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Tuesday, April 29, 2014

Chair

Mr. Joe Preston

Standing Committee on Procedure and House Affairs

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● (1105)

[*English*]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): Team, let's get at it this morning. We've got lots of work the rest of this week.

We start with a point of order from Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): I hope this won't take long. It's simply a notice of motion. I won't be asking that we deal with it today, but I do want to give notice of it. I have copies in both English and *en français*. I'll read the motion:

> That, pursuant to its Order of Reference of Thursday, March 27, 2014, regarding the matter of accusations of the Official Opposition's improper use of House of Commons resources for partisan purposes, the Committee appoint Tuesday, May 13, 2014, for the appearance of the Leader of the Official Opposition;
>
> That, prior to that meeting, the Committee request that the following documents be produced to the Clerk of the Committee no later than Friday, May 9, 2014, in order that they may be translated and provided to all members of the Committee,
>
> (a) from the House of Commons Administration, its employment records for all staff who have worked at the New Democratic Party operation located at 4428 boulevard Saint-Laurent, Montréal (otherwise known as the "Montréal satellite office"), with personal information redacted;
>
> (b) from the House of Commons Administration, all correspondence with the House Officers or Research Bureau of the Official Opposition, or any of their offices, regarding satellite offices, existing or planned, including, but not limited to, (i) the Montréal satellite office, (ii) a Saskatchewan satellite office, (iii) explanations of the rules regarding satellite offices, and (iv) explanations of the rules regarding staff who are neither employed in the Parliamentary Precinct or at constituency offices;
>
> (c) from the House of Commons Administration, all correspondence, during the past 12 months, with Elections Canada or the House Officers or Research Bureau of the Official Opposition, or any of their offices, regarding mass mailouts; and
>
> (d) from the Official Opposition or the New Democratic Party, as the case may be, the lease agreement for the Montréal satellite office; and
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> That the Committee request briefing materials, to be provided prior to this meeting, from the House of Commons Administration, including the Law Clerk, setting out an explanation of the jurisdiction of the Board of Internal Economy to investigate the use of House resources, whether in the matter of mass mailouts or satellite offices, including potential recourse available in cases of misuse or non-compliance.

Thank you, Chair.

The Chair: That's a notice of motion.

An hon. member: Point of order.

The Chair: On that one, yes.

Mr. David Christopherson (Hamilton Centre, NDP): Chair, I would submit to you that at the appropriate time the notice of motion should be deemed out of order by you based on the fact that it is moot. The Board of Internal Economy felt that the only way they could put the NDP under the gun—

The Chair: Excuse me, Mr. Christopherson, I'm not dealing with debate today—

Mr. David Christopherson: —is to change the rules—

The Chair: Excuse me. Let's not start the day this way. When the chair says, "Excuse me, Mr. Christopherson," you stop, and I get to give a bit of a ruling.

This is a notice of motion. I'm going to accept the notice of motion. That means we don't discuss it until it comes back to the floor. If at that time you would like to debate whether it is in order or not, then that would certainly be your time to have that discussion, but right now, it's a notice of motion.

We will move on to the next topic of the day, which is another motion. We have a speakers list on the other motion, Madam Latendresse's motion, that we deferred yesterday. On the speaking list right at the moment is Mr. Lukiwski.

Mr. Tom Lukiwski: Yes, Mr. Chair. I was looking at my colleague opposite and I noticed it was Mr. Simms rather than Mr. Lamoureux. Mr. Lamoureux had the floor at the last—

The Chair: It's the daytime Mr. Lamoureux.

Mr. Tom Lukiwski: It's like looking in a mirror. I can't tell the two apart.

Very briefly, because I know we want to get on to clause-by-clause consideration, I told the official opposition and all members of this committee that I would have two reasons that we are opposing the motion as proposed by Madam Latendresse.

First, very obviously, we have been paying careful attention during all testimony. I do not see the need to have a report repeating what we had already heard. We had made careful notes as to the testimony provided, and therefore I think it's redundant, at the very least, to have a report to tell us the information we have heard over the course of the last couple of weeks.

Second, I would point out that, in my belief at least, this was a tactical and procedural manoeuvre by the New Democratic Party because if a report were presented and then tabled in the House it would allow the NDP to ask for concurrence, which they have done many times before. Concurrence in a report, as we all know, requires three hours of debate in the House which would take away from government orders, government legislation, and would allow the NDP to further their position on the fact that they are not in agreement with the fair elections act. I think this was a procedural tactic and is not necessary.

Based on those two reasons, we will be opposing the motion.

The Chair: Thank you.

I have Mr. Christopherson next on my speakers list.

Mr. David Christopherson: Thank you very much, Chair.

I don't know how to proceed. I seek some guidance from you. I wish to place an amendment, but I also wish to speak to the main motion. If I place my amendment and we have the debate and vote, would I still have the floor, Chair, or do I need to move that amendment at the end of my remarks on the main motion?

The Chair: I'll give you some latitude. If you're moving an amendment to this motion, you can speak to that amendment, but I'll leave you on the main speakers list, if you will. I'll probably combine the two and let you speak.

Mr. David Christopherson: That's great. Thank you, Chair.

I move that the date in the motion be amended from today's date of Tuesday, April 29, to next Tuesday, May 6.

I've taken the liberty of consulting with the analysts to see if that's reasonable. My understanding is that they can meet that date should this committee decide to approve the amended motion.

The Chair: I don't know if I have to check with the mover of the motion, but I will.

Are you all right with that? Okay.

Mr. Christopherson.

Mr. David Christopherson: I don't want to delay on this point. Today would be practically impossible. I understand the dynamics we're up against, but to make the motion relevant, this amendment makes sense. Then we can debate something that's practical. The government actually could vote for this because it's a reasonable amendment to the motion, and then still kill the whole thing if they want, or not. We just think it tidies it up a bit, Chair.

Thanks.

● (1110)

The Chair: All right.

Mr. Lukiwski.

Mr. Tom Lukiwski: Chair, if you wish, just to respond, we have no problems with the amendment. We understand looking at the original motion that the date was obviously impractical, given that today is the date the report was supposed to be submitted. We'll still be arguing against the motion as amended, but certainly we have no problem with the amendment.

The Chair: All right.

(Amendment agreed to)

The Chair: Okay, on the amended motion, Mr. Christopherson, you still have the floor. Let's remember what our purpose is today and try to get there sooner or later.

Mr. David Christopherson: I'll simply make the point that notwithstanding the government's conspiracy theory.... They're always accusing us of being conspiratorial in everything, and they've done it again here today. Notwithstanding that, it's a very simple request. This is not unusual on committees. We are asking our analysts to provide the committee with a summary of the testimony. All it is is a tool to inform the public—because this will be looked at not only now, but they will be studying this for some time, I assure you, and it's not going to look good for the government in history—and also to inform colleagues who didn't have the benefit of being here for the hearings and who do not have the time as a rule to do that kind of background research on every single bill that comes before the House. It would inform them for their participation in debate at report stage and third reading.

Notwithstanding the government's concern that there's some big conspiratorial plot, all we want really is a tool. I'm not surprised the government is saying no, because they haven't wanted to be forthright, open, or helpful at all, and everybody knows that, but it's not stopping us from trying to make the government do the right thing. All this is is a regular kind of business where we have a complex issue, many complex presentations, and sometimes differing points of view, and it just provides a summary for the media, the public, and colleagues who aren't on this committee. There's nothing unreasonable about this, Chair.

If the government votes it down, which it looks like they're going to, then it's just one more example of how undemocratic and unhelpful they are in terms of anybody having participation or knowing what's going on. It's just one more example of the government's bloody-minded approach to changing our election laws whether anybody else likes it or not.

The Chair: Thank you, Mr. Christopherson.

I have no one else on my speakers list, so we will vote on the amended motion.

(Motion as amended negatived)

The Chair: We will move on.

There's one other notice of motion. Are we not touching it today? Great.

Let's move on to clause-by-clause study. This is where the excitement begins.

First of all, we have a couple of guests here from the Privy Council Office: Natasha Kim and Marc Chénier.

Thank you very much for joining us today.

Pursuant to Standing Order 75(1), consideration of clause 1, the short title is postponed and the chair calls clause 2.

(On clause 2)

The Chair: The first amendment is IND-1.

Yes?

Mr. Craig Scott (Toronto—Danforth, NDP): Mr. Chair, is clause 1 the title?

The Chair: It's the short title.

Mr. Craig Scott: Can that be stood until the very end?

The Chair: I think it is stood.

Mr. Craig Scott: It is. Good. Thank you.

The Chair: You are going to have to bear with your chair a little bit too, as it's been a while since I've done a clause-by-clause study. When you think I've gone astray, let me know. None of you seem to be shy.

Mr. Craig Scott: I just missed it.

The Chair: The first amendment is IND-1. It is deemed moved. Mr. Rathgeber, I'll give you a couple of minutes to discuss it.

● (1115)

Mr. Brent Rathgeber (Edmonton—St. Albert, Ind.): Mr. Chair, my two amendments to Bill C-23 I think logically have to be considered together. IND-2 is on page 86 of the package and IND-1 is on page 1.

Simply, what I am attempting to do is, based on the evidence provided to this committee by Mr. Casey regarding the unlevel playing field between independent candidates and those associated with political parties, it proposes to change the amendment of what is a candidate by adding a new candidate definition in proposed subsection 67(7), which would be my second amendment on page 86. It would allow an individual not affiliated with a political party to apply outside of a writ period directly to the Chief Electoral Officer with the same requisite documents that a candidate would apply during a writ period, that is, $1,000, 100 nominators, and an official agent, and therefore could be declared a candidate outside of a writ period by a Chief Electoral Officer, thereby allowing all the rights and privileges of a candidate, including raising money and issuing tax receipts.

Thank you, Mr. Chair.

The Chair: Thank you very much.

As you have mentioned another amendment further on, when this one is voted on, we'll tell you what happens with the other.

The clerk informs me that the vote on this one will apply to the other. See how fast we can go.

Are there comments?

Madam Latendresse.

[*Translation*]

Ms. Alexandrine Latendresse (Louis-Saint-Laurent, NDP): I have a technical question about the wording of the amendment in French versus English.

The English reads “under subsection 67(7) or 71(1)”, whereas the French just refers to “paragraphe 67(7)”. I'd like to know why that is.

[*English*]

The Chair: We're checking that. Apparently it is only replacing the line down to it. It is the same line but it is shorter in one than in the other. It is line 22 on page 2 and so it only ends up being that.

We are okay with the technical side.

Mr. Scott.

Mr. Craig Scott: I would like to seek some clarification from the legislative clerk. Are we voting on this, but then we'll also get to Mr. Rathgeber's IND-2 later as a separate vote?

The Chair: The vote will apply to both.

Mr. Craig Scott: In that case, before making a comment, I want to ask whether Mr. Rathgeber has said all that he needs to on the second one or whether he would like more time.

Mr. Brent Rathgeber: No, the amendments have to be read together. Combined they would, if passed, level the playing field between independent candidates and those related to political parties.

Mr. Craig Scott: I will certainly be supporting this. I think we heard very compelling testimony from Mr. Casey. He also indicated the length of time into the decades that the discriminatory sections operation of the Canada Elections Act with respect to independents have been noted and yet we have never gotten around to changing them. We have an opportunity now to do so. I think this is one where the record was so clear because of the nature of the testimony from Mr. Casey that I'm not sure I need to say much more.

The Chair: Let's hope that's the case with all.

Mr. Christopherson.

Mr. David Christopherson: That's the beauty of being sovereign MPs. We decide for ourselves.

This stuff didn't come easily, because I've always been a candidate as a member of a party and so it's a completely different way of looking at things.

You read it kind of quickly, Mr. Rathgeber. Would you be kind enough to unpack that for me one more time as to the key point of the injustice and how this corrects that?

● (1120)

The Chair: Very quickly.

Mr. Brent Rathgeber: Currently under the Canada Elections Act only candidates, political parties, or electoral district associations can raise money outside of a writ period and issue tax credit receipts. My amendments attempt to amend the definition of a candidate to allow an individual who's not affiliated with an official party to apply outside of a writ period, or practically before an election writ is filed, and become a candidate, provided he complies with all the requirements that a candidate would have to comply with during a writ period and be declared a candidate directly by the Chief Electoral Officer, therefore assuming all the rights and privileges, including raising money and issuing tax receipts.

Mr. David Christopherson: Very good.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): I've been trying to figure out some of the questions related to nomenclature. This is a question that relates to this section, but also to some other issues. So I apologize; it's almost a point of order, but not quite. This is IND-1. It relates to IND-2, which I managed to find in clause 28. I was going to ask if there were any other independent amendments Mr. Rathgeber has put in, or if these are the only two. The reason I'm asking this is that, in part, I'm a little confused by the nomenclature. I see some amendments labelled PV, and some labelled G, and I'm just not sure what the scoop is on who has done what. It's hard to zip back and forth and look into the substantive debate at the same time.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Mr. Chair, I can respond to that, if allowed.

The Chair: Sure. Very quickly.

[*Translation*]

Ms. Elizabeth May: It's actually quite simple.

[*English*]

The PV refers to “Parti Vert”. G refers to “government”. I think that will be the only codes you need to unpackage.

The Chair: There are a couple more. There's BQ, and there's IND, independent, but yes.

Mr. Scott Reid: G does not mean Green. IND, independent, means only Mr. Rathgeber, and it does not mean anything the Green Party submitted. Is that correct?

Ms. Elizabeth May: Until I form a majority government, G will just mean Conservative.

Mr. Scott Reid: Fair enough, well, there's only another year and a half.

Some hon. members: Oh, oh!

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

The Chair: Next would be NDP-1.

Mr. Craig Scott: It's NDP-1, which will be followed by NDP-2. One is on the definition of “leadership campaign expense”. This is the one we're dealing with. The one on the definition of “nomination campaign expense” is of the same ilk.

The Chief Electoral Officer in the table of amendments that he provided as recommendations gave fairly detailed reasons why there's a problem in the definitions of leadership and nomination campaign expenses in Bill C-23. He explained that definitions of leadership and nomination campaign expenses are not amended, but at the moment these definitions include only expenses incurred during the contest proper, and none of those incurred before the formal start of the contest or after its conclusion. As well, they don't include the use of non-monetary contributions, like gifts or goods or services.

Without going into more detail about the extra reasoning he gave, this amendment is an attempt to follow his recommendation, which was to modify the definition of “leadership campaign expense” in the definition section so that it would read, “'Leadership campaign expense' means an expense reasonably incurred by or on behalf of” and then we would insert, “leadership contestant related to a leadership contest, including a personal expense as defined in section 478, as well as any non-monetary contribution.”

If everybody's had a chance to look at it, I won't need to say anything more.

● (1125)

The Chair: Independent amendments are deemed moved, but you need to move yours each time you come.

So, would you move your amendment.

Mr. Craig Scott: It's what I just said.

The Chair: Thank you.

Mr. Reid.

Mr. Scott Reid: Looking at this, and perhaps I misunderstand it, but with the phrase “any non-monetary contribution” my instinct is to think that effectively the dollar value of people's voluntary labour would count and might add a significant amount of complexity. Indeed, it might put all kinds of people into non-compliance, especially large, volunteer-based campaigns.

I went through that process myself when the Stephen Harper campaign, which was run on small contributions and many volunteer hours, was up against the Belinda Stronach campaign, a giant machine funded by a few giant contributions and very few volunteers.

I have the concern that we would unintentionally slant the playing field towards those big money candidates. In particular, because it's so hard to keep track of these volunteer hours, it would put the people focusing on a volunteer and populace campaign into perpetual non-compliance with what seems to me to be the least significant part of the cost compliance law. Large dollar contributions are potentially the source of influence and small-scale volunteer efforts are not.

The Chair: Very good.

Mr. Simms, go ahead.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Are we proposing an amendment to an amendment, I suppose you would call it, about the fact it doesn't include...? It seems to me it has never been obvious.... I mean, volunteer is volunteer hours.

In the 10 years I've been here, I can't think of anywhere it has been included in some kind of contribution mechanism. I think, obviously, they are looking at tangible goods as being part of the non-monetary contribution, which is why we proposed the same thing based on what was given to us by Elections Canada.

The Chair: Mr. Scott.

Mr. Craig Scott: I think it has already been—

Mr. Scott Reid: I was going to respond to Mr. Simms first.

The Chair: If you would like to do that, and then we'll go this way. It may help. Go ahead.

Mr. Scott Reid: Elections Canada has taken the approach when you're dealing with work that if the person is volunteering at something for which they have no professional or career-based connection.... For example, I'm an accountant, and if I come in and hammer signs into the ground, it's not a problem. However, if I'm a bookkeeper and I come in and help keep the books in a campaign, that's what I'm specialized in, and that is an issue. Sorting that out and being in compliance with it has always been, in my experience, considerably difficult even within the universe of my own very small election campaigns.

The way this is written, with very expansive language, would capture at least that problem and perhaps beyond, but at least that problem. Whereas, having bookkeepers come in and do bookkeeping, which is what they are competent at, which is important given the importance of competent bookkeeping in a campaign, leads to an unnecessary problem. I think we want to keep money out of these campaigns as best we can but not volunteer labour.

That's how I would respond to your concern, Mr. Simms.

The Chair: Mr. Simms and then Mr. Scott. You're going to get a chance on that. You're listed like I am.

Mr. Scott Simms: To clarify, you're saying that those who have a certain expertise or who carry on normal business in the way they make a living, if they provide that service to a campaign, then that's considered part of this non-monetary contribution.

Mr. Scott Reid: I don't think it's the expertise per se, but I think if you have done it professionally, or it's your work, then it becomes an issue. A sign painter who paints a sign was an example that was offered once.

Mr. Scott Simms: Yes, I understand what you're saying.

The Chair: Mr. Reid, go ahead.

Mr. Scott Reid: I’m done.

The Chair: You have not convinced each other, but you're complete.

Mr. Scott, go ahead.

Mr. Craig Scott: I want to be as helpful as possible. If there actually is this kind of danger zone, we could continue talking about what it might look like, to clarify, so that it's not a problem.

Without making this proposed amendment to my own amendment —is that possible even? Somebody else would have to do it.

The Chair: You may find a friend.

Mr. Craig Scott: Occasionally. If it said “as well as any non-monetary contribution in the form of gifts of goods or professional or commercial services” would that work? That's the language the Chief Electoral Officer used as his examples, “gifts of goods or services”.

● (1130)

The Chair: I don't want this to mean the lady who brings in the pie—

Mr. Craig Scott: Nor do I.

The Chair: —or the guy who brings in a pie.

Mr. Simms.

Mr. Scott Simms: As a modest proposal, how about we take out the word “any”? It would thus read “section 478, as well as non-monetary contributions.”

The Chair: Mr. Scott.

Mr. Craig Scott: I have a feeling I'm supposed to think of that as extremely clever, and I think it probably is—

Mr. Scott Simms: No, the guy behind me came up with it.

Voices: Oh, oh!

Mr. Craig Scott: —but I'm not exactly sure whether that will help us qualify what those non-monetary contributions are.

Mr. Scott Simms: Well, it certainly makes it a little more precise, doesn't it? I think the language leads to the fact that it's non-monetary.

The way I read this is it's just something that's donated. Let's say someone donates a cooler, or someone donates something that allows the carrying on of a function in a leadership contest. That's just the way I read it.

I mean, we'll be here until the next election if we keep going with trying to define this. I'm just trying to figure out a way of cleaning up the language here to a lesser degree. If we just say “as well as non-monetary contributions”, it's understood by us all what exactly that means: tangible goods.

Mr. Craig Scott: Keep in mind that one of the innovations in the government's bill that we're certainly not opposing is the power to request interpretations, guidelines, and opinions from the Chief Electoral Officer. This is the kind of thing that would be subject to such an interpretation, and maybe people with apple pies would clearly not be part of the interpretation.

The Chair: Mr. Reid, help us.

Mr. Scott Reid: This is the same subcommittee that deals with the Ethics Commissioner. Do you remember when the Ethics Commissioner decided that anything that cost $30 was a problem? We kind of thought, you know, we may be easy, but we're not cheap. Thirty dollars was a bit too low as the level at which you had to declare things.

I think this is the danger with this sort of thing. An after the fact ruling could come down as being something like that. In all fairness, though, if I were the CEO and l looked at it and it said “any”, I would say that any means any, and Parliament has spoken. So we would find ourselves getting involved with a problem there.

My own sense also is that if we tried to do...and I think Professor Scott was being very helpful and had a good idea when he said—I wrote it down—in the form of gifts, goods, or services. I know what he's trying to get at, or I think I know what he's trying to get at.

Again, to use a real-life example from the leadership race for the Conservative Party that I was involved in about a decade ago, to my understanding, and I could be wrong on this, Belinda Stronach was flown around the country in one of her family's corporate jets. That would seem to be the kind of thing, I think, that you're trying to get in there.

How you make sure that gets in and not the home-baked apple pie which the nice lady from down the road made to feed the volunteers —

The Chair: Date squares.

Mr. Scott Reid: What's that?

The Chair: Date squares. I was going to give you my list.

Mr. Scott Reid: Yes, some date squares.

I don't know how to deal with that situation, or with someone taking care of the kids of people who are out. Do you know what I mean? I don't know what the solution is to that.

Mr. Craig Scott: Mr. Chair.

The Chair: One more try, but we can't do this much on all of these.

Mr. Craig Scott: Yes, exactly.

The first point is this is an attempt to be helpful with the problem spotted by the Chief Electoral Officer. I see what's been raised as an obvious issue. At the same time, if we abandon this, we're abandoning all non-monetary contributions, so I'd say we should try to figure something out.

This is my neophyte's first question on procedure. Having started this, can we have it stood?

The Chair: Yes.

Mr. Craig Scott: That would be in order to have some further discussion. We're going to be here for three days, and this is the kind of thing we could talk about a bit more.

The Chair: Yes, but it moves it to the end, and we don't get to it until then.

Mr. Craig Scott: That's fine.

The Chair: You're remembering where the end is.

We would have to stand the whole clause.

Mr. Craig Scott: Let me put it this way, then. As for the government side, can you support it as written, even getting rid of the word “any”?

Mr. Tom Lukiwski: No, but in an attempt to be helpful, I think you both articulated fairly well the intent but some of the inherent perhaps unintended consequences. I think it might behoove all of us to give this some thought. If you wish to stand it, it may well end up that it comes at the end without further debate, but it at least allows us to have given some thought to it by the time it gets to there.

If that's your intent, we wouldn't have a problem with that, but that's up to you.

● (1135)

The Chair: Okay.

Mr. Christopherson, let's see if we can get there.

Mr. David Christopherson: Mr. Chair, I appreciate the tone on this and the attempt, but rather than leave it, I'm not thoroughly convinced at all that we're going to have the full discussion that we need to have on all the clauses in the time available. We've invested already some good all-party discussion on this and we're not dividing along partisan grounds, as we're likely to on a number of other issues. Could I suggest, Chair—

The Chair: Are you anticipating something? You can make all the suggestions you want.

Mr. David Christopherson: I'm going to write that down.

What I was going to suggest is a little different, but by unanimous consent we can do pretty much anything. I suggest that we take the time to talk about that in the break between this meeting and when we reconvene this evening, and decide that we will deal with this right off the top when we come back at seven o'clock. That should give us time to find out whether we can quickly come to agreement. If not, Mr. Chair, and quickly, if we don't have agreement, because it's not a delaying tactic, then we simply agree very quickly to put it to the end and it will follow the natural course.

The Chair: If I have unanimous consent for that, we can do that.

Some hon. members: Agreed.

The Chair: Great. Then that's what we'll do.

Everything to do with clause 2, which also then is LIB-1 that is exactly the same.

I'm being told we have to move to the next clause. We can come back and look at this whole clause collectively.

Mr. David Christopherson: Bring the whole clause back at seven o'clock.

The Chair: Yes.

Mr. David Christopherson: We can live with that.

The Chair: Do I still have unanimous consent for that?

Some hon. members: Agreed.

The Chair: All right. Anything to do with clause 2, I'm working my way down on anything that says clause 2.

(Clause 2 stood)

(On clause 3)

The Chair: This is the start of clause 3. We go to G-1.

Mr. Tom Lukiwski: Mr. Chair, I will move that.

The Chair: That's what we're looking for first.

Mr. Tom Lukiwski: Very simply, as I'm sure everyone has read already, this motion makes the Chief Electoral Officer's term non-renewable.

The Chair: Mr. Scott.

Mr. Craig Scott: Tom, you did move this, right?

Mr. Tom Lukiwski: Yes.

Mr. Craig Scott: I'm just making sure that page 5, line 16 is where I thought it was.

My point would be whether there is anything that came up in the testimony or in our discussions.... I would ask, in fact, what has prompted this, because it's a new limitation which basically says that the Chief Electoral Officer can serve one term only. Is that right? Is that the effect? Are there comparisons with other parliamentary officers where it is the same as this?

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: In the Parliament of Canada, quite frankly, I don't know. I don't believe so, but I do also believe in other jurisdictions there has been. Quite frankly, the reason for it is we feel it enhances the independence. Similar provisions apply with the Attorney General and this one doesn't apply to the current CEO. This would be on a go forward basis.

Mr. Craig Scott: And the basis on which it's not applying is...?

● (1140)

Mr. Tom Lukiwski: Why we're not applying it to this one?

Mr. Craig Scott: Yes. Is there a clause later that I missed, in the transitionals, that makes it clear this doesn't apply?

Mr. Tom Lukiwski: Yes, I would ask our experts to confirm what I have just stated that this would be on a go forward basis and does not apply to the current CEO.

Mr. Marc Chénier (Senior Officer and Counsel, Privy Council Office): Actually, if you look at transitional provision clause 127, it's written:

> Despite section 13 of the Canada Elections Act, as enacted by section 3, the person who occupies the position of Chief Electoral Officer immediately before the day on which that section 3 comes into force may continue to hold office until he or she reaches the age of 65 years.

So there would be no transitional provision to remove the non-renewability of the CEO's term.

Mr. Tom Lukiwski: I should also clarify that I misspoke. I'm sorry. I think I said "Attorney General" instead of "Auditor General". It's similar to the Auditor General.

Mr. Craig Scott: Yes, okay. So the Auditor General has one term only.

Mr. Tom Lukiwski: The term is non-renewable, yes.

Mr. Craig Scott: I guess my concern remains that the Chief Electoral Officer is appointed by resolution of the House and the record beforehand would surely be taken into account, and I'm not sure that the enhancement of independence is a reason to counter-balance what might turn out to have been, by all accounts, an excellent Chief Electoral Officer. I'm not so sure that I'd be easily convinced to vote for this for that reason.

The Chair: Madame Latendresse.

[*Translation*]

Ms. Alexandrine Latendresse: I'd just like to say that the Chief Electoral Officer has a longer term than most other agents of Parliament for a number of reasons, but one in particular. The act doesn't prohibit the renewal of a CEO's term for one reason.

During periods with majority governments, a CEO who is in office for 10 years may have to oversee two federal elections. A new CEO would have to administer the following election. And that might be a mistake in some cases. It could be useful to have the ability to renew the term of a CEO who is doing an excellent job, if the CEO and House are both in agreement.

Therefore, I won't be supporting the amendment either.

[*English*]

The Chair: Mr. Reid.

Mr. Scott Reid: My question is actually for the officials.

When we go to the actual Canada Elections Act, there's section 16, and there's (a), (b), (c), (d). All of that is referred to in the amendment. But it's not 16(1), (a), (b), (c), (d), and here we're putting in a (2). Technically speaking, should this not say that the number (1) will be added in front of the current enumerations, and then the (2), or is that just implied? I actually don't know, but I'm just wondering if we're going to do something that's procedurally not correct here.

Mr. Marc Chénier: When the bill is reprinted, it will be reprinted with the subsection (1). It's done automatically by the House of Commons printing service.

Mr. Scott Reid: That's just the way we do these things.

Mr. Marc Chénier: If it's a clause that becomes a subsection (1), if it's a section that becomes a subsection (1), it's done automatically. It doesn't have to be provided for in the bill.

Mr. Scott Reid: Thanks for that clarification.

The Chair: Super.

Shall amendment G-1 carry?

An hon. member: On division.

(Amendment agreed to on division)

The Chair: Shall clause 3 as amended carry?

An hon. member: On division.

(Clause 3 as amended agreed to on division)

(Clause 4 agreed to)

(On clause 5)

The Chair: Now we go to NDP-3 on clause 5.

Mr. Scott.

Mr. Craig Scott: I'd like to move, as found in the reference document that you have, to make effectively two insertions. They would be subclauses (2.1) and (2.2) in clause 16.1.

They are responsive to both the specific suggestions made by the Chief Electoral Officer on some of the comparative practice around this kind of thing, guidelines or interpretations in other areas that give a degree of discretion to the officer asked to issue the guideline or interpretation

Collectively, this amendment would insert two provisions. First, it would say that the Chief Electoral Officer may decline to issue a guideline or interpretation note when the matter is being considered by the commissioner or by the courts—that's one reason—or when in the opinion of the Chief Electoral Officer, the matter is inappropriate. Second, before issuing a guideline or interpretation note, the Chief Electoral Officer may take into consideration any information that he or she believes is necessary to prepare it.

Again, these are responsive to comparative practice and what the Chief Electoral Officer brought to us. He also indicated that there is a need for some kind of a mechanism throughout these new sections 16.1 to 16.4 to collectively prevent a huge logjam, a huge amount of extra work for Elections Canada on the simple basis that guidelines and interpretations can be asked for.

One of the mechanisms for dealing with this is that if the matter is inappropriate, the Chief Electoral Officer does not have to go through the motions of issuing a guideline or interpretation.

There will be other ones I'm going to be tabling which go more closely to the issue of efficiency, but we'll leave it at that.

● (1145)

The Chair: Ms. May, you also have an amendment that's exactly the same, so I think I should allow you to speak to this one also.

Ms. Elizabeth May: Thank you, Mr. Chair. I appreciate that, and given that it is exactly the same, I'll only make the following points.

The Chief Electoral Officer in testimony to this committee pointed out that Bill C-23 would create some rather operationally difficult hurdles: timelines, the ability to consult—in some of my amendments I'll go into some of the details around the consultation that's required with his advisory committee—the nature of the bilingualism that's required.... Under this amendment, we're just trying to ensure, as Mr. Scott has said, that the guidelines and interpretations that the Chief Electoral Officer is asked to provide are in effect practical for him to accomplish.

Obviously, the reason these are so close is that we've taken on board in the Green Party, as has the official opposition, the recommendations made by Mr. Mayrand.

The Chair: Does anyone else want to speak to this amendment?

We will vote on the amendment.

Mr. Craig Scott: Could we have a recorded vote on that, Mr. Chair?

The Chair: Certainly.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: That is defeated. Amendment PV-3 then is also dealt with.

We're still on clause 5. We move to G-2.

Mr. Lukiwski.

Mr. Tom Lukiwski: I'll move that motion, Chair.

Ms. Elizabeth May: I know we voted on NDP-3. Did we vote on PV-3?

The Chair: When they're identical, one vote suffices for both.

Ms. Elizabeth May: Thank you for the procedural help.

The Chair: We're discussing G-2.

Mr. Lukiwski.

● (1150)

Mr. Tom Lukiwski: It basically allows more time for the CEO to issue guidelines and interpretations, from 45 days to 60 days. If the commissioner is going to be bound by a ruling, he should be able to have the opportunity to provide his opinion. We're just suggesting that this make some sense, in that it gives a little more time to consider the issues before making a ruling and issuing a ruling.

The Chair: Thank you.

Madame Latendresse.

[*Translation*]

Ms. Alexandrine Latendresse: Again, I'd like a small clarification on the French and English versions of amendment G-2, at point (c).

Mr. Lukiwski, the English version refers to 15 days, but the French version says 60 days.

[*English*]

Mr. Tom Lukiwski: I'm sorry. I haven't seen the text *en français*.

Ms. Alexandrine Latendresse: It's the amendment.

Mr. Tom Lukiwski: No, I understand that. Are we talking about a different wording between the English and the French texts?

[*Translation*]

Ms. Alexandrine Latendresse: I'm referring to point (c) of your amendment.

[*English*]

In English it's “15” days, so I just want to know which one is right.

Mr. Scott Reid: Those are the sorts of questions the courts really don't enjoy dealing with.

Voices: Oh, oh!

Ms. Alexandrine Latendresse: If it means that the French will have more time, I don't have a problem with that.

Voices: Oh, oh!

The Chair: Mr. Chénier.

Mr. Marc Chénier: In this instance, the paragraphs are not meant to be read as (c) with (c), because sometimes there are additional changes that are required in one language version as opposed to the other. Paragraph (b), I believe....

Ms. Natasha Kim (Director, Democratic Reform, Privy Council Office): While my colleague is looking for this, I'll note that there are actually two timelines being changed: the overall timeline, which is 60 days from 45 days, as well as the consultation period, which is moving from 30 days to 15 days. That's why the two, 60 and 15, are being used.

The Chair: So they're not parallel on the page. Although it's the same clause, they're at different places.

Mr. Craig Scott: It's replacing the 45 by 60 in that section.

The Chair: Right.

Mr. Simms.

Mr. Scott Simms: I just have a point of clarification or information.

You've shortened the response for the parties, from the political advisory committee—

A voice: [*Inaudible—Editor*]

Mr. Scott Simms: It's going from 30 days to 15 days, the response of the parties to the advisory committee. You'll find that under paragraph (c). Within the bill, it's in line 2 on page 6.

It's a little short isn't it? You're cutting in half the response from the party in this particular situation. It might be a little bit onerous for some of the parties, maybe not so much for ours, but maybe smaller parties as well. I mean, you have a two-week—

Mr. Tom Lukiwski: Are there smaller parties than yours?

Voices: Oh, oh!

The Chair: Oh, that's mean.

Mr. Tom Lukiwski: I take it all back.

The Chair: I saw the grin start, you know—

Mr. Scott Simms: How about we have this conversation in two years?

Voices: Oh, oh!

The Chair: Yes.

You can go on the list.

Mr. Tom Lukiwski: Anyway, it is what it is. We think it's appropriate, Scott. That's what I'm saying.

The Chair: Madame Latendresse, and then Mr. Scott.

[*Translation*]

Ms. Alexandrine Latendresse: I'm just trying to get a clearer sense of this. I'm really mixed up.

I have the amendment here. At point (c), the English version talks about replacing line 2 on page 6, and the French version talks about replacing line 16 on page 6.

You're saying they don't match up in the bill, and that's true. But does that mean I don't have the right translation? I don't understand.

Mr. Marc Chénier: The change proposed in point (c) of the English version is the same change contained in point (b) of the French version, where it says “dans les quinze jours suivant la date”.

Since the changes to the provisions didn't involve adjoining lines in the English version of the bill, the two changes had to be split into two points. So the English version of the amendment contains an extra point.

● (1155)

Ms. Alexandrine Latendresse: I see.

It's the same in other spots throughout the amendment, point (h), for example.

Mr. Marc Chénier: In the English version, point (h) amends line 5 on page 7 of the bill, affecting new subsection 16.2(2) of the act. The same change is proposed in point (g) of the French version of the amendment.

Ms. Alexandrine Latendresse: That makes it really hard to compare everything. We're trying to follow the French, but it's hard to know whether it all lines up or not. It's extremely tough to get it all straight.

Mr. Marc Chénier: Basically, the consultation period went from 30 days to 15, and the timeframe the CEO has to issue guidelines and interpretations went from 45 days to 60, in a coherent way.

[*English*]

The Chair: As long as that's done in each spot, then it will be translated. Are you okay with that?

[*Translation*]

Ms. Alexandrine Latendresse: I guess so, but it makes it difficult to compare the amendments to the bill with the provisions in the bill or even the act, and to do the proper checks.

[*English*]

The Chair: Mr. Scott.

Mr. Craig Scott: Just so we're clear, there are amendments coming up from the NDP but also from other members and from the Green Party, I believe, where we're attempting to tackle the same issue of crunched timelines by creating a system where....

At the moment the act is written so that the consultation period gets rolled into the period at the end of which the CEO must issue the guideline or the interpretation, and that leaves him with almost no time to do so. I understand we're both trying to fix the same issue.

Our solution is to keep the consultation period of 30 days, and then on top of that say it's 45 days afterwards that the opinion must be issued.

It seems what we're getting here is the same result on the one end, I believe, 45 days once the Chief Electoral Officer has heard back from the parties or the commissioner, but only 15 days for the parties or the commissioner to be considering it.

I'm wondering, or appealing to the government, whether or not we could focus on whether this 15-day period is really too little and that the better solution would be to do 30 plus 45 and change your 15 to 30. Everything in here would be fine, I think, in accord with everything we were trying to do. Your addition of the commissioner as somebody who has to be consulted would be fine, but the 15 days just seems to be a real crunch in order to.... I understand it's an attempt to respect the CEO's limits. The CEO is now being given 45 days. That's great, but in the process—

Mr. Tom Lukiwski: Sixty.

Mr. Craig Scott: Yes, 60, but 45 on top of the 15, I believe.

A voice: Correct.

Mr. Craig Scott: That's good, but in creating that solution, which is responsive to his concern, we're creating a slightly different issue of the parties being under the gun and maybe smaller parties being in a different position than we are in.

I would actually propose an amendment where it says 15, and there would be consequential amendments in anything else where you've referenced it. Where you say 15, make it 30. It would be great by us.

Mr. Scott Simms: Can we do that from the floor?

Mr. Tom Lukiwski: Thank you for your suggestion.

In response, we're satisfied in that we believe this strikes the right balance. It gives a little bit of extra time for the CEO to issue guidelines and interpretations, which we believe is the most important thing, and it doesn't add time on top of that.

One of the considerations of all parties is to try to get rulings and interpretations as quickly as possible, given the fact that the CEO has to consider all aspects of suggestions, recommendations, and input from the parties. I think giving the CEO additional time is necessary, and I think that's a good thing, but without adding an additional 15 days or two weeks on to the end result, which is, I think, problematic for most parties. We thought we could certainly cut the 30-day consultation down to 15. It still should give enough time for parties to give that information and consider the information they wish to pass along.

What I'm saying, Craig, is that we're satisfied with this. I think it's appropriate.

● (1200)

Mr. Scott Simms: So it's a futile exercise on the amendment, evidently. That's too bad.

Well, we can vote on it.

Can I propose to amend it?

The Chair: You'd have to give it to me in writing, but you could.

Mr. Scott Simms: Can I do it here, right now? All I want to do is extend it from 15 to 30 days.

Ms. Alexandrine Latendresse: Didn't we just amend—

The Chair: We'll pause just for a minute. You have a quick conversation and we'll figure out how that's done.

● (1200)

(Pause)

● (1205)

Mr. Scott Simms: All right, Chair, I'm ready to go.

I move that the amendment be amended by replacing, in paragraph (c), the number “15” with “30”, and replacing in subparagraph (i), the number “15” with “30”.

The Chair: We're on the amendment to the amendment.

Mr. Lukiwski.

Mr. Tom Lukiwski: Are we dealing with Scott's amendment here?

The Chair: We're dealing with the 15 turning into 30.

Mr. Tom Lukiwski: The main thing that we believe is the most important element here is that when the CEO issues a ruling which would be applicable to all parties in an advanced ruling that it be done quickly, particularly if you were in a writ period. Correct?

I don't want to open up a can of political worms again, but on the in-and-out thing our position was, without trying to go back on that again, that the interpretation in the Canada Elections Act was changed and then applied retroactively. In other words, our position had always been that we had been following the rules explicitly, but the rules were changed in the Canada Elections Act and then applied retroactively to a previous election.

Without re-arguing the case, that's why we feel it's important to get an advanced ruling or a ruling out as quickly as possible that would be applicable to all parties. Time is of the essence if we're in the middle of a writ period. That's why we think this timeline gives the CEO more time to do an in-depth examination and then issue the ruling but doesn't extend the overall time between consultations within parties and the CEO's final ruling. If you add another two weeks, and in effect that's what Scott is suggesting, that might prove to be very problematic if you're getting into a writ period.

Again, we believe that the timelines presented here.... I understand the arguments and I appreciate that, but we think, based on the fact that speed is of the essence, particularly if you're on the verge of or entering into a writ period, it's important to get a ruling as quickly as possible while still giving the CEO enough time to give good consideration. That's why the suggestion of reducing one by 15 and adding another 15 days on the other so the overall timeline remains the same just gives more time for the CEO to consider the arguments.

The Chair: Thank you.

Mr. Scott.

Mr. Craig Scott: I appreciate the argument, and the logic is good, except I think at least in two provisions that I think are the applicable ones in Bill C-23 it says that:

> ...if the 45-day period coincides or overlaps with the election period of a general election, they shall be published...no later than 45 days after polling day...

In fact, there is no ability.... I think the government's drafting has already taken into account that they don't want the Chief Electoral Officer having to drop things, not just during, but when it overlaps.

Mr. Tom Lukiwski: That's a decent point.

If you're going into an election, and there's no overlap, and you want a ruling prior to the writ starting, or even if you're in a pre-writ campaign, any party is developing its campaign, advertising plan, get out the vote plan, or you name it, and there's an issue that comes up that may cause parties to rejig their strategic plan, I think it's incumbent upon the CEO to get that information that they're ruling on to all parties as quickly as possible. You're right, not into a writ campaign, but I consider any time you're in the lead-up to an election, whether it's pre-writ or writ, it's pretty important.

I'll go back to the in-and-out situation. That strategy was developed in the lead-up to and including the writ period. Had we had an advanced ruling prior to that, obviously our method of running that election would have changed. I think it's really, really necessary. That's why we don't want to extend the length of time unduly.

I appreciate the argument. I understand it. We believe it's appropriate. That's all I can say. We might just agree to disagree.

The Chair: We've heard the argument on both sides of the amendment to the amendment. We get to vote on the amendment to the amendment first.

We are voting on Mr. Simms' change from 15 to 30, those in favour of the change from 15 to 30.

(Subamendment negatived)

The Chair: Now we're voting on G-2 itself and all of the changes in it.

We just did the amendment to the amendment. Now we're going to do the amendment. I also need to let you know that this will change, as Mr. Scott has already noted, some other changes down the road. There are other amendments from other parties that this, if we vote on it, will cover.

Mr. Scott.

● (1210)

Mr. Craig Scott: We'll hear the ruling, but I'm assuming those are all the ones that deal with timelines, and that where we're adding clauses, those safeguard clauses, will those be okay?

The Chair: The answer is we can only touch one line in a clause once, so if it changes it now, you can't then change it again later, even if it is a different portion of it.

Do you want the—

Mr. Tom Lukiwski: No, I don't think that's what Craig is asking.

The Chair: Yes, all right.

Well, do you want to know which ones it affects?

Mr. Craig Scott: Yes, that would help. If we know what it affects, then that will tell us whether or not we should be a bit more fulsome in our arguments on the amendment.

The Chair: I suppose that's the case.

It's NDP-4, PV-5, LIB-3, NDP-7, PV-11, LIB-4, and PV-12.

I was doing bingo calling on Saturday night and this was very reminiscent of that.

Mr. Craig Scott: Okay, the ones we want are okay.

The Chair: So if we adopt G-2 as it presently stands, none of those will be proceeded with.

We are voting on amendment G-2.

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

The Chair: It passes and all of those others will now drop out of the lineup.

You're going to have to tell me when I get to any of those.

Next will be amendment PV-4 on clause 5.

Ms. May.

Ms. Elizabeth May: Mr. Chair, this is related to, but sufficiently different that it wasn't captured in the passage of government amendment G-2. It deals with the same issue that has been raised by the current Chief Electoral Officer, that when coming up with an interpretation decision, he needs to be able to consider information that's relevant and take into account what the Chief Electoral Officer himself believes is relevant.

You have before you my amendment to clause 5. It's amending line 7 on page 6. For the aid of committee members, let me read how amended clause 5 would read with my amendment included. It would now say, and this is on page 6, at proposed subsection (4):

> The Chief Electoral Officer shall, in preparing the guideline or interpretation note, take into consideration any comments received under subsection (3)—

This is the part that this amendment would add:

> and any other information that, in the opinion of the Chief Electoral Officer, is necessary to its preparation.

Again, we're dealing with someone who is expert in the field, who may want to reach out to other sources of information. We don't want to shackle the Chief Electoral Officer such that he or she is unable to pursue other relevant information that will assist in the preparation of a guideline or interpretation note. I'm hoping that this is one that's sufficiently non-controversial. Of course, it comes from Mr. Mayrand as a request, but I'm hoping the government members might see their way to approve this.

To reinforce for government members, it doesn't change any timelines; it just allows the preparation of the interpretation note or guideline to have full access to other significant, relevant information that the Chief Electoral Officer believes is necessary to the preparation of the note.

Thank you, Mr. Chair.

The Chair: Thank you.

Is there further comment?

Mr. Reid.

Mr. Scott Reid: I got the impression that this power was available anyway and I thought he was being.... While I appreciate his concerns, there was nothing I saw that could have been reasonably interpreted as limiting his ability to seek out information necessary to the preparation of his ruling.

● (1215)

The Chair: Okay.

Is there further conversation? We'll go to Mr. Scott and then I'll go to you, Ms. May.

Mr. Craig Scott: Yes, both what Ms. May and Mr. Reid said I think has great validity. I would not like the fact that if we've moved this—we have one that's not so dissimilar later—or if it gets voted down it would mean that the Chief Electoral Officer does not already have this.

I appreciate Mr. Reid's intervention to say he can take into account information as is available to him anyway. It's a judicial notice kind of thing if you are going to compare it to what judges can do. As long as we all can agree, or we're all on the same page that this is not necessary, but it's more for the sake of certainty, even though that language is not used in Ms. May's amendment, then I'd be much more comfortable and I'd like it to be there for the sake of certainty. I don't think there's any harm in it, but it's important to be on record that Mr. Reid's interpretation also seems to be correct.

The Chair: Ms. May.

Ms. Elizabeth May: I think it's a matter of statutory interpretation. I'd agree with Mr. Reid that it's possible to interpret it both ways. I am concerned, though, that under proposed subsection 3 that it's the collection of advice from members of the advisory committee of political parties, but the language “shall” being mandatory language: the Chief Elector Officer under Bill C-23 shall take into account information that is received and advice and comments from the advisory panel of political parties.

It is true that it is not exclusive to only that advice, but it is open to interpretation if that was the intent. I think it's very important and that it be preferable to accept this amendment so it's very clear. If that's what you believe to be status quo, then there's no harm and greater certainty in passing this amendment. If not, it would be helpful to have on the record from Conservative Party members of this committee for any future court interpretation that the statutory intent of this is not to so shackle the Chief Electoral Officer that he can only take into account that advice referenced in proposed subsection (3).

The Chair: Mr. Reid.

Mr. Scott Reid: In line with that thinking, I want to be absolutely clear—and my colleagues are free to disagree with me, but I don't think they will—that what is emphatically not being said here is that the Chief Elector Officer is effectively like an arbitrator in final binding arbitration, who has to choose between the Green Party interpretation, the Conservative Party interpretation, and the New Democratic Party interpretation. That would be the very narrow and completely incorrect reading of this section.

To me the correct reading would be that he or she has to look at those things but may also engage in any wider consultation that's appropriate, similar, as Professor Scott said, to taking judicial notice of external information.

The Chair: Professor Scott.

Mr. Craig Scott: It's a very helpful exchange. My own view is that Ms. May is correct that there's absolutely no harm in clarifying in the way she's suggesting in the amendment. There's no statutory drafting reason not to make it clear. At the same time, if the vote goes against it, in my view, for sake of certainty, it's not necessary.

The Chair: Mr. Simms.

Mr. Scott Simms: I agree with what was said. I think there's no fear in providing this in the act just so that we get what I consider to be a little too prescriptive and obviously too restrictive, really. If you leave it as it is right now, I certainly think this leaves it to better interpretation and a more effective way of gathering information.

Originally I thought you had the right intent, but after listening to Ms. May, I realize that this may be more necessary than we think.

The Chair: Thank you.

Mr. Christopherson.

Mr. David Christopherson: I have a question more than anything for the government.

What would the harm be? There doesn't seem to be too much disagreement, but it's sort of belt versus suspenders. If this creates less public money being spent in the courts because we can be that much clearer here, it seems that would be an improvement to the bill.

I would ask the government, what is the potential downside of putting in this extra wording to ensure that we don't end up in court and go through a whole thing when every one of us seems to be onside? I would just ask the government if there is some particular reason or some harm done that we are not aware of if we go ahead and put the wording in.

● (1220)

The Chair: Mr. Reid.

Mr. Scott Reid: My goal is not to suggest there be harm in putting the wording in, only to suggest there would be no harm in leaving it out, if you follow the distinction there.

Mr. David Christopherson: If I may, Chair, isn't that the whole concern and part of Ms. May's...?

I'm not a lawyer so some of you have an advantage on these kinds of things when it comes to the courts and their roles at one time. It was suggested by a learned colleague that this could give rise to a question that ultimately would need to go to the courts. That would be my response, if there's that potential and none of us want that to happen and it's clear what we would hope as the drafters of the legislation would be the outcome of that court case, should there be one, why not pre-empt and preclude anybody from having to go through all of that when we seem to be of one mind and putting in the language would seem to not harm anything else?

Mr. Scott Reid: Mr. Chair, my understanding of how the courts deal with something when they cannot find an answer within what they refer to as the four corners of the act, meaning the words themselves are somewhat ambiguous in the minds of the court, they try to start with the words, of course, but when they can't do that, they then look to what was discussed during the debates over the issues. Presumably they would look to the debate we've had. It would be clear from what I've said, from the fact that my colleagues on the government side have not intervened to suggest that I was mistaken, and from the fact that, Professor Scott, on your side also, clarified this point that the intention was that the CEO is not required to rely only on what the parties have offered, but may also seek additional information elsewhere.

The Chair: All right.

Mr. Christopherson, very quickly.

Mr. David Christopherson: I don't want to belabour this, Chair, but it's an important point.

I'm still having some difficulty understanding. Though I haven't heard the government say it's not likely anyone would have a problem interpreting this, it's not likely this would end up in court, no one's making that case. We're all of a clear mind, and we can take steps to put language in there that would preclude and prevent and make unnecessary a citizen or an organization having to spend all that money going to court, plus the public money that's involved, just ultimately to arrive at an interpretation on which we're 100% in agreement, from what I can see.

I mean this sincerely. Why would we not take the steps to drop in a few words that prevent anybody from having any doubt as to the interpretation? Therefore, they would have no need to go to the courts. When the ruling is made, then it's very clear and that's the end of it. If we leave it open-ended, are we not just generating potential court action needlessly?

The Chair: I haven't called repetition on you in a long time, David, but we're starting to hear the same things over. Where are we on this?

Mr. Reid.

Mr. Scott Reid: I don't think he's being vexatiously repetitive, although I do think the same question got asked.

Maybe I could address a different aspect, because I think I've gone as far as I can in responding to the substance of that question. This is about the Chief Electoral Officer issuing an interpretation. My understanding of these interpretations is that he's effectively saying Revenue Canada does much the same thing. There's some ambiguity in some provision of the law as to what falls afoul of the law. In looking at it, I'm going to say that I won't prosecute if you do up to this point, but if you go beyond it, you stand in danger of a prosecution.

With that in mind, I think the issue would not be the kind of thing that's likely to find itself before the courts because of the fact that this is about his indication to us as to what he'll do as an actor, as opposed to determining what the actual law is, and where the line is that you're drawing, if you follow.... If a tennis ball lands on the white line, is it in or out? We say the line is not zero points of thickness.

I don't think that the particular danger Mr. Christopherson is addressing is likely to produce litigation. That's just my own impression. I am now beyond the bounds of my own expertise, but that's my sense.

The Chair: I'm going to stop there.

We are voting on amendment PV-4.

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

The Chair: We're moving all the way through the list now to PV-6.

Ms. May.

● (1225)

Ms. Elizabeth May: Mr. Chair, PV-6 is an amendment to clause 5 on page 6. Again, it's relating to guidelines and interpretation notes. It amends proposed subsection (8), such that the amendments that are made are subsequent to my next one, which will be proposed subsection (9), to ensure that external auditors will have to be bound by the guidelines and interpretation notes that are issued by the Chief Electoral Officer.

Right now, at line 27 on page 6, proposed subsection (8) says that the guidelines and interpretation notes are binding. The next one that makes sense of that is my amendment that makes them binding on external auditors, so PV-6 and PV-7 need to be considered together.

The Chair: I was going to let you know that what happens to PV-6 will happen to PV-7.

Ms. Elizabeth May: That's right.

I need to explain that both of them together offer the intent of ensuring that the guidelines and interpretation notes of the Chief Electoral Officer will be binding on external auditors. This, of course, is also an amendment that was largely recommended from the testimony of the Chief Electoral Officer, Mr. Mayrand.

The Chair: Okay, great.

Is there any discussion?

Mr. Scott.

Mr. Craig Scott: We will be supporting this amendment.

Amendment PV-6 and PV-7 also dovetails with amendment NDP-5. Formally, it doesn't matter to me which one.

We also have an amendment, proposed subsection (9), which would make guidelines and interpretation notes binding on external auditors. We use slightly different language. We say “Despite subsection (8)” as the way to link them together.

The Chair: We'll get to yours, too.

Mr. Craig Scott: Right. The point is to look at them together.

Let's just call them informally external auditors. I think we should realize how important this is. Not only has a CEO suggested it after reflection and analysis, but in the system set up by Bill C-23, the external auditor is the government's response to the demands by the official opposition and others. I think they include those who voted for our motion in March 2012 for direct access by the Chief Electoral Officer and his auditing team to the receipts and documentation of the national parties which at the moment do not have to be produced. The government is saying there has to be external auditors doing it, and that's their answer.

Therefore, it's all the more important, if that's the case, that this should be voted for. You need to at least have that connection between the interpretations of the act in this structure set up by the government's Bill C-23 and the external auditor. If the government does not want to vote for this, I would worry.

One of the worries of the Chief Electoral Officer is that external auditors appointed by the parties from general auditing firms may not have the same kind of expertise as in-house auditing staff in the office of Chief Electoral Officer. As such, his worry is that the auditing may not be as experienced or as informed.

