



Legislative Assembly of Alberta

The 30th Legislature
Second Session

Select Special
Democratic Accountability
Committee

Election Act
Election Finances and Contributions Disclosure Act
Stakeholder Presentations

Thursday, November 5, 2020
9 a.m.

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**Legislative Assembly of Alberta
The 30th Legislature
Second Session**

Select Special Democratic Accountability Committee

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Standing Committee on Democratic Accountability

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9 a.m. Thursday, November 5, 2020

[Mr. Schow in the chair]

The Chair: Okay. I'd like to call this meeting to order. Welcome to all members and staff in attendance and those watching on Alberta Assembly TV and the World Wide Web. You could be anywhere in the world, but you are watching and joining us today, and I appreciate that.

My name is Joseph Schow, and I'm the MLA for Cardston-Siksika and chair of this committee. This is the Select Special Democratic Accountability Committee. I'm going to ask members and those joining the committee at the table to introduce themselves for the record, starting to my right.

Mr. Horner: Good morning. Nate Horner, Drumheller-Stettler.

Mr. Smith: Good morning. Mark Smith, MLA, Drayton Valley-Devon.

Mr. Sigurdson: Good morning. R.J. Sigurdson, Highwood.

Ms Fir: Good morning. Tanya Fir, Calgary-Peigan.

Ms Goodridge: Good morning. Laila Goodridge, Fort McMurray-Lac La Biche.

Mr. Rutherford: Brad Rutherford, Leduc-Beaumont.

Member Ceci: Joe Ceci, MLA for Calgary-Buffalo.

Ms Sweet: Good morning. Heather Sweet, MLA for Edmonton-Manning.

Dr. Massolin: Good morning. Philip Massolin, clerk of committees and research services.

Mr. Roth: Good morning. Aaron Roth, committee clerk.

The Chair: We will now go to those on the phone. We'll start with the opposition caucus. Introduce yourself, please.

Ms Pancholi: Good morning. Rakhi Pancholi, Edmonton-Whitemud.

Mr. Dang: Good morning. Thomas Dang, Edmonton-South.

The Chair: And the government caucus.

Mr. Jeremy Nixon: Good morning. Jeremy Nixon, Calgary-Klein.

The Chair: Thank you very much.

I'll also note that there are no substitutions this morning for this committee.

Based on the recommendations from Dr. Deena Hinshaw regarding physical distancing, attendees at today's meeting are advised to leave the appropriate distance between themselves and other meeting participants. Microphones are operated by *Hansard*. Committee proceedings are being live streamed and audiostreamed on the Internet and broadcast on Alberta Assembly TV. Please set your cellphones to silent for the duration of the meeting. Pursuant to the August 24, 2020, memo from hon. Speaker Cooper I'll remind everyone that outside of those who have an exemption, those observing the proceedings of the Assembly or its committees are required to wear face coverings.

I'll move on to item 2 of the agenda, approval of the agenda. Does anyone have any changes they would like to make?

Seeing none, can I get someone to move to adopt the agenda? I see that Ms Goodridge moves that the agenda for the November 5, 2020, meeting of the Select Special Democratic Accountability Committee be adopted as distributed. All those in favour, please say aye. And on the phone, please? Any opposed, please say no. That motion is carried.

Item 3 is approval of the minutes from the October 29, 2020, meeting. We do have draft minutes from our last meeting, which were posted on the committee's internal website for the members to review. Are there any errors or omissions to note for the draft minutes from October 29, 2020?

Seeing none, can I get someone to please move the adoption of those minutes? I see that Ms Fir moves that the minutes for the October 29, 2020, meeting of the Select Special Democratic Accountability Committee be approved as distributed. All those in favour, please say aye. Any opposed, please say no. That motion is carried.

Just for, I guess, housekeeping's sake, I was told in the past that we won't necessarily go to members on the phone asking specifically for votes, so when I say, "All those in favour" and "All those against," that includes anyone who is on the phone to vote.

Moving on to section 4, oral presentations on the Election Act and the Election Finances and Contributions Disclosure Act, members of the committee have invited several individuals and organizations to make oral presentations in relation to the committee's review of the Election Act and the Election Finances and Contributions Disclosure Act pursuant to Government Motion 25. The committee agreed to a subcommittee recommendation from July 28, 2020, in regard to the length of presentations and the question-and-answer period for each presenter. In accordance with the committee's decision, each presenter will have five minutes to make their presentation. This will be followed by a 20-minute period for questions by committee members.

