thank you, Mr. Chair, and thank you, Mr. Mayrand.

**The Chair:** Thank you.

Mr. Scott, for five minutes.

**Mr. Craig Scott:** Thank you very much, Mr. Chair.

I wanted to follow up a little bit further, Monsieur Mayrand, on this question of seed funding and whatever amounts one guesses at. The fact of the matter is that for most local campaigns, the fundraising itself, which is part of the campaign activity, doesn't really get going until at least a couple of weeks in, in terms of when money starts rolling in.

So seed funding often might need to be more than, say, a ballpark \$4,000. It might be prudent to have a fair bit more if you know the record in the riding is that you're able to raise a fair bit more.

Is it your reading of the bill that if an EDA were to seek a loan of, let's say, \$20,000, you would actually need, say, 15 guarantors, or 16 guarantors, because the guarantors can't go above \$1,200? Is that correct?

**Mr. Marc Mayrand:** Correct.

**Mr. Craig Scott:** Great. I know you're not in the business of saying how banks will or will not act, but my serious worry is that the kind of paperwork involved here to go beyond a few thousand dollars in a seed loan could be extreme for a bank. When they have to track 15 to 20 guarantors for a \$20,000 loan, for example, that could itself be a disincentive to lend, from a business case perspective. Do you have any concerns along those lines?

**Mr. Marc Mayrand:** It could be there's a point where it doesn't make much business sense, but again, banks are good at figuring out ways of managing complex systems. I don't know what will be the behaviour once the rules are in place.

Again, my comments today are based on the assumption that there will be some \$1,200 loans. How many? I don't know. What I'm raising as an issue is that these types of loans, contributions, will be extremely complex to administer for political entities, contributors, and Elections Canada, which after three years may have to follow and monitor an inordinate number of very small loans, when you think of it.

• (1145)

**Mr. Craig Scott:** Exactly.

The question now is on this whole issue of unpaid loans becoming deemed contributions. There was some reliance from the minister in his testimony last session on the fact that a provision in Bill C-21, which says that a loan becomes an unpaid loan when it's been written off by the lender as an uncollectable debt and then it kicks over to the EDA being responsible, would more or less be pro forma.

That's exactly what banks would do, and therefore a bank would never really end up in the position of potentially being found to have committed an offence under the act. They wouldn't actually have a deemed contribution because they would always use this mechanism.

I notice in your remarks you said:

[*Translation*]

...according to the information reported by candidates after the 18-month statutory period, none of the \$2.6 million in unpaid loans was written off by a creditor.

[*English*]

I'm wondering if there's some serious tension between what the minister was telling us about the likelihood of banks simply using this writing-off provision and Elections Canada's experience with the fact that this doesn't seem to happen very often. Is there any tension, or are we talking about two different actors?

**Mr. Marc Mayrand:** I don't think so. I think we were probably talking from different perspectives. The fact is, from the data that's available to us, writeoffs don't occur under the current regime. Now with the new regime, the writeoff would trigger a liability of the association or the party, so that means the use of more writeoffs.

There is another point I think I need to be clear on. The fact that a contribution is deemed does not create any illegalities. I think we have to be absolutely clear on that.

**Mr. Craig Scott:** It's very important that you clarify that.

**Mr. Marc Mayrand:** There's no offence associated with the fact that a loan or any unpaid claim suddenly becomes a deemed contribution. There's no offence, certainly, attached to this.

**Mr. Craig Scott:** It's very important that you do clarify that because I believe the minister is under the impression that this is the effect. We asked that question. It's very important that this committee go on to look at that.

Do I have any time left?

**The Chair:** Yes, one second. There's no time left.

**Mr. Craig Scott:** Next time around let's talk about rebates.

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

Mr. Albrecht, for five minutes, please.

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

Thank you, Mr. Mayrand, for being here today.

I'm sure there's at least one thing all of us around this table today can agree on. On page 4 of your comments, where you talk about the complexity of the bill relating to stakeholders, those providing loans, and Elections Canada, you left one group out. You've left out this committee, in terms of the concerns we have about the complexity of it.

I want to turn to page 6 of the English section of your comments, when you started speaking about avoidance. You say:

By limiting loans of more than \$1,200 to financial institutions, the regime seeks to curtail the influence of individuals who finance political entities through loans, and to eliminate the use of loans as a means to skirt contribution limits.

Then you go on to say:

That being said, since the bill in no way affects credit sales, an individual could sidestep the new rules on loans by becoming a supplier of goods or services.

Just as an example, as a candidate, I could go to a printer and have him or her print \$10,000 or \$15,000 worth of collateral to use in my campaign, which would then, in effect, become a loan because it's not paid yet.