If there's a linkage between the two through Ms. May's combined amendment, and our amendment, as well, I think the circle would be kind of squared, if that's the right metaphor.

The Chair: Mr. Reid.

Mr. Scott Reid: The first comment to make about amendments PV-6 and PV-7 together, or alternatively about amendment NDP-5, which substantially is the same thing, although worded in a somewhat different manner, is that if we were to adopt this, we would effectively be imposing on certain actors a legislative requirement that they follow interpretation guidelines. They effectively cease at that point to be interpretation guidelines, that is, a guide as to the things that I am prepared to prosecute. My own interpretation of the law is that this reading is going too far as to what you're allowed to do. However, that reading of the provision of the law is within the bounds, barely within the bounds, perhaps.

Once we say that these future rulings of the Chief Electoral Officer are binding on any participant, they are not guidelines anymore, but regulations. This is a fundamental change. If they're binding on the auditors, let's face it, they're binding on the rest of us. We get audits done. This is a backdoor way of achieving that which the legislation seeks through the front door to prevent. I would argue that it's going in a different direction than I think the law ought to go, and I would oppose it on that basis.

I want to say something else. At the very end of our last discussion, between Mr. Christopherson and me, the concern we had is that this won't lead to litigation...aside from the fact that we have given a very strong indication in our transcripts as to the intent of the relevant part of the law.

Also, these are only interpretation bulletins. In the end, they do not actually determine what the law is, merely what someone who has no judicial authority believes them to be. We would be shifting from that. In a sense, if we were to adopt this amendment, we would be making my prior statement untrue, which I think would be a step backwards.

● (1230)

The Chair: Thank you.

Mr. Scott.

Mr. Craig Scott: I appreciate the point. I think the point is very well taken, that the current paragraph (a) specifically says that guidelines and interpretation notes are issued for information purposes only and are not binding on those listed registered parties. It is important that Scott's point be known, that this is making binding on the external auditor something not being binding as such on others.

For the reasons I gave, the purpose is to create part of an enforcement structure that the external auditors play a role in. That's why it would be justified as an exception, the same way as the commissioner is actually effectively bound by these. This is why the commissioner needs to have more of an organic connection to the process of generating these things, which partly goes back to Tom's amendment that was already adopted.

It's not an attempt to make an end run around this; it's recognizing what we think is a difference.

The Chair: Ms. May, on that point.

Ms. Elizabeth May: I appreciate the latitude, Mr. Chair, but only want to say that given that this is the advice that comes from the Chief Electoral Officer, I don't believe this is a case of an end run, as Mr. Reid said. It really is a matter that when you consider the importance of guideline orders and interpretation orders, those of us who struggle with the Canada Elections Act during elections—and I've had the same experience—I could wish that we got snap decisions so that when we ask a question we know right away that the issue is going to be resolved. But if your guideline and interpretation order isn't even binding on the external auditors, the ability to ensure that the statute is being observed and that across the board the auditors are able to have the benefit of the advice given by the Chief Electoral Officer, that binding on external auditors is something recommended by Elections Canada itself based on their experience.

That's all I wanted to add. I think it's an improvement to the act.

The Chair: Mr. Reid.

Mr. Scott Reid: Very briefly in response to one thing Ms. May said, I actually can't remember my exact words. I may have used the term “end run” that she attributed to me. If so, I want to make it clear that my intention was not to suggest any inappropriate recommendation on behalf of, or sneakiness or whatever one wants to attribute to, the CEO or to any other participant. It was simply a choice of words that perhaps could have been better.

● (1235)

The Chair: Thank you, noted.

We'll vote on amendment PV-6.

(Amendment negatived)

The Chair: Then PV-7 would also not apply.

Mr. Craig Scott: Could we have a recorded vote on that one please?

The Chair: A recorded vote on PV-6 itself will affect PV-7.

An hon. member: Yes.

The Chair: I'll let you have it if it affects NDP-5 too. No, I'm just kidding.

Mr. Tom Lukiwski: Chair, I have a point of clarification if I may.

I'm not trying to delay this or anything. I don't know what the procedure is when calling for a recorded vote. Are you procedurally supposed to call for it prior to the chair calling the vote?

The Chair: Yes. We obviously had voted on this.

Mr. Tom Lukiwski: For the benefit of Craig, because seriously, if you want to have recorded votes then he can—

Mr. David Christopherson: Chair, at the time it's called, we'll request that it be recorded.

The Chair: Fair enough. That's fair. We already know what the outcome of this is going be, I think, by hands. I saw who voted.

Mr. David Christopherson: Well, hope springs eternal on this side, Chair.

The Chair: I know.

Mr. Reid.

Mr. Scott Reid: On the same point, I don't think anybody is doing this for reasons that are unreasonable.

I'm actually glad Mr. Lukiwski got a clarification because we were also discussing it over here. To be clear, in the event you call it quickly and then someone says afterwards, it's not going to bug us that they then request a recorded vote. Effectively you'll get unanimous consent for it.

The Chair: You're right. It's not the intent of the Chair to move so fast that you can't get it in if you want to get it in, but let's try to ask for it before we do a show of hands.

Is it okay if we don't do it on this one now?

Mr. David Christopherson: No.

This was the correction, not the—

The Chair: Oh, I get it. From now on.

Mr. David Christopherson: Correct.

The Chair: Indulge us on a recorded vote on PV-6.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: It's still defeated, which then affects PV-7 also.

NDP-5 is very similar, but I'll move to Mr. Scott.

Mr. Craig Scott: To be perfectly consistent with what we've just done, although it is different, it is intended to be the same thing. We're just using different language for external auditors, so I'm not going to drag that one out because it's the same issue.

The Chair: Okay. I think we should vote on it though.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: That was defeated by the way, just so we know.

Ms. May, would you like to start us off on PV-8?

Ms. Elizabeth May: Mr. Chair, again, we're still in the clause on page 6. This time we're into 16.2:

> The Chief Electoral Officer may decline to issue an opinion when the matter is being considered by the Commissioner or by the courts or when, in the opinion of the Chief Electoral Officer, the matter is frivolous.

This is to increase the latitude the Chief Electoral Officer has to issue an opinion when faced with requests and timelines. There are certain circumstances in which the Chief Electoral Officer has suggested he would like and in the future he or she would want as an officer the ability to say it's inappropriate at the moment for him to issue such an opinion either because it's essentially before the courts or under investigation, or in another circumstance when the Chief Electoral Officer considers the matter to be frivolous.

We think this is an improvement to the bill. We appreciate the consideration of the members of the committee.

The Chair: Thank you very much.

On PV-8, is there any other comment?

Mr. Scott.

Mr. Craig Scott: Basically I would say that we would support it. We have an amendment, NDP-6, that is similar where we use the language “the matter is inappropriate”. I think it's the same one. We'd be happy to vote for this one, and if it passes, not to then be pressing the other language.

● (1240)

The Chair: It's my understanding that PV-8 really should have the word “inappropriate” not “frivolous” in it too. We just didn't get it updated in time. It's still fine.

Ms. Elizabeth May: That's perfect. The committee had our updated amendment. That's great. These guys are incredible. “Inappropriate” was the word....

The Chair: It's the guidance of the chair that does that.

Ms. Elizabeth May: “Inappropriate” was what I would want for PV-8, as opposed to “frivolous“.

The Chair: All right. So, we're back to Mr. Scott speaking to PV-8.

Mr. Craig Scott: It's the same as NDP-6 and the reasons given by Ms. May I think are correct. It goes back to my earlier point that the system the government has set up here with guidelines and interpretations and opinions is designed to assist and not block or load down the Chief Electoral Officer's work. There is a worry that with the number of parties out there, the ability to ask for interpretations—Tom, an example you might like—almost as often as opposition members ask for written responses to order paper questions. It's the kind of tool you can expect smaller parties to use a lot. I honestly think that having a decision-making mechanism for the Chief Electoral Officer to say that this is inappropriate and if he's forced to spend all kinds of time giving an opinion on something that's inappropriate, even if he makes it short, is going to be a waste of time.

The Chair: Okay, we're voting on amendment PV-8.

(Amendment negatived)

The Chair: This leads us to NDP-6, which is another version of the amendment.

An hon. member: I'd like a recorded vote on that.

The Chair: You'd like a recorded vote on NDP-6. You didn't move it.

Mr. Craig Scott: I move it, and I move that we no longer need to debate and we go straight to the vote and we have a recorded vote.

The Chair: We're on NDP-6 and we'll have a recorded vote, please.

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

The Chair: We are now at PV-9.

Ms. May.

Ms. Elizabeth May: Mr. Chair, just to surprise members of the committee, given that this amendment is substantially the same as the one that was just defeated, I won't take the committee's time to argue the point that we need to empower the Chief Electoral Officer to be able to decline to issue an opinion in certain circumstances.

The Chair: All right.

It has already been deemed moved. Is it defeated?

I'm seeing nods. Fine.

Mr. David Christopherson: Just apply the last vote.

The Chair: Apply a vote? We haven't done that, ever.

Mr. David Christopherson: There you go.

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

The Chair: We're on PV-10. Ms. May.

Ms. Elizabeth May: Amendment PV-10 takes us all the way to page 7.

The Chair: Hang on, I have to put on my seat belt. We just went too fast there.

Ms. Elizabeth May: We're moving a little fast here.

On page 7, line 1, there's the insertion to allow that in addition to considering the material facts included in an application, in preparing the opinion, the Chief Electoral Officer may take into consideration any other information that he or she believes necessary.

I think the ground has been tread here; we know that the Chief Electoral Officer is, in giving these opinions, guidelines, orders, and interpretations.... Again, this is for greater certainty, to ensure that the Chief Electoral Officer under Bill C-23 is not restricted in the access to information, opinions, and additional information that will inform the decision that is requested within clause 5.

Again, this insertion of proposed subsection 16.2(1.1) would be for greater certainty. I think the arguments are much the same, but I would hope the members of committee would give it new consideration and fresh consideration. There's no harm done in this. They've already made the point that they believe this is already the case, and those same arguments apply. For greater certainty, why not ensure that the Chief Electoral Officer can have access to all of the information they find relevant?

● (1245)

The Chair: Thank you.

Mr. Simms.

Mr. Scott Simms: My intent was to implore those who voted against this with the same thrust in the last time we debated this issue, to reconsider in this case. It's not done in an irresponsible manner. We've heard from the testimony that the Chief Electoral Officer would certainly like to have more flexibility, and we trust that person to do as such. I think this goes a long way to providing something that's not overly prescriptive but that is certainly allowing him the confidence to do his or her job.

The Chair: Thank you.

Mr. Scott.

Mr. Craig Scott: Mr. Chair, although Mr. Reid has had to step out, I think it's important to link to what he said earlier. He actually used the example of an arbiter. In his view, the analogy should not be to an arbiter who has to choose between the arguments and the facts presented by two sides and can't go outside the four corners of these. I think, or I hope, that same analogy applies as it did before. I also see this as a "for greater certainty" clause, even though the language isn't used.

We will be voting for it. We think it's important to clarify. At the same time, I don't think there should be legal harm, because I think this could be done anyway.

The Chair: Okay, we'll vote on PV-10.

Mr. Craig Scott: A recorded vote, please.

The Chair: You see? I was delaying, waiting for it.

Mr. Craig Scott: Thank you.

The Chair: We'll have a recorded vote on PV-10.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We're now on NDP-7.1.

Mr. Craig Scott: Mr. Chair, what about PV-12?

The Chair: It was dealt with because of something else we already did.

There was a line conflict and we've already dealt with that line and we can't deal with it again.

Mr. Craig Scott: Just so I know for in the future then, just as a point of clarification, if it turns out that it wasn't clear from the bill whether the Chief Electoral Officer and the commissioner are already bound, that's not the issue; the issue is simply if it's exactly the same line that's been dealt with.

The Chair: Okay. So you are on NDP-7.1.

Mr. Simms, you are on the list for this.

Mr. Craig Scott: I also want to give a form of notice, so I don't forget my own plan, that I do have a 7.2 that I neglected to submit, another one that I'd like to add after, Chair.

As for this one, I hope that everybody will see this for being as crucial as it is. It basically says that the Chief Electoral Officer may consult with the commissioner, and communication channels specific to that may be set up including a collaboration structure. It may well be that the Chief Electoral Officer in discussions with the commissioner.... Because the commissioner has to work with the compliance and enforcement so much in this act, it should be a much more collaborative process on some of these interpretations, or especially opinions.

The Commissioner of Canada Elections, Mr. Côté, specifically drew attention to this issue in an entire half a page almost. He talks about how these interpretation guidelines and especially opinions would affect him, and that therefore, if only because of his independence in the overall structure, there should be some element of his not having opinions imposed upon him. That's why some collaboration structure would be useful.

The last thing I would say is I just said the last thing I would say.

● (1250)

The Chair: Super. We like it when it's already been done.

Mr. Simms.

Mr. Scott Simms: Very briefly, I would like to add to that. In regard to the communication structure that currently stands, I'm highly suspicious from the outset about this, about the isolation, as I deem it, of the commissioner in this particular situation. I think something should be formalized and structured. I congratulate the author of this for explicitly pointing out the relationship between the two and how they collaboratively will come to a better decision, whether it's writing opinions or not or some other decision material.

I implore all of us to have a look at this and to formalize the relationship between the two as it should be despite the fact that we feel that the language isolates the commissioner in many respects.

The Chair: Thank you, Mr. Simms.

Mr. Lukiwski.

Mr. Tom Lukiwski: My point is I don't think this is necessary. I think this has already been captured to a large extent in government amendment G-2, which we've already passed. It will be further enhanced by an amendment that we are bringing forward, which we'll get to in a few moments, government amendment G-3, which states that the Chief Electoral Officer may disclose any document or information that the Chief Electoral Officer has obtained under the act and that the CEO considers to be important, germane, and useful to the commissioner.

I'm not saying that the intent of this is poor, Craig, whatsoever. I'm saying that we've already captured part of this.

If you want to go back to amendment G-2, line 16, I think you'll find that we have already captured some of this and if you take a look at what is coming up in G-3, I believe you will find that you have everything you want.

The Chair: Mr. Scott.

Mr. Craig Scott: On amendments G-2 and G-3, G-2 is a good start because it references the fact that the commissioner, like the ACPP, would be asked for his feedback.

This goes a bit further though, because it basically talks about consulting even before that and that the collaborative structure recognizes the very specific institutional stake the commissioner has in the interpretation of a vast chunk of the Canada Elections Act and that it should not be left to him to have to react in a feedback way in the way that the parties have to. So there is a difference there.

For the second thing, there is nothing wrong with G-3. We have a later one that we put in the commissioner's section. I think it's NDP-71—

The Chair: We could only dream of NDP-71.

Mr. Craig Scott: —that might add a bit more to that. That's fine, but that's still more about information flow which I think is intended to be much more along the lines of what the commissioner needs for compliance and enforcement. It's much more after the fact. I really would plead with and implore the government to consider this amendment, because it came up specifically as a very crucial thing for the commissioner, given his position having to work with interpretations and opinions on the act.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Quickly, G-3 is about investigations only—let's make sure we have clarity on this—and G-2 is about interpretations only. I think that between the two of them, we have everything covered that was expressed as a concern when we heard testimony.

● (1255)

The Chair: Seeing nothing else.... Are you seeing something else?

Mr. Craig Scott: I'd like to have a recorded vote.

I would just add that, with great respect to Tom, I think it meets the commissioner's need to an extent, but the after the fact consultation, once the Chief Electoral Officer has already prepared the interpretation of guideline, is quite different from what he was looking for. We need something much more up front and collaborative.

The Chair: Thank you.

So we're on NDP-7.1 and it's a recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: Mr. Scott, you said something about an NDP-7.2. Does it fit right in this spot?

Mr. Craig Scott: I believe it does, except that I think in order of precedence, it probably comes after the government's.

The Chair: We will go to PV-13 first, and watching your clocks, we have a couple of minutes for this before we break from this session.

Ms. Elizabeth May: Mr. Chair, this is going into new territory. I don't think it's duplicated or even close to any other party's amendment. It is based on the testimony before this committee of Professor Emeritus Paul Thomas. It's based on a U.K. precedent as well.

Given the fundamental importance of the Canada Elections Act, before any minister attempts to amend it, this is...and we can see the problems. I don't know that all of us around the table will agree that Bill C-23's course might have been easier had the minister consulted in advance with the Chief Electoral Officer, but in any event, I think that the general opinion of many Canadians is that Bill C-23 would have been much improved had the minister of the day consulted in advance with the Chief Electoral Officer. This would create a mandatory obligation on the minister, obviously for all time, that extensive consultations with the Chief Electoral Officer with respect to any proposed amendments to this act and its regulations would have to be conducted before amending the act.

I think it speaks for itself. I'll just add that it would avoid a lot of difficulty in the future. I think it's the kind of thing Canadians would have expected, in that no one would amend the Canada Elections Act without extensive consultations with the officer of Parliament who is the most knowledgeable on the subject. This would create an affirmative obligation, and there's no harm done by requiring those consultations. It doesn't bind the hands of a future minister to disagree with the Chief Electoral Officer, to even disagree in the most vociferous manner and to put forward amendments that are contrary to the advice, but one would want to see any minister consult with the Chief Electoral Officer before putting forward amendments.

The Chair: If it's okay with the committee, I'm going to thank Ms. May for that, and we'll start right back at that when we come back.

Ms. Elizabeth May: Maybe I'll have to speak to it again to refresh your memory.

The Chair: You may refresh it slightly when we return, at which point we would then go back to NDP-1, as we had unanimous consent for. That's what we will do.

I have one more thing. The agendas you're following and crossing off are your copies. Please bring them. We won't be giving you updated ones each time. You know where you are, so that's a better thing to do.

On a point of order, Mr. Christopherson.

Mr. David Christopherson: Chair, it's just a minor matter, but it's important. We're going to pick it up with Ms. May, but there was a speakers list. I want to make sure that the speakers list will also transfer to seven o'clock.

The Chair: Certainly.

Mr. David Christopherson: I believe it's Messrs. Simms, Scott, and Reid, then me.

The Chair: Sure, I'll go along with that. I'd let all of you speak anyway.

Mr. David Christopherson: As long as I want?

The Chair: No.

We will adjourn until seven.

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