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Mr. David Tilson

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● (1530)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, ladies and gentlemen.

This is the Legislative Committee on Bill C-2, meeting 22. The orders of the day, which are televised, are Bill C-2, an act providing for conflict of interest rules, restrictions on election financing, and measures respecting administrative transparency, oversight, and accountability.

We are into the process of clause-by-clause consideration. You may recall when we adjourned the last meeting it appeared we had finished most of the amendments to clause 2 and all of the clauses consequential to it, which were clauses 3, 28, and 38. However, over the weekend, more amendments have been received, and those amendments should be debated and voted on before we actually take a vote on clause 2.

The remaining amendments all involve clause 28. They are: BQ-8.1, which is on page 42.1; G-23; G-23.1, on page 42.2; and NDP-1.2.1, on page 42.3. As I said, all of those are on clause 28.

(On clause 28)

The Chair: Accordingly, we will move to the first amendment we received, which was the Bloc Québécois', which is found on page 42.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Mr. Chairman, I'm moving this amendment, but I don't think it will require any lengthy debate. Simply put, it proposes to correct the French version. The English version notes that the Governor in Council is responsible for deciding who may serve as Commissioner, whereas in the French version, the person responsible is the “commissaire”. Therefore, we're asking that “gouverneur en conseil” be substituted for the word “commissaire” in the French version.

[*English*]

The Chair: Monsieur Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I'd like to invite our technical experts to share any thoughts they might have on that.

Mr. Joe Wild (Senior Counsel, Legal Services, Treasury Board Portfolio, Department of Justice): With respect to that particular motion, it's technical, to change a mistake in the drafting from a reference to the commissioner to the Governor in Council.

The Chair: Another comment over here, Mr. Lukiwski?

● (1535)

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Put the question.

(Amendment agreed to)

The Chair: It has been drawn to my attention that the next amendment, which is found on page 42.2, G-23.1, is the same as the one we just voted on.

What do we do now? Mr. Martin isn't here. I guess we move on. Mr. Martin isn't in the room. Has anyone seen him? We have to keep this going. I want to be courteous to members. Let's wait a couple of seconds.

Mr. Martin, we have reached you. We are on page 42.3, which is a New Democratic amendment, NDP-1.2.1.

Mr. Martin, please move that.

Mr. Pat Martin (Winnipeg Centre, NDP): As soon as I find it, sir, I would be happy to move NDP motion—

Mr. James Moore (Port Moody—Westwood—Port Coquitlam, CPC): Just before you continue, Pat, we have not been given a copy of these new amendments here. Can we get those circulated?

Do you have a set of the new amendments now? I don't have one in front of me.

The Chair: It was my understanding that all members had received it, but hopefully we have some extra ones.

Mr. Martin, could you just hold on for a minute? I want to make sure all members have a copy of this amendment.

Mr. Martin, everyone seems to have a copy of the amendment. Could you move that motion, please?

● (1540)

Mr. Pat Martin: Thank you, Mr. Chairman.

I'd be happy to move NDP amendment 1.2.1. on page 42.3 of our working book. The motivation for the NDP putting this motion forward is that rather than preclude the possibility of the current Senate ethics officer and the current ethics commissioner...they would be in fact be at least considered, were their qualifications satisfactory, for the newly created position.

That explains the intent of the NDP motion.

The Chair: In debate, we'll hear Ms. Jennings, then Mr. Poilievre.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I think Mr. Martin's amendment is quite interesting, and it does on the face of it respond positively to some of the concerns and preoccupations some members around this committee expressed last week, myself included.

I would just like to ask our legal expert sitting at the table whether or not the intent Mr. Martin has said he wishes his amendment NDP-1.2.1. to achieve does in fact achieve it.

Mr. Joe Wild: What the amendment does is add, to the class of candidates who can be considered for the position, a former Senate ethics officer or former ethics commissioner.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: Given that this is not really a grandfathering clause, which is what was spoken of last week....

The Chair: There appears to be a question for you, Mr. Wild.

Mr. Joe Wild: Is it a grandfathering clause? In the sense that it does not preserve any of the current ethics commissioners in their positions or put them into the position of the new conflict of interest and ethics commissioner, it merely reflects an additional class of people who would be qualified to be appointed to the position.

Mr. Pierre Poilievre: Ultimately, Parliament would have to choose, even if these two additional criteria were added to the list of qualifications required of a conflict of interest commissioner. As a Parliament, we would still have to choose between the Senate ethics officer and the former ethics commissioner. Neither one of them would be automatically grandfathered into the new, combined position; they would just both be eligible to apply to be considered.

Mr. Joe Wild: Yes, that's how I read it. I'm assuming, of course, that between paragraphs (b) and (c) there is an “or”. It's not clear from the drafting of the amendment that there is an “or” following paragraph (b), but assuming there is an “or”, then we are talking about three different classes, in that either former ethics officers of the Senate or the ethics commissioner would be eligible to be appointed.

Mr. Pierre Poilievre: It is the position of Conservative members of the committee that, given that we have laid out very specific knowledge-based criteria here in the bill and that someone who's going to occupy this new and entirely different position will have to interpret laws codified in statute, this person should have qualifications that are already laid out here in the act, and that we needn't make special amendments to qualify one, or in this case two, additional people who otherwise may or may not be qualified.

If the existing Senate ethics officer or the existing parliamentary ethics commissioner meets the qualifications laid out already in the Accountability Act, then I believe they should be considered, but if they do not, then we should not put in place a separate section designed especially for two specific individuals who otherwise would not live up to the qualifications required of the job.

Thank you.

The Chair: We have Mr. Murphy and then Mr. Owen.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Mr. Chairman, I was just going to bring up that at line 20 there has to be a semi-colon and an “or”, and it has to be formally done.

I couldn't disagree more with my friend here. This is a proper amendment. It is what was discussed, and we're very much in support of it. It takes away the element of witch hunt that surrounded the new qualifications that were presented by the government. We support the amendment.

● (1545)

The Chair: Mr. Owen, and then Mr. Martin.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Chair.

Let me ask Mr. Wild whether, in his interpretation of clause 28 as it is currently worded, the current ethics commissioner would qualify under its set of criteria, given that we're talking about a federal commission that involves ethics.

Mr. Joe Wild: The current ethics commissioner would not qualify under proposed paragraph 28(2)(b), in that the office is currently not a commission. It has not been defined or created as a commission—it's the office of the ethics commissioner—and has been specifically excluded from the meaning of those words in the Federal Court Act.

The Chair: Mr. Martin, and then Ms. Jennings.

Mr. Pat Martin: Mr. Chairman, I understand Mr. Poilievre's point, and I understand the government's position, but it's our position that we don't want this committee to be used as a lynch mob. What I put forward is a very balanced idea that doesn't guarantee that the current ethics commissioner will somehow carry on into the newly contemplated position, but it also doesn't preclude that possibility.

We've all seen job postings that are cleverly written to give some kind of preferential advantage to a specific person you have in mind. I don't want to see this job outline rigged like some shady ring toss on a carnival midway. I want it to be fair and open and transparent and such that this person will survive or fail on their merits, and not on some rigged setup by this committee. I just don't want to be a part of that.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: When I look at the other sections, proposed subsection 81(4) says:

> The Commissioner is eligible to be reappointed for one or more terms of up to seven years each.

We could theoretically have a situation, if Mr. Martin's amendment is not carried....

When the legislation goes into effect, someone who is qualified under proposed paragraphs 81(2)(a) or (b) is appointed as the Commissioner of Conflict of Interest and Ethics, takes a turn, and is appointed for seven years, for instance. The commissioner could possibly complete the entire seven years or leave beforehand for personal reasons—it could be an illness or any problem whatsoever in the family—and someone else would be appointed for a term.

The initial commissioner would then be available to be appointed at the end of the subsequent seven-year term and would not be qualified. Am I correct? Would the commissioner not be qualified, under the current wording?

Mr. Joe Wild: If the initial commissioner fits under the categories in proposed paragraphs 81(2)(a) or (b) before being appointed, there would be no issue with that commissioner continuing to be reappointed after leaving office for a certain amount of time and then being appointed again, because the qualifications in paragraphs 81(2)(a) or (b) would continue with that person for his or her natural life.

Once you're a former judge or a former member of a board, commission, or tribunal, you would continue to be one. The wording of paragraphs 81(2)(a) and (b) does not mean to say that the day before the appointment comes into effect, you must be a judge or a member of a board, commission, or tribunal.

Hon. Marlene Jennings: Yes, but you know as well as I do that I can't ask you for an opinion. You've made it quite clear that you're not here to give legal advice.

If someone has been out of a particular position that has a required qualification for five, seven, or eight years, he or she is generally not going to be considered. You're going to take someone who's currently in the position.

You put “former judge” so that someone who's an actual judge could be appointed, and he or she would have to be a former judge to take up the appointment. The explanation that you had given was that it was because we had specifically said it should be a judge or a former judge and a member or a former member. The explanation you gave was that under the legal definition and tradition, you put “former” because you're looking for the current one, and the person would have to automatically resign from the position of judge or a position in a tribunal or commission in order to be appointed.

The point you're making now doesn't hold water, if your first explanation was right.

● (1550)

Mr. Joe Wild: My first explanation was specifically to the question of whether or not a current member was actually eligible. The answer is yes, because the word “former” is really signaling the fact that you are not holding two jobs. At the time of appointment, you would have been “former”.

It did not in any way shape or form limit or put in place some kind of a temporal restriction on when “former” actually occurred. If you ceased to be a judge five years ago, you would still be eligible under proposed paragraph 81(2)(a). If you were a member of a federal or provincial board, commission, or tribunal a decade ago, you would still have the qualification of being a former member of a board, commission, or tribunal.

Whether or not someone who has been out of a position for a given length of time is of interest to the Governor in Council when looking at the whole appointment process, I can't speak to that. It depends on the particular individual and the particular characteristics that are in play at the time.

Hon. Marlene Jennings: Thank you.

The Chair: All those in favour?

(Amendment agreed to)

The Chair: We now move to a new stage.

We're going to vote. If there's debate, that's fine. It's the overall vote on clause 2.

I would like to emphasize to members that the vote on clause 2 applies to clauses 3 and clauses 4 to 38.

Is there any debate?

Mr. Martin.

Mr. Pat Martin: Just to be clear, Mr. Chairman, when you ask, “Shall clause 2 carry?”—I'm not sure, from the way you just phrased it...does it apply to clauses 3 to 38?

The Chair: Yes, it's clause 3 and clauses 4 to 38. You're right.

Mr. Pat Martin: Okay. Thank you. I just wanted to be sure I understood you.

That's remarkable, isn't it?

The Chair: We're in remarkable times.

Is there any debate on this vote?

(Clauses 2 to 38 inclusive agreed to)

The Chair: We go on to new clause 3.1 at page 37, if I'm correct.

Mr. Poilievre, does new clause 3.1 replace the amendment on page G-21? Should we still be looking at amendment G-21?

Mr. Pierre Poilievre: Yes. We are going to withdraw amendment G-22.

● (1555)

The Chair: You're going to withdraw amendment G-22?

Mr. Pierre Poilievre: That's right. Then we're going to move to amendment G-22.1, which accomplishes the desired outcome.

The Chair: So we're on to page 38.1, Mr. Poilievre—I believe that's correct—which is amendment G-22.1.

Mr. Pierre Poilievre: I move this amendment. I'll open my remarks by allowing a technical explanation from the panel of experts.

Mr. Joe Wild: Mr. Stringham will explain this one.

Mr. James Stringham (Legal Counsel, Office of the Counsel to the Clerk of the Privy Council, Privy Council Office): Mr. Chairman, amendment G-22.1 addresses a concern that might arise if two different parts of the act come into force at different times. The concern is with respect to the five-year lobbying ban, which is currently found in section 29 of the Conflict of Interest and Post-Employment Code, as established by the Prime Minister under the current Parliament of Canada Act.

Section 29 sets out a five-year lobbying ban for former ministers, senior public servants, and ministerial staff designated under section 24 of the code. Now, most provisions of the code are making their way into the Conflict of Interest Act. However, the lobbying ban is not. It's migrating to the lobbying act. The Conflict of Interest Act, when it comes into force, will effectively supersede the code. The code will be no more. If the Conflict of Interest Act comes into force before proposed section 10.11 of the lobbying act, which provides for the five-year lobbying ban, then there will be a period of time between the coming into force of the first and the coming into force of the second when there will be no five-year lobbying ban.

The result is that if a senior public office holder leaves office during this period—that is, the period between the coming into force of the Conflict of Interest Act and the coming into force of proposed section 10.11 of the lobbying act—then that person would not be subject to the five-year lobbying ban.

This transitional provision, new clause 3.1, carries section 29 of the code in effect during that period. It may be that if those two parts of the act come into force at the same time, there won't be an interregnum, a need to fill a gap, but if there is a gap, then section 29 will be sustained and the registrar of lobbyists will be put in the position of—effectively stand in the shoes of—the current Ethics Commissioner and be able to enforce section 29 of the code.

Thank you, Mr. Chairman.

Mr. Pierre Poilievre: It's a coming into force issue, effectively.

Mr. James Stringham: That is correct.

Mr. Pierre Poilievre: So it does not alter the substantive intentions of the bill in any way. It just ensures that the coming into force provisions do not create unnecessary loopholes.

Mr. James Stringham: That is correct, Mr. Chairman.

Mr. Pierre Poilievre: It closes a loophole, in effect. Okay.

Question.

The Chair: No, no, not yet.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: It's somewhat complicated. My only question is this: does this amendment apply retroactively to anyone?

[*English*]

Mr. James Stringham: No, not at all. It continues the regime from the present code with respect to senior public office holders and just maintains it. Then it's taken over.

[*Translation*]

Mr. Benoît Sauvageau: Thank you very much.

[*English*]

The Chair: Okay.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: The next clause, clause 39, relates to the subject matter of gifts to candidates. There are a series of other clauses that are related to this particular clause.

I am suggesting that we follow the same procedure we did with clause 2 and that we deal with all of the amendments that pertain to the subject matter of clause 39 before I put the question on clause 39. In other words, we'll do the same process for clause 39 as we did for clause 2.

An hon. member: There is no page for clause 39 in the book.

The Chair: You have to let me finish this, and then we'll try to answer all your questions. I want to say this, and then you can make sure you're clear.

First of all, we're going to deal with the amendments to clause 40. Once this is done, we will put the question on clause 39. Its results will be applied to all the consequential clauses—clause 40, clause 56, and clause 58. Do you want me to repeat that, or are you all clear?

Good, you're all clear.

(On clause 40)

The Chair: We will call the first amendment, which is L-1.9 on page 45.1 of the book—which seems to go on and on here forever—that relates to clause 40.

Ms. Jennings.

● (1600)

[*Translation*]

Hon. Marlene Jennings: When Mr. Walsh made a statement to the committee and answered questions about his concerns that certain provisions of Bill C-2 violated the constitutional autonomy of the House and of MPs, he pointed out that the right of MPs to participate in debate and to vote was part of the process of constitutional autonomy and of the constitutional workings of Parliament.

Lines 27 to 33 of clause 40 on page 55, which amends subsection 96.6(2) of the Canada Elections Act, stipulates the following:

> (2) An elected candidate who fails, within the required period, to provide a statement as required by subsection 92.2(3) or to make a correction as authorized by subsection 92.3(1) or 92.4(1) shall not continue to sit or vote as a member until it is provided or made, as the case may be.

Mr. Walsh made it very clear that this provision violated the constitutional autonomy of the House to draft and adopt rules governing the conduct of members, rules such as who is entitled to vote, who can participate in debates, and so forth.

By deleting lines 27 to 33, as I propose in my amendment, the House would continue to have authority over such matters. However, it would still be free to amend the Standing Orders to include the wording of this subsection, if it deemed such action advisable.

● (1605)

[*English*]

So this ultimately touches on the rights of members of Parliament to vote and debate in the House and on the constitutional autonomy of the House to determine who has the right to vote and debate.

If we delete lines 27 to 33, it means the House continues to have that constitutional authority and can, if it wishes, in its good judgment, decide if an elected candidate who omits to file the statement as laid out in Bill C-2, or to correct it, as authorized under Bill C-2, has the right to sit or not. It's the same, once an election happens, as our not being allowed to sit and not having access to a member's operating budget, etc., until there's a certificate from the Chief Electoral Officer, under the House orders, certifying that we are in fact the candidate who won in the particular federal riding in which we ran. At that point, we have to swear an oath, and then we benefit from all the rights and privileges of a member of Parliament and we can begin to draw our salary. It goes retroactively to the election date, but until that certificate comes to the House of Commons through the proper channels, we're not allowed to sit. So if a certificate takes six months and the House is recalled after an election, that elected candidate may not sit, may not debate, and may not take part in votes.

So in the same way, I think it should remain the constitutional authority and autonomy of the House to make that decision.

The Chair: Mr. Martin.

Mr. Pat Martin: Thank you, Chair.

I was simply going to voice our concern as well with the point that Mr. Walsh raised. It was a graphic illustration of what is wrong with the direction of some of this bill, when he pointed out that it should be the will of the people that has primacy here, not some administrative detail or filling out the correct form in triplicate. To block a duly elected member of Parliament from taking their seat and exercising their duties, based on the failure to cross a “t” or dot an “i”, seems a breach of privilege, a breach of the primacy of Parliament, giving too much authority to statutory administration.

So I support this amendment.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, Mr. Chair.

I wanted to get our technical experts to give an overview of this clause, if they could.

Mr. Joe Wild: Mr. Chénier would be pleased to do that.

Mr. Marc Chénier (Counsel, Democratic Renewal Secretariat, Privy Council Office): Thank you, Mr. Chair.

I'd like to point out that there are safeguards in Bill C-2 to protect against an undue *empiètement* on the privileges of the House. If one looks at the proposed section 92.3 in clause 40, this allows the candidate to seek an extension from the Chief Electoral Officer to either file the return or make a correction to the return. The Chief Electoral Officer applies a test that's provided for in that proposed section and grants the extension if the delay was due to the illness of a candidate, to inadvertence, or to an honest mistake of fact. What this means is essentially the Chief Electoral Officer will grant the request for an extension, unless there's an indication that the intention was to not provide the statement, for a dishonourable purpose, or was to try to hide something.

Where the Chief Electoral Officer refuses to grant the extension, or if the person is outside of the delay that was given by the Chief Electoral Officer, then there's another safeguard that the candidate, or the member in this case, can go to a judge and obtain an extension from the obligation to file the statement. Again, the criteria is the same. So it's granted if the delay was due to the illness of the candidate, to inadvertence, or to an honest mistake of fact. Basically, you need two independent, if I can call them, officials—the Chief Electoral Officer and a judge—to have reason to believe that the failure to file the return was due to an attempt by the member to circumvent the disclosure requirements.

Of course, it's up to this committee to decide whether it wants to deal with this through the House code or through the legislation, but the presumption behind clause 40 is that there's a public interest in having an MP disclose any personal gifts that may have an influence on how he or she votes in the House of Commons. If there's any indication that the member may be trying to circumvent the disclosure requirement, then this particular clause says that he or she can't sit until the statement has been provided and until there's full openness about any gift that he or she may have received that could influence a vote.

● (1610)

Mr. Tom Lukiwski: Mr. Chair, so I'm clear here, I would ask Mr. Chénier this. What you're suggesting then is that without the amendment proposed by Ms. Jennings, currently in the act there are provisions that would allow a member to almost invariably get an extension, and the only reason a member would not be granted an extension, listening to what you have said, is if there was a determination by the Chief Electoral Officer and a judge that he or she had done something deliberately to not file for some other reason.

In most of the cases Ms. Jennings was referring to, I think it would be through inadvertence, or perhaps a legitimate reason due to illness. So the member would not be penalized unduly, because there are provisions currently in the act allowing for an extension to be granted. The way the legislation is currently written, if I interpret what Mr. Chénier is saying correctly, the only people who would not be granted an extension are those who are trying to do something untowards in a deliberate fashion.

Mr. Marc Chénier: If there was any indication either to the Chief Electoral Officer or a judge indicating that there was something untoward happening, that is so.

Mr. Tom Lukiwski: Thank you.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: This is actually a very important point. The law is not designed to give an unelected bureaucrat the ability to withhold the parliamentary privileges of a duly elected member. It's designed to withhold those privileges from someone who may not have actually been elected properly, because they may not have actually followed the rules and that is the reason why they have not filed their forms. In those circumstances, where someone has not filed all of their documentation, it's perfectly legit and they've not done so for a reason that a judge or the commissioner believes is due to a breach of the Canada Elections Act...in those cases you can argue that the member's election to office is, by itself, possibly illegitimate. That is the reason why we're pursuing this approach.

Ms. Jennings talked about if someone had an administrative error, got sick and couldn't fill out all their forms. Do you see those as being real reasons under the current law for a commissioner to deny someone the privilege to sit in the House of Commons? Perhaps Mr. Wild can offer a concrete example of where it would apply.

Mr. Marc Chénier: Mr. Chair, I guess there's currently a parallel provision in the Canada Elections Act, where if the official agent of a member has not filed Canada's election return, they can't sit or vote in the House of Commons. Exactly the same safeguards exist with respect to that possibility. To my knowledge, since the provision was adopted there has not been a case where a member was not permitted to sit or vote in the House of Commons.

Mr. Pierre Poilievre: So this has never been a problem to date. Similar provisions that already exist in the Canada Elections Act have never been misused to deny someone their parliamentary privilege. Is that right?

● (1615)

Mr. Marc Chénier: I'm not aware of such a case.

Mr. Pierre Poilievre: Mr. Wild, do you have any examples of where the clause that Ms. Jennings seeks to amend might apply?

Mr. Joe Wild: As Mr. Chénier explained, I think where that particular clause might apply would be if someone were wilfully attempting to contravene the provisions that are in the Canada Elections Act. As my colleague, Mr. Chénier, also pointed out, there are other requirements in the Canada Elections Act covering a similar type of scenario involving extensions being provided through the Chief Electoral Officer or a judge, with the ultimate repercussion being a wilful intent to get around the provisions of the act that could result in disqualification to sit in the House.

Just to finish on that point, it's certainly open to Parliament to legislate in this area if it so chooses. The government has put a proposal forward in Bill C-2 and it's open to Parliament as to whether it wishes to adopt this proposal or not.

Mr. Pierre Poilievre: I'll conclude on this point by saying that someone's election to a seat in the House of Commons is dependent not only on the number of votes they get but whether or not they follow the rules to get those votes. There is a rationale under certain rare instances where if someone deliberately breaks the rules and is trying to conceal the fact that they broke those rules by not filing, they should be prohibited from sitting in the House of Commons.

That is what the clause aims to deal with. Thank you.

The Chair: Madam Jennings, then Madam Guay.

Hon. Marlene Jennings: The only point I wish to make is that none of the examples Mr. Poilievre raised...I did not raise any of those examples.

Secondly, I would like to point out that Mr. Wild has said, in his capacity of not providing legal advice but simply technical advice, that should it be the will of this committee to carry this amendment, the House of Commons would still, under our Constitution, have the authority to adopt rules that would achieve the same objective that the government's proposed section is attempting to deal with. The difference is that if it's done by the House, the constitutional autonomy of the House and its members are untouched. However, if my amendment is defeated and it remains in the statute, then there has been *un empiètement*—I don't know the word in English—of the constitutional autonomy of the House and its members.

I would put the question, if Madam Guay is fine with that.

(Motion agreed to)

The Chair: We now move to a vote on clause 39, and that vote applies to clauses 40, 56, and 58.

(Clauses 39 and 40 agreed to)

(Clause 56 agreed to)

(Clause 58 agreed to)

The Chair: We now move to new clause 40.1, which is on page 46.

Ms. Jennings or Mr. Owen, do you want to speak?

On a point of order, Mr. Lukiwski.

● (1620)

Mr. Tom Lukiwski: Just prior to Mr. Owen getting into this, I would argue, Mr. Chair, that in my opinion, at least, this is outside the scope of this bill.

The Chair: I'd like him to move the motion before we do any of that stuff.

Hon. Stephen Owen: I so move.

Mr. Tom Lukiwski: Now can I speak on my point of order?

The Chair: Yes.

Mr. Tom Lukiwski: Thank you.

It's not that I see anything wrong with what Mr. Owen is saying about floor crossing. I just think this is outside the scope of this bill. I do not think it fits within the scope of this bill. This is a conflict of interest omnibus bill; we all know that. We've been going over it clause by clause, but I just don't think this particular area that Mr. Owen wishes to pursue fits within the confines of this legislation. I would argue that it is out of scope.

I'd like the clerk perhaps and the chair to respond to that.

The Chair: Mr. Owen.

Hon. Stephen Owen: I'm certainly very interested in hearing the clerk's and the chair's reasoning on this, but we are talking about an accountability act, and this goes to the heart of our electoral and therefore our democratic process in that it speaks to the will of the electors of a particular riding to have the right to choose their member.

I can't think of anything more fundamental to the accountability of a government or members of Parliament than keeping faith with the electorate. I do point out that what it gives the member who has left the party to join another party is a fair opportunity for that member to go back before his own constituents and make his case. Perhaps if there was some good reason why he left the party and joined another one, he could make that case to the electorate.

An hon. member: A point of order, Mr. Chairman.

The Chair: We're already on a point of order.

An hon. member: No, we're on debate of the motion.

The Chair: We're on a point of order raised by one of your colleagues, and I'm going to rule this as inadmissible.

L-2 proposes a procedure for recalling a member of Parliament. The Canada Elections Act is extensively amended by this bill, but those amendments are concerned with contributions, returning officers, and so on. Crossing the floor and the recall of a member are not mentioned.

The *House of Commons Procedure and Practice* states, on page 654:

> An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill.

Mr. Owen, I therefore rule that L-2 is a new concept that is beyond the scope of Bill C-2 and is consequently inadmissible.

Mr. Owen.

Hon. Stephen Owen: Thank you.

I would simply ask, Mr. Chair, that you seek unanimous consent to overrule that opinion.

The Chair: Mr. Owen, the procedure, as I understand it, is that you move that the ruling of the chair be sustained and there would then be a majority vote. So asking for unanimous consent is not the procedure.

Hon. Stephen Owen: I'm sorry. Thank you, Mr. Chair.

If I could follow on that suggestion, I would like to appeal the decision.

The Chair: Okay.

Shall the ruling of the chair be sustained? All those in favour of the ruling being sustained?

You know what? Hands are going up and down like a yo-yo here. I'm going to ask for that vote again, please.

Shall the ruling of the chair be sustained?

Some hon. members: Agreed.

● (1625)

The Chair: So L-2 is out of order.

Okay. Now we go to clause 41. This deals with contributions from corporations, unions, associations.

There are a series of other clauses that are related to this particular clause. As we've done several times before, I propose that we deal with all the amendments that pertain to the subject matter of clause 41 before I put the question on clause 41.

So we will first deal with the amendments to clause 43. Once that is done, we will put the question on clause 41, and its results will be applied to all the consequential clauses: clauses 43, 52, 54, and clauses 60 to 64.

So we will stand clause 41 and we will call for the first amendment, which is NDP-1.10, Mr. Martin, on page 48.2 of your package, which relates to clause 43.

(On clause 43)

Mr. Pat Martin: Yes. Even though I have a feeling I'm walking into a set-up and you may rule this out of order, I will move NDP-1.10, and if possible, I'd like to speak to the amendment too.

The Chair: The chair never sets anybody up, Mr. Martin—at least, he does his best not to.

The amendment NDP-1.10 proposes a repayment of contributions in cases where a member ceases to be a caucus member of the party from which they were elected. I've read this before. The *House of Commons Procedure and Practice* states at page 654:

> An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

The chair rules that it is. Therefore, Mr. Martin, I must rule that NDP-1.10 is a new concept that is beyond the scope of Bill C-2 and is consequently inadmissible.

On a point of order, Mr. Murphy.

Mr. Brian Murphy: I didn't hear whether there was a point of order made by anybody for you to rule on.

The Chair: The chair is ruling on it, Mr. Murphy, on my own, which I'm entitled to do.

We're going to clause 41. As I indicated, the vote on clause 41 applies to clauses 43, 52, 54, and clauses 60 to 64. Is that clear?

(Clause 41 agreed to)

(Clause 43 agreed to)

(Clause 52 agreed to)

(Clause 54 agreed to)

(Clauses 60 to 64 inclusive agreed to)

The Chair: We now go to clause 42. There are no amendments.

The chairman concludes, with respect to clause 42, that it applies to clauses 45, 48, 49, 50, 51, 53, 55, and 57.

Is there any debate on clause 42?

Ms. Jennings.

● (1630)

Hon. Marlene Jennings: This is just a point of clarification.

Given that my amendment L-2.1, on page 48.1 in our binder, creates a new clause, is that the clause we would deal with immediately following dealing with clause 42?

A voice: Precisely.

Hon. Marlene Jennings: Thank you.

(Clause 42 agreed to)

(Clause 45 agreed to)

(Clauses 48 to 51 inclusive agreed to)

(Clause 53 agreed to)

(Clause 55 agreed to)

(Clause 57 agreed to)

The Chair: We now move to new clause 42.1, which is on page 48.1.

Ms. Jennings.

Hon. Marlene Jennings: I'd like to move my amendment.

The Chair: Indeed.

Mr. Martin, and then Monsieur Sauvageau.

Mr. Pat Martin: Does Ms. Jennings have any opening remarks to introduce her amendment? I didn't mean to jump in front of her. I only wanted to be on the list to speak.

Hon. Marlene Jennings: I think my amendment is pretty self-evident. It deals with adding a criterion to the individuals who have a legal right to donate: that in addition to being an individual who is a citizen or a permanent resident, as is now the case, that individual would have to be at least 18 years of age.

The Chair: If we're getting into debate, the chair is going to make a ruling. The chair is going to rule this as being inadmissible.

Amendment L-2.1 proposes an amendment to the Immigration and Refugee Protection Act relating to contributions to registered parties, associations, leadership contestants, or a nomination contestant. *House of Commons Procedure and Practice* states at page 654— you must have this memorized by now, but I'm going to say it again—

> ...an amendment is inadmissible if it amends a statute that is not before the committee or a section of the parent Act unless it is being specifically amended by a clause of the bill.

Since the Immigration and Refugee Protection Act is not being amended by Bill C-2, it's inadmissible to propose such an amendment. Therefore, amendment L-2.1 is inadmissible.

Madam Jennings.

Hon. Marlene Jennings: I would like to speak to that ruling, because my amendment does not in any way amend the Immigration and Refugee Protection Act. What my amendment does is to state that the definition of a permanent resident, which we find under the Immigration and Refugee Protection Act, is the definition to be used when applying this legislation.

Nothing in my amendment is carried over into the Immigration and Refugee Protection Act. It simply refers to the definition under the act. If one wishes to know the legal definition of a permanent resident, go and take the Immigration and Refugee Protection Act off the shelf, look up subsection 2(1), and you'll find what the definition is.

I would urge you to speak again with your advisers. I think if you sought technical explanations or advice from Mr. Chénier or Mr. Joe Wild, they would confirm what I just stated.

The Chair: The chairman is wrong. You may proceed with your amendment.

Hon. Marlene Jennings: Thank you, Chair.

Given that the chair has now ruled that my amendment is in fact in order, I would seek the support of the members of this committee to adopt it and to carry it in order to ensure that under C-2, electoral donations, political donations, will be admissible only from individuals who are Canadian citizens or permanent residents and who are at least 18 years of age.

● (1635)

The Chair: I have Mr. Martin, and then Mr. Sauvageau.

Mr. Pat Martin: Thank you, Chair. As much as I understand what Ms. Jennings is getting at, and I appreciate at least the work that she's done and the sentiment inherent in this, I think she's trying to stem the problem that arose with what we're calling the Volpe clause, because we were all horrified at this idea of shaking down school children for their lunch money, to overstate things somewhat. While it would prevent children being coerced into participating by those who would seek to exceed the donation limits of the Election Act, I feel some reservations and hesitation with Ms. Jennings' amendment in that I believe she may have gone too far. No matter how well-intentioned the amendment is, there is a legitimate place for young people getting involved in the political process.

The New Democratic Party has a youth wing to which someone over the age of 12 can be a member. It's not inconceivable that a 14-year-old may choose to donate $50 to an election campaign as part of an exercise in learning more about politics, and their parents might encourage them to do so. We don't want to see the abuse that clearly took place in the recent Liberal leadership race.

So I'm going to speak against this amendment on the basis that I think there has to be a way to allow young people to get involved in that process, but with some guidance and control. The NDP has put forward an idea that I would like to speak to when the occasion arises.

The Chair: Monsieur Sauvageau, go ahead, please.

[*Translation*]

Mr. Benoît Sauvageau: I'm somewhat at a loss for words after hearing those remarks. The NDP members never cease to amaze me. They are funded by the unions, they don't want the unions coming here to speak to us and now, they want young people to finance their election campaign.

I wholeheartedly endorse Mr. Volpe's amendment, even though we would have preferred the definition used in Quebec. In Quebec, a person must be eligible to vote in order to make a contribution to a political party. That simplifies matters even more. A person who is eligible to vote can contribute financially to the electoral process. I don't know if this kind of amendment would be amenable to everyone. We endorse the proposed amendment, but we would have preferred to have it clearly stated that only eligible voters can make election contributions.

Thank you very much.

You continue to surprise me, Mr. Martin.

[*English*]

The Chair: All right, Ms. Jennings, and then Mr. Poilievre.

Mr. Poilievre.

Mr. Pierre Poilievre: I share similar concerns to Mr. Martin, because, frankly, I made my first contribution to a political party when I was 15 years old, and this would have prevented me from ever being a member of a political party. I donated $5 to join the party. What year was that again? I can't figure out which party.... What did we call ourselves at the time?

I would have been prohibited from participating as a member of a federal political party had this clause been enacted into statutory law. I know of dozens of youth in my constituency who recently met to start up a youth association in our constituency, all of whom would be disqualified from continuing to contribute their $10 membership fee.

The Liberal Party has already caused problems with donations due to the Volpe affair, and I would not want those problems to now extend and strip away the democratic rights of people to join parties before they turn 18—a right that our party cherishes. So I'm going to propose a subamendment, replacing Ms. Jennings' amendment. For the purpose of placing it in the act, it would read: “Section 404 of the act is amended by adding the following after subsection 404(1): In addition, no individual shall make a contribution to a leadership contestant, or to a nomination contestant, unless the individual is 18 years of age or older.”

In other words, we ban the Volpe effect but we continue to allow youngsters to be members of federal political parties. In essence, we address the concerns that Ms. Jennings is ostensibly seeking to deal with, and at the same time we ameliorate the concerns Mr. Martin has raised.

I offer that subamendment, Mr. Chair.

● (1640)

The Chair: Okay, we have a subamendment.

We have Ms. Jennings, followed by Madam Guay.

Hon. Marlene Jennings: I would first like to speak on my own amendment to explain why I will not be supporting Mr. Poilievre's subamendment. There is nothing, absolutely nothing, in my amendment that would preclude a 12-year-old from becoming a member of the youth wing of the NDP—or a 14-year-old, because in the Liberal Party of Canada, the rule is that you have to be 14 years old to become a member—and paying their membership due. The membership due is not a political donation or a contribution.

Mr. Pat Martin: It is for tax purposes.

The Chair: Mr. Martin, please. Madam Jennings has the floor.

Hon. Marlene Jennings: I have never received a tax receipt for my $5-a-year membership to the Liberal Party.

Mr. Pierre Poilievre: You have a bad accountant.

Hon. Marlene Jennings: No, no.

So this in no way precludes a young person from joining a political party. It also in no way precludes that young person, under the age of 18, from volunteering their services—from helping to stuff envelopes, if that's what they wish to do; from attending activities; from going door to door during an election campaign, if that's what they wish to do; in helping to organize town hall meetings, etc. There is nothing in my amendment that would do that.

What this section precludes is someone under the age of 18, who is a Canadian citizen or a permanent resident, from making a contribution that is tax receiptable, because the definition of “contribution” is found elsewhere in the act.

That's why I won't be supporting Mr. Poilievre's subamendment.

The Chair: Thank you, Ms. Jennings.

Madam Guay.

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): Mr. Chairman, we will be opposing Mr. Poilievre's amendment. Is it legal for candidates to accept donations during an election campaign? With Mr. Poilievre's amendment, it would be more legitimate in fact in the case of a leadership campaign. There's a double standard at play here and we cannot go along with this amendment.

Secondly, the Bloc Québécois has a youth wing made up of budding party members. My colleague and I are no longer part of this movement, but my children are. These young people get involved in volunteer work and various political initiatives. Quite often, they lack financial resources because they are students. I've never received any donations from these young people. However, we do help them organize forums, as well as regional and national meetings where they learn how the political process works. By youth wing, I means persons up to the age of 30, not just 16 to 18 year olds. They are mentored by teams of slightly older individuals.

To say that potential contributors must be eligible to vote is quite legitimate and a much simpler approach. We will certainly not be voting in favour of Mr. Poilievre's motion.

[*English*]

The Chair: Mr. Martin, on the subamendment.

Mr. Pat Martin: I would ask people to keep in mind that there is another idea coming forward. I would hate to see the subamendment pass that would actually preclude a further amendment we intend to put forward. Our idea is that minors should be allowed to make campaign contributions, but that figure, the amount they donate, should be deducted from the donation limit of their parent or their guardian. We believe this satisfies everybody's concern, because what we're trying to avoid is a family exceeding the donation limits by laundering money through their children's bank account.

We see nothing wrong with a 12- or 14-year-old child making a $20 contribution, or even a $50 contribution, but that amount would be deducted dollar for dollar from the amount their guardian would be allowed to donate. So it would avoid any abuse. The logic is that guardians are responsible for their minor children; therefore, they would also appreciate the tax receipt of their minor children to put against their own income at the end of that tax year.

My only hesitation with supporting Mr. Poilievre's amendment is I believe that would render my amendment, which will come up soon, out of order. And I think we have come up with an idea that would satisfy everybody.

● (1645)

The Chair: Okay.

We've got a few people who want to say a few words here.

Mr. James Moore.

Mr. James Moore: Pass. I was going to speak to the—-

The Chair: Mr. Murphy.

Mr. Brian Murphy: Briefly on the subamendment, there seems to be a lack of legal underpinning to the whole situation in that the age of majority in each province is either 18 or 19. It's very different, and that's the age at which people are recognized in law. What I'm hearing from the subamendment and from the NDP is that young people who are not people in law, able to make their own decisions and choices, can make a decision up to a point. It seems to be quite inconsistent with what I've been hearing—supposedly as policy—from both parties, and I'm at a loss to understand what the legal underpinning might be, except, as they say, exigent circumstances make bad policy. I think we would be very much at odds with the law, given that in New Brunswick young Liberals can join for no fees whatsoever.

This probably needs more study—the subamendment, that is.

The consistent approach in Quebec, where the age of majority is 18, seems to be legal. It seems to be constant with good political principles, and if that's the spirit of this as well, I could certainly support the main amendment.

On the subamendment, it's hasty, it's rash, it's opportunistic, and it's wrong in law.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: It will take me some time to recover from all those adjectives.

I'd like to get some clarification from the legal team here. Would the original amendment, without a subamendment, ban a minor from buying a political party membership for $10?

The Chair: Mr. Chénier.

Mr. Marc Chénier: Mr. Chair, subsection 404.2(6) of the Canada Elections Act provides that:

> The payment by an individual during a year of fees of not more than $25 per year in relation to a period of not more than 5 years for membership in a registered party is not a contribution.

So that amount would be excluded from what is deserved to be a contribution.

Mr. Pierre Poilievre: So they could still join a political party?

Mr. Marc Chénier: That's correct.

Mr. Pierre Poilievre: That's good to know.

We have experts who could confirm these things for us.

The Chair: There are all kinds of chats going on here. Either there's a debate, in which case you do it through the chair, or we're going to vote.

We're voting on Mr. Poilievre's subamendment.

(Amendment negatived)

The Chair: We're voting on the amendment.

The chair votes against the amendment.

(Amendment negatived)

(Clause 44 agreed to)

(On clause 46)

● (1650)

The Chair: Now we will go to clause 46. Clause 46 is consequential to 47, so the chairman is proposing that we do the amendments to clause 46 starting on page 49, which is a Liberal amendment.

Mr. Owen, L-3.

Hon. Stephen Owen: Thank you, Mr. Chair. I really have two concerns. The effect of this amendment is to raise the individual limitation from $1,000 to $2,000. Given the realities of the need to raise funds by political parties in order to properly fulfill their functions and the right of individual citizens to partake in political activity, including joining and contributing to political parties, $1,000 is simply unrealistically low and $2,000 would be more realistic. It also would provide that the costs of attending leadership conventions or other party and policy conventions would not be included in that amount.

Mr. Chair, everyone will recall that Bill C-24 was a very dramatic change in the political financing rules and culture of this country two or three years ago, and we're all clearly going in the same direction on this. However, the $1,000 limit seems low. It might be interesting to get some technical legal advice on this with respect to whether a $1,000 limit would be a breach of the charter, in breaching someone's personal rights.

The Chair: Before we go to Mr. Wild, I failed to say, just so we're clear, the vote on clause 46, because it's consequential to clause 47, would apply to clause 47.

Mr. Wild, Mr. Stringham.

Mr. Joe Wild: Monsieur Chénier will speak to the charter issue.

Mr. Marc Chénier: I'd just like to point out, Mr. Chair, that the analysis for this proposal was done, and it was determined that 99% of contributions to parties in Canada are for an amount less than $1,000 and that the average donation to parties and candidates is less than $200.

Having said that, I think the policy rationale for the whole package—because I think they should all be viewed together as a package—of measures dealing with political financing, that is, the ban on union, corporate, and association contributions, along with the lower contribution limits, serves to meet important policy objectives of encouraging parties in Canada to strengthen their connection with a broader base of the electorate and to eliminate the opportunity for and the perception of undue influence that might be had by wealthy corporate, union, or organizational contributors.

It also provides clear rules and eliminates exceptions that are currently confusing, as the Chief Electoral Officer noted during his appearance before this committee. The local exception for contributions by unions and corporations is not a clear rule for contributors.

● (1655)

Hon. Stephen Owen: Excuse me, Chair, I'm sure we're not speaking about corporate or union donations; we're talking about individual donations here.

The final point I think I would just make for us all to consider is that there is administrative expense involved in receiving, receipting, recording, and administering donations, and when you look at the cost per donation of going through that whole process, we might want to consider whether $1,000 is unrealistic in many cases.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: There are actually three reasons the Accountability Act limits donations to $1,000.

First, we promised it in the election, so we're delivering it.

Second, we believe that political donations should not be a tool of industry or individuals to purchase influence within the political system, and by reducing the allowable donation to $1,000, you accordingly reduce the ability of individual donors to purchase influence in the political process.

And finally, it will force political parties to reconnect with everyday, ordinary, nine-to-five, lunch-bucket, hardworking people. That's what some parties in this country have done. Other parties have not succeeded in finding broad support from everyday people to finance their operations.

I believe this amendment is designed to subsidize those parties that have not succeeded in building a broad donor base and to subsidize those parties—or that party—that rely on wealthy, connected insiders to finance their operations.

So we will oppose this amendment on the grounds that $1,000 is reasonable and on the further grounds that no one other than the very wealthy would be able to make a $2,000 donation. As such, we wonder why the Liberal Party or any party would want to put in place an amendment here that seeks to empower the very rich to enhance their influence in the democratic process.

The Conservative Party believes that the playing field should be made level for people of all income classes by restricting donations at a reasonable level of $1,000, so we strongly support the existing provisions of the Accountability Act, and we will be voting against this amendment.

The Chair: Monsieur Sauvageau, then Mr. Martin, and then Ms. Jennings.

[*Translation*]

Mr. Benoît Sauvageau: Ms. Jennings reminded me, and rightfully so, that Mr. Poilievre seems to have forgotten that Bill C-24 has been in force for two years now, and that the wealthy, companies and unions are not allowed to make contributions to political parties. Bill C-2 also deprives them of that right. This amendment does not give them that right either. We have to be careful about the kind of message we're sending out. You have three reasons for proposing these conditions: Liberal, Liberal and Liberal. You are not motivated by political reasons or by a desire to achieve transparency.

If you go with the Quebec model, it's all or nothing. During the 1970s, when the Elections Act was adopted in Quebec, a contribution ceiling was set at $3,000. That amount has not been indexed since 1976 or 1977 and it applies only to individuals. I don't have a problem with the $2,000 limit. I'm not asking that it be set at $3,000. You yourself agreed to let Pierre-F. Côté testify before the committee. We heard that 99 per cent of all contributions are under $200. Consequently, I don't have a problem with applying cost-of-living indexation to certain legislative provisions, as is done in Quebec.

Mr. Poilievre often raises this matter and I'm curious to know how many cases of serious fraud have been reported in Quebec, where the ceiling is set at $3,000 for individuals. To my knowledge, no cases have been reported in 30 years. Therefore, I don't see a problem with increasing the limit from $1,000 to $2,000. If someone were to donate $999 to my campaign, I would be no more obligated to vote in favour of bank mergers or the CRTC than I would be if that person had given me $1,500. This argument doesn't wash, but when you're desperate, you grasp at straws.

● (1700)

[*English*]

The Chair: Mr. Martin, and then Ms. Jennings.

Mr. Pat Martin: One of the reasons I like this $1,000 limit in Bill C-2 is that it gives me a raise in pay of a couple of thousand dollars a year. I won't be able to donate as much as I currently do, but I don't approve of this idea of moving it up to $2,000. I think the spirit of this bill, the accountability nature of this bill, is to reconnect with the grassroots. Most of the clauses in this bill I think seek to reconnect with Canadians in a real way, and this is one of those clauses that, if for no other reason than the symbolism that we're going to take big money out of politics, warrants our support.

The other side of the coin, which I realize Mr. Owen's amendment doesn't deal with, is the banning of union and corporate donations altogether. That remedies a terrible injustice that was in Bill C-24.

My own union, the carpenter's union, has 168 independent locals across the country—I'll be very brief with this—and we were allowed to donate a total of $1,000, all 168 combined, whereas Robin's Donuts or Tim Hortons has 1,000 franchises and they can donate $1,000 each. We found it completely unsatisfactory. So I welcome this change that unions and businesses and corporations... *nada*, not a penny.

People down to $1,000 each—we'll just find more people. That's the thing, get more people engaged in the political process. It's a plus, it's a bonus. There are very few donors giving larger than $1,000 in our party anyway. It's not going to hurt us or our ability to operate, and I think other parties would benefit from this. It forces them to get in touch with those smaller ma and pa $50 and $100 donors. You only need more of them.

The Chair: Okay.

Ms. Jennings, and then Mr. Lukiwski.

Hon. Marlene Jennings: Thank you.

I appreciate the comments my colleague, Monsieur Sauvageau, made, correcting some of the statements that were made.

I would also like to emphasize that there is absolutely no need for any member of this committee or any member of the public to somehow believe that Bill C-2 is changing the current regime regarding the legality or non-legality of financial donations from corporations or unions. That has been illegal, under the political financing bill, for two years now.

Under the previous government, Bill C-24 was adopted and came into force January 1, 2004. At that point, it became illegal for corporations and unions to donate to political parties. It also became illegal for individuals to donate more than.... At that point, it was $5,000 a year. But because, under that law, it was indexed, in 2006 under that annual indexation it becomes—

The Chair: A point of order, Ms. Jennings.

Mr. Martin.

Mr. Pat Martin: Not to be rude, Ms. Jennings—I don't mean to interrupt you—but I think you misunderstand. I was wondering if we could get the technical advisers to clear up an issue that may save us a long debate later on.

The Chair: I don't know.

● (1705)

Mr. Pat Martin: I think it would be helpful. I'm just asking if Madam Jennings would allow it.

The Chair: If she wants to ask, she can do that, Mr. Martin. But that's not a point of order.

Ms. Jennings has the floor. There's lots of time to ask her.

Hon. Marlene Jennings: Thank you.

In terms of the individual donation, prior to January 1, 2004, there was no limit to the amount individuals could donate to political parties or to leadership candidates, for instance. The Liberal electoral financing bill, Bill C-24, which was adopted and came into force January 1, 2004, made it illegal for a corporation or a union to donate to a political party and made it illegal for an individual—

Voices: Wrong.

Hon. Marlene Jennings: Excuse me, may I continue?

The Chair: Remember what we were talking about. We're going from $1,000 to $2,000, not unions and corporations.

Hon. Marlene Jennings: And creating a top limit. At that time, it was $5,000 indexable. It became $5,400 with the indexation in 2006.

The point I would like to make about this amendment, which was put forward by my colleague, Mr. Owen, is that by creating a limit of $2,000, it does not in any way impede any political party from, to use the words of my colleague, Mr. Poilievre, on the other side of this table, “connecting with the grassroots”, because in the words of their own technical advisers, the Chief Electoral Officer reports that the average donation is under $200. So if one were to use his logic, the government should have made the maximum donation by an individual $200 annually, but it has not done that. It is proposing an upper limit that is five times the average donation. Therefore, I believe his logic does not hold.

But I also know that Mr. Martin is going to be voting with his friends, the Conservatives, and therefore it will be a tie vote. The chair will do what he has done from the beginning, which is side with the government.

The Chair: Ms. Jennings, don't do that. Don't go there.

I read a statement at the outset, so you're all clear as to how I am voting on this. Don't take shots at the chair.

Mr. Lukiwski.

Mr. Pierre Poilievre: A point of order.

The Chair: On a point of order, Mr. Poilievre.

Mr. Pierre Poilievre: I want to quickly clarify one point.

In the statement the chair read earlier on, he did not say he would vote with the government. In fact, in cases where a government amendment would come to a tie, he would vote against it as well. So the chair has been consistent with the statement he made earlier on.

I urge the committee to respect the truth of his statement.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, Mr. Chair.

Very briefly, notwithstanding the huge amount of inaccuracies Ms. Jennings has just listed, I have two quick points that address what both Mr. Sauvageau and Mr. Owen were saying. I believe we have passed an amendment calling for a five-year review of the act. Five years from now, if people around the committee felt that the $1,000 limit was sufficiently too low because of cost of living increases and the like, then the legislation could be changed to increase that limit. I think $1,000 is perfectly in line with the message we're trying to give to Canadians.

With that, Mr. Chair, I would just call the question.

The Chair: We've got four speakers before we do that.

Mr. Tonks, go ahead, please.

Mr. Alan Tonks (York South—Weston, Lib.): Mr. Chairman, I would urge the committee to support the $2,000. It's been my experience—I'm sure similar to that of many others—that many people say to me that they'll be making a contribution to my campaign and to other campaigns.

In urban areas there are family relationships and interests in specific issues that lead people to support, my goodness, even the Green Party—when I say “even the Green Party”, I don't mean “*even* the Green Party”, but our party, in addition to the Conservative Party and the Green Party. People will make those contributions. The spirit of this amendment is to increase that flexibility so that people can engage the democratic process.

If we're approaching it from two positions, one, that contributions are bad, just like lobbying is bad, so it's a nefarious activity that just has to be illegal, then, okay, I think that's wrong-headed. And two, if we're approaching it with the viewpoint of encouraging people to participate in the democratic process by attending conventions, my goodness, to go to the convention in December is going to be several hundreds of dollars. If you want to encourage the average person to get into the process, he or she is not going to be able to afford that.

So I would argue, if I can use that term, that the $2,000 is in keeping with what the statistics in Quebec have indicated is reasonable. There hasn't been any advice that's been given that illegal activities have taken place with respect to paying for privilege and access beyond that defined in the act, so I don't know what we're arguing about. It's in the spirit that the government has put this forward. It's coming down from a personal contribution, I think, of $4,000, and the government is coming down to the $1,000 from the Bill C-22 recommendations. Let's saw it off. That $2,000 sounds pretty good, in the middle, to me.

● (1710)

The Chair: We've got Mr. Murphy, then Mr. Rob Moore, then Mr. Martin.

Mr. Murphy.

Mr. Brian Murphy: Boy, I couldn't disagree with Mr. Tonks more. To suggest that people who contribute to the Green Party and the Conservative Party at the same time—

Mr. Alan Tonks: And the Liberals, as a matter of fact.

Mr. Brian Murphy: —I can't believe it.

But what bothers me, Mr. Chairman, is that we're essentially in a legislative committee, attempting to build policy, and ultimately this part of it perhaps, with all due respect, is a bit of a charade to suit each party's purpose.

The Conservative Party has lots of money right now, and it will have lots of money, and they're going to spend lots of money. To say, as John Baird said, that moneys come out of politics, well, they don't.

But if we can get serious about something, we are currently going through a convention. You may someday have a convention. They're expensive. We heard not the same testimony from all three...four, I suppose, but three mainline political parties regarding convention fees and how they treat them differently. There was by no means unanimity on how that convention fee is dealt with, and there was by no means any unanimity, or even disclosure, on how much they actually cost, but conventions, let's say, are expensive. To have that limit include convention expenses I think is manifestly unfair to any party in a given year.

Think about it. You may have a convention one year and we don't, or as large a one or as many of them, and it's manifestly unfair to the democratic process that you spend a lot of your time, energy, and money in the political system on many conventions in one given cycle when the other party is not. I really do think this part of the amendment that excites us, I guess—convention delegate fees—is a sensible one. The people of Canada would see it as such. Overall, this is going to put a freeze on people attending conventions, and what could be more important to a political party than to having policy conventions and leadership conventions to get people more interested in the democratic process.

Having said that, the limit proposed in the act is probably unconstitutional. Peter Hogg, and other names that I gave to the clerk, and to you, Mr. Chair, learned constitutional professors, are busy people and could not, in this railroaded environment, foresee to find their way to give expert testimony of eminence from the best law schools in Canada on the constitutionality of this issue. We have heard nothing about it. When you get down to $1,000, and $700 of that might be for a convention, there might be a very good argument that one's rights to contribute to the democratic process—and I'm only kidding about Mr. Tonks' remarks—to the parties he or she believes in, are limited.

I only need to cite—and I don't have the SCR site—the case of Harper v. Canada with respect to the unfair limits on your right to contribute as you see fit, as a manifestation of the charter right of free expression. This comes dangerously close. I'm sure it will be challenged. I think you should think about it, and as a resort, I think you should try to find some way to save delegate fees. It's very important to the democratic process.

The Chair: Mr. Martin.

Mr. Pat Martin: Thank you.

I wanted to take a moment to clarify for my colleague, Marlene Jennings. I don't always agree with Ms. Jennings, but it's rare that she's completely dead and utterly wrong. Just because this is a televised meeting, I think it's important to the debate and the quality of this debate that we all come from the same base level of information.

We should make it clear that Bill C-24 allowed $5,000 for individual donations and $1,000 for corporations or unions. My problem was the way in which they calculated what constituted a union. That was the point I was making.

The second point I would make is that not everyone has convention fee problems. We're having our bi-annual convention in September of this year, and the delegate fees are $90 if you pre-register and $135 if you pay at the door. So you're the architects of your own problems if you have delegate fees of $700. It's elitist anyway, and you should probably reconsider that as a party policy. We shouldn't be crafting legislation to suit bad elitist practices. The inverse should in fact be true.

● (1715)

The Chair: Let's have a vote on L-3.

The chairman votes against the amendment.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We will proceed to NDP-2, which is on page 51.

Mr. Martin, it's a New Democratic Party proposed amendment, if you could move that, please.

Mr. Pat Martin: I will very tentatively move it and then wait to see if the chair has anything to say about it.

I'll be happy to speak to it, if you find that it's in order.

The Chair: The chair finds it in order, Mr. Martin, so go to it.

Mr. Pat Martin: You can't blame me for being a little gun-shy.

The Chair: Well, I know.

Some hon. members: Oh, oh!

Mr. Pat Martin: I would like to strongly recommend this particular amendment, and I hope there's broad interest in it because the goal is to put some controls on the massive leadership loans we see taking place, even though this amendment deals with candidates of any kind, whether electoral or for the leadership.

We believe that the current rules surrounding loans are problematic, and that if the loan is not repaid within 18 months, it's deemed to be a donation. So if someone loans me $100,000 and I don't pay it back, it's deemed to be a donation of $100,000, which is illegal. There's an illegality built into the current Canada Elections Act.

What we contemplate is that there shouldn't be these huge personal loans to begin with, because it's impossible to track down the repayment schedule, etc. In the Liberal leadership race, a person loaned himself or herself $50,000. How do we ever know if the person repaid the loan?

So the amendments I'm seeking are in two stages, NDP-2 and NDP-3. The first part only says that the loan must be made through a bank, credit union, or other financial institution.

When we get to NDP-3, you will see that we also consider that no one should be allowed to co-sign a loan to an extent greater than the donation limit of that individual, in case there's a default and that loan becomes a donation. This would solve the problem that there are no built-in illegalities to the bill. So I urge support that these loans....

In closing, one of our concerns and reasons for moving this is that we believe some of the loans in the current Liberal leadership race are tantamount to corporate sponsorship, because they're made by senior corporate executives and may never be repaid. So in the cases of Apotex Inc. and Power Corporation, these people are having a disproportionate influence in the political arena by virtue of these massive personal loans.

So I urge support of NDP-2, meaning these loans have to come through a lending institution.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Mr. Martin, you briefly started it off, but could you move amendment NDP-3, which is found on page 52?