Our first presenter today is Lori Williams with Mount Royal University. Ms Williams, when you begin, we will start the clock at five minutes. The time is now yours.

Ms Williams: Can everybody hear me?

The Chair: Yes, we can.

Lori Williams

Ms Williams: Right. Well, thanks very much. To begin, as you can see on the slides that I have, I think the priority here has to be focusing on democracy. I'm concerned a little bit about people talking about efficiency simply because democracies aren't noted for their efficiency, and of course the expenditures, the time, and the effort involved are important to the integrity of the democratic process. So my first point is that I just think it's important to prioritize democracy over efficiency. As much as some of these recommendations might make sense in terms of cost savings, we've got to be cautious, I think, with respect to what they might involve.

For example, I'm going to talk a little bit today about the ability to vote or have access to polls. In courts of independent oversight the Chief Electoral Officer needs to be sort of an independent body that can be seen not only to be able to do effective and independent oversight but be seen to do so. We saw the negative optics associated with the firing of the Election Commissioner to save money. This is not the kind of thing in terms of democracy that is easily justified. It certainly raises a lot of questions. More independence for the Election Commissioner will help with that significantly and also the access to public information and

disclosure. Then the final point, that red tape reductions cannot and should not be seen to limit democratic access or oversight.

On the next slide I talk about the Chief Electoral Officer recommendations, particularly in the Alberta 2018-19 annual report, and the change in the Chief Electoral Officer's term. This change is meant to improve independence alongside other sorts of independent agencies and oversight bodies. The recommendation is that the term increase from 12 months after a general election to 12 months after voting day of the second general election held since the date of appointment of the Chief Electoral Officer. I just want to say that I think that's a really important change to make. There was reference in the reporting that the average term of a Chief Electoral Officer is about four years. That doesn't give the kind of institutional memory or stability or independence that is, ideally, put in place.

He also put in his report that he wanted to increase staffing efficiencies, reducing the number of polls to increase staffing efficiencies. I'm a bit concerned. Although increasing advance polls is positive – that could increase access – I'm concerned about people who might have transportation or employment challenges that would prevent them from being able to actually access polls if there are fewer of them, so I have questions that I wanted to raise about that.

The voter ID recommendations. The fact is that there's a claim being made about many people having said that they think ID should be used, and there are certainly a large number of kinds of ID that are used. There are, I think, relaxed standards, from what I gather, in places like homeless shelters and so forth. I'm a bit concerned about the vouching option being strongly protected because there have been controversies around whether this is acceptable in the past. Again, increasing access is important as well as accountability there.

I think that probably the biggest questions centre on the next slide, around third-party advertising. The increase in the amount of spending that can be done, particularly by third parties, raises questions about fairness and about accountability, transparency, and so forth, particularly when we're looking at third-party spending. During elections it's \$150,000; for referendum advertising, \$500,000, half a million dollars; for Senate elections it's \$30,000; and for supporting or opposing candidates it's \$3,000. These are significant discrepancies. I think they get around a lot of the intentions of the limitations on, for example, corporations and unions. There could be sort of an end run around the restrictions placed on them, and these very high spending limits really raise questions about fairness in the election, whether people can sort of fairly discern between the kinds of information that they're getting.

One other thing that concerns me about what I'm seeing there is the transparency, accountability, and disclosure of those third-party contributions. It has to be public, and it has to be timely, but I'm concerned that if the expenditure amounts, for example, in a referendum are under \$350,000, then a financial statement doesn't have to be filed with the Chief Electoral Officer. I think that raises significant concerns with respect to accountability and transparency as well.

Then on the next slide the Chief Electoral Officer has recommended prewrit limitations on third-party advertising.

The Chair: Ms Williams.

Ms Williams: Yes.

The Chair: You're welcome to just finish this thought, but your time has expired.

Ms Williams: Thanks very much.

Even though one month might be in keeping with other kinds of spending limits, my concern there is that probably something like the six months in Ontario would make sense. Otherwise, again, it enables some parties to get around the spending limits and gain a significant advantage in terms of the kinds of influence they exert.

Thank you.

9:10

The Chair: Okay. Thank you, Ms Williams. I appreciate that.

We will now go to questions from the floor from committee members, which will take up 20 minutes. Just by virtue of a coin flip, we'll go over to the opposition caucus first. I see Mr. Ceci.

