



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Procedure and House Affairs

PROC • NUMBER 071 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, October 3, 2017

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Chair

The Honourable Larry Bagnell

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• (1100)

[*Translation*]

The Chair (Hon. Larry Bagnell (Yukon, Lib.)): Hello everyone.

Welcome to the 71st meeting of the Standing Committee on Procedure and House Affairs. This is a public meeting.

Today we are continuing our study of Bill C-50, An Act to Amend the Canada Elections Act (political financing).

The two witnesses are from Elections Canada: Stéphane Perrault, acting Chief Electoral Officer, and Ms. Anne Lawson, general counsel and senior director, legal services. Thank you for being here.

I will now give the floor to Mr. Perrault so he can give his presentation.

[*English*]

Mr. Stéphane Perrault (Acting Chief Electoral Officer, Elections Canada): Thank you, Mr. Chair.

I'm happy to be here today to speak to Bill C-50. I will try to keep my remarks brief to leave as much time as possible for questions from the members.

Bill C-50 has two main elements, both related to political financing. The first element is a new regime for reporting on certain fundraising events. The second element is more technical and relates to correcting a long-standing problem regarding the regulation of leadership and nomination campaign expenses and contributions. I will speak to each aspect in my remarks, but will focus primarily on the first component of Bill C-50.

I have also distributed a table containing a few technical amendments for the committee's consideration for the better administration of the proposed provisions in this bill.

The first element in Bill C-50 is a new regime for reporting on regulated fundraising events. The requirements for disclosing information and reporting apply only to certain fundraisers. To fall within the scope of the bill, a fundraiser will need to have all of the following three elements. First, it must be organized for the benefit of a party represented in the House of Commons or one of its affiliated political entities. Second, the fundraiser must be attended by a leader, a leadership contestant, or a cabinet minister. Third, it must be attended by at least one person who has contributed over \$200 or who has paid an amount of over \$200, part of which includes a contribution, as a condition for attending the fundraiser event.

In this regard, I note that the bill offers a calibrated approach. Not all parties will be subject to the new requirements and I believe that is a good thing. Similarly, the rules will not apply to all fundraising activities, but only those for which a minimum amount is charged to attend and where key decision-makers are also present.

There is also an important exception for party conventions, including leadership conventions, except where a fundraising activity takes place within the convention. The convention itself is exempted, but if there's a fundraiser that meets all the conditions within the convention, then that is caught by the new rules. Again, this reflects a concern to achieve a proper balance and I think it is wise.

However, I note that donor appreciation events held at party conventions will be exempted from the proposed rules. I understand that this reflects a concern with regard to the fluidity of attendance at such events and practical difficulties in applying the rules. This is something that the committee may wish to examine.

In order to improve transparency, Bill C-50 provides for two types of disclosure to be made with respect to regulated fundraising events. First, a notice of such events must be prominently posted on a party's website at least five days prior to the event. Second, a report must be provided by the party. Even if the fundraiser is made for the benefit of affiliated entities, it is the party that must provide the report to the Chief Electoral Officer within 30 days of the fundraiser. This report must include details of the fundraiser, including the names and partial addresses of attendees, and the names of any organizers of the event. There are some exceptions to protect the privacy of people working at the event or underage persons who may be attending.

These disclosures would vary during a general election. Notice of a regulated fundraising event would not be required and a single report for all fundraising events held during a general election would be due to the CEO within 60 days after polling day. In practice, this may prove to be a tight timeline. There are clauses for extensions, but I think that we'll see over time whether that 60-day period is a good balance.

Generally speaking, the bill increases the transparency of political fundraising, which is one of the main goals of the Canada Elections Act. It does so without imposing an unnecessary burden on the smaller parties that are not represented in the House of Commons or for fundraising events that do not involve key decision-makers.

● (1105)

[*Translation*]

That said, I am proposing a number of minor and technical amendments to improve the administration of Bill C-50.

First, as parties are required to publish notices on their website of fundraisers covered by Bill C-50, I would propose that parties be required to also notify Elections Canada of such a publication. This will assist Elections Canada in administering the Act and in ensuring that the reports to be submitted 30 days later are indeed submitted.

Second, so that the bill more closely mirrors current authorities in the Canada Elections Act for other reports, I am recommending that the CEO be permitted to request, in writing, substantive corrections and revisions to reports submitted after a regulated fundraising event.

Consideration should also be given to adding an offence for filing a false, misleading, or incomplete report so as to bring this bill in with other components of the existing regime for financial returns.

I will now turn briefly to the second element of Bill C-50, which deals with the definitions of leadership and nomination campaign expenses in the Canada Elections Act.

This aspect of the bill responds to a recommendation made by Elections Canada and recently unanimously endorsed by this committee. The purpose of this change is to ensure that all expenses and contributions made in relation to leadership and nomination contests are regulated.

Not surprisingly, Elections Canada supports these proposed changes. The current definitions are not aligned with the goals of the act and are difficult for both nomination and leadership contestants to understand and comply with.

There is, however, an amendment that is contained in our table of amendments and that I would recommend be made to this part of the bill. It is essentially meant to ensure that only expenses and contributions in relation to leadership and nomination campaigns are captured by the new definitions and by the rules on expenses and contributions.

I would say, respectfully, that there was an unintended broadening of the definition and that the wording of the definition needs to be clarified.

That is all I have to say. Thank you.

I would of course be pleased to answer any questions the committee members may have.

The Chair: Thank you very much.

Mr. Bittle, you have seven minutes.

Mr. Chris Bittle (St. Catharines, Lib.): Thank you very much, Mr. Chairman.

[*English*]

Thank you for being here today.

Could you describe for us our current political financing regime and how it's regarded worldwide?