Is there not a simple way to simply include as an amendment that we could not allow suppliers to give direct goods to a candidate, that they have to give it to the EDA, or provide it to the EDA on credit, as opposed to providing it to the individual candidate? To me, it seems a simple fix.

**Mr. Marc Mayrand:** Again, I would support that. One of the key objectives of the bill is to prevent self-lending, but unfortunately it forgot to deal with self-supply, which also exists in a campaign. It's not rare to see that.

I'm not sure that the provision of the statute is open in Bill C-21. I think you would need to get advice on that aspect, but, again, it would require an amendment to the legislation. It can be done, certainly, and it should be done.

• (1150)

**Mr. Harold Albrecht:** I agree with your concern, and I think it's a loophole. There are people who would take advantage of it, but the suppliers also need to be aware that they are taking a huge risk by extending credit to an individual candidate as opposed to the EDA, which is ultimately responsible for the campaign.

**Mr. Marc Mayrand:** We have very limited information on that, but the impression we have is that there's a fair bit of confusion for lenders and suppliers on whether they're lending to an individual or a campaign, which is a different entity. I think there is a lot of confusion there.

**Mr. Harold Albrecht:** You are underlining the complexity again.

If I have a little more time, Mr. Chair, on page 7 you say:

...the regime should bring closure to the management of political entities' finances, by precluding the possibility of loans remaining unpaid for extended periods.

Do you have a period in mind that would clearly define the parameters as to how long that should be extended?

**Mr. Marc Mayrand:** The bill proposes a three-year period to get rid of loans. In my recommendations report, and I was basing that on previous draft legislation, I was proposing 18 months. Three years is probably right, because even after three years we still see loans and unpaid claims outstanding. In terms of loans, it's about \$600,000 after three years, and for unpaid claims it's about \$400,000. The amount has gone down significantly, but there are still quite a few claims outstanding after three years.

**Mr. Harold Albrecht:** Mr. Chair, do I have a little bit of time?

I just want to clarify this. In the last sentence of that paragraph you say "the bill does not allow for this disclosure to be achieved". In my

understanding, the bill did address the time parameters as to how long the loan could be left unpaid.

**Mr. Marc Mayrand:** Unfortunately not. This is another complex part of the regime. I'll try to put it simply. If you take a candidate, the candidate must file his return within four months of the election date, the polling date. At this point that return will show what's been coming in to the campaign, what were the expenditures, and what is outstanding in terms of claims or loans. Then, on the access, it says the candidate has 18 months to reimburse those debts. As long as the reimbursement takes place within that 18-month period, there is no requirement under the act to file an amended return or to file an updated return. It's the same thing for leadership candidates. Again, if debts are entirely paid within the statutory period, after the first return there's no statutory requirement to update the return, so we don't know the source of funds and how they were distributed among creditors.

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

**The Chair:** Mr. Williamson, for five minutes.

**Mr. John Williamson (New Brunswick Southwest, CPC):** Thank you, Chair.

Mr. Mayrand, it's good to see you again. You've raised a lot of interesting points today. It sounds almost as if we've gone from a real mess into a swamp, in terms of some of the proposals, what the bill is trying to accomplish, and then your counter-proposals.

What I find interesting today is that this bill had actually advanced to this stage with multi-party support. I thought we were actually getting somewhere, and now I'm wondering if that's the case.

I want to step back and get to first principles. What is it we're trying to accomplish here? I think if you look at the headlines, it's dealing with the outstanding debts from candidates and how to resolve those. Reading the bill, listening to your comments, it seems the solution we're looking at just involves a maze of regulations. I believe that for a lot of candidates, new and old, the current regime is cumbersome, and we're talking about potentially building on that.

As a side note, I'm beginning to be skeptical that banks are even in a position to fill some of the room we're asking them to. We'll have to put that question to them, I think, as opposed to any of you gentlemen today.

Can I ask you this? Your solution seems to be...I'm going to try to kind of nail it down here, and you're welcome to correct me if I'm wrong. You're looking for greater access of information from Elections Canada reporting requirements, no loans, and, ultimately, political parties would assume the obligations of local candidates when it comes to at least the local level.

Coming from that, I have two questions. First of all, what is your solution to deal with the large outstanding loans from leadership contestants?

I'll ask that one first, and I'll come back to my second one.

•(1155)

**Mr. Marc Mayrand:** Again, there's no easy one.

The main one that I think would be effective is to prevent candidates from running who still have outstanding loans after whatever period—three years—so not allow them to run in future elections until they've covered or reimbursed all their debts.