Member Ceci: Thank you, Ms Williams, for that presentation. I just want to take you to your last slide if I can, protection of voter information/confidentiality. I really didn't hear you discuss that at all. Could you just briefly report on that slide for me?

Ms Williams: Yeah. I was a bit concerned. In the enumeration report there was a recommendation, very briefly, of removing electoral contact information from the list of electors provided to registered political parties and candidates. Again, to protect confidentiality, that looks like a good idea, but the 2019 Chief Electoral Officer report and recommendations recommended the increased use of electronic records, saying that those would be given to political parties in electronic form and demanded back from those parties, that they were basically the property of the Chief Electoral Officer and would have to be returned. That would be very difficult to control.

I think I'm very concerned about electronic access to personal and private or confidential information, the difficulty of controlling that, and, of course, the problems of hacking. I just wanted to raise that as a possible concern.

The Chair: And a brief follow-up, sir?

Member Ceci: Yes. One follow-up. One of the things I took from your presentation – there were many things, of course, but one of the things that I think you underlined throughout is the concern that people have the opportunity to vote easily and that it's clear what they're voting for and, if I can maybe use my own words, that vulnerable populations still have the same right and franchise as other people who have more resources. Would that be a fair thing to say for your concerns?

Ms Williams: Certainly, it's part of it. Again, it centres around, in part, the reduction of the staffing efficiencies by reducing polling stations. Again, advance polls will increase access. That's good. The mobile polling, that's talked about in the various documents, is also good. It looks like they're planning to go to homeless shelters. They're planning to go to long-term care facilities and so forth. Those aren't the folks that I'm as concerned about in this so much as people that might not be connected to one of those institutions or agencies, people who, if there are fewer polling stations, might have a more difficult time in terms of accessibility, maybe lack of clarity in terms of where they can go to vote. In other words, it could have an impact on their ability to vote, at least for those who are particularly financially vulnerable.

The Chair: Thank you.

We'll now go to Ms Goodridge, with a question and a brief follow-up.

Ms Goodridge: Thank you so much for your presentation, Ms Williams. It was very appreciated. The very idea of having more people voting is definitely something that is of interest and

importance to me. I was just wondering if you could elaborate slightly on strengthening the voter ID but also on the issue of vouching to balance the accountability. What are your concerns regarding the current process, and how do you believe it could be strengthened?

Ms Williams: The first thing that concerned me was the reference in the report that a number of people had expressed concerns about identification. Of course, there are a number of ways people can verify who they are, and vouching is the final option. It's clear in the report that there are a large number of kinds of identification that are considered acceptable. I didn't find information on what those forms were, but I'll accept that likely a large number of types of identification are acceptable.

Vouching would be an option if identification weren't available. My concern there is that vouching has been publicly criticized, certainly, in the past. Some people have questioned whether it might leave the door open to things like fraud and so forth. Again, I'm very concerned that somebody might be disenfranchised by tightening too much the kinds of voter identification that are required or the future limitation on the possibility of vouching, particularly, again, because this has been an issue that's been addressed publicly. It's been a topic of significant debate in the past. I think really strong protections in terms of broadening voter identification and that possibility of vouching, sort of entrenching it so it's better protected, that's my concern, that we not have people who are disenfranchised because they don't have access, either to the right kind of ID or to secure a process for vouching. I just want to see it protected, I guess, is what I'm saying.

Ms Goodridge: Wonderful. Well, thank you for that, Ms Williams.

As a brief follow-up, you touched on the concern around reducing the number of polls. I represent the riding of Fort McMurray-Lac La Biche, so a very large rural riding in northeastern Alberta. In our area there's a limited number of spaces that are available to be polling stations. Typically most of our polling stations have two, three, four polls, sometimes even more than that per polling station. My understanding around the recommendation is that by allowing more voters at some of these urban polling centres, it actually allows for an optimization of staff without actually limiting the franchise. Would that be something that you would support?

Ms Williams: Again, I'm just concerned. There's a combination of things that are happening. There is an increased number of advanced polls. That could increase access, and that's a good thing, and I certainly support that. I'm just concerned about efficiencies limiting the number of polls for folks who might have difficulty gaining access, particularly people who need to use public transit or – advanced polls might be part of this as well – people who, because of their employment situation, may have limited times available for them. I'm not saying that efficiencies aren't appropriate, perhaps, in some cases, but I don't think efficiency should be the primary concern or consideration. I think access should be prioritized.

The Chair: Thank you.

Next question comes to us from the phone with Ms Pancholi. Please go ahead for a question and a brief follow-up.

Ms Pancholi: Thank you, Ms Williams. I appreciate your presentation this morning. I'm wondering if you could comment a little bit more about your concerns – I know it's a short period of time, the five minutes, to present – about the third-party advertising and how those high limits can get around the restrictions on unions and corporations making donations. I think you kind of had to rush through a little bit of the prewrite advertising part of your

presentation, but if you could just maybe elaborate on how you think the high limits might allow for kind of getting around that limitation on corporation and union donations.

Ms Williams: Right. Basically, what it means is that those with a lot of money will have more influence in elections. That alone is a concern, but it could be possible for people who are, let's say, wealthy individuals who are corporations or unions to donate to a third-party advertiser, a PAC, and exert influence that way. In other words, to put it simply, what we've got is a restriction on election advertising on the kinds of contributions that can be made to individual candidates. The kinds of contributions that used to exist no longer exist, so a wealthy individual or organization could donate to a third-party advertiser and get around the spending limits in that way. It doesn't look to me like the restrictions in place are effective in preventing that. I guess I just don't see enough clarity in terms of those limitations.

It's just the high ceiling of those limitations as well and just a lack of clarity as to: why is it so high in a referendum? I mean, it certainly opens the door for the possibility of those with more money to have disproportionate influence during an election. Again, in a democracy where equality and certainly equal access is prioritized, these raise concerns.

Ms Pancholi: Thank you. Just a follow-up, Ms Williams, kind of two parts. One is that we know currently before the Assembly is a bill that would also allow for increased third-party advertising in local elections, municipal and school-board elections. Given the range that we see between the types of third-party spending, referendums, all of that, would your recommendation be some sort of standardized amount that goes across all kinds of elections? You know, you spoke to the large amount for referendums, \$500,000. Would that be your recommendation, to at least have some standardization?

9:20

Ms Williams: Well, standardization, I think, or equity, I would say. I mean, obviously, if you're dealing with something that's province-wide, it might be appropriate to consider slightly more money. But it's the dollar amounts. I think they're too high. The \$30,000 limits, the \$150,000 limits, the \$500,000 limits: I think those could be so high as to give some bodies, some groups, some organizations a significant advantage in terms of their influence. I think more modest or moderate amounts as well as more consistency would be preferable.

The Chair: Thank you.

With about nine minutes and 50 seconds left, we'll now go to Mr. R.J. Sigurdson for a question and a follow-up.

Mr. Sigurdson: Thank you, Chair. I'd like to thank you for your presentation. I guess I want to kind of shift to a little bit of a different topic. As an MLA and a first-time MLA I know I struggled through the process at the very beginning of running. I found it very confusing. I know you made your statement about: red tape reductions cannot be seen to limit the democratic access. I would agree with that, but I guess what I'd like to know is – of course, we want to be able to encourage as many people to get involved in their local political processes. I'm just wondering if you have any comments on any barriers that you see or difficulties that you would raise for people to be easily engaged in this process and become involved more within, you know, the political process in Alberta.

Ms Williams: Well, one of the things, certainly one of the recommendations, is that there be a combination or consolidation

of these two pieces of legislation. One of the things that they're recommending is that rather than a fee that has to be filed upon with your nomination papers, there instead be a deposit, and if you don't file financials within the time limit, then that deposit be forfeited. In other words, for somebody to run for office, it would not cost them potentially \$1,000; it would be a maximum of \$500. In fact, if they filed everything on time, the deposit would be returned to them. That does increase access, so I think that has potential. Again, combining the finance and disclosure requirements and other elements of elections into – or at least co-ordinated legislation does make some sense.

On the downside – and this is important to recognize – I don't know if any of you were paying close attention to all of the candidates in the recent by-elections in Toronto, but there were some candidates there who, I would say, were making a joke out of the process. If the bar is too low, there could be concerns that some folks might not take the process seriously. They might, as it happened in one case, just by the name of the candidate, essentially make a joke of it. In a system of freedom of expression, I suppose that's just one of the things that can be involved. I would say that reducing that particular limit on access, or at least putting it in place in such a way that somebody wouldn't be facing the possibility of, first of all, \$500 to file and then another \$500 if they don't submit their financials on time, could deter some people from wanting to enter into the process.

There aren't, as far as I can see, any recommendations about making it easier for someone to be involved in the process. What I've seen, fairly significantly, is a lot of organizations that are trying to support or promote or encourage candidates to run, giving them the kind of preparation and training. Now, sometimes that comes from the party, and that's important and helpful, but sometimes it comes from other organizations and agencies, particularly at the municipal level, where parties are not as officially active. To my mind, things that make it easier for people to be able to run and to understand what's involved in that is helpful, but there also have to be sort of reporting and filing guidelines that need to be in place that are also important to recognize and acknowledge.

Mr. Sigurdson: Thank you, Chair, and just a quick follow-up. Maybe just along that thread, too, just a specific comment on your review of everything, if you've noticed – I mean, we have a chance here to be able to review, and I appreciate your comments about combining them. I think that's a very valid point to be able to clarify on it. As well, with your review, have you seen any specific challenges that you can see that are there that maybe affect, adversely, women or minorities within the province of Alberta? Are there any changes that we can address in our review of the laws as we move forward?

Ms Williams: There would, actually. I mean, most of the things that are being done for new candidates – and there are a number of organizations. Just for everybody, if you're not aware, I do some research and teaching in, basically, the exclusions that exist in the political process. I teach a course called women in politics, but it's about access challenges for people that are not sort of part of the mainstream, that are minorities, might be dealing with levels or layers of discrimination, and so forth. For them it becomes very challenging to be involved in the process.

Currently what happens is that a number of, you know, independent or private agencies, charitable organizations that accept donations, and so forth try to encourage by training, maybe a bit of help in terms of funding, to file papers and so forth. That sort of thing is offered by – maybe help with media training and so forth. I know, for example, the Manning institute does that in

Calgary. Ask Her is another organization that does that in Calgary. But then that depends on the organizations that are able to raise enough funds and provide enough programs to help those who are not normally part of the political process to participate.

There's no question that there are barriers to access. Many people don't know how to function with respect to the media. They don't know how the process works. Of course, we do want to open accessibility significantly if we can.

It would be great if there were government sort of training processes or information. I mean, I'm doing a lot of online learning right now, and I'm finding that making it available – very short sort of video-type things make it easier for people to understand. That's something perhaps the government could undertake. But even providing more training in a sort of consistent way that anybody had access to. Again, accessibility is an issue because some people may not have access to Wi-Fi or to the kind of equipment to do things online. I think making the information and access broader would be an excellent thing to do, and not leaving that to the private sector, I think, would be great as well. As it is right now, it looks like there's almost a partisan influence. The Manning institute is associated with trying to promote more conservative candidates in politics. Ask Her is associated with women and minorities. It would be great if there was an organization that sort of promoted and provided support more broadly to equalize that access.

I appreciate that question. It's important here.

The Chair: Thank you, Ms Williams.

We'll go now to Mr. Dang on the phone. Mr. Dang, you have two minutes and 45 seconds.

Mr. Dang: Thank you. Perhaps I'll just ask my question briefly and maybe give you more time to answer. I just wanted more perhaps for Ms Williams to expand on the prewrit limitations on third-party advertising, recommendations around that. I'm curious what you think. As you noted, of course, Ontario has larger limits, but do you foresee freedom of speech issues or anything like that around prewrit spending and how we should be limiting that?

Ms Williams: Right. There's a distinction that is drawn in the documentation. They're actually cognizant of some of the court decisions that have been made around this, so they're basically saying that election-focused advertising would be restricted and not sort of broader, less-defined, political kinds of advertising. It's not going to restrict advertising, for example, on broader issues and so forth but advertisements that deal with either particular partisan candidates, parties, policies, and issues, that sort of thing. That would be more restricted.

It might be an issue going forward, but as things stand right now, at least as I understand the recommendations that are being made, if you shift the definition from this broad, amorphous thing called political advertising – certainly could run into freedom of expression issues around that – and instead focus on those that are directly related to an election – again, because it's prewrit election period, it's focused on election candidates and issues – I think that probably is the kind of thing that has been upheld by the courts in the past, probably could get around the kinds of concerns of these more recent decisions that have struck down limitations on ill-defined political speech. I'm not sure if that's clear to you.

Yeah. It looks to me like the Chief Electoral Officer is trying to change the definition in such a way as to make it less likely to be the subject of a Charter challenge. Again, based on what we've seen in cases in the past, it looks like that might be successful because it does focus around elections rather than on broader political speech.

9:30

The Chair: Mr. Dang, if you like.

Mr. Dang: Thