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Jeudi 9 juin 2016

Standing Committee on General Government

Election Finances Statute Law Amendment Act, 2016

Comité permanent des affaires gouvernementales

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

Chair: Grant Crack
Clerk: Sylwia Przezdziecki

Président : Grant Crack
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Hansard Reporting and Interpretation Services
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Thursday 9 June 2016

Jeudi 9 juin 2016

The committee met at 1400 in room 151.

ELECTION FINANCES STATUTE LAW AMENDMENT ACT, 2016

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

Consideration of the following bill:

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

MR. GUY GIORNO

The Chair (Mr. Grant Crack): Good afternoon, members of the committee. Good afternoon, legislative research, Clerk, and Mr. Batty from Elections Ontario. Welcome, members of the committee and Hansard. I call the Standing Committee on General Government to order this afternoon.

As per the order of the House, we are going to be dealing with Bill 201, An Act to amend the Election Finances Act and the Taxation Act, 2007. We have with us this afternoon Mr. Guy Giorno. I'll let him introduce all that and the firm that he's with.

I'll just remind members that Mr. Giorno has up to one hour for his presentation, followed up to an hour of discussion. We will adjourn at 4 p.m. or earlier, if that's the case.

At this particular time, I would like to welcome Mr. Giorno to committee this afternoon. You have up to an hour.

Mr. Guy Giorno: Thank you, Chair, and, through you, thanks to the members of the committee. Thank you, in particular, for the invitation to appear before you this afternoon.

I thought I would begin, as the Chair suggested, by introducing myself and explaining a bit of my background. I am a partner in the law firm Fasken Martineau. I say at the outset that the comments I make during your deliberations today are made in an individual, personal capacity. I don't speak for my firm or any other organization or entity or person.

My legal practice is devoted to the areas of government transparency, government ethics, government ethics law, and political law, including election law and campaign finance law.

I know that the Chief Electoral Officer, when he spoke to you earlier this week, mentioned an organization called the Council on Governmental Ethics Laws. It's my honour to be completing a four-year term on the steering committee of that organization. As the CEO mentioned, he is a former president of that organization. That's an international body, drawn primarily from Canada and the United States, which is devoted to five areas of ethics and ethics law, many of which are relevant to the subject matter of your consideration. The Council on Governmental Ethics Law focuses on the law of elections, the law of campaign finance, the law of public sector ethics, the law of lobbying and the law of freedom of information. Through that organization, I have had exposure to a number of other lawyers—American attorneys—who practise in this area.

In addition to my legal practice, where I routinely advise on matters of this nature, I also have experience serving as a former chief of staff to a Premier of Ontario and a former chief of staff to a Prime Minister of Canada. I also have experience in leading campaigns.

I am a fellow of the Riddell school of political management at Carleton University, where I teach a master's level course on political campaigns. I am also a fellow of the University of Toronto School of Public Policy and Governance.

You may, and probably will, have witnesses before you who have greater depth of experience in campaigns or greater depth of experience in government or people like the Chief Electoral Officer, who spent their entire careers focusing on election law. But I think that I bring a unique perspective as somebody who is a lawyer whose practice is based on these laws but who also complements with campaign experience in my past and governmental experience in my past.

It's on that basis that I was pleased to accept the invitation to come before you and address some of the key issues that arise from Bill 201.

I thought I would begin by identifying four principles that are common to election campaign finance laws across Canada. There are jurisdictional differences, and Bill 201 is a piece of legislation that exhibits those differences, but there are also some fairly consistent and important principles that apply—federal, provincial and municipal—to all areas of campaign finance law in

Canada. The reason I identify these principles is because they provide an important litmus test or basis on which to assess the various provisions in Bill 201.

The first is transparency. Universally in Canada—every law—it's accepted that those who contribute resources or money to the political process must do so openly and publicly. There must be disclosure of who they are and how much they've contributed.

Integrity is the second important provision. It follows from the first. If there's disclosure of who is contributing and how much they've contributed, all laws recognize that that must be the person's own money. The disclosure must be of funds that actually belong to the person given freely, not forcibly, to a candidate or political party. And they can't be the funds of another given circuitously for that purpose. Again, that's a principle that's accepted in every Canadian election finance law.

The third principle, which is common to all laws, is the principle of uniformity. We draw a definitional distinction between monetary contributions and non-monetary contributions but the philosophy of the law and the principle of the law is that whether money is given or other things of value are given, they're all valued and treated as contributions and they're all subject to the other rules. That's an important principle. I'm going to talk about that later because not every aspect of the current law meets that principle squarely.

The fourth principle I know is one that other witnesses have talked about, including the CEO. It's the principle of fairness, the principle of a level playing field, the suggestion that it's essential to our democratic process that everybody play by the same rules and that we actually build into the rules obstacles, disincentives or barriers that prevent people from trying to game the system or circumvent the rules.

Those are the four common principles. There are, on the other hand, several areas where different jurisdictions have different approaches, areas where policy-makers and lawmakers can choose to do any number of things. Eligibility to contribute is one of them. Who is permitted to make contributions? What types of entities? And what types of individuals are permitted to contribute?

Should there be spending limits on candidates and parties, and if so, what should they be?

Should there be limits on contributors or on contributions being made? If so, what should those be?

What are the acceptable sources of campaign funds for political parties and candidates, and to what extent should those sources include public financing?

Finally, how should third-party advertising be dealt with?

The four principles identified are uniform across the country. These five policy fields are areas where there is going to be legitimate debate about the correct approaches.

I want to turn first to eligibility to contribute. I'll begin by talking about where one has to be located. The approach of most jurisdictions in Canada, including Ontario and including the federal jurisdiction, is that a contributor has to be from the place—from the country, in terms of Canada, or the province—where he is contributing. You'll see that that's not universal. There are some provinces that allow out-of-province, even out-of-country, contributors, but Ontario's not one. As you know, Bill 201 doesn't propose to change that.

Still on the issue of who's eligible to contribute is the issue that's raised squarely by Bill 201, and that is whether corporations should be permitted to make contributions. You'll see from the preponderance of green on the slide that most provinces do still allow corporate contributions but that's not permitted at the federal level. It's not permitted in four provinces. I think it's a welcome reform for Ontario to join the growing list of jurisdictions that no longer permit corporations to make political contributions. I did want to put up this slide on the map to point out that in this respect Ontario is a leader, that Ontario is joining—still a minority—a growing group of jurisdictions that have outlawed corporate contributions.

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The outlawing, or the banning, of corporate contributions leads to another related policy question, and that is: Is anything needed to replace those contributions? This leads to the discussion of whether additional public financing is required. When we talk about public financing, it's important to recognize that taxpayer subsidies, or taxpayer allowances, paid directly to political parties are not the only form of taxpayer financing which is injected into the political system.

As the map before you shows, in addition to some jurisdictions which pay allowances directly to parties, we have reimbursements to candidates—some jurisdictions will reimburse candidates for a share of their spending—and some jurisdictions will reimburse political parties for a share of their spending. And I haven't put tax credits, which are another form of public financing, on this map because every territory, every province and federal jurisdiction provides tax credit subsidies. I've not updated this map to reflect Bill 201. You'll see that Ontario already provides reimbursement to candidates—the thresholds are going to be changed by Bill 201, or are proposed to be changed—and to parties. You'll also see that some provinces don't do any of that. Some provinces don't have any reimbursement.

In the west, in the territories—Nunavut and Northwest Territories have no political parties, but the territories provide reimbursement neither to candidates nor to parties for their spending, nor do the western provinces.

I put this before you to emphasize that the question of allowances paid direct to parties, yes or no, cannot be considered in a vacuum because parties and candidates are already receiving other forms of public subsidy through the reimbursement of expenses—which Bill 201 proposes to change by lowering the threshold—for candidates and through the very supportive and encouraging tax credit system, which encourages individuals to contribute to the political process.

When one looks at a direct subsidy paid to political parties, one of the challenges is that it's very hard to

conceive of a mechanism for calculating that subsidy except on a per vote model. I'll say at the outset that I don't agree with the calculation on a per vote basis, but I do concede that intellectually it's hard to think of a basis for calculating a subsidy, other than on a per vote basis. When you look around the rest of the country, you'll see that the per vote model is used, in whole or in part, in every jurisdiction. New Brunswick, Nova Scotia and Prince Edward Island—the three Maritime provinces—use exclusively a per vote calculation to determine the subsidy.

Quebec uses a per vote calculation, but on top of that, Quebec also provides, at certain levels of fundraising, matching funds. I believe two and a half dollars per dollar—it's very attractive matching—for the first $20,000 raised, and then dollar-for-dollar for the next $200,000 that are raised.

Manitoba is the only province that has deviated from strict per vote subsidies. The per vote calculation is an element to their subsidy, but the first basis of the calculation is a fixed amount per candidate fielded in an election. On top of that, the remaining funds—and Manitoba allocates a certain amount of money each year for political subsidies—is then divided among the parties on a per vote basis. Also, a unique feature of Manitoba law—I suppose other laws, even though they're silent on this matter, could allow parties to opt out: Manitoba expressly, in its legislation, provides that parties can decline to accept their per vote subsidy.

The question, of course, is: Is this fair and is it necessary? I'll turn to the necessity in a second, but I'll start by talking about the fairness. My concern with a per vote subsidy—while I admit that intellectually it's difficult to think of too many other ways to calculate them—is that it flies in the face of the democratic principle that office is something that must be earned and re-earned at every election. Just because a candidate—party—received an individual citizen's vote in 2007, 2011 and 2014 does not mean that that party has automatically earned the right to be voted for again in 2018.

In the eyes of the democratic system, all parties and all candidates are equal. At an election, the incumbent is as equal as a non-incumbent. A candidate who has never held office is as equal as one who is seeking election for the second, third, fourth or multiple time.

The problem with a per vote subsidy is that it gives an additional head start, right? It gives a leg up on earning votes again—which everybody should be doing by starting fresh, starting new—to those who got votes last time. Of course, there's no intellectual or principled reason why somebody who got a vote last time should have a financial head start, or an extra head start, to getting votes the next time.

That's not to say that there aren't advantages to incumbency. That can't be changed. Incumbent MPPs are going to have advantages over non-incumbent challengers, and incumbent governing parties will have advantages over opposition parties. But that fact, which nobody can change, is not a reason to give an additional head start—a financial head start—to parties that got more votes last time which is not enjoyed on the same basis by parties that got fewer votes last time.

The next challenge: I've heard it said that when people vote for a party, they're agreeing with that party, and therefore they're agreeing that that party should be financed. Of course, that's a ridiculous assertion. Individual Ontarians who go to the polls and put an X beside a candidate's name are directly saying nothing more than that they want that individual to be their member of the Legislative Assembly, representing their riding. They're electing one person for an office, and indirectly, they're deciding which party they want to govern the province. But there is no basis on which we can abstract from a vote for an MPP—and indirectly, a vote to form a government—to say that that was, in addition, a decision that the voter also thought it was a good idea to give that candidate's party taxpayer dollars for the purpose of seeking re-election the next time. It's an argument, really, that only a politician could construct, because there's no other basis for suggesting that a vote to put somebody in office equates to a vote to give taxpayer money to that person's campaign, or that party's campaign, four years later.

In any event—and the committee members will have their own views on whether this is a principled approach, and Ontarians may disagree on this—the evidence is clear—well, even if it's not. Even if we can disagree on whether it's fair and reasonable, it's not necessary. We have to look at the federal experience, which determines whether or not it's necessary, because there were, as members will know, federal per vote subsidies which were phased out gradually, starting in 2011 and ending in 2015. The experience of the major parties that were affected by that confirms that not only were they able to withstand the fundraising challenge caused by the elimination of the per vote subsidy, but they were able to thrive and do better.

Look at each party in turn. The light-pink shaded area on the chart is the amount of the per vote subsidy enjoyed by the Liberal Party of Canada. You'll see it declines to zero. The dark red is the amount of money they fundraised from contributors—and, I will add, they fundraised from individual contributors, because at the federal level during this period of time, corporate contributions were banned and union contributions were banned. You'll see that the Liberal Party of Canada not only offset the loss of the per vote subsidy; they did far better than they had when they were receiving it.

The Green Party: Light green, declining to zero, shows the per vote subsidy. Dark green shows the amount that the Green Party of Canada raised from individual contributors. Again, the Green Party was not only able to withstand the loss of the per vote subsidy; it did better than when it was receiving it, and did better in total. Adding subsidy plus contributions, the Green Party did better, with no subsidy and contributions, in 2015.

The federal NDP: The light orange shows the amount of the per vote subsidy, declining to zero. The orange

shows the amount they raised from human people. Again, the federal NDP not only was able to withstand the loss of the federal per vote subsidy; it did better. Again, this is in an environment where there were no corporate contributions and no trade union contributions.

The Conservative Party of Canada: The light blue shows the per vote subsidy, declining to zero. The Conservative Party of Canada is the only party which did slightly worse in 2015 in total than in 2011, but I think those who remember the events of 2015 might speculate that there were other things going on in that year that may account for the difference between 2011 and 2015. The fact of the matter remains, though, that another major political party was able to withstand the loss of the per vote subsidy and more than make up the difference by going to individual contributors.

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I realize that political parties in Ontario—I was involved in running campaigns for one of them a couple of decades ago—may have a hard time today. In the days when it's possible to go to corporations and get corporations that want to do business with you and need to meet you, it's hard to conceive of how, in the absence of those corporate contributions, one might be able to finance a political party. But the federal experience shows that not only is it possible, but it is realistically plausible to predict that that will be the effect.

In fact, in the absence of corporate contributions, these federal parties—Greens, NDP, Liberals, Conservatives—are able to finance campaigns on the basis of average contributions from individual, human people that are very small. The Conservative average, the largest of the four major parties: $150 per individual donor. The Liberals: $124.64 per donor. The NDP: $98 per donor. The Greens: $84 per donor.

So if anyone comes before this committee and says that public subsidies, public allowances, are necessary because otherwise only rich and wealthy Canadians, or in this case rich and wealthy Ontarians, giving the proposed maximum of $1,550, inflation-adjusted, to parties and $1,550 times two, inflation-adjusted, to riding associations or candidates—only the wealthy can contribute, the evidence is to the contrary because federal political parties do just fine with average donations that are nowhere near that scale.

The average federal donation, give or take, is $100 and change, or it's under $100—maybe more than $100. That will be the experience of Ontario political parties once corporate contributions are banned. As to whether the parties need a small adjustment period phased out to zero over time, I'm not going to argue that that is unnecessary; maybe it is necessary. But the suggestion that parties might need permanent subsidies or subsidies increasing is absolutely belied by the federal experience. Parties have done just fine without corporate contributions and without subsidies.

The next issue addressed by Bill 201 is that of contribution limits. I'm not going to say much about the contribution limits other than to say that the new proposed limit puts Ontario roughly smack in the middle, and well-positioned. It's certainly not the lowest in the country. Quebec's limit is by far the lowest. It matches, as you know, the federal limit, and there are many provinces that have much higher thresholds and, in some cases, no limits.

On this particular slide, I've also doubled the contribution, assuming that under the current Ontario regime, an individual can contribute his or her annual amount and then can contribute another amount in an election period—and there could be more than one election period in a year. I've actually been modest in suggesting a period of time in which there are two election periods with the current threshold of $19,950.

Other than congratulating the minister and the government for introducing what I think are reasonable limits, I won't say much more on contribution limits. I will, however, as we talk about contributions and the valuing of contributions, talk about an important issue of transparency and fairness, or lack of transparency and fairness. At the outset, I will say to the members of the committee that this is not a problem caused by Bill 201. It is a problem that exists in the Election Finances Act today, and the problem with Bill 201 is that Bill 201, as currently drafted, fails to take the obvious and necessary opportunity to fix it. The issue is paid time off.

The definition of "contribution" in subsection 1(1) of the act, which is amended slightly, and I've placed before you some red lettering to show the very slight adjustment to the definition of "contribution": The definition of "contribution" as it exists, and as it is not fixed by Bill 201, has a problem because in clause (b) of the definition of "contribution" we have an exclusion from contribution of a service or action performed for a political party, etc. etc., "by an individual voluntarily, so long as such individual does not receive from his or her employer or from any person, corporation or trade union pursuant to an arrangement with the individual's employer, compensation in excess of that which he or she would normally receive during the period such service was performed."

I don't know the original intent of the drafting of that language, but I know, and I think committee members have already heard, how that language is interpreted and given effect on a campaign-by-campaign basis. As evidence of that interpretation and how this law has been interpreted and applied for decades, I refer to the handbook issued by Elections Ontario. The handbook makes very clear that an employee can be paid by her or his employer full pay—as long as it's not extra pay—and get that paid time off and give services—an hour, a day, an entire campaign's length of services—paid by the employer, and that time is not treated as a contribution from the employer to the campaign of the political party and is not treated as a contribution from the individual to that political party, so long as the individual agrees to do it.

The current system in Ontario is that if an employee—a partisan activist—asks his or her employer for four

weeks off—the length of a campaign—to donate services to a political party—actually, they can take off weeks before a campaign as well—and as long as the employee does so freely, the payment by that employer of the salary, the wages and the benefits is not a contribution, is not booked and is not recorded.

Ontario is one of the few provinces to permit this travesty. There are provinces in which it's illegal for a corporate employer to pay its employees to work on a campaign. The federal jurisdiction is one of them. Quebec is one of them. Manitoba and Nova Scotia are the other two. There are other provinces which permit employers to give people paid time off to help political parties, but in those jurisdictions there's full transparency. It is acknowledged for what it is. It's acknowledged as a contribution. It is disclosed; it's transparent. In jurisdictions that have contribution limits, that contribution is subject to those limits.

Only in Ontario and in PEI, which has the same language, although I don't know how it's interpreted or if it's ever an issue in PEI, and in Alberta—though in Alberta, they have a blanket exemption that no donation of any services of any kind are contributions. So practically speaking, only in Ontario do we have a situation where major political parties can have their campaign headquarters populated and run by employees of corporations and not have those corporations disclose in a transparent fashion the amount being spent.

I know that some people who approach this issue see it as an issue of backdoor corporate contributions, and it is. If you're going to outlaw corporate contributions of $9,950, why would you ever let corporations give tens of thousands and hundreds of thousands of dollars of indirect contributions in the form of salaries to main political parties? But to me, it's more than that; it's an issue of transparency. When you say that this paid time off is not a contribution, not only is it uncapped; it's also secret. There's no reporting of it. There's no disclosure of it. No one knows how much each of the three main political parties received in dark-money contributions, being the salaries and the benefits paid to people who were running their campaigns the last time.

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I've been around as long as many members of the committee have, and we know why this loophole has not been closed. The loophole has not been closed because all three parties have benefited from it—Liberals, PCs, NDP—and nobody wants to stop receiving the free, secret, undocumented, unrecorded, undisclosed gifts of hundreds of thousands of dollars in staff salaries to run their central provincial election campaigns. But that doesn't make it right.

As the CEO pointed out, this is the first major overhaul of election financing in Ontario in 40 years, and this aberration has to go. There is no principled basis on which political parties can continue to benefit from the secret contributions, the dark money, the indirect contributions of staff time paid for by big corporations and consulting firms who are loaning their employees to run the political campaigns of the parties they are going to turn around and lobby once in office.

Still on the subject of transparency and fairness is the issue of government resources. There is a provision in the Canada Elections Act, subsection 321(1), that says, and I'll read it verbatim, "No person shall knowingly conduct election advertising or cause it to be conducted using a means of transmission of the government of Canada." That's in the federal law. It was never in the Ontario law. It should be.

I then turn to the issue of spending limits. Limits can be of three kinds: limits on spending by candidates, limits on spending by political parties and limits on spending by third parties.

You'll see that limits on spending by candidates and parties are fairly universal. The only jurisdictions with no limits of any kind are Yukon and Alberta. There are no party limits in Nunavut and Northwest Territories because they don't have parties. But you'll see that third-party spending limits are employed in only half of the jurisdictions: federal, British Columbia, Quebec, Manitoba, New Brunswick and Nova Scotia. Ontario is middle of the pack—middle of the pack in not regulating third-party spending. We'll be middle of the pack still in regulating third-party spending.

I'm not really going to comment on what those limits should be. I am going to comment on an important principle of equality of law, and that is, if Ontario is going to begin to limit third-party spending, it's absolutely essential, as a matter of fairness, that the base on which spending limits are applied is uniform and fair. That's true of party spending limits and it's true of the manner in which we deal with third parties. I'm going to talk first about party limits, then move on to third parties.

You'll note—and the Chief Electoral Officer acknowledged this—that, at a particular point in time in history, maybe by a minister or a staffer, the act was amended to add two exemptions to the definition of campaign expense. This was research and polling, and travel.

The largest five expenditures in any central campaign are the leader's tour, research and opinion polling, direct voter contact, staff salaries and advertising. I've shown the pie with all the pie slices the same size. Advertising is the biggest of those, but these are five major categories.

The problem we have right now is that two of those categories aren't subject to limits. Whether you believe the limit should be one dollar or a gazillion dollars, that doesn't matter as much as the fact that the limits have to be applied on a consistent base. If we say there are going to be spending limits and then we say that two of the five most important expenditures of a party are somehow not counted by that base, where is the fairness there and what's the justification for having limits on some things but not other important things?

Then, for another slice that we talked about, there's the staff loophole that allows parties to reduce their staff expenditures by having big corporations and consulting firms donate the free time of their paid staff; right? So we've now got three of the five major campaign

expenditures of central campaigns somewhat challenged in a regime where we claim that we are regulating spending: two, because they're exempted entirely; and another one is staffing, because we allow the secret contribution of corporations and consulting firms, who give their employees away for free.

Still on the issue of fairness and a level playing field, I wanted to draw the committee's attention to an issue related to the new definition of political advertising. The new definition will be in subsection 1(1) of the act. It would be enacted by subsection 1(4) of Bill 201.

You'll see—I've got text in red there—the addition of all sorts of language which, first of all, adds issue advertising to the definition of "advertising," if the issue is one on which a party or a candidate is associated, and then adds five exceptions, or five situations, in which advertising is not political advertising. It's listed there: an editorial, a book, the transmission of a document etc.

I think it has been said, and the CEO did make this clear, that this is based on a federal definition. The attempt has been made to take the federal definition and import it to Ontario. Federally, it's called "election advertising." Under Bill 201, it's called "political advertising." It's essentially the same definition, with only a few interesting features that are different.

The first is that in the federal definition—I'm referring to clause (b)—we exempt from the definition of "advertising" a book or the promotion of a book, but federally, that exemption only applies if the book was planned to be made available to the public regardless of whether there was an election. In other words, books are exempt from the definition of "advertising" unless the publishing of the book is a sham and it's really a campaign tactic. So if the only reason for the book is that there's an election campaign, that's not exempt under federal law. Curiously, Bill 201 omits that exception to the exemption.

The second issue is that federal law provides for an exception if groups or persons transmit documents directly to their members or their employees or their shareholders. Bill 201 mirrors that language, except the difference is that "person" is defined differently by Bill 201 than by the Canada Elections Act.

The key distinction there is that under federal law, "person" in this part of the Canada Elections Act still includes a corporation, whereas in this part of Bill 201, "person" does not include a corporation. So there's an exemption under federal law for a company that wants to send a flyer to its employees or to its shareholders. The language is there in Bill 201, but because corporations aren't persons, corporations aren't exempted if they send flyers to their employees and their shareholders. And yet, because unions are groups, unions can send flyers to their members under federal law and also under Bill 201. So there's a lack of harmony there in an attempt to borrow federal concepts.

I laud the attempt to borrow the federal concepts, but there has been some loss of some language in clause (b), and then there has been the use of the word "person" in clause (c), which means different things federally and provincially. These are things that can easily be cleared up with amendments, but that cleaning up of amendments is essential to ensure that the playing field remains level.

A summary of what I've just said is that a union's communications with its members are exempt from the definition of "political advertising"—and, I would say, as it should be. That is as it should be. That is as it is under federal law and as it should be under provincial law. But a corporation's communications are exempt under federal law but not under provincial law.

I then wanted to talk about section 22, which treats some kinds of advertising as contributions to campaigns. This is advertising which, in certain circumstances, is treated as a contribution, or advertising which is simply treated as advertising by a party.

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The current law is pretty much the same as what Bill 201 proposes, except that, because Bill 201 is bringing in nomination contestants under the act as a reference added to nomination contestants—leadership contestants were already under the act, but because they're now being brought more fully under the act, there's a reference being added into section 22 to leadership contestants, and references to corporations and trade unions are being removed.

A contribution that is described in that way—that is, advertising that promotes a party or a candidate "is provided or arranged for by a person with the knowledge and consent of the party ... candidate," if its value is over $100, is treated as an expense of the party or candidate. That's an important point of fairness. If someone other than a candidate or someone other than a party takes out an ad promoting the candidate or promoting the party, and they do so with the party's knowledge and consent or they do so with the candidate's knowledge and consent, the existing law's and Bill 201's attempts are quite reasonable. If it's done with the candidate or party's knowledge and consent, it should be treated as a contribution to the candidate or party. That's what the current law attempts to provide and that's what I think Bill 201 attempts to provide, except there are some problems.

The first problem is that subsection (1) no longer applies to advertising by corporations and trade unions. It used to be that if a corporation took out an ad saying, "Guy Giorno is great," and I knew about it and consented, that would be treated as a contribution to me. But now, because we're taken corporations out, that corporation can do so without it being a contribution to me when, by any sense of fairness and level playing field, if I knew about it and I consented and it's promoting me, it should be treated as a contribution to me.

It is true that there is a new section added later on in the bill—and I'm referring to what will be subsection 37.10.1(4) of the act, which would be enacted by section 40 of the bill. It says that it would be illegal for a corporation to do that; it would be illegal for a corporation to take out that ad promoting me.

But there's an important piece missing. What we have talked about all along, as an important principle of

election law, is this idea of fairness and a level playing field and no circumvention. So that principle in the Election Finances Act, as it now stands, and in federal law and in most other jurisdictions, manifests itself in restrictions on all the players. If a corporation is going to take out an ad promoting me, it has legal responsibility for that, and I, as a candidate, also am going to bear responsibility in terms of a contribution or an expense. It's not just focusing on the person taking the ad out that benefits me; if I benefit, I as the candidate or I as the party am also subject to the law.

The problem with the drafting of Bill 201—because the law says that if a corporation takes out advertising benefiting a candidate or a party with the knowledge and consent of that candidate or party, the corporation is breaking the law. But it's not counted as a contribution to the candidate, and if it takes place during an election campaign, it's not treated as an election expense of the candidate or of the party. Again, when we deal with section 22, we're not talking about accidental happenings; we're talking about corporations that run ads that promote people with the knowledge and consent of the people they're promoting. Under the current law, again, that would be a contribution and an election expense. Under Bill 201, the corporation would get in trouble because they would be breaking the law, but there would be no consequences for the candidate in terms of a contribution and additional spending towards the cap, and in the eyes of the party, no contribution and no spending towards the cap, when, of course, if there was knowledge and consent, there should be.

The solution to this is to expand the concept of a deemed contribution and a deemed expense to include that sort of advertising, even when it is conducted by a corporation or a trade union. The law says they shouldn't do that, but if they do do that, it's got to go to the bottom line of the party or the candidate, particularly when—and I stress this again: We're not talking about things the parties didn't know about; we're talking about parties and candidates being complicit in this advertising because it's done with their knowledge and their consent.

That leaves the issue of third-party advertising. The first observation I want to make is that federal law gets at collusion between parties and third parties from all ends. It says that a third party can't mess around with the rules, or skirt the rules, to try to evade the third-party spending limit; it's true. But it also says that parties and candidates can't mess around—that's my word; "collusion" is the word in the statute—with third parties to evade the party spending limit and the candidate spending limit. In fact, that is the more realistic concern.

It is good that federal law—and Bill 201 will mirror this—will prevent people from splitting third parties into two pieces to avoid the spending limits. But realistically, the public debate over the harm or the avoidance of third-party spending limits has never focused on the limits on the third parties so much as on parties and candidates using and abusing third parties to run advertising which is really advertising for the parties and for the candidates under the guise of third parties.

Federal law prevents that by saying that a party cannot skirt or evade the party spending limit by dealing with a third party and getting a third party to do its dirty work. Federal law says that a candidate can't evade a candidate spending limit by playing footsie with a third party and getting a third party to do its dirty work. These are real potential harms that the federal Parliament has rightly legislated against.

Yet for some reason, Bill 201 doesn't address that. There is an anti-collusion provision which says you can't mess around to avoid or evade these new spending limits on third parties; it's a thing. But there's nothing there that says a party can't put up a front third party to evade the party spending limit, and there's nothing that says a candidate can't put up a sham third party to evade the candidate spending limit. This is, of all the omissions in Bill 201 and the attempt to mirror the federal law, the most egregious omission because the harms that I'm talking about, the harms that federal law legislates against, will easily befall the Ontario system unless those loopholes are closed.

I've used the words "skirting around" or "messing around." The actual legal term used federally and in the one section of Bill 201—which should be used in three places, but it's only used in one now—is "collusion." Even then that doesn't go far enough, because as I think the Chief Electoral Officer said to you, and I'm going to reinforce the point, collusion is too high a threshold. To find collusion, to prove collusion, the prosecution would have to prove a deliberate, knowing scheme between a third party and a party to circumvent the limits, or a deliberate scheme between a candidate and a third party to circumvent the limits.

In the US—when we talk about the United States, it's important to recognize that with one federal jurisdiction of 50 states, there's a lot of variety in US election and campaign finance law, but let's take the US federal example and the states that deal with this. They do not set the bar so high. When they try to prohibit playing footsie, if I can use that term, between candidates or parties and third parties—or PACs, as they would call them—they set the bar much lower, and they set the bar at the level of coordination.

You're going to say, "What does coordination mean?" I think the CEO was asked this. Well, at the US federal level, the FEC says that coordination is any of a lot of things. If a party or a candidate suggests that something happened and the third party does it, that's coordination. If the party or the candidate or agents of them are talking to a third party about where you might run the ads, what types of ads you might run, whether you use radio or TV or Internet, what the timing should be or the frequency—any of that discussion—that's coordination.

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If there is discussion about a topic and that third party runs off and runs an ad on the topic, that's coordination. If the party and the third party use the same vendor, the same ad agency or the same people to do the design or to run the campaigns, that's coordination. If somebody

leaves the employment of a political party and then goes to work for a third party or if somebody is a contractor for a campaign and goes to work for a third party, in the United States federally, that's coordination.

These are the sorts of ills or public policy challenges that Ontario law should be addressing, not setting the bar so impossibly high that no prosecutor will ever prove that a party and third party colluded. Again, the issue here should not be sending somebody to jail. The issue should simply be making sure, if there is coordination, that the party has those expenditures counted towards its cap and the candidate has that spending counted towards their cap.

Yes, that might lead to prosecution and incarceration. The point of the matter is that I'm not suggesting that coordination should be a lower bar so more people are prosecuted; I'm suggesting that coordination should be a lower bar so that more expenditures that are properly party expenditures and that more expenditures that are properly candidate expenditures are assigned to the parties and the candidates and not hidden as the expenditures of third parties.

There is another technical glitch in the new subsection 22(5) of the act, enacted by subsection 16(2) of the bill, where the elimination of corporations and trade unions actually removes a requirement that people who are running third-party ads provide information to broadcasters and publishers. Surely that was not the intention, because corporations and trade unions can still be third parties under this bill, so presumably the Legislature would still want them to comply with subsection 22(5).

I now want to switch to the issue of integrity, which, as I said, is a principle that is important in all Canadian jurisdictions, and talk about some of the things that Bill 201 does not address. The largest omission is the intersection or the overlap between political fundraising and lobbying. Now, I've already talked about what happens when consulting firms are allowed to donate weeks and weeks of employees' time to the major political parties to run their campaigns. But there are issues, as well, involving the intersection of lobbying and fundraising.

At the federal level, this problem has been addressed in myriad ways. The Lobbyists' Code of Conduct actually makes it a problem for a lobbyist to fundraise for a politician and then to turn around and lobby that politician. That rule was affirmed by the Federal Court of Appeal in one case. There have been several investigation reports by the Commissioner of Lobbying finding that lobbyists have broken the rules when they try to raise funds for the people they lobby or lobby people for whom they raised funds.

In addition to that—and I think that you've had handed out an excerpt from Open and Accountable Government. These are the Prime Minister's guidelines for members of his government. They also deal with the unacceptable link between fundraising and lobbying: fundraising off of lobbyists or letting lobbyists do your fundraising.

Finally—and this is another handout—the federal Conflict of Interest and Ethics Commissioner has dealt with this in her interpretations under the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons.

Just to speak to a few of them: Annex B in Open and Accountable Government is entitled "Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries." I'm proud to have drafted the first version of this. It's a sign, I think, that these are, on a non-partisan basis, the right thing to do or the validation of these guidelines that when Prime Minister Trudeau reissued the book in which these guidelines were found, he changed other portions of it but he left annex B—the rules on fundraising and lobbyists and why the two cannot mix—unchanged and intact as a validation of the fact that they set the gold standard as best practices.

You'll see a very high bar which is set here, with a broad definition of stakeholder: A minister's stakeholder is anybody who works for an entity that has an interest in the minister's department and anybody who works for a company that might be lobbying the minister or his or her staff. The rules that Prime Minister Harper first and Prime Minister Trudeau now sets for ministers is that you can't have any stakeholder of your department—or Ontario ministry—on your fundraising team, on the executive of your riding association or on your campaign team. You can't use stakeholder lists for fundraising. You can't target people who are stakeholders of yours when you want to raise funds. If you have a fundraising reception, you can't discuss government business there. You can't have any lobbying there. These are the federal practices, as I've said, under Prime Minister Harper, confirmed and continued by Prime Minister Trudeau. There's no reason that those principles do not apply in Ontario, but we have no rules of any sort.

I've also distributed the very recent guidance from the federal Conflict of Interest and Ethics Commissioner's report dated April of this year, where she goes so far as to say that if you're a government official and some company or some person who works for a company who gave your riding association money appears before you and you've got to make a decision in an official capacity, you must recuse yourself. She says that members of Parliament must recuse themselves from committees if people appearing before the committees gave their riding associations money. She says you can't accept funds from anybody who might even possibly lobby you in the future and she says you can't solicit funds for your riding association from anybody who has dealings with your government portfolio or your parliamentary committee.

At the federal level, through many, many different means—the Prime Minister's guidelines, the Conflict of Interest Act, the Conflict of Interest Code for Members of the House of Commons, the Lobbyists' Code of Conduct, decisions of the lobbying commissioner or the Conflict of Interest and Ethics Commissioner—the overlap between political fundraising and lobbying, the toxic, pernicious overlap between the two, has been addressed in so many ways. In Ontario, how is the toxic, pernicious overlap between political fundraising and

lobbying addressed? Not at all: not in the Members' Integrity Act, not in the Election Finances Act and not in Bill 201 in any way, shape or form.

So if we're going to talk about the importance, and I agree that it is important, of seizing what is good and valuable and cutting-edge and best practice from federal law and policy, and apply it—adapt it if necessary—to Ontario, surely Ontario should be following the federal lead in dealing with fundraising by lobbyists, fundraising from lobbyists, lobbying those from whom you fundraise, and lobbying from those to whom you give funds.

I don't want to suggest, by the way—I believe that the federal law and policy are the gold standard within Canada—that there's not more internationally that we can learn because, in the United States, many jurisdictions go even farther than that. For example, a majority of states do not let any political fundraising take place while the Legislature is in session. Not only will you members not be going to any receptions; there would be no receptions at all while the Legislature is sitting. You couldn't receive, ask for or be given riding association contributions. Some 15 of those states don't let anybody make contributions while the Legislature is in session, and 14 of them don't let lobbyists make contributions which the Legislature is in session. In fact, five states don't allow a lobbyist to make any political contribution at any time, ever.

In addition to that, the United States has given us the lexicon and a body of law known as restrictions on pay-to-play. What is pay-to-play? Pay-to-play is when political contributions are made in an attempt to get government business or a government decision or a favourable outcome from an executive branch member or a legislator. In the United States, pay-to-play is subject to legislation and a high degree of scrutiny.

In Canada, we don't even talk about pay-to-play. Pay-to-play is tolerated, is never mentioned, and Canadian lawmakers are doing little to nothing to address it. In fact, as a lawyer, the number one question US-based corporations ask me about Canadian law is, "We have pay-to-play restrictions in the United States. Can you tell us about the pay-to-play laws in Canada?" I have to say, "Well, actually, federal and provincial jurisdictions don't prohibit pay-to-play. We don't restrict pay-to-play." They're stunned that a democracy as advanced as Canada has not taken any steps to regulate, restrict or prohibit pay-to-play fundraising.

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What are some US examples of pay-to-play restrictions? Some states say that if you own or are the principal of a company that holds government contracts, you can't give any political contributions, nor can your spouse, nor can your dependent children. Some states say that if you are an executive of a company that does business with the government, you can't make contributions, or if you're any employee of that company whose salary or commission or bonus is dependent on the government contracts, you can't make a contribution. Some states also say that if you're in that position, you can't give to a political action committee—what we would call a third party, so not only can you not give to a political party, but you can't give to a third party. Some states say that if somebody helped raise funds for you, that person can't be awarded a government contract. Some states don't restrict or prohibit; they just make disclosure a requirement. They say that if you're bidding on a government contract, you must disclose all of the political contributions by all of your officers and all of the members of your board of directors.

As of January 1 of this year, Virginia applies these principles to economic development loans and grants. If you want an economic development loan or grant from the Commonwealth of Virginia, you can't have had any officer of your company or any member of the board of directors of your company make a state-wide political contribution.

The Securities and Exchange Commission, federally in the United States, actually got the ball rolling a few years ago with restrictions on investment advisers who were advising government clients and also making political contributions.

I'm not advocating any particular one of these. Different states have done different things. I've simply pointed out that south of the border, there is a recognition that this issue of paying for access, paying for government contracts and paying to influence is pernicious, a problem and must be addressed. Here, nothing is being done.

The Chair (Mr. Grant Crack): Thank you very much. We're right at the hour. I think you were almost finished anyway.

Mr. Guy Giorno: I am. Thank you, sir.

The Chair (Mr. Grant Crack): Would you like just a one-sentence wrap-up or do you want to get into the questions?

Mr. Guy Giorno: Thank you.

The Chair (Mr. Grant Crack): Okay. So we'll start with Ms. Fife.

Ms. Catherine Fife: Thank you very much. It was a very interesting presentation. I have to say, I think that it's helpful for this committee to hear about practices in different jurisdictions and see how Bill 201 is balanced in that.

The electoral officer came before us and he gave us some very good recommendations, primarily around political advertising. You did touch on that. One of our primary concerns, as he pointed out and as did you, is around issue-based advocacy. As the bill is crafted, that six-month period prior to an election is off limits, if you will, for any voices, any citizen group, any group whatsoever to weigh in. For us, this is a fundamental issue of freedom of speech, as you have indicated. Could you give us some sense as to, when you balance it off with the government advertising piece and the carte blanche that they have, how does that leave us as a committee navigating through this area, Mr. Giorno?

Mr. Guy Giorno: Thank you, Mr. Chair, to the member who asked. I don't want to repeat things that the Chief Electoral Officer has said. The definition was

imported from federal jurisdiction. In federal jurisdiction, there are no spending limits outside campaign periods, yet Bill 201 now seeks to take that federal definition and apply it outside campaign periods. I think the CEO rightly identified the problems with that approach. If I understand his recommendation correctly, he was suggesting that maybe it's better to leave issue advertising to campaign periods only and not outside. I don't disagree with that. I just approach it slightly differently, and I think maybe coming to the same conclusion.

Nobody in Ontario wants to suppress free speech, whether it's free speech of organizations, corporations or individuals. At the same time, the reason issue advertising is in the federal law for campaigns only is because if you want a level playing field, it's important to avoid a sham where people are really advertising for or against candidates and parties without using those words. So, for example, if in the last campaign a third party wanted to say, "Firing 100,000 civil servants is dumb," or "Firing 100,000 civil servants is great" without using a party's or a leader's name, there's a good public policy argument that that activity should be regulated as it's about the party advocating downsizing the public service by 100,000, yea or nay, because the law ought not to do indirectly what one can't do directly.

But I think the CEO has made a good point that maybe outside election periods, the rules ought not to be the same because during those six months or during the four years between elections, to suggest that simply talking about a public policy issue makes you a proponent of the candidate who espouses or opposes that might not apply. But I do think, in a campaign period, we should be reluctant to allow people to skirt the rules by just not naming people.

Ms. Catherine Fife: For sure.

It's interesting because the government advertising piece—we've only had, really, three days of these hearings. Last night, we heard from an academic on this issue who views an average citizen and a lobbyist as very different people and that very different rules should apply. I think, though, when you have—and really what sparked this committee is that you had ministers who had quotas, who had to reach quotas, and then you had a direct correlation between the people who were donating to that minister and affecting policy. That fundamentally is the issue that we are all trying to get at.

That said, there is an issue of conflict of interest that I think we as a committee are going to have to get to. I don't think that Bill 201 addresses it fully, so I think that we share your concerns. I don't want to take you back down memory lane here, but in 2013, you did appear before a parliamentary committee reviewing the federal conflict-of-interest rules, and you said, "Political fundraising can give rise to conflict-of-interest issues, especially when the targets of fundraising are stakeholders of a politician's department or when the funds are solicited from lobbyists who are lobbying the politician or his ... office or department." Do you see this as a culture, really, of politics right now in the province of Ontario? Do you see it as an ongoing issue, Mr. Giorno?

Mr. Guy Giorno: How should I answer that? I can speak to what I know, and I know that when I was working in this building, it existed, and I have no evidence to suggest that it has changed. So I guess the answer would be yes, although I don't know for sure.

Speaking a bit more directly to the point, it's a problem anywhere if you don't regulate the issue. If you have a system where people are free to give money to public-office holders or to politicians with abandon, and there are no checks, obviously, those who want things from politicians will use that system to get the access and to get the results that they want. It's maybe just human nature, which is why we have laws to prevent people from doing what human nature would encourage them to do. That's why the laws are there federally; they're working quite well.

As I said, when I worked in this building, it would have been quite common to have fundraising receptions. Members of particular industry groups would, in fact, arrange fundraising receptions for ministers, and small groups would meet with ministers at high ticket prices. I don't know for a fact that that continues, but I have seen no evidence that it doesn't continue.

Ms. Catherine Fife: But that has been your experience.

Mr. Guy Giorno: Yes.

Ms. Catherine Fife: Do you believe the Ontario cabinet ministers were placed in a conflict of interest, having been given fundraising quotas which they met by holding fundraisers with stakeholders who had a financial interest in their ministry? Clearly, one of the key concerns for us would be—it may not be for you, but one of the major political issues that we've been dealing with in this place is the sell-off of Hydro One. The very people who helped craft the IPO were then invited to political fundraisers, and then, in turn, obviously paid very high ticket prices to have an audience with a minister. Can you please comment on that?

Mr. Guy Giorno: It would be improper for me to speculate on a particular case. In fact, those are things the Integrity Commissioner might have to or is considering under the Members' Integrity Act. I'll simply answer the question differently: The rules, the law, should prohibit that. So I can't comment on whether there was a breach in the past, but this committee, the Legislature, the government and all parties have a chance to fix the rules. The rules should make that academic because that's prohibited in the future.

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Ms. Catherine Fife: I think that we will be inviting the Integrity Commissioner to this committee because I think that's at the heart of the issue here around political fundraising. We will also be inviting the Auditor General, because that ties into the government advertising.

I'm sure you've seen the commercials on the ORPP. They've been running now for two full years. This fellow and this woman are desperately trying to get across that bridge. At great cost to the taxpayer, these commercials continue to run, as do the people in the commercials, I

might say. Of course, the government has even backed off for a full year. They've reversed their decision and bought a whole other year of time for large corporations on the pension plan.

The Auditor General weighed in this last weekend on cap-and-trade. We do know what that plan is, but on the weekend, when the commercials with David Suzuki were running non-stop, we had no sense of what that plan was. So you have a government advertising a plan that the people of this province have not yet seen—and actually, even still on ORPP.

In 2015, the Government Advertising Act was revised greatly. The Auditor General did weigh in, and it was very powerful, I thought, that she said that this will remove her oversight on what a partisan ad is. To the tune of $600,000, those ads ran during the federal election.

The Canadian Taxpayers Federation—I'm sure this is the first time that a New Democrat has thanked the Canadian Taxpayers in a committee, but they did FOI it and they found that $600,000 accelerated that advertising. Do you think that there is a complete breach of ethics here when a government has the ability, carte blanche, to advertise at will, regardless of the reality that the people—government advertising is a part of this act. You did this last time—

Mr. Lou Rinaldi: Point of order.

Ms. Catherine Fife: —and I will not be bullied by the Liberal government on this.

The Chair (Mr. Grant Crack): Thank you. There's a point of order: Mr. Rinaldi.

Mr. Lou Rinaldi: If we could keep talking about Bill 201. It's very, very important that we do it. I think what the member is talking about totally falls outside the realm of Bill 201.

The Chair (Mr. Grant Crack): Thank you, Mr. Rinaldi. I'd ask Ms. Fife to try to bring it back into this specific bill.

Ms. Catherine Fife: Government advertising is part of this bill, though, Mr. Chair. I am well within my rights as a member to address government advertising. I would urge the government to not continue to call me on that.

Mr. Giorno, I've given you enough material and context to comment on government advertising and the culture of it in the province of Ontario. Would you please feel free to share your opinion?

Mr. Guy Giorno: I'll just address it briefly. On the one hand, because I've certainly worked in places where governments did advertise, I would be reluctant as a citizen to say that governments can never advertise on TV, for example. I think that the government has an obligation to communicate with people where they are. People watch TV, they listen to radio and they're on the Internet. The idea that because it's safe to put out boring, black-and-white print ads, governments should only communicate with taxpayers through print ads in newspapers that nobody reads—I would never say no to TV.

But on the other hand, a level playing field is absolutely important, where there is a free exchange of ideas. That somebody who has taxpayer resources gets a leg up in that debate and people who don't, don't is a problem.

I would never say that government shouldn't advertise. On the other hand, I do believe that the rules and the system should prevent government from skewing the debate to the advantage of a partisan entity because that is the partisan entity that runs the government. I agree with that principle.

Ms. Catherine Fife: Within the context of Bill 201 and what it says around lobbying of government for groups and for individuals—for the government to limit the voices of individual groups to six months prior to an election and have no ground rules whatsoever for the government: do you think that levels the playing field? The answer is no.

Mr. Guy Giorno: There are other examples. For example, you can look at Manitoba, where there was a decision that if you're going to be restricting third parties, you would restrict government in the same period of time.

Ms. Catherine Fife: Manitoba has actually come up a fair amount.

My last question for this cycle: Does this act do anything to restrict cash-for-access to cabinet ministers when the limit is $7,750?

Mr. Guy Giorno: Well, no. That's the point I was making. There are changes to limits, there are changes to who can contribute, but the concept of pay-to-play, people making contributions to get things, be they lobbyists or others, is not at all addressed by Bill 201.

Ms. Catherine Fife: Thank you very much.

The Chair (Mr. Grant Crack): We'll move to Ms. Malhi.

Ms. Harinder Malhi: Thank you for your presentation. It was interesting to see all the different perspectives that you brought to the table. In the past, you have advocated against imposing spending limits on partisan advertising without imposing limits on third-party advertising to allow political parties to defend themselves.

Mr. Guy Giorno: Are you saying I have? Are you asking me?

Ms. Harinder Malhi: I'm asking if that's still your position.

Mr. Guy Giorno: Yes, my position is a level playing field.

Ms. Harinder Malhi: It's been suggested that the current proposal to limit spending on third-party associated-issue ads be removed while maintaining the spending limit on partisan ads. According to your previous statements, would it then follow that the political party advertising limit should also be removed to allow political parties an even chance to defend themselves?

Mr. Guy Giorno: As an individual, I wouldn't object to that. I believe the field should be levelled regardless of how it's levelled.

Ms. Harinder Malhi: Regardless of how it's levelled. So you feel that there should be no limit on it?

Mr. Guy Giorno: Pardon me?

Ms. Harinder Malhi: There shouldn't be a limit on it?

Mr. Guy Giorno: You asked me a hypothetical. If the limit was removed on one, could the limit be removed on another? That wouldn't trouble me, as long as the limit is fair.

The longer answer is: I don't have a fixed view as to what an appropriate limit is. My contribution has avoided that, so I've picked on issues of fairness and balance.

To be honest, I get the sense that the mood of the Legislature or the government is that there will be some limits to be done this way, so I focused on how to make sure it's done in a fair way and everybody's treated equally.

I hadn't really thought too deeply about other issues like whether there should no limits or not. I kind of assumed that that wasn't even a realistic line of discussion for this committee.

Ms. Harinder Malhi: Another question I had is that you talked a little bit about collusion in the American system. How do you think we can make that work in the Canadian system or here in Ontario?

Mr. Guy Giorno: I would begin by removing the word "collusion" from the statute and using a word like "coordination." We could either leave it to regulation or guidelines from the Chief Electoral Officer. I won't speak to that, but again, it would have to be binding guidelines so that everybody knew what the rules were, or the rules could be spelled out in the statute. Those rules should make clear that where there is that level of coordination between a third party and a party or a candidate, those are the contributions to, and expenses of, those parties and candidates. I would begin by doing that at minimum.

Ms. Harinder Malhi: Can I ask a question of the Elections Ontario official? How do you think this would be possible to enforce from your office?

Mr. Jonathan Batty: I'm not sure you would have it before you, but if I can turn you to the Chief Electoral Officer's submission from June 6, on page 19, actually, he specifically addresses his recommendations in respect of anti-collusion.

As Mr. Giorno has indicated, what the Chief Electoral Officer recommended was a model similar to the provisions as found with the Federal Election Commission and a number of state jurisdictions talking about coordination. His proposal was that there actually be specific rules enshrined in the legislation as you would see in the rules from the Federal Election Commission and from those state jurisdictions.

Ms. Harinder Malhi: Thank you.

Mr. Mike Colle: Can I just expand on that, just a clarification?

The Chair (Mr. Grant Crack): Okay; a clarification, Mr. Colle.

Mr. Mike Colle: This suggestion by Mr. Giorno about using the term "coordination," setting a lower bar so it wouldn't be as difficult to enforce: Is that something that falls within the proposal of the Chief Electoral Officer, do you think? Would that fit, the use of the word "coordination" with a lower bar?

Mr. Steve Clark: The Chief Electoral Officer used the word "coordination" on page 19.

Mr. Mike Colle: Yes. I was just trying to get a clarification from the Chief Electoral Officer.

The Chair (Mr. Grant Crack): Mr. Batty, do you have any comments?

Mr. Jonathan Batty: What the Chief Electoral Officer said was this, and I realize all members might not have the submission before them so I can just quote. In the words of the Chief Electoral Officer:

"I think that Bill 201 should have more stringent anti-collusion provisions.

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"To prove collusion under our current legislation, collusion can only be established where it can be proved that a third party's advertising has been done with the knowledge and consent of a candidate or party. It essentially means that the candidate has to have controlled the advertising."

Then he says, "I will leave it to the lawyers to tell you how hard it is to prove there is direct evidence of this sort of control."

I think that's what Mr. Giorno was speaking to in his presentation.

What I will tell you, as an election administrator, is that it undermines confidence in the electoral process. The public can plainly see that candidates and organizations that claim to be non-partisan are able to actively coordinate their advertising. They are not prohibited from doing so because neither is exercising direct control over the other.

This sort of coordination is especially troubling when an organization relies on former political staff or partisan strategists to shape a third party's advertising. The public sees this as an apparent conflict of interest, and the Chief Electoral Officer said, "I do, too."

What he believed was that our election law needs to directly address this matter. He called upon the clear regulatory precedents for doing so from the United States—and referred to the Federal Electoral Commission for one—that adopt rules, that prohibit coordination between campaigns and independent organizations.

Mr. Mike Colle: That's very helpful. Thank you.

The Chair (Mr. Grant Crack): Thank you. Mr. Rinaldi?

Mr. Lou Rinaldi: Thank you, Mr. Giorno. I must confess that in 2003, I'd taken you off my Christmas card list for comments you had made. But after hearing you today—

Interjections.

Mr. Lou Rinaldi: After I heard your very thoughtful presentation—and I must admit, it was very thoughtful and, I think, very unbiased. I certainly appreciate that. That's kind of refreshing sometimes.

I want to talk a little bit about—last night, for example, we had Professor Pauline Beange. I think she was in her cottage somewhere up north, enjoying, probably, a glass of wine. She basically said in her submission that the passage of the Federal Accountability Act in 2007

that led to not allowing third-party advertising federally—she felt that it expanded that into provincial levels by default, I guess. That was the statement she made.

Do you think that stricter election financing laws in Ontario will allow this to happen to other governments, like municipal governments or regional governments? That was her comment. She felt that third-party advertising would become even more wide in Ontario, for example, because it was restricted federally. Do you have any sense of that?

Mr. Guy Giorno: I'd never thought of it that way. While I followed the Chief Electoral Officer's submissions, I hadn't followed hers.

I don't know. One would think that issue advertising is directed to federal issues or provincial issues or local issues. But if she has done a study of that, I wouldn't be able to refute it either. It seems counterintuitive to me, but again, I don't want to challenge any studies she has done.

Mr. Lou Rinaldi: Sure. Good. My other question, if I may, and quickly: I know you talked a lot about the per vote allowance. Your presentation was very thorough, and I thought it was very, very good.

What Bill 201 proposes—obviously, I think you're not in favour of per vote. I think that was pretty evident, and that's fair. Do you think the approach that Bill 201 is taking—the way it's written—something that should be looked at? Or do you think it's sort of a cautious way to try to go down the road as we change others?

Mr. Guy Giorno: Again, I want to be fair and realistic. I don't think that subsidies are needed in the long term, and I think the federal model has demonstrated that. But I do get that we have provincial parties that aren't used to actually going to people and getting $100 donations. They're used to going to big corporations and lobbyists and getting big donations, so I do accept it will take time to get provincial parties to change their ways. While I don't like subsidies or per vote allowances, I'm not here to make an impassioned case saying, "Never give them—no transition." I think there should be a transition. I think the transition should be short-term and go to zero.

Even then, does it have be a per vote transition? If I were asked, I would say there's no basis on which all three major parties shouldn't get the same amount, declining over time to zero, and quite quickly to zero. My concern specifically on the formula in Bill 201 is that it doesn't go to zero and it goes down too slowly. To use the federal example, I think that four years was enough time for the parties to be weaned off these allowances. I don't see why it should be much different provincially.

Mr. Lou Rinaldi: Okay. Thank you.

The Chair (Mr. Grant Crack): Okay, thank you. You have about three minutes on average, I would think. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Mr. Giorno, for coming in, and thank you so much for giving us such a thorough and detailed analysis of your perspective on Bill 201. I just want to double-check with the Chair: Chair, does that mean I only have about two minutes now?

The Chair (Mr. Grant Crack): Let me double-check. No, actually, I apologize. You've got a good six.

Ms. Indira Naidoo-Harris: Great. I'm going to jump around a little bit, but I want to pick up on what my colleague was asking about the per vote subsidies and so on. Just very quickly, I understand your concerns about the per vote subsidy, but I want to touch on something that I know we're touching on broadly. Doesn't a focus on individual donations to some extent only give a gateway to wealthy Ontarians to having a voice when it comes to fundraising? Now, I know you talked about the $150 and the $120 sort of averages and the $98 averages that are out there for donations, but my point is that even $98, $120 or $150 may be too much for some people. That's my concern.

I want to find out from you, because clearly this is your area and you have a lot of experience in this: How would you propose—and I think my colleague touched on it a bit—to level the playing field so that Ontarians in general will have a chance to have a voice in this manner?

Mr. Guy Giorno: You're right, and I never meant to suggest that $100 is not a lot of money, because $100 is a lot of money. Some people can't afford that. But I don't think the fact that some people can't afford that amount means that they should be free to assume we need public financing. I would maybe answer your question this way: It is true that even at those levels, some people will not contribute. Nonetheless, it is also true that at those levels of average contributions, our federal parties are healthy and viable, there's full expression of views and they represent the views of those who are paying those $100 and those who don't, who can't afford to. They're still healthy and viable.

The issue, in my view, is not: Does everyone need the right, the ability and the freedom to contribute to a political party, otherwise we'd have no contributions; we'd have all public financing? A better question is: Are these, as the Chief Electoral Officer said, quasi-public, quasi-private entities—political parties—going to be open and viable? Will they do their jobs? And they are, I think, at those levels of contribution.

Still on that, I want to go back to the United States. Senator Bernie Sanders's average contribution is $27. Now, $27, even with the exchange rate, is still low. How does he do that? He does that by inspiring people. I guess that's the other thing I wanted to say. When you're dealing with individuals at those lower dollar levels and not big corporations writing a cheque because they want access or they want some result, the people who are raising money are actually going to have to give people a reason to give. They're going to have inspire them, and that's not a bad thing. That's a good thing, in my view.

Ms. Indira Naidoo-Harris: Thank you. Since I don't have that much time, I'm going to go directly to another question. Hopefully, in the next round, I'll get a chance again.

You were clearly a key player in designing a lot of the federal legislation that was out there, so I'm very interested in your comments about pay-to-play. You were there when some of this stuff was being designed, and yet, federally, as you mentioned, this wasn't reflected in those rules. Can you tell me why you didn't suggest a move forward with pay-to-play and why you think that's something to do now?

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Mr. Guy Giorno: I think that if you look at Open and Accountable Government, the document for ministers—I didn't write it all, but I wrote this section for Prime Minister Harper, and Prime Minister Trudeau has adopted it unchanged—that is a pay-to-play regime. Those concepts are in there, and I'm quite proud they're in there. I have said publicly—not just here; I've said on the record before the House of Commons—I think this should be in law, not just as the Prime Minister's policy. It should be in law.

Why is it not in law yet? Good question. Things don't often move as quickly as one would like.

Except for the fact the words "pay-to-play" are not in here, those are the concepts. I would advocate that this is a government gold standard that should be incorporated in every jurisdiction in Canada. Should it move from policy to law? Absolutely, it should.

Ms. Indira Naidoo-Harris: Thank you. Do I have time for one more?

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

Ms. Hoggarth, you have about three minutes.

Ms. Ann Hoggarth: I really enjoyed the presentation. It's great to get views from everyone.

In the bill, Bill 201, we want to even the playing field by banning corporate and union donations. There is no corresponding ban in Bill 201 that bans corporate and union donations to third parties. Should we ban corporate and union donations to third parties? If not, should there be a limit, and if so, what amount? What are your suggestions on how to administer this?

Mr. Guy Giorno: I don't know, broadly speaking, the answer to that question. I do know a narrow part of the answer, and that is that if a corporation is contributing to a third party to get a result, to lobby, to get influence, to get a contract, that should not be permitted.

The larger question, whether corporations should have speech at all: I think it is accepted that even corporate citizens have a right of free speech. I don't know the larger issue, but on the narrow issue: If they're abusing that right, if they're paying for the wrong things, they're paying for access, they're paying for results, they're paying for contracts and they're paying for influence, they should not be permitted to do that. I'm not sure that contribution restrictions are the way to do that. I think there should be other—that's what I meant; that may be a better way of putting it.

I think what's missing in Bill 201 is that sort of regulation, realizing that it's not just the dollar value of the limit; it's the things people are paying for and the relationships they have with government which caused them to do that that have got to be also looked at and regulated.

Ms. Ann Hoggarth: All third parties are after something, right? Really.

Mr. Guy Giorno: Many do. I wouldn't say all do, but many do, sure.

Ms. Ann Hoggarth: Yes. Whether they're satisfied or dissatisfied, they want the election to go one way or another.

Mr. Guy Giorno: Yes, but there's a difference, right? Everybody who participates in public policy has a viewpoint. People might want a law changed. But I'd be wary of saying that an individual citizen who believes that this law or that law—I'll pick a federal issue, not a provincial issue: marijuana reform, or legalization or decriminalization, whatever—citizens may have views on that, right? That's different than a lobbyist who wants a government contract. I think that's different than somebody who's making a commission on a sale to a municipality, a province or the federal government. Yes, everybody wants something, but I would be wary of a definition which says that the citizen who has a view on an issue is in the same boat as a company that actually wants something for a financial benefit. I do think that those are different kinds of wanting things from the government.

Ms. Ann Hoggarth: The final part of my question has to do with real-time disclosure. We want to have real-time disclosure. Throughout the many changes over the years to federal and provincial election laws, none have yet to adopt Ontario's model. Why do you think that is?

Mr. Guy Giorno: I don't know why. Thank you for allowing me to point this out. I should credit Ontario as the leader in real-time disclosure. We shouldn't lose sight of that. Everybody should do that. I don't actually know the reasons why it's not done federally. It could have to do with infrastructure and funding, but there's no reason there shouldn't be real-time disclosure. Ontario can do it.

Ms. Ann Hoggarth: Thank you very much.

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

Mr. Randy Hillier: Thank you for being here today. First, I want to thank you for such a wonderful and informative presentation, Guy, but also say that it has clearly had a significant impact. It's clear that your presentation has sparked committee members to further examine and evaluate Bill 201 in some very new light. We've got a lot to examine, contemplate and reflect with what you've presented today. I would like the opportunity, if you are available, to come back for an additional meeting with the committee at some time while we're sitting this summer. I hope you'll be able to do that.

I'm going to keep my remarks very brief for now. I just want to ask you for your views on a couple of clauses in Bill 201, and those are the new section 15(2), which is that subsection 21(2) of the act is repealed and the following substituted, and that's about amounts of $100 or less that are not to be considered as contributions. That clause, in addition to subsection 21(1) of Bill

201, which substitutes subsection 26(1) of the act—and that's where there are some changes under group contributions. I'm just wondering if you've had an opportunity to look at how those two clauses fit or jive with the discussions about limiting union and corporate contributions and creating a more fair and level playing field.

Mr. Guy Giorno: I think most jurisdictions have—it's not called this, but this is what it is—a de minimis threshold below which there's at least an option not to record. With goods and services, that may make sense. If somebody brings a couple of pizzas to campaign headquarters and donates them to volunteers, do they have to be booked as contributions? That's the reason we have thresholds. I'm not going to comment on if it should be $100, $200 or $25.

But then you refer to the group contributions provision, which is of course not a group contribution; it's a group being a flow-through for contributions from individuals who are behind that group, which could be a group, an unincorporated association, an accounting partnership or whatever. That pre-existed. That was before Bill 201 and after Bill 201. All that Bill 201 does, I think, consistent with the updating to add nomination contestants, is refer to nomination contestants there.

I take it that your question is that this pre-existing concept, that groups can be not contributors, but funnellers or flow-throughs of individuals' contributions—how does that line up with the $200 de minimis example? That's not a Bill 201 issue because the sections are the same in the existing Election Finances Act. I don't want to presume to speak for Elections Ontario, but I don't see that there's an avoidance possibility there, either under the existing act or under the current bill. Is your question: Can a group use the $100 exemption, which is in various sections, to avoid the need to disclose the names or sources and the amounts of those individual contributions if each is below $100? The language of the section, either the new section or the existing provision, doesn't allow that. It says—I'm referring to section 21, subsection (1) of the bill, which is essentially re-enacting with some changes: "Any contribution to a political party" etc. "made through any trade union, unincorporated association or organization ... shall be recorded by the trade union, unincorporated association or organization as to the individual sources and amounts making up the contribution." So that's mandatory.

That information then goes to—these sections are not repealed and re-enacted, so sections of the act are not being changed—the party and it has that information. There's nothing there that says that if the amounts are under $100, you don't have to do that. You must, as the unincorporated group, give all the sources and all the amounts, even if they're under $100. The $100 exemptions don't apply to that section. So that's on the record. It goes to the political party or it goes to the person who benefits from that. Again, I don't want to speak—before, I was embarrased that Elections Ontario disagreed with me. But I don't think that the $100 de minimis exemption, in various places in the act, allows people to amass large group contributions of under $100,000 each and therefore have no disclosure and no transparency, because you've got to record the sources and the amounts, regardless of the amount.

Mr. Randy Hillier: So you could still use it as a flow-through, but it would have to be recorded and transparent.

Mr. Guy Giorno: Yes. The law has always thought that accounting partnerships and other partnerships for years can, as a convenience to partners, give one cheque, as long as there's disclosure of the names and the constituting amounts. That's true of the partnerships; it's true of any unincorporated organization.

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Mr. Randy Hillier: Right. The only other change is there has been some expansion of that to include, from my reading, that unions are now included under group contributors.

Mr. Guy Giorno: No, they're not. Unions can give those contributions in that manner now. I don't know whether they do or they don't, because they can give contributions in their own right now. That will be removed. But certainly, as a matter of theory, as I said, a union can use this provision now. This is actually in Elections Ontario's guidance, as well. They're an unincorporated entity. They can use this provision now.

Funnily enough, I've never worked on too many campaigns where we got union contributions, so I don't know whether they do it that way. But this is not a change that is actually giving members of unions more rights. They have that opportunity now, if they wish to avail themselves of it.

Mr. Randy Hillier: Right. Well, listen, I'm going to leave it at that. Maybe if my colleague—

Mr. Steve Clark: If I can just follow up, one of the suggestions that we've heard a couple of times is the issue of identifying the donor in a more detailed way with an address. I think that the example we had was somebody searching out George Clooney's and Brad Pitt's donations. What are your comments about providing additional information for donors so that they can be recognized?

Mr. Guy Giorno: You know, that's a tough one. I don't have an answer because there are two important principles that converge here: One is transparency and one is privacy. I'm still old enough to remember the days when, at least for municipal elections, we'd have entire voters lists stapled to telephone poles in the city of Etobicoke. You would never do that now because of privacy.

There has got to be a way. I do believe certainly that the information must be meaningful. Fred Smith—there could be many people. It should be important so people can identify who the person is. But I personally can't speak to how that's done in a way that achieves the transparency and maintains the privacy. But I do believe that the transparency is important—and the privacy, too. Sorry.

Mr. Steve Clark: No, it's okay. That's fine. Thank you, Chair. Thanks, Guy.

The Chair (Mr. Grant Crack): Thank you very much. Is there any further debate? I'll allow Ms. Fife and then, if there's time left—you have about six minutes, so feel free.

Ms. Catherine Fife: It's really interesting. You've been very complimentary of the changes that have happened under Open and Accountable Government, 2015. You'll also note that the Prime Minister has, around electoral reform, balanced the committee, if you will. You can see that this committee is unbalanced, in a rhetorical way.

What do you think about that? I'm going back to the electoral officer. He asked us to put the elector at the centre of this debate about the work of this committee. He asked us to level the playing field. He identified the perception or the reality that money is playing a major role in the way that government operates and the way that fundraising happens in the province of Ontario.

Yet, if you look at the major ways that other parties in the past have looked at electoral reform—particularly around fundraising—this is a serious departure from that. We have a piece of legislation before us which we are asked to work with. Quite honestly, Mr. Trudeau, at the very least, has created a level playing field from which to work. Would you like to comment on that, Mr. Giorno?

Mr. Guy Giorno: As a member and a spokesman of the Every Voter Counts Alliance, which is dedicated to achieving proportional representation at the federal level, I certainly agree with the premise of your question. The Prime Minister was right to make the committee balanced.

But as a matter of fairness, majorities have been used to put through election reforms in different jurisdictions at different times in history. I don't think we can say that this has never happened before. That's just how the system runs.

But on the same point, I think that Mr. Essensa was right when he talked about the voter being the centre of things. I do know that there are many occasions, probably fewer in this decade than there were decades ago, when significant changes, including to election law or laws, were achieved through a consensus of political parties.

The point I was going to make is that for all the merits of taking a consensus-based approach, where all parties agree on major reforms and things like that—those aren't actually voter-centric. I don't want to get into a large debate. There are some examples in the history of Ontario and federally when the things that were the consensus of the political parties were actually achieved and enacted to the exclusion of what ordinary people wanted and their interests, and particularly, a process where, as was wont to happen in this building and in Ottawa decades ago when parties would meet behind closed doors, there would be negotiations, then a bill would come through and it would go through three readings in a day. That has happened.

I'm not suggesting that the member is advocating that.

Ms. Catherine Fife: No, no, I know.

So let me just take it back to lobbying. You've heard the piece around government advertising. There's the piece about lobbying. All of these issues play into the way that this bill is being debated and the discourse on it, if you will. Do you believe that people often engage in lobbying at political fundraisers?

Mr. Guy Giorno: Well, they shouldn't. They shouldn't, is the short answer.

Ms. Catherine Fife: They shouldn't, but do you believe that they do, given your experience?

Mr. Guy Giorno: I've been lobbied at political fundraisers, so I guess by definition—

Ms. Catherine Fife: So there you go. Is there anything that should exempt reporting of lobbying—

Mr. Guy Giorno: In fact, one of the reasons I used to hate going to them when I worked for the Premier was because you'd go to these events and just end up being lobbied.

Ms. Catherine Fife: Exactly.

Mr. Guy Giorno: But seriously, that's why we need rules against it.

Ms. Catherine Fife: That's where we need to get to, right?

Mr. Guy Giorno: One other thing that I want to say is that there is no lobbying piece in Bill 201. The changes to the Lobbyists Registration Act, which are being proclaimed into effect, do not actually address some of these issues.

Ms. Catherine Fife: And that's disclosure. So let's talk about the disclosure of lobbying at fundraising, because that's really where we need to go with this committee. People pay a huge amount of money to go to a dinner with the Premier or with a minister, and that is not disclosed. That is lobbying that is happening in the province of Ontario, and that is not disclosed. Do you see that as an issue that we should, as a committee, deal with even though it's a little bit outside our mandate?

Mr. Guy Giorno: There are a lot of answers to that, and I don't want to give procedural advice.

Ms. Catherine Fife: I'm sorry. I can't hear you.

Mr. Guy Giorno: Sorry. There are a lot of answers to that. First is that I don't want to give procedural advice. This bill has been referred to committee before second reading, so it hasn't even been approved in principle. There is no determination of the Legislative Assembly as to what the principle is to frame the mandate of the committee, so I'm not sure what's germane or what's not. That's number one.

Second of all, which is a technical point, the lobbying that occurs at fundraising events is supposed to be registered and recorded according to the laws of the jurisdiction, federal or provincial—

Ms. Catherine Fife: Supposed to be.

Mr. Guy Giorno: Yes, so in that case, part of it is a cultural thing. People lobby without knowing it or lobby thinking they can get away with it. But even then, I don't actually agree that the issue is disclosure there. I don't believe there should be lobbying taking place at fundraising events. I believe that the regulatory regimes should be such that we separate the two. We don't disclose when they're happening together; we don't let

them happen together. I don't believe that lobbyists should be fundraised or fundraisers, and vice versa.

So I would actually say, Chair, to the members concerned that while I am a big fan of transparency, in some areas transparency is not enough. Certain conduct should be proscribed—that is, not permitted—and any intersection between lobbying and fundraising is one such area. It shouldn't exist.

Ms. Catherine Fife: So, as a committee, we should look at closing the loophole that exists in Bill 201 on this issue.

Mr. Guy Giorno: Yes.

Ms. Catherine Fife: Thank you.

Mr. Guy Giorno: Except there's no loophole; there's just nothing there.

Ms. Catherine Fife: That's a Liberal loophole, when there's nothing there.

The Chair (Mr. Grant Crack): Thank you very much. We'll go to Ms. Hoggarth.

Ms. Ann Hoggarth: The government, through Bill 201, is trying to make Ontario a leader by implementing pre-writ advertising limits for political parties. The proposed changes are designed to help prevent any party from circumventing the purpose of election period spending limits. What is your opinion of the bill's current approach and the million-dollar limit? Should there be a limit for constituency associations and candidates as well?

Mr. Guy Giorno: I hadn't really thought of it that way. It's a twofold answer. One is that, generally, most of the expenditures that are of concern are by central parties, but of course if that's limited, then you may actually have a spillover effect that people will start to be using riding associations and individual campaign expenses to do that. Actually, there can't be individual campaign expenses outside of the campaign period; there can only be the riding association expenses. So I'll simply concede that that's a valid point.

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As to the issue of levelling the playing field, this is why I identified a number of areas where I think that if the legislation is going to move in that direction, it should just make sure that we are completely preventing people from doing what the law intends that they not do. We should make sure, for example, that there's a very clear separation between third parties and parties, consistent with the principle that the members identified.

Ms. Ann Hoggarth: Thank you very much.

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

Mr. Lou Rinaldi: Again, thank you very much. I'm quite intrigued by your knowledge of this, so just a quick question to follow up on Ms. Fife's question on the process piece—and this is just your opinion, if you wish. We're doing this, as you mentioned, after first reading. It's not really a committee structure as we are normally accustomed to, as you can see by the way the flow of questions goes, and the time frame. Hopefully, after second reading, we'll get back to what committee "normal" is, I guess.

Do you feel that that's a good process to try to tackle an issue of this magnitude?

Mr. Guy Giorno: If only Norm Sterling was around to hear me compliment him, because he was a big proponent of bills going to committee after first reading. I think it's an excellent approach.

In fact, if I might comment a bit more, part of the problem is just that: After second reading, the bill is approved in principle, and the committee is actually deliberating within the framework of the bill already approved in principle, and it's very technical. Yet, often, it's the first opportunity for members of the public to engage, and they're kind of wondering why we're engaging on the bill, or whether it should exist at all. But it has already been approved in principle and we're just here, as a committee, to look at technical details within that framework.

I think that the referral of bills to committee before second reading—after first reading—is excellent, and it should happen more often. It actually provides more opportunities for members of the public to engage.

I also like, as a citizen, the non-partisan flavour. I think it's an excellent process. This should be a model. It should happen more often.

Mr. Lou Rinaldi: Thank you.

Do I have more time—

The Chair (Mr. Grant Crack): Thank you. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you, Chair. Mr. Giorno, again, thank you for coming in and sharing some of your thoughts on Bill 201 with us.

As I mentioned earlier, in 2006, the federal government passed the Federal Accountability Act. I know you worked very closely on this legislation, so I think your experiences and your observations on all of this are very important to us and what we're trying to do here at this committee.

In hindsight, how do you feel? Is this legislation holding up, a decade later? What do you think are its strengths and weaknesses?

Mr. Guy Giorno: Okay. Wow, that's a big question.

Ms. Indira Naidoo-Harris: Yes, it is.

Mr. Guy Giorno: The reason is because the Federal Accountability Act amended so many statutes. I can pick and choose a few of them. For example, I'm on the record, along with the Canadian Bar Association, saying that the Conflict of Interest Act has the right principles, but it doesn't have enough teeth. I'd be happy to answer more questions about the Conflict of Interest Act.

I think the Lobbying Act has held up well. I think that until recently, there was a problem with enforcement, but now there are charges laid, and convictions, so I think that's holding up well.

Changes to the Access to Information Act: More entities are subject to it, but the content of it was not as much as it could have been. To use an example, Ontario politicians, who are used to a strong Information and Privacy Commissioner, with the power to make binding orders, might be surprised to find that the federal In-

formation Commissioner lacks that power. That was an issue that the Federal Accountability Act did not address as fully as it could have.

Sorry; it's a large bill. I think there are pieces that are working and there are pieces that do still require some changes, to this day. Does that—

Ms. Indira Naidoo-Harris: No, that was great. I'm particularly interested, actually, in where you feel the weaknesses are, just because we are at this point where we're looking at designing something in Bill 201 and trying to do that.

Mr. Guy Giorno: Speaking broadly—and the Federal Accountability Act is an omnibus bill—most of my personal criticisms are not of content; they are of the lack of teeth. The enforcement is not there. The powers aren't there. The penalties aren't there. The consequences aren't there.

If this committee is trying to extrapolate from that, I think that it's important—and it's consistent with the answer I gave previously on these practices for fundraising and lobbying. It's great to have a piece of paper; it's great to have the rules. But unless there's enforcement, then people can ignore them. Certainly, my takeaway from the Federal Accountability Act is that things need to be enforceable. There need to be consequences for doing what the law says you shouldn't do.

Ms. Indira Naidoo-Harris: Thank you. I believe my colleague is—

The Chair (Mr. Grant Crack): Thank you. Mr. Rinaldi.

Mr. Lou Rinaldi: Just another quick comment: There seems to be a trend with some of the folks who presented up till now, of donors having to name their employers, to try to prevent or show some sign that there's no funnelling money through the back door, for lack of better words. Do you have any sense of that issue and how—we've had a few who said that, so that if we're stopping corporate and union donations, there are other ways that they can do that.

Mr. Guy Giorno: It's funny; I support that concept but for a different reason. I am less concerned, although it is theoretically possible, about money being shifted from an employer to an individual. I am more concerned that people work in companies or organizations that do business with the government, where there should be disclosure of the fact that this person works for somebody who has government contracts, that this person works for a company that is lobbying for this outcome, that this person works for a company that is getting economic development grants. So the short answer is yes, I agree with the concept, for slightly different reasons, of accountability and transparency—but absolutely. And not all, but many US jurisdictions require things like that.

The Chair (Mr. Grant Crack): Mr. Giorno, I'd like to thank you very much for your presentation and for the discussion that ensued. It was very informative. We thank you for coming before committee this afternoon.

Mr. Guy Giorno: Thank you.

The Chair (Mr. Grant Crack): To members of the committee, just a follow-up: I did call a subcommittee meeting for 4 p.m., but it is cancelled as I think we're making some progress on the schedule for public hearings on the bill.

I want to thank everyone for coming this afternoon and for all the support that we've had here. This will be the last committee meeting in this place for another month. We look forward to returning, in Toronto—I believe it's July 20—

Mr. Steve Clark: July 11.

The Chair (Mr. Grant Crack): July 11, it is. Thank you very much.

Have a great summer, everyone. This meeting is adjourned.

The committee adjourned at 1557.

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Also taking part / Autres participants et participantes
Mr. Jonathan Batty, general counsel, Elections Ontario

Clerk / Greffière
Ms. Sylwia Przezdziecki

Staff / Personnel
Mr. Jeff Parker, research officer,
Research Services