**Mr. John Williamson:** With the leadership loans we're seeing today, how would that go?

**Mr. Marc Mayrand:** I would treat them the same. Anyone who enters the electoral competition and incurs debts and cannot repay them after, again, a reasonable period of three years, maybe should not be allowed to enter the race again.

**Mr. John Williamson:** Okay.

My next question is this. Has any consideration been given to the idea of moral hazard? If local candidates run up debts, instead of showing some restraint as the election nears and things don't look great, they just keep spending, knowing full well that the central party is going to eventually assume the debt.

The question of moral hazard...it seems that debts could actually become larger and just be turned over.

**Mr. Marc Mayrand:** I think that will be something the parties will need to factor into their internal set-up.

When we look at the overall picture of funding for candidates, we see that loans represent about 3% to 7% of their financing. Half of it comes from contributions and 40% comes from transfers from campaigning and parties.

The other thing is that, again, there is a limit on spending. The candidate has to be careful there, because he can easily get offside if he crosses the line over the spending limits.

**Mr. John Williamson:** Chair, do I have another 30 seconds? How's my time?

**The Chair:** You have 20 seconds left.

**Mr. John Williamson:** I'm wondering if, getting back to first principles, the solution doesn't just rest in terms of dealing with past outstanding obligations in future—I guess this applies more to leadership—removing that \$1,200 one-time donation, allowing it to be multi-year, and frankly, just keeping the heat on individuals to raise money. We have generous tax receipts for candidates. Is that not perhaps the solution, being able to go back to donors time and time again?

**Mr. Marc Mayrand:** In any case, that will have to be done because those loans can only be reimbursed out of contributions. That has to happen. The question I posed already to the committee is whether we need to ensure that there is level access for all Canadian citizens and whether allowing for a seed loan to get a campaign started would better serve the democratic system.

**The Chair:** Thank you.

Mr. Cullen, for five minutes.

**Mr. Nathan Cullen:** Thank you for the testimony today. It's helpful.

The suggestion of removing all personal loans—because it's so complicated to try to understand when someone hits their limit. It's a moving target. In terms of putting that to banks and credit unions... and obviously we're going to have hear from them, I think, as a committee. We're making a bunch of assumptions about what they will and won't do, and I don't think anyone around here is necessarily right, and I don't think Elections Canada can assume either.

If you have a guarantor who comes in to guarantee the loan, which from personal experience is something that my credit union was interested in, that then prevents that person from donating to the campaign because that's an assumed contribution, even though they haven't donated a dollar. Is that correct?

•(1200)

**Mr. Marc Mayrand:** Yes.

**Mr. Nathan Cullen:** So it's not a perfect scenario, in the sense that some campaigns don't have a lot of deep-pocket donors and people who are willing to.... It's complicated as well if you take out a \$50,000 loan. You then have to marshal together enough people at \$1,200 a person to guarantee that loan.

**Mr. Marc Mayrand:** Or ask your party or riding association to guarantee it.

**Mr. Nathan Cullen:** Right. For a general election, it may be one thing; for a leadership race, it may be quite another.

**Mr. Marc Mayrand:** Yes.

**Mr. Nathan Cullen:** I understand the idea of getting rid of individual loans. We're trying to have that tension, as you just said, between accessibility to the political system while not allowing money to buy politics, to buy leadership races, right? Someone once said that money in politics is like rain on a sidewalk; it finds its way through the cracks.

There were some loopholes created in the last law big enough to drive a truck through, in terms of personal loans, to circumvent these limits and allow people to blow through limits that were intended to have fairness.

You've suggested the idea that if somebody has exceeded those limits on his personal loan front and hasn't paid them back—you talk about a three-year window—they should not be permitted to run again. This is a pretty strong thing for a chief electoral officer to suggest, to ban someone from running based on the idea that they've been irresponsible or negligent. It almost infers—and I know you're not inferring—that perhaps the candidate took that money knowing they couldn't pay it back. It was a way to circumvent the limits on contributions that applied to everybody else in the race, if you follow me.

It's a three-year ban or a ban on not running because of a three-year limit. That's what your suggestion is, correct?

**Mr. Marc Mayrand:** Until those debts are repaid.

Again, when I suggest that, I go from.... We need to balance all the principles here and the objectives. If we are truly concerned about bringing finality to those debts, I think we need to think of other measures than the ones that are in Bill C-21.

**Mr. Nathan Cullen:** It's interesting to me, because it is, as I said—and I don't want to put words in your mouth—a pretty severe consequence: you cannot run until these debts are taken care of. The challenge, again, through some personal experience, is that the hope and optimism of a candidate sometimes exceed the economic realities that also face that candidate. You can be convinced; I resisted, I guarantee you that.

But the notion, particularly in general elections, of either that person not being able to run or the party having to subsume that debt...this level playing field you talked about earlier I think remains critical: access to the political environment.