Mr. Stéphane Perrault: I've had the pleasure of speaking across different jurisdictions in Canada and abroad about our political financing regime. I've never said it was perfect, but I do honestly believe it is one of the better calibrated regimes that I've seen. I certainly would not envy any other regime taken as a whole.

Mr. Chris Bittle: In your report after the election you made a recommendation that there be administrative and monetary penalties regimes in order to help with enforcement. Would such a regime help with the enforcement of the provisions in Bill C-50?

Mr. Stéphane Perrault: I think that's a very good point. The rules that we have here today for review by this committee are a good example of what I call a regulatory regime. This is not the stuff of criminal law.

Certainly I would hope that if there was a regime for administrative monetary penalties, this regime would apply to these kinds of rules, because these are exactly the types of rules that AMPs, as we call them, are best suited to assist in ensuring compliance.

Mr. Chris Bittle: I'm sorry I didn't have much time to go over the chart that you provided, but on that point on the criminal law, in terms of clause 9 and your recommendations there, offences could also be added requiring intent. For curiosity's sake, are there offences within the Canada Elections Act that require proof of intent, which is more of a criminal standard rather than a regulatory standard that only requires the guilty act rather than the guilty mind?

● (1110)

Mr. Stéphane Perrault: For most of the political financing rules in the act when there's a requirement or a prohibition, there's both an offence created that we call a negligence offence or a due diligence offence, which does not require intent but only requires that the person exercise due diligence, but there is also a parallel offence in many cases requiring intent. So depending on the circumstances and the nature of the conduct, then either may be used.

Mr. Chris Bittle: Just out of curiosity, have there ever been any successful prosecutions that you're aware of of individuals who showed intent?

Mr. Stéphane Perrault: I would have to go back, but I believe that's the case, yes.

Mr. Chris Bittle: Many fundraisers offer a chance to buy a table's worth of tickets. In that case, some donors may donate much more than the single ticket price. However, in that practice, they have actually purchased a number of tickets and could invite a number of guests. For example, there could be a \$50 fundraiser where donors are invited to buy a table for \$500. Based on your reading of Bill C-50, would that option, the option to buy 10 tickets for \$500, trigger the new regime, assuming a designated politician was in attendance?

Mr. Stéphane Perrault: As long as part of the \$500 includes a contribution, so assuming the benefit received is not the full amount, then it would trigger the new rules. All participants present would be disclosed as part of the regime, not only the purchaser of the tickets.

Mr. Chris Bittle: Bill C-50 contains a number of exemptions to the reporting requirements, predominantly for those who are executing the fundraising event. However, it's not clear if a personal support worker for an attendee would also be exempted if they attended in the course of their employment. Would you support an exemption for people like a personal support worker who may be present at the fundraiser in support of someone who has paid to attend, so in terms of an accessibility piece?

Mr. Stéphane Perrault: I think that would make sense, of course. I would support that.

I just want to come back to my first answer, because I may have misled the committee. I'm thankful for—

Mr. Chris Bittle: There was no intent, I'm sure, to go back to the original....

Some hon. members: Oh, oh!

Mr. Stéphane Perrault: The trigger is having been required to pay at least \$200, so I believe in terms of the tickets, independent of the number of tickets bought, if buying at least one ticket of over \$200 is required, then that would be caught. But if the amount of the ticket that is required to attend is under \$200, or is \$200 and less, then it would not be triggered.

Mr. Chris Bittle: In terms of the personal support worker, that's a...?

Mr. Stéphane Perrault: It seems like a very reasonable element to add to the bill, yes.

Mr. Chris Bittle: Okay.

Thank you, Mr. Chair.

The Chair: Sorry, when you did your correction, did that change the table of \$500?

Mr. Stéphane Perrault: Yes, exactly. With a table of \$500, if it's 10 tickets of \$50, none of the tickets in order to attend are over \$200, so my reading is that this would not trigger.... If any of the tickets are more than \$200, then that would trigger the application of the rules.

The Chair: Thank you.

Mr. Nater.

Mr. John Nater (Perth—Wellington, CPC): Thank you, Mr. Chair, and thank you to our witnesses today.

I want to follow up on that last point. Multiple tables can be sold for \$500, but as long as the requirement was \$50 per ticket, it would not trigger the reporting premise. The prime minister could attend a \$50-ticket event and multiple people could buy \$500 tables, but it would not trigger the requirements then?

Mr. Stéphane Perrault: Correct. My understanding is this bill is meant to capture situations where, in order to attend one of these events where a key decision-maker is present, at least one person who's attending has had to pay over \$200.

Mr. John Nater: Would you recommend a change? In your learned opinion, would you want to see a change that the dollar value be added if someone pays over \$200?

Mr. Stéphane Perrault: I think that's for the committee to consider. I don't have a strong view on that. I think the purpose of the bill is to deal with situations where there's a concern over privileged access, and whether one of those situations, as you describe, that is currently not captured falls into that category, I think is something for the members to consider.

• (1115)

Mr. John Nater: Thank you.

I want to follow up on one of your recommendations, and that is the notification to Elections Canada, as well as being published on a website. It's more of a comment, but I think that is a worthwhile suggestion. It makes sense that if Elections Canada is going to be regulating this there should be some notification requirement.

I want to follow up a little more on the five-day notification on a party's website. I brought this up when the minister was here last week. I'm thinking of a situation in which a long-standing event has been planned, tickets are over \$200, but no individual who would trigger reporting requirements—the prime minister, a minister—is initially attending, and then, within that five-day period, whether it's two days in advance or one day in advance, a guest is added, and it could be the prime minister or a minister, within that short period of time.

How would you envision the act applying in that case? What would be the advertising requirements? How would that work, in your opinion?

Mr. Stéphane Perrault: From memory, I think that in a situation like that, any organizer of the event becoming aware of the presence of one of the, let's call them, key decision-makers who triggers the application of the rules, should give notice to the party so that the party, immediately upon receiving notice, may make any adjustments to the notice, or publish a notice as required.

Mr. John Nater: Would you recommend any changes to that to deal with that in a different way, or do you think that's adequate, that simply within perhaps hours the changes are made online?

Mr. Stéphane Perrault: As I read the rules, I think they're adequate to deal with the situation. If there's a concern that I have not seen, then I am happy to hear about it. But it seems that there is flexibility there to deal with those situations.

Mr. John Nater: What about a situation in which an advertisement is sent out with simply the potential for special guests attending, with no names attached to it, and then those special guests are confirmed closer to the date? Do you see any way that the act would apply in that case? The implication is made that a minister or prime minister is attending, but no names are associated with that. Would that trigger any reporting requirements to pre-publish that?

Mr. Stéphane Perrault: I think if the party or the organizer are aware, even though the identity of the person is not yet known, but they're aware that, let's call it, a decision-maker, is going to be present and advertise that as a component of the event, the party should provide the notice.

Mr. John Nater: In any situation where there is a strong likelihood or a strong potential that the prime minister or a minister is likely to attend, there should be some kind of notification given.

Mr. Stéphane Perrault: Certainly I think it would be prudent to do so.

Mr. John Nater: In a situation where the ticket price is under \$200, let's say \$150, and the prime minister or a minister is present at those events, would it be within the rules that further donations could be solicited at the event? It's \$150 to attend the event, but then at the event there's a representative of the Laurier Club, for example, encouraging a maximum donation at that event. Would that be permissible within the current provisions of Bill C-50?

Mr. Stéphane Perrault: This bill does not seek to capture a situation where there is not a precondition of payment to enter. As I said, I think it's designed to capture what I would describe as "privileged access", access that is limited to people who pay a meaningful amount. If there is not a requirement to make that contribution as a condition for attending, even though attendees may be encouraged to make contributions when they are there, then this is not meant to be captured within the purview of this bill.

Mr. John Nater: So there would be no reporting to Parliament after that.

Mr. Stéphane Perrault: There would be the reporting of the contributions as always, according to the normal rules.

Mr. John Nater: How would you foresee a situation in which there was an event, let's say a relatively small event, 10 people, and afterwards it came out that all 10 of those people made the maximum donation? In keeping with the spirit of disclosure, would you see any potential revisions that should be made to capture those situations, where there is no requirement but nonetheless every single person who attended made the maximum donation, or a large contribution?

Mr. Stéphane Perrault: I think disclosure is achieved already in terms of who's making contributions. What this adds is disclosure on the context around which such contributions are made.

Again, I think that would shift the purpose of the bill. I'm not saying this is a good or a bad thing, but the purpose of the bill is to aim only at the situation where there's a prior condition of making a certain contribution for attending.

• (1120)

Mr. John Nater: I want to go back to one of the comments made by Mr. Bittle about misleading, false, and inaccurate reporting. As you see it right now, there is no provision within the act that would prevent a party or a riding association from simply filing a false report. There's nothing preventing that.

Mr. Stéphane Perrault: Correct.

There's a provision for failure to report. At some point, if it's so patently false, it may amount to a failure to report, but we get into shades of grey. I think other provisions in the act dealing with other kinds of financial reports make that distinction. First, there's an obligation to file, with an associated penalty if you don't file. Second, there's a separate obligation for the timeline. That's a recommendation that's in the table, to separate the obligation to file from the timeline. Third, there is a prohibition on providing false or misleading information.

I think it is preferable to separate all three, from a compliance and enforcement point of view. But in this case, only the first two are in the bill, actually. There is nothing about false and misleading information in this bill.

Mr. John Nater: Thank you very much.

[*Translation*]

The Chair: Thank you, Mr. Nater.

Mr. Christopherson, you have the floor.

[*English*]

Mr. David Christopherson (Hamilton Centre, NDP): Great, thank you, Chair.

Thank you very much for being here again. We do this so often, it's almost beginning to feel like family.

My apologies to the committee for being late. I have public accounts back to back during this sitting. I was in another building, so physically it was impossible for me to get here, but I'll do my best going forward.

I want to pick up where Mr. Nater was asking questions, because I thought that was an interesting line of thinking.

I probably need some edification on your part. I noticed that you're being very narrow, and I assume that's because this is a very narrow application. The idea is that if you know ahead of time that the minister of finance is going to be there, that's a draw card for you and you're going to pony up the money. This is meant to capture that so there is some kind of accountability.

However, Mr. Nater raised a very interesting scenario. There is no guest that is published, but there is a wink-wink, nod-nod that it would be worth your while to come by. Then they show up and lo and behold, coincidentally everybody there makes a maximum contribution. This is all Mr. Nater's thinking. I'm not taking credit for any of his thinking, but I'm chasing it down a bit.

What is to prevent that from happening? My understanding is that at that point, because it wasn't privileged access in any way, it would just be the usual reporting mechanism. It wouldn't be reported as an event that would normally come under the rubric of this subject.

I will leave that with you. Help me out.

Mr. Stéphane Perrault: Well, I think it depends on the facts.

The way you were aligning it was more of a situation where everybody knows that in fact the minister is going to be there but it's not laid out explicitly. That's a deceitful scenario. In that case, I would think that the party would be under the obligation to be truthful about that and make the disclosure, make the announcement in a transparent way.

That's a different scenario from an event where everybody is invited, whether or not they pay—and that's the second scenario that I think Mr. Nater was referring to—and they happen to meet a minister or a leader and they make a contribution. In that case, anybody is invited to be there and it's not an issue of privileged access.

I'm not sure exactly which scenario you were dealing with.

Mr. David Christopherson: I'm not either. That's why I'm asking you. That's why we have you here, to ask these kinds of questions.

Mr. Stéphane Perrault: In the case where a party intends to bring in a minister and suggests so in half words, I think certainly that is a scenario in which the party would need to disclose the relevant information ahead of time. That is captured by this bill.

What is not captured by—

Ms. Anne Lawson (General Counsel and Senior Director, Legal Services, Elections Canada): [*Inaudible—Editor*] the minister and the ticket price—

Mr. Stéphane Perrault: And the ticket price, of course.

What is not captured by this bill is when there is no prior condition to attend in terms of paying. That is a deliberate policy choice, because that defines the nature of this legislation.

• (1125)

Mr. David Christopherson: Okay, it's getting us partway there.

All right, let me ask this question. Were you consulted on the development of Bill C-50?

Mr. Stéphane Perrault: We did have information that was made available simply to look at our planning assumptions, but there was no consultation in terms of whether this was a good or bad proposition. That is perfectly normal in the course of these kinds of legislation.

Mr. David Christopherson: Well, it's normal if you're going back to the last Parliament, but it's not so much normal if you go back in the history of how this thing should be done.

On privileged access—this subject matter—are you aware of how this regime would compare to any other existing regimes in terms of its effectiveness?

Mr. Stéphane Perrault: The only one I know of that I can compare it to is the Ontario provincial regime. I understand that the committee may be hearing from Mr. Essensa.

The Ontario regime is much stricter. Whether or not that's a desirable thing I think is for the committee to consider. In the Ontario example, there's an outright prohibition on attendance. My understanding is that's for any candidate, member of Parliament, or a leader. That is very sweeping. Even independent candidates are prohibited from attending any fundraiser where there's an entry price, and there are no thresholds. It's sweeping in its scope, and it's quite restrictive in the nature of the fundraisers.

I understand there's a bill being considered, Bill 152, to exempt party conventions, which were not exempted. Any time you have party conventions and they have contributions, then party leaders are not allowed to attend. I think Mr. Essensa can better inform the committee on the problems that this causes.

That's why I think when I made my remarks, I said that this bill is carefully calibrated. I think it's based on some experience in the Ontario context.

Mr. David Christopherson: You use those words and we'll use other words, but I hear what you're saying. You're doing your job exactly the way you should do it.

In terms of that comparison, are there any international comparisons?

Mr. Stéphane Perrault: Not that I'm aware of. We have one of the strictest regimes internationally in terms of contributions and spending. This is a very restrictive regime. When you travel and you speak to other jurisdictions, or when they come to visit, they're always surprised at the extent of the restrictions we have on fundraising and expenses.

Mr. David Christopherson: Listen, I've done election observation missions in—I'm not going to name it—a country where the election commission takes out ads to wish the president a happy birthday. There is a wide, vast gap in terms of these regimes.

Chair, how much time do I have? It can't be much.

The Chair: You have three seconds.

Mr. David Christopherson: Yes, I have, like, none. I'll save it for the next round.

Thank you, Chair.

The Chair: Mr. Graham, *s'il vous plaît*.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): I must build on the opposite extreme from Mr. Nater's point earlier. If you're having an event, you're organizing an event, and you announce that the minister of something-or-other is going to come, or a leadership event candidate is going to come, and it then goes forward, but that person never shows up, is it captured?

Mr. Stéphane Perrault: Well, it's certainly captured in terms of the notice. I think, after the fact, if the event is cancelled, effectively —

Mr. David de Burgh Graham: Well, the event happens, but the guy just doesn't show up.

Mr. Stéphane Perrault: Well, it's no longer a regulated event within the meaning of the bill, so my instinctive reaction—and I'd have to look at it carefully—is that, if it doesn't meet any of the conditions, no matter what the notice said, then there would not be a requirement to report. Of course, all the contributions would be reported afterwards.

Mr. David de Burgh Graham: Right.

If a leadership race is finished—for example, we saw one finish yesterday or two days ago—but a candidate still has debt, that defeated candidate who is having the event is still technically a leadership candidate. Is he captured in this even though his leadership race is over?

Mr. Stéphane Perrault: Absolutely.

If there is a fundraiser that meets the three conditions, then it would be captured if it's organized for the benefit of an affiliated political entity, and a leadership contestant is one of them. It would be caught by the proposed rules, on the assumption that this bill were enforced, of course, in your scenario.

Mr. David de Burgh Graham: Okay. Should anyone else be captured who hasn't been captured in this bill?

Mr. Stéphane Perrault: Not that I can foresee, no.

Mr. David de Burgh Graham: So the opposition finance critic is out. You're lucky.

This is just an edge case, because I've been doing a lot of edge cases. Just for the sake of argument, let's say I'm having a fundraiser in my riding, and an opposition leader happens to live in my riding, as was the case until two days ago, and he happened to show up at my event. Would that be captured? That is somebody who meets the requirements, but he isn't in my party.

Mr. Stéphane Perrault: That's an interesting hypothetical. I think the spirit of that legislation—and, again, I would examine the words carefully—is that it would not be captured even though technically the words “leadership contestant” are not restricted to the leader of the party hosting the event.

Mr. David de Burgh Graham: Okay, fair enough.

You mentioned that you would like us to revisit the exemptions for a convention. Do you want to go into any more depth on that? What would you like to see us discuss?

• (1130)

Mr. Stéphane Perrault: I think members of the committee have a better sense than I do in terms of the practical realities of these conventions and the fluidity of attendance. I note that the act contemplates that, if there's a ticketed fundraiser within a convention that it has captured, it meets those definitions. I'm not sure why the practical considerations that go into the donor appreciation event don't go the same way with the fundraiser. That's one thing.

I also don't know if in practice it may be difficult to distinguish between a donor appreciation event and a fundraiser. If somebody wanting to take part in a donor appreciation event that is held every year at the annual party convention makes a large contribution, say, the full maximum amount, a week prior to the convention, is that a donor appreciation event or is that a condition, a payment, to attend a meeting?

I'm assuming good faith here, of course, but there may be situations where it's not perfectly clear how to distinguish one from the other. I think the committee, with the experience of its members, would be better positioned to look into that and see whether the lines are drawn at the right place.

Mr. David de Burgh Graham: In my campaign, my most successful fundraising event was a pay-what-you-can-afford event. I have a very poor riding, and it was pay what you can afford. There was no price set to it. Some people paid \$20 and some people paid \$400, and I had somebody who would now be captured at that event. Now, because I have no price, the moment somebody has paid \$200, does it become captured, even though it wasn't a condition?

Mr. Stéphane Perrault: No, it only becomes captured if it's a prior condition for attending. If one is required to pay over \$200, then everything is captured. If people happen to be there who have made contributions, but were not required to do so, then it is not captured.

Mr. David de Burgh Graham: Okay.

You had suggested a number of amendments. Do you want to expand further on any of these amendments to provide clarity? At some point we have to actually turn these into amendment drafts, which aren't phrased like this.

Mr. Stéphane Perrault: Mr. Chair, I'm quite happy to do that. I have Madam Lawson here to assist as well. I know that there is

perhaps more time. If the committee wants to go through each of these one by one, then we can do that.

Mr. David de Burgh Graham: How much time do I have left?

The Chair: You have almost two minutes.

You could start with Mr. Graham.

Mr. Stéphane Perrault: The first is one that I mentioned in my introduction. It's a prior notice to Elections Canada. We don't look on websites every day to see if notices come up. If we received a report 30 days later, we'd have to go back in time and verify whether there was proper notice. We also would not be in a position to encourage or remind the party that it has an obligation to file a report. If we have the notice at the same time, then we can work with the party to make sure either that they file or that they get the extension that they need because they can't meet the timeline. I think it would be of great assistance. As I said, it could be simply an electronic email proving notice to Elections Canada. That's the first recommendation.

The second is in a situation where organizers who are not the party come to realize that the information they provided to the party is not accurate; it's missing names of attendees, for example. There is currently no obligation on them to inform the party of any change so that the party can make the corresponding change to the report. This amendment would ensure that anybody who is involved in the organization who becomes aware of any change in the information to be provided in the report passes on the information to the party, and that the party then makes the correction to the report.

The Chair: Okay, I think we'll stop there. I know you have three more amendments, but I'm sure we'll get to them somewhere along here.

We'll go now to Mr. Richards.

• (1135)

Mr. Blake Richards (Banff—Airdrie, CPC): Thanks, Mr. Chair.

I have two questions. The first relates to one of the two glaring loopholes that Mr. Nater has identified. The first loophole he identified clearly is the minimum five days' notice. For example, it's not advertised that the prime minister is going to be attending until maybe they make an amendment two hours before the event or something. The other one, of course, is this idea that there's no ticket price, but you show up and of course everybody is expected to give the \$1,550 maximum donation. Now the prime minister can attend an event for which there isn't a \$1,500 ticket price, but there is, if you know what I mean. You've already indicated to us that this would certainly be possible under this legislation.

The first of those glaring loopholes is the one I want to ask about.

Should the committee feel that it's appropriate to make an amendment so that it would be absolutely required—whether it's five days or whatever the minimum notice we would determine would be reasonable—that following that time you couldn't, for example, add the attendance of the prime minister or some other minister two hours prior to the event? How would the committee go about making that amendment?

Mr. Stéphane Perrault: These are good points. I would differentiate the two. I think the first one is perhaps more properly aligned with the spirit of this bill. I think if it were to be amended to make sure that if there's no announcement of a minister or key decision-maker or a leader of a party, then that person could not attend unless it's set back five days and there's a notice. That, I think, would be within the scope and spirit of this piece of legislation.

The second scenario is somewhat different. This is a scenario where any ordinary Canadian, whether they have money or not, can attend; however, at that event some will make contributions, and in some cases, significant contributions. Now, whether or not that's a concern goes to the whole issue of contribution limits, but this is not a matter dealing with restricted access to key decision-makers. In that scenario anybody could have access to those decision-makers.

It's less a loophole than an issue definition problem, whereas the first one falls within the scope of this bill and perhaps could be corrected.

Mr. Blake Richards: The reason I chose to ask about the first one is I recognized the second one, although I will predict that we'll see fundraisers where the prime minister is in attendance where every person who is there is giving \$1,550; they just weren't required to in order to attend.

Having said that, I recognize that I don't think there's a way to change that. I think that's just there. It will probably exist, but it shows why this legislation won't fix the problem. I don't think it can be amended. I think the first problem could be. You've identified how that might be possible, and I appreciate your doing that.

Let me ask you about the one amendment. It's more to try to understand it because I'm not sure. I'm reading the analysis on your sheet. It's the one about the leadership and nomination contest expenses. I'm trying to understand what you're trying to accomplish with it. When I read the analysis it indicates that it's talking about registered parties and candidates as different from nomination or leadership contestants. It's talking about one entity spending money to promote another so they can get around the expenses.

The Chair: Blake, which one of the five—

Mr. Blake Richards: It's the last one.

What I'm understanding there is, it's almost sounding as if this would be intended to deal with where a party or a registered candidate was promoting a nomination contestant or a leadership contestant, which I find a fairly unlikely scenario. Is that what you're trying to deal with, or am I misunderstanding this?

Mr. Stéphane Perrault: It's the reverse scenario. It's not a factual problem, I think it's a drafting problem. If you look at proposed section 476.02, it's for a nomination contest. It's mirrored in the leadership contest definition. The definition proposes that it capture, and I'll only read excerpts, any cost that "was incurred for or that was received as a non-monetary contribution"..."used to directly promote or oppose a registered party, its leader, a nomination contestant or a candidate during a nomination contest".

This is not a nomination contest expense. The only one that's relevant here is the expense incurred to promote the nomination contestant.

● (1140)

Mr. Blake Richards: What you're indicating here is this may be a way for a candidate to spend an extra 20% to get around the expenditure limit during an election campaign. Say a by-election was called and the nomination fell within the electoral period and therefore they could spend to promote themselves to the general public because they're the only nomination contestant. This would allow them to spend additional money over and above any of the other candidates in the election. Is that what you're getting at?

Mr. Stéphane Perrault: Not quite. What I'm getting at is that the definition captures all kinds of expenditures that have nothing to do with either a leadership contest or a nomination contest, which we're not intending to capture.

We would not read it that way. The definition was just borrowed from other provisions of the act. For clarity's sake, we would interpret this narrowly. I would recommend that we remove references to irrelevant entities.

A leadership campaign expense is a campaign expense that was incurred in relation to the leadership contest, not some other entity or event. Similarly for a nomination contest....

Mr. Blake Richards: Thank you.

The Chair: Thank you very much.

Now we'll go to Ms. Tassi for five minutes.

Ms. Filomena Tassi (Hamilton West—Ancaster—Dundas, Lib.): Thank you, Mr. Chair.

Thank you again for your presence here today.

Getting back to the previous comment that you made with your second recommendation, is there some timing you would suggest with respect to that notice coming to Elections Canada?

Mr. Stéphane Perrault: The notice given to Elections Canada should be made no later than at the same time the notice is put on the website.

Ms. Filomena Tassi: If it's five days then it's five days, or whatever the case may be.

I'm pleased to hear you say that you refer to the purpose of this legislation, which relates to privileged access. We know this is the driving force behind it. You believe it's carefully calibrated. Do you think this legislation fulfills the purpose it was intended for?

Mr. Stéphane Perrault: I think you'll be hearing from the Commissioner of Lobbying and the Conflict of Interest and Ethics Commissioner. They may have separate views on that.

From my point of view, this is a bill that relates to political financing activities, but not as they impact on the fairness of the electoral process. They are not about the level playing field. They are not about fairness of the electoral process. They are about concerns over perceptions of privileged access to decision-makers.

This is somewhat outside the general scope of the Elections Act. It's caught here because these concerns arise in the context of fundraising events, so it's quite proper that it be in there, but from my point of view, as an administrator concerned with electoral fairness, it improves somewhat transparency. It is calibrated, and I can administer this, although I have some minor improvements that could be made.

From a conflict of interest or ethics point of view, this is something more for other witnesses to speak to.

Ms. Filomena Tassi: Right, but essentially with respect to privileged access, this meets that objective.

Mr. Stéphane Perrault: It captures a number of key decision-makers, and it doesn't capture, by contrast, what I've spoken about in other jurisdictions. It doesn't capture people who are not key decision-makers, so, yes.

Ms. Filomena Tassi: With respect to the exemptions that are listed, and we heard the question previously raised with respect to the PSW, in terms of those who are required to be listed, do you think that exemption list is full?

Is there anyone there who you think should be exempted who doesn't currently appear on that list? PSW is perhaps one that you considered. Is there anyone to whom you would automatically extend that list?

Mr. Stéphane Perrault: When I looked at the list, it seemed complete to me. A point was made about adding...and I think it's a good point, but I do not see anything else missing.

Ms. Filomena Tassi: At the beginning of your comments you talked about the application of this bill with amounts of \$200 and over, and that it would not apply to all parties. With respect to all parties specifically, you thought that was a good thing. Can you expand on the \$200 amount, and the second point about not applying to all parties?

• (1145)

Mr. Stéphane Perrault: It's not \$200 but over \$200, which mirrors the contribution disclosure rule even though, in this case, it may not be a full contribution as long as a portion of that is a contribution. If you are buying an over-\$200 ticket, let's say that \$75 of that is a meal benefit that you buy. The rest is a contribution that would be caught even though the contribution portion is less than \$200. That's one thing.

The other thing is about the parties that are not captured. It is important in the act to strive to calibrate the regime to the realities of different parties. In the recommendations we made to this committee, and to Parliament, we have tried to reduce, for example, the number of mandatory audits for small campaigns.

A one-size-fits-all approach to all campaigns and all parties is not always appropriate or warranted, and this is a good example. Parties that are not represented in the House of Commons, even though they may well be one day, at this point probably should be exempted from these rules.

Ms. Filomena Tassi: Getting back to the example of the table, if someone pays \$500 for a table and it is \$50 per ticket, does that \$500 contribution still show up in Elections Canada as a contribution, so that person is actually named as a \$500 contributor?

Mr. Stéphane Perrault: The person who buys the table will be making a contribution minus any personal benefits that he or she directly receives from attending, so the value of his or her meal, but not the others. With respect to that contribution, in this case I would assume most of the \$500 would be reported as part of the regular reporting on contributions either through the quarterly reports that parties file or the annual reports, and whether or not it's caught by the regime there.

Ms. Filomena Tassi: Perfect.

The Chair: Thank you, Ms. Tassi.

Mr. Reid, for five minutes.

Mr. Scott Reid (Lanark—Frontenac—Kingston, CPC): First of all, thank you to both of our witnesses for being here today.

I want to clarify the \$200 limit, because there are two ways of slicing this. It's only a penny difference, but I want to ask. If I contribute \$200, does that have to be reported or is it required to be \$200.01 in order to get reported? We keep on talking about over \$200, so the question is, is the dividing line \$200 or is it—

Mr. Stéphane Perrault: The penny makes the difference. The reporting rules currently in the act for reporting the name and address of the contributors are contributions made over \$200 in the aggregate. If in a year you make several contributions, and at the end of the day you've made in the calendar year more than \$200 in contributions, then your name and address will be reported.

Mr. Scott Reid: If you choose to seek the nomination in the riding of Lanark—Frontenac—Kingston, for the sake of argument, and I'm an enthusiastic supporter of you and I write you a cheque for \$200 at an event you're at, that will not be reported. There's no requirement for that. It has to be \$200.01 to be reported, to be clear.

Mr. Stéphane Perrault: Correct. That's true of every threshold. There's always the penny over that threshold, whatever the threshold is.

Mr. Scott Reid: I only wanted to make sure, because we had a discussion here with the minister last week where she referred to \$199.99, as if that was the dividing point. I wanted to make sure I have the number right. I can just state as a matter of fact that trying to slice things that way will leave a trail that will be embarrassing, but if \$200 versus \$200.01 is the dividing point, then it's actually fairly easy to create an event where you sell \$200 tickets. I just wanted to be clear about that.

Mr. Stéphane Perrault: It is more than \$200, which is the same threshold in the act for contribution disclosure. Even though in this case the amount of the contribution may in fact be less than \$200, it's the price of the ticket.

Mr. Scott Reid: Yes.

I got the other point you made. That was a good point to make. I appreciate that. But it's helpful for us all, I think, to understand that the division is between \$200 and \$200.01.

I wanted to make an editorial comment, if I could. You're welcome to comment or not comment on my comment, but this is meant for the benefit of everybody else on the committee, and for the minister, if she's listening.

In its zeal to be all-inclusive, the government has dealt with the problem that actually was the problem we had here. Chinese billionaires are buying tickets to get access to the Prime Minister of the country. That was the issue: cash for access to people who have direct executive power. Those dinners are now covered by this legislation. So, too, are those dinners covered for opposition leaders who are contestants for the leadership of a party, both parties in and out of power. Had the law gone into effect a little earlier, Jagmeet Singh would have been covered, for example, and the other contestants for the NDP leadership, as well as people who are contestants for nominations.

I will just state the obvious. In the scenario I gave in which you are running for the nomination for one of the parties in the riding of Lanark—Frontenac—Kingston, an event you hold is now covered. The chances that a Chinese billionaire is going to buy a ticket seem unlikely. What I'm wondering about are where we're mostly likely to see non-compliance, where people are contestants for nominations, unless I've misunderstood something. Is this not likely going to result in a lot of technical non-compliance with a law where there's no actual problem in any meaningful sense? Are we not simply creating a large administrative burden for the agency and for people who are local volunteers, enthusiasts, partisan supporters, without the requisite expertise to always understand what the law requires of them?

• (1150)

The Chair: You have 30 seconds if you want to respond.

Mr. Scott Reid: Sorry about that.

Mr. Stéphane Perrault: On your editorial comment, I want to clarify that the fundraising events that are captured would include a fundraising event that is held for the benefit of the nominee in Lanark, in your scenario, as long as the leader of the party, or interim leader of the party, or leadership contestant, would be present. It's not sufficient for the nomination contestant to be present. It has to be one of the leaders, or if it's not a member of cabinet, aspiring leaders of the party.

Mr. Scott Reid: Thank you.

The Chair: Thank you.

We'll go to Ms. Sahota.

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

I'm going to ask a more general question. You were saying that we currently have one of the more strict regimes in the world when it comes to fundraising goals. Do you think that this piece of legislation adequately addresses some of the holes we may have had in our fundraising rules? Do you think we need it to go further and be more strict?

There's a lot of talk about people just showing up at fundraisers and wanting to give all this money and saying, "Here, take it", even though it's not a requirement for getting in. This is not my experience. When I throw a fundraiser, even if it is \$200, I'm usually chasing people around for months afterwards. Sometimes there are a few who it's a year later before they get their cheques in. My experience has been, whether there's a minister there or not, you have to chase people around for a long time. People are not just

willingly giving money. It's tough, and it's a part of the political reality that you have to fundraise. It's not my favourite part of this job, but in order to succeed and carry on serving people, it's a reality we all have to face.

Do you think this piece of legislation takes that into account and reaches a balance, or do you think we perhaps should have gone as far as Ontario's legislation? If we do make the rules that strict, could we have a whole bunch of other unintended consequences, where people are finding other means of doing things that perhaps create other problems?

Mr. Stéphane Perrault: Fundamentally that's a policy question as to how far you want to go. It's not for me to speak to that. The purpose of this bill is not to limit fundraising activities. It's not to restrict the amounts people can give. It does not deal with the fairness of the electoral process, including the level playing field in terms of the capacity to raise funds or receive money from groups or individuals. Individuals in Canada can only give up to a certain amount. That is not affected by this bill.

This bill is really about fundraising activities that raise a concern or create a perception of privilege and access. It's a bit remote from the main goals of the Elections Act, in terms of a level playing field and the fairness of the electoral process. I understand why it's in the Elections Act, because it takes place in the context of fundraising activities, but how far you want to go is really a policy question for members of this committee.

What I would say is that you have to be careful not to over-regulate unintentionally. This bill is carefully drafted. It avoids some of the traps we've seen elsewhere, such as catching a party convention that was not intended to be caught. It's for members of this committee to look at the policy and see whether it should go further. From my point of view, this is not a bill about the fairness of the electoral process. I would say only that it increases transparency, that it's calibrated, and that I can administer this piece of legislation, with some improvements. I think that's the limit of my words on the matter.

• (1155)

Ms. Ruby Sahota: Do you feel that it increases transparency?

Mr. Stéphane Perrault: It certainly does increase transparency, yes.

Ms. Ruby Sahota: Okay.

I know I'm going towards a policy question. Ontario changed its fundraising rules recently. This came up in our last meeting. I was interested in knowing your opinion on whether that was a good road to go down. Maybe you can't even answer that, but we were discussing whether there are events you could still have where only a certain list of people get invited. It could be donors who have already donated \$1,500, \$300, or some other amount. Then you have events where the invitee list is made up only of people who have previously contributed a certain amount. The entry price would not be listed, because you don't have to pay to come to this particular event, but you're only invited to it if you've already donated a certain amount in that calendar year or whatever. Is that something that would still be seen as problematic? Do you think the Ontario legislation solves the problem of not having cash-for-access events, as people have been putting it?

Mr. Stéphane Perrault: I just want to make clear here in a scenario where you would invite only people who have contributed over a certain amount, in this case over \$200, that would, generally speaking, be caught by this bill.

Ms. Ruby Sahota: This bill would catch that.

Mr. Stéphane Perrault: Correct. If a prior condition for attending the event is having made a contribution of more than \$200, so that includes a donor appreciation event, it would be caught, unless the donor appreciation event is held during a party convention. There it is exempted.

Ms. Ruby Sahota: Okay. If the pre-condition is that in the calendar year at some point you would have to have donated a certain amount, then this legislation catches that.

Mr. Stéphane Perrault: Absolutely.

Ms. Ruby Sahota: Okay, thank you.

The Chair: Mr. Christopherson, for the last contributor.

Mr. David Christopherson: Thank you.

I'm a little disappointed we didn't get a chance to hear the other three recommendations—

The Chair: Sorry, Mr. Christopherson. With the committee's indulgence, I'll let him do that at the end.

Mr. David Christopherson: After 12? Okay.

The Chair: Yes, if the committee agrees.

Mr. David Christopherson: Then I'll just ask one quick question and let you get to that.

Going back to the first recommendation on the five days, we've had some discussion about it, but another aspect of this is you don't plan a fundraiser in five days. If you do, it's going to fail. There is lots of preparation. As one way to solve this, in addition to letting you know directly, wouldn't it make sense to give a little more time?

I don't know how far you can go in commenting on this, because I know you are very careful about the technical interpretation and not getting into the “our” politics of it, so I respect if you can't go where I would hope you do. But by extending it for more than five days, you then give everybody an opportunity to actually see it. To make it five days and say that we're doing this so it is transparent, and we're even putting in the legislation, in the regulations, that it has to be prominent—whatever that might mean—on the website.... But with five days, you'd pretty much have to have somebody whose daily duty it is to monitor from a political point of view. You would have to do the same sort of thing.

Wouldn't one answer to this be to just make that time frame longer, a little more realistic? This looks like they want to be able to say, “Look, we have a new provision”, but in reality it doesn't change anything in the real world.

What are your thoughts on that?.

• (1200)

Mr. Stéphane Perrault: I only would link that to the previous comment that was made about a minister being able to come more or less at the last minute, so the longer the notice is, the more likely it is that you'll be caught in a situation where there is uncertainty in terms of who is going to be participating. You have to look at the two

issues together, and if you want to be strict about making sure that all the events are caught, then you'll have to consider what is a reasonable timeline. I won't draw a line for that for the committee.

Mr. David Christopherson: Chair, I'll just contribute the rest of my time to the review of the final three amendments.

Thanks.

The Chair: Is it okay with the committee that we go a little over time so that the witness can elaborate a bit on his recommended changes to the act?

Some hon. members: Agreed.

The Chair: Mr. Perrault.

Mr. Stéphane Perrault: Thank you.

We have covered the first two, and I am down at the third one with respect to the new provision, 384.5. This is something I did address in my opening remarks. There may be situations where there is a missing element in the report and the CEO should have the authority to request formally a change to the report to be made. This is something that exists for all the other reports that are in the Canada Elections Act, I believe, and does not exist for this one. It's a very technical amendment.

The next one is regarding offences—and again we spoke to that one—for filing a false and misleading.... There is a requirement to file within a certain timeline, but there is no separate offence for filing a false or misleading return either by way of negligence or deliberately. This is something that exists again for other provisions to the act dealing with reports, and I believe there should be one here as well.

The next one is again on the timeline of reporting. It combines the obligation to file currently in the bill with the obligation to file in a specific timeline, and if you look at the other provisions of the act on filing, it separates the two. There is an obligation that each and every one of you had as a candidate to file a report, and then there is a separate obligation to file that report within a separate timeline. So, if you do file but you happen to file late, then that is addressed specifically. By combining the two, it may be a bit more difficult in terms of enforcement.

Again, this is a great example. The point was raised that if we have administrative monetary penalties, then that should be the way to deal with it, but we should separate the obligation to file from the timing obligation.

The last one is the one we discussed regarding the definition of leadership and nomination campaign expenses, which if you look at the language of the clauses in the bill, carry with them references to parties, promotion of parties and candidates and other entities that have nothing to do with nomination contests or leadership contests, and I would recommend this be made cleaner. Certainly, I would interpret those provisions as referring specifically to expenses in relation to the nomination contest or the leadership contest, as the case may be, and not these other expenses.

The Chair: Is that okay for committee members?

Thank you very much, witnesses, for coming today. This has been very helpful and I'm sure we'll see you again.

Could the committee members just stay for a minute. We have one housekeeping thing to do in camera [Proceedings continue in camera]

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