● (1720)

Mr. Pat Martin: I would be happy to move amendment NDP-3, which, as I began to explain, is also dealing with this issue of when a loan is not a loan, when a loan is actually more properly a donation or undue corporate influence on the electoral process.

This subsection would say:

> (1.1) Any loan of money that is made to a candidate by an individual is considered to be, for the purposes of subsection (1), a contribution made by that individual.

So having failed in the first one, and that individuals will in fact still be allowed to make loans, at least this loan cannot be any larger than the donation limit under the act. If you need to borrow $20,000 to run your own election campaign next time around, Mr. Chairman, you would have to find 20 people to loan you $1,000 each. That would be within what we're contemplating in this amendment.

(Amendment negatived)

The Chair: We now move to amendment NDP-4, which is on page 53.

Mr. Martin, could you move that?

Mr. Pat Martin: I will move amendment NDP-4 on page 53. I think people will like this one a lot better than they liked amendments NDP-2 and NDP-3.

This one deals with the issue of the Volpe clause. This is what we're calling the Volpe clause.

Canadians were horrified. They were shocked and appalled, from one end of the country to the other, that children were being exploited by those who would seek to abuse the donation limits of the Canada Elections Act. It drove people away from the elections process, I think. An already jaded electorate was jaded even further by this rampant abuse. Clearly there's a legislative need to create an environment where the people aren't willy-nilly circumventing the donation limits of the Canada Elections Act.

In the case of minors, we believe this is a logical approach to address the issue of whether minors should or should not be able to make donations. The language we're recommending is “Any contribution made to a candidate by a minor is considered to be made by the parent”—and I would like to add the word “or guardian”, if I may, later—“of the minor designated for that purpose” by the parent or guardian of the minor.

I think this satisfies everything. There are logical reasons that the guardian should be directly linked to any donation by the minor.

First of all, we have to start from the premise that it's not a bad thing that minors make contributions to the electoral process. That's certainly our position, that while maybe it's something that should not be encouraged, it shouldn't be discouraged.

To accommodate that, we should also start from the premise that guardians or parents have a responsibility for the actions of a minor. That's well established in law. If a child vandalizes someone's house or something, it's the parent who's going to have to make good for that, often through the courts. This is true also in this case, that the guardians and the parents have some control and direction over their minor children. So if we are saying that minors should be able to donate, and if we are saying that parents and guardians have some responsibility, and if we are realizing that it's the parents who will be able to use that contribution as a tax deduction, if it's in excess of the $25, as pointed out by Mr. Chénier, then this language satisfies all of those and it would preclude the possibility of some corporate executive laundering money through their children's bank accounts to exceed the donation limits of the Canada Elections Act.

Thank you.

The Chair: Thank you, Mr. Martin.

Mr. Murphy.

Mr. Brian Murphy: I have a question of the legal panel on this. It gets back to age of majority and imputation of gift and trust.

I can imagine my young daughter wanting to give money perhaps to the Green Party, and by the time I made my mind up, all the money was exhausted; my daughter had made the contribution for me but I had no room left to make my own donation. That's a possibility—the imputation rules and trust. People are not people until the age of majority kicks in. How does this square with what the law is, anyway, which is that a minor really can't make a contribution? It's not his or her property?

Mr. Wild, take the UNB perspective and deal with 19 as the age of majority in New Brunswick.

● (1725)

Mr. Joe Wild: You have us speechless.

I'll take a shot at this, I guess, as best I can.

There's certainly nothing in the Canada Elections Act, as it currently reads, that precludes an individual from making a contribution, and it doesn't describe individuals based on age. There's nothing in the current law that would stop an individual from making a contribution just because they happen to be under 18 years of age.

I'm not sure if there's much more that the member was seeking, Mr. Chairman, so perhaps I'll leave it at that.

The Chair: Okay.

Ms. Jennings

Hon. Marlene Jennings: Under the Canada Elections Act, the section that currently deals with contributions to political parties, to electoral candidates, to leadership candidates, whether it's at the national party or the local riding association level, states that a minor is able to legally donate up to the legal limit for an individual—a physical person—which for the year 2006 is $5,400. Is that correct?

Mr. Marc Chénier: That's correct.

Hon. Marlene Jennings: My understanding from the testimony that we've heard—including a statement I believe from Maître Chénier—is that the Chief Electoral Officer has publicly stated that the average annual donation by an individual is under $200 a year.

Mr. Marc Chénier: That's also correct.

Hon. Marlene Jennings: This committee voted against putting an age limit on the capacity to donate. Now we're being asked to say that it's okay if a minor donates, and that it's even okay if a minor donates the maximum amount, which now is $1,000, not $5,400. That's not abhorrent, as long as we put it under the column that's listed under that minor's parent's name or legal guardian's name. But as Mr. Murphy—who I believe made the point—said, parents do not necessarily share the same political views as their children and may not belong to the same political party as their children.

A voice: My dad was a Conservative.

Hon. Marlene Jennings: Yes.

Therefore, I think parents might just have a problem with the tax credit and the limit being applied to them when it's their child making the donation. That's the first point.

Secondly, it says it would be “considered to be made by the parent of the minor”. Well, if a minor has two parents, both parents work, and they file individual tax returns, then how is the Chief Electoral Officer going to determine which parent gets...? Under what column is it going to be? Is it going to be under the column of Marlene Jennings, or is it going to be under the column of her husband if their minor child decides she's going to donate money to the Communist Party of Canada or the Marxist-Leninist Party.

For instance, if she's going to donate the maximum on January 1 of a particular year, and let's say the maximum is still $1,000, then presuming that I'm still an elected member of Parliament, I will not be able to donate to my own riding association, to my party. My husband will also not be able to donate to whatever political party he wishes to support and, if it's an election year, to whomever candidate he wishes to support.

I think there's a real problem with this particular amendment. As a result, I will not be supporting it.

The Chair: Okay.

Mr. Lukiwski.

● (1730)

Mr. Tom Lukiwski: Yes. I just want to get this on the record. While I support the spirit of what Mr. Martin is trying to achieve in this amendment...I listened to the argument Ms. Jennings put forward. In reality, Ms. Jennings makes a fairly good point. I wish we could accommodate both interests somehow, but I think I'm going to be supporting the position of Ms. Jennings. Her argument hit home

The Chair: Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

If might, just to sum up, Ms. Jennings used the word “abhorrent”. What was abhorrent was the abuse by a Liberal leadership candidate to exploit these children in an egregious way. That's what made it necessary for us to attempt, at least, to have a fair try at fixing this problem. It seems to me Ms. Jennings is more interested in protecting a loophole that the Liberal Party is fond of abusing than in any sincere good wishes for the children who may be exploited.

The Chair: We've been doing so well, Mr. Martin.

Mr. Pat Martin: I don't think I made myself clear, though, in how we anticipated this working. It would be one or the other parent who would have their minor's donation associated with their tax return.

The Chair: On a point of order, Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: It's 5:31 p.m.

[*English*]

The Chair: It's 5:31; you're right on the button.

We're going to adjourn until 6 o'clock.

Mr. Pat Martin: May I continue?

The Chair: Yes.

I think to be fair to Mr. Martin, as long as you don't go on for half an hour, we'll let you conclude. That's a qualification in allowing you to continue.

Mr. Pat Martin: All right, thank you.

The Chair: You've concluded, Mr. Martin?

Mr. Pat Martin: Oh, you mean conclude now. I'm sorry.

The Chair: Yes, conclude now.

Mr. Pat Martin: I thought you meant at 6 o'clock.

The Chair: No, I'm saying don't go on until 6 o'clock.

Mr. Pat Martin: All right, thank you. I will wrap up quickly.

Judging from Ms. Jennings' comments, maybe I didn't make myself clear or maybe the clause is not abundantly clear, but we anticipated that the minor's contribution would be deducted from the donation limits of one of the guardians. In other words, in the analogy that Ms. Jennings used, if her 17½-year-old minor child did donate $1,000 to the CPCML and used up all of her contributions, her partner or husband would still be able to donate to the party of his choice.

What we envisioned was if it's a $1,000 spending limit that we arrive at—and I believe we will be passing that clause—if the minor child donates $50, which is much more likely, then the guardian or parent would still have $950 room.

I think Madam Jennings is using an extreme example to defeat a laudable principle. I would hope that more people could see fit to support this, because the public expects no less.

The Chair: I'm not going to stop you from talking, but we'll have to continue at 6 o'clock.

We will break until 6 o'clock.

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