I don't think it was fair. You passed over the comments about two candidates: one traditionally able to access lines of credit, loans from a financial institution, middle-aged white male, versus a young female candidate walking into the same institution or treated the same. That doesn't meet with the reality that exists within our financial institutions today. It's a hangover from days past, but it still exists.

Can we just simply wash over that piece and say that banks will be neutral on whomever walks through their front doors?

**Mr. Marc Mayrand:** There are several aspects to your question. I want to be clear. To my mind, we need to distinguish candidates from leadership contestants. These are separate entities and separate contests.

In the case of candidates, what I put forward in my remarks is that the party becomes liable for those debts after three years, with no civil order or sanction for the candidate. The party itself may decide not to endorse that candidate in future elections.

Where we seem to have difficulty is with regard to leadership contestants.

**Mr. Nathan Cullen:** Yes.

**Mr. Marc Mayrand:** One of the proposals I put forward was that in the extreme case where the debts are not reimbursed...I don't believe, personally, that imposing further fines on those individuals will help resolve the situation; it just aggravates it.

•(1205)

**Mr. Nathan Cullen:** It's like fining a panhandler. Cities try it.

**Mr. Marc Mayrand:** We need to look at other mechanisms. We could look at making the party responsible for the leadership contestants' debts, but again, I think the parties would have views on that.

**Mr. Nathan Cullen:** Is that not fraud, in the sense that some candidates will be viewed more preferably by the party than institutional candidates coming from within, and is that your reluctance?

**The Chair:** Your time is up.

**Mr. Nathan Cullen:** Sorry, Mr. Chair.

**The Chair:** I'll let you finish that piece. I was really interested and wasn't watching the time, and then I looked down and you're a whole minute past.

**Mr. Nathan Cullen:** Oh, my goodness.

**Mr. Marc Mayrand:** Another alternative would be—which I agree would be an extreme measure—to prevent them from running again in future events. Maybe we can think of other...

I know that in Quebec the approach taken to resolve this is to make the candidate personally liable for the debts that are outstanding at the end of the contest. But again, it's not an easy, foolproof solution to the issue of a leadership race, I must say.

**The Chair:** Mr. Lukiwski, you have somewhere around five minutes.

**Mr. Tom Lukiwski:** I want to get right back into the leadership contest, because I think, as you mentioned earlier, that's where we have the most difficulty. Generally speaking, I agree with your analysis, Mr. Mayrand, that most candidates don't take out a lot of loans. If they do, it's normally a loan taken out by their chief financial agent and guaranteed by their rebate, but there are not a lot of individual loans.

Loans seem to come into play in leadership contests, because in those contests, depending on the political party, the limits for spending could be close to a million dollars. To try to finance a leadership run is an expensive process, and it seems that's where loans are the most logical form of getting quick cash.

That brings us to the question, as we've seen since the 2006 election, where there is still a number of unpaid loans. The current legislation really is toothless. You haven't got any ability. And you're right: do you fine somebody? What good does that do? The intent is to try to recover the money.

I'd like to ask you, even though you've talked on a number of occasions about perhaps exempting leadership contestants from this legislation, would it not make more sense to include leadership contests as a way of putting some teeth into the ability of taxpayers to see their money returned? I think, for example, if we included in this legislation the same provision as to the obligation of the political parties, there would be some serious consequences. I think the parties would perhaps be a little bit more diligent in examining who they allow to enter into the race, but I think, if nothing else, we could be assured that, if six years after completing a contest someone still owes \$100,000 to \$200,000, there is some mechanism by which we could recover that money.

Would you agree? I'd just like to get your thoughts on why you keep saying that maybe we make an exemption for leadership contests, instead of saying they should be included in this legislation.

**Mr. Marc Mayrand:** As we're having this discussion you're getting me thinking. Maybe one way for the party and for the regime to fix this problem is to have loans contracted by the parties themselves. After all, it's their event, and they may determine through internal rules how to allocate funds from those loans among all candidates. When their leadership contest is over, the party is responsible for reimbursing the loan.

That may be a test solution that needs to be performed.

**Mr. Tom Lukiwski:** I'm not disagreeing; I think that's actually the innovative way to look at it. But that would be up to the political parties to determine. Political parties would have to make that determination, would they not?

**Mr. Marc Mayrand:** Yes.

**Mr. Tom Lukiwski:** So that wouldn't be covered by legislation. I'm saying that—

**Mr. Marc Mayrand:** We could cover it in legislation. In fact, to work, I think it would have to be covered in legislation.

As to limiting loans in leadership races and the reimbursement to the parties, only the parties themselves.... Again, the parties are already setting spending limits for their leadership race, so they have the tools.

**Mr. Tom Lukiwski:** With that in mind—because I imagine this is, particularly on the 2006 leadership contest by the Liberals, fairly frustrating for you and your office, and has been for a number of years—you made a series of recommendations in your 2010 report. Based on the discussion we've been having here today—and now having had a chance to take a look at Bill C-21 as well, of course—would you feel that you're in a better position to come back to this committee with an updated series of recommendations, including recommendations on the particular point of repayment of leadership contest loans?

● (1210)

**Mr. Marc Mayrand:** My recommendation from 2010 still stands.

The problem the committee will have is that many of these recommendations dealt with unpaid claims, and that is not opened in Bill C-21. So there's a procedural issue, I believe.

Similarly, concerning coming forward with a recommendation on leadership contests, I don't know that the provisions of the bill are broad enough to include them, because Bill C-21 is very limited to loans. It would not come with—

**Mr. Tom Lukiwski:** I agree with you, it doesn't deal with the elephant in the room, the unpaid loans by leadership contestants. I'm suggesting that we perhaps take a look at including some of those provisions in the bill. Obviously we have the ability to amend the bill. The minister may want to take a look at going back to the drawing board, so to speak.

But it would be interesting to see any recommendations you may have that we could consider legislatively, particularly with leadership contest rules and regulations.

**The Chair:** I have Mr. Gill for five minutes.

**Mr. Parm Gill (Brampton—Springdale, CPC):** Thank you, Mr. Chair.

I also want to thank the witnesses for coming to participate in this very important discussion and topic.

I'm wondering whether you're able to share your thoughts concerning loan defaults. Do you see more of a problem, say, with candidates running in general elections, or is this more a problem among the leadership contestants?

**Mr. Marc Mayrand:** I'm not sure I want to talk about defaults. I prefer to talk about outstanding loans, because these loans may be subject—and this is recognized in the current legislation, Bill C-21—to binding agreements. It doesn't mean they're necessarily in default.

What I can confirm to the committee is that for candidates there is still a significant number of outstanding loans and unpaid claims, even after three years. So it is something that exists in the system.

In the case of leadership contests, when you think of it, the new rules were introduced in 2007, so there haven't been many leadership contests. There have been a few. My sense is that there are general efforts to reimburse those outstanding claims—some less successful, of course.

**Mr. Parm Gill:** Can you define the word “significant”? Are you able to give us some sort of number of how many candidates are involved, or what the amount is, possibly?

**Mr. Marc Mayrand:** Well, for unpaid loans there is probably something I could share with the committee, if there is interest.

If we're looking at the last three GEs, generally for candidates—I'm talking about candidates here—outstanding amounts at four months after the polling date stood at between \$3 million and \$4 million. That's about 7% of all the funding available to candidates in elections. After 18 months, those amounts have been reduced by about 25%.

I hate to do a quick average, but after 18 months, it stood, I think, at about \$1.3 million, so still after 18 months there was \$1.3 million outstanding. After 36 months—three years, the period provided by Bill C-21—we are still talking about half a million dollars in total debts outstanding among all candidates, and here we're talking about 1,400 candidates.

There is effort. What this shows is that there are continuous efforts on the part of candidates to reimburse their debts, but some are struggling in terms of the time needed to reimburse them.

● (1215)

**Mr. Parm Gill:** If you were to look at the last number of elections, which way would you say the trend is going? Is it getting better, election over election, or is it getting worse?

**Mr. Marc Mayrand:** I would say it's steady. That's why I'm thinking about seed loans being allowed. It seems pretty consistent across the system that candidates need a bit of money to start up their campaign. I don't see big variation from election to election. I will of course share this table with you, but you will see that there are no real peaks and valleys in it.

It is similar with unpaid claims. In addition to unpaid loans, we're talking about \$1.1 million of outstanding claims after an election.

**Mr. Parm Gill:** Are you also able to share with us some stats under the current system? Where are most of the loans coming from? Are they being taken out using a financial institution, or individuals, or what other means are being used?

**Mr. Marc Mayrand:** It varies by political entities. Of the two entities we have spoken most about today, for candidates in an election, 50% of the loans are from the candidates themselves, and another 30% are from other individuals. In leadership contests, which have been an issue of much discussion, leadership contestants are again depending on individual or other entity loans to the tune.... Again it varies very much, because there are far fewer contests, but it's somewhere around one-third of their funding that is through loans. Of this, a third is from individuals or corporations. Put the private loans aside—those covered by Bill C-21.

**The Chair:** Thank you.

I've run out of people on the list. Mr. Mayrand has suggested he could stay for a little while longer. I would suggest one more seven-minute round, if we can do it. If you want to share some time, you can do it, but we'll give each party one turn, if that's all right.

First we'll go to Mr. Williamson—and share your time, if you need to—and then to Monsieur Garneau and Mr. Scott.

**Mr. John Williamson:** Thank you, Chair.

I want to challenge you. You've mentioned the seed money several times, whether it's \$4,000 or \$10,000. Are you suggesting that this would come from the political organization itself, or would it be mandated, or...?

**Mr. Marc Mayrand:** It would not be mandated. All I'm saying is that, over and above the contribution regime, consideration should be given to allow candidates in an election—I'm not talking about leadership contests—to have access to small loans to get their campaigns started.

**Mr. John Williamson:** Correct me if I'm wrong, but I believe that's the case in the bill. The parties can lend money to riding associations if they choose to do so—or not—and I think they do or do not for a whole host of reasons. Has the candidate tried to raise money? Have they shown good faith?

If you're just suggesting that what works now should remain, I would agree with you, but if you're suggesting anything more than that.... I think that between the existing party structure that allows for it, as well as the very, very generous tax receipts that candidates can provide, there is an obligation here for candidates to go out and raise money themselves.

When you're able to collect \$100 and return \$75 to that individual, there is an obligation on the candidates themselves. I worry that we're drifting into territory that suggests the candidate has no obligation, or we're minimizing it and turning the responsibility over to others.

Could you clarify your \$4,000, or whatever the figure is? How would it differ from what currently exists with the party loans and the financial opportunities that candidates have?

• (1220)

**Mr. Marc Mayrand:** Currently, there's no restriction, so we have to look at it in the context of Bill C-21. Again, my suggestion is based on the fact that....

You're absolutely correct: the candidates get most of their funding through contributions and another big part from transfers from their EDAs or the party. But when we look at the system globally, they are looking for 7% of their funding—it's not a large amount—that comes from loans other than those from the parties or EDAs. What Bill C-21 is taking away is that 5% to 7%.

What I'm suggesting is that consideration be given to either eliminate those loans entirely, because of the complexity in the bill, or allow a separate, one-time, one-campaign loan, with a strict limit, to allow candidates to get seed money to start their campaigns. That's all I'm suggesting.

**Mr. John Williamson:** Thank you.

That was basically my point: to just highlight the moral hazard again.

I'll turn it back to you, Chair.

**The Chair:** Is there anyone else from your group?

Mr. Reid.

**Mr. Scott Reid:** I just have one question. I had two questions initially, but Mr. Scott took one of them.

My question relates to your suggestion that if a candidate has not paid off debts, that candidate would be unable to run again, and I must say, I worry that this sort of thing would have the effect of hitting certain classes of individuals in a way that would be tougher than it would be for other classes of individuals.

If we're thinking about a formal campaign for Parliament, individuals who would run as independent candidates would have a much harder time paying off their debts than would those who could be assisted by their parties. This suggestion would have the effect of discriminating against independent candidates, who would have to be much, much more careful about running.

Given the fact that independent candidates typically stand the best chance of having an impact, not in a general election but in a byelection, which might very well be called a short time before a general election, you could see a situation in which someone who runs, and who has to spend a bit and go into debt to run a credible campaign, is then prohibited from running again. I worry very much about that. I just throw it out as a note of caution to you.

**Mr. Marc Mayrand:** Oh, absolutely. Again, I just want to clarify that when I'm.... That consideration of prohibiting someone from entering a contest would be for leadership contestants. I didn't have that in mind for a candidate.

**Mr. Scott Reid:** Oh, I see. So purely for leadership contests...?

**Mr. Marc Mayrand:** Yes.

**Mr. Scott Reid:** My apologies.

**Mr. Marc Mayrand:** Yes, because there's no mechanism there to bring an end to this debt load. The last resort...and I agree with everyone that it would be a last-resort measure that they would be stopped from entering future contests.

**Mr. Scott Reid:** I apologize. I misunderstood what you were getting at.

Thank you.

**The Chair:** Is there anything else from...?

Mr. Scott.

**Mr. Craig Scott:** Thank you, Mr. Chair.

I just wanted to quickly follow up, Mr. Mayrand, on one comment. In your discussion with Mr. Cullen about alternatives to which entities would be ultimately responsible for an unpaid loan, we were discussing the national party a little bit, for example. You did say that possibly one option could be to consider it—because you mentioned Quebec—and it could be that the debt falls back on the candidate.

I just want to double-check. My understanding is that if we did this, we would in effect be circumventing the whole issue of candidates not being able to fund their own campaigns. Would you agree with that?

**Mr. Marc Mayrand:** I would tend to agree, yes. Hopefully you will have officials from Quebec to explain their regime, but that's my understanding of their regime.

**Mr. Craig Scott:** Okay, so they would have that problem. Thank you.

You started out, in almost your first or second sentence of the critique part of your presentation, talking about the relationship between this and the provision of goods and services and how they could be provided on credit, for example. I want to take that just a tiny bit further. It may just be that I have not read this closely enough or do not understand the system well enough, but does the idea of a loan in kind come up at all?

For example, we've had cause to discuss recently in the House issues of preferential funding for providing certain services, such as flights within a riding where remote communities need to be contacted by candidates. If, in fact, a very good price is given by a corporate entity, or even the donation of a service, does that fall at all within the parameters of the idea of a loan?

• (1225)

**Mr. Marc Mayrand:** No, it falls within the parameters of a contribution.

**Mr. Craig Scott:** It's entirely within—

**Mr. Marc Mayrand:** It's a contribution in kind. It's the commercial value less the actual cost paid by the beneficiaries.

**Mr. Craig Scott:** So we don't need to worry about that with respect to this. The current regime under the Canada Elections Act covers the whole question of whether market value for particular kinds of services has been charged. Is that correct?

**Mr. Marc Mayrand:** Yes, somewhat.

**Mr. Craig Scott:** A few people were concerned that there might be a gap.

On this issue of an unpaid loan becoming a deemed contribution, we were cut off towards the end of my last question. I just want to make sure that we are clear and on record that your position is that if, for example, a financial institution gives a loan of \$10,000, and it flips over and is unpaid at the end of three years and becomes a deemed contribution, nothing in the bill or currently in the Canada Elections Act turns that contribution into an offence.

**Mr. Marc Mayrand:** That is correct. I think you have to look at all the circumstances of the transaction to figure out if it is.

**Mr. Craig Scott:** That's despite the fact that we know that a financial institution as a corporation can't give at all.

**Mr. Marc Mayrand:** That's why I think we need to be careful, because in many circumstances, it may have started as a very legitimate loan. It cannot be turned suddenly, just by a fiction of the law, into a criminal offence.

**Mr. Craig Scott:** Great.

Talking about fictions of the law, one means by which an unpaid loan can be dealt with is by having it be the subject of a binding agreement. If all a bank or the two actors have to do is enter into a new binding agreement, which looks to me just like another way of renewing the loan, isn't there the potential for this to be put off forever? Is that something you were referring to indirectly before?

**Mr. Marc Mayrand:** I haven't gone into the details of those provisions. Yes, and it's more than that. I don't have access to those documents. All I get is a notice that there's a binding agreement in place.

**Mr. Craig Scott:** You have to approve this. According to proposed subsection 405.6(5), it's you, as the Chief Electoral Officer, who has to verify it. But you're telling us that you wouldn't have access to the details.

**Mr. Marc Mayrand:** Exactly, and that's why in my opening remarks I asked for additional authority if we want to pursue those provisions.

**The Chair:** Thank you.

We'll go to Madame Latendresse, please.

[Translation]

**Ms. Alexandrine Latendresse:** You mentioned the changes that complicate this bill and you proposed some amendments that would simplify it.

We were allowed public funding for some time. Do you think that would allow things to remain more transparent and to deal more effectively with difficulties of this kind?

[English]

**Mr. Marc Mayrand:** I don't see any direct relationship, honestly. The issues we're dealing with in terms of loans existed under the previous funding regime. It has little to do with the funding regime.

**The Chair:** Craig, you have about a minute left, if you have something really pressing.

**Mr. Craig Scott:** Unless Mr. Cullen has something.

**Mr. Nathan Cullen:** I want to get back to the guarantor's thing.

You suggested that the bank may look at the local riding association, the EDA, as somebody who could sign off. I'm not sure banks would recognize that as an entity. Would they not then see the people in the riding association as the ones guaranteeing the loan?

What I'm trying to understand for all parties is the mechanism, especially early days in a campaign, especially for not well-funded candidates. A few members who are your key supporters sometimes also sit on your executive. The bank is not going to see the EDA or the riding association as a legal entity that will guarantee a loan. Those people in effect have made a contribution. In your response to my question earlier, I think you said the banks can recognize the riding associations, or potentially the party, as the guarantor.

•(1230)

**Mr. Marc Mayrand:** You're correct. It's a grey zone in the law. There's a provision in the act that allows a creditor to sue an EDA. In that context it gives it some personal, moral personality, if I can use that expression, even though it's not incorporated. That's one of the reasons I suggested that the party, at the end of the day, should be responsible for those debts.

**The Chair:** Mr. Garneau.

**Mr. Marc Garneau:** Thank you, Mr. Chair.

I think the personal observation based on Bill C-21 as written, and even with what you propose here, is that if you are an independent candidate, you're seriously disadvantaged. I'll just make that remark as an opener. I'm not asking for a comment.

[Translation]

Mr. Mayrand, do you know whether banks and other financial institutions are comfortable with the provisions of Bill C-21? Ultimately, they are going to be deciding whether or not to grant a loan, in situations that may become public knowledge.

**Mr. Marc Mayrand:** We have had no discussions about the bill with financial institutions.

[English]

**Mr. Marc Garneau:** Okay.

I want to clarify this because there seems to be some ambiguity in Bill C-21, and I want to make sure it's 100% clear.

If a candidate has a debt, during the course of the three years before it becomes a deemed contribution, are they allowed to receive up to the maximum amount from the same person once a year in helping them to repay their debt? At the moment they can only receive once in the campaign.

**Mr. Marc Mayrand:** It's the same thing for contributions. You can contribute every year.

**Mr. Marc Garneau:** That's every year.

**Mr. Marc Mayrand:** Or they could lend every year.

**Mr. Marc Garneau:** In theory, can I say \$1,200 times three from the same person, if one takes it all the way to the three years?

**Mr. Marc Mayrand:** Yes, except if you're contracting loans, you're not helping your situation.

**Mr. Marc Garneau:** I'm talking about individuals contributing to help you repay your debt.

**Mr. Marc Mayrand:** Yes, absolutely.

It's \$1,200 a year.

[Translation]

**Mr. Marc Garneau:** In your presentation, you described two examples of loopholes. I would like a few more details about them. You said that, unlike the current provisions on contributions, nothing in the bill specifically prohibits anyone from channeling loans through other people. Could you explain what could happen?

**Mr. Marc Mayrand:** I was thinking of the situation we have seen in other systems, the use of dummy names. So an individual who wants to lend \$10,000 to a campaign uses family members to hide

the loans, if I can put it that way. The act does not specifically prohibit that.

**Mr. Marc Garneau:** So it would be relatively easy to build in another amendment.

**Mr. Marc Mayrand:** Absolutely, and I strongly recommend doing so.

**Mr. Marc Garneau:** Very good.

The other loophole you mentioned was credit sales. Could you expand on that a little for us?

**Mr. Marc Mayrand:** Given that we are saying that it is inappropriate for candidates to fund themselves, I feel that we should look at all kinds of transactions, not just loans. The other possibility is for candidates to sell themselves goods and services on credit. So they secure funding indirectly that they cannot get through loans, but they can get through credit sales. That is why I am saying that it is a loophole that has to be looked at.

**Mr. Marc Garneau:** Thank you.

[English]

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

Thank you, Monsieur Mayrand and friends, for being with us today.

I think we've pretty much talked that one through, so I will excuse our witnesses, with thanks for them coming today.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** I just wanted to make sure that Marc now fully understands what he'll be looking for when he announces his candidacy.

We're all here for Marc. That's all I'm saying.

**Mr. Marc Garneau:** May I thank both Tom and Nathan for being my campaign co-chairpeople.

•(1235)

**The Chair:** They're your fundraising team, Mr. Garneau.

On that note, there's been some discussion, among some, about having the Canadian Bankers Association and the caisses populaires come as a group of witnesses. It's the chair's omission for not having them on the original witness list, and I'll take that.

If it's all right with the committee, we'll try to get them as early as this Thursday. We're having quite a bit of trouble getting other witnesses for Thursday. I think they will be able to come.

Do I see nods of the committee that this is all right?

**Some hon. members:** Agreed.

**The Chair:** Let's do that.

Monsieur Garneau can talk to them at that time too.

Is there anything else for the committee?

There will be another group in here at one o'clock. If you're still not finished or want to eat lunch, you'll need to do that at the back so you're out of television shot.



Madame Latendresse.

**Ms. Alexandrine Latendresse:** Would it be possible to perhaps have Equal Voice or aboriginal groups on Thursday?

**The Chair:** We keep asking. The best we can do is take the witness list and ask the groups. In some cases we have no answers and in some cases we have no absolute answers as to when they can come. At some point we'll make a decision as a committee that we can't fill the spots, but we'll keep doing our best. The clerk is doing her best to get them.

**Ms. Alexandrine Latendresse:** I just want to make a general recommendation. If it's possible to have them before the banks, it would be really useful.

**The Chair:** We've asked them. We've told them our open spots. We do not yet have a commitment that they will be coming. We'll do our best.

**Ms. Alexandrine Latendresse:** That's it. Thank you.

**The Chair:** Great.

Is there anything else for the good of the committee today?

Seeing nothing, we are adjourned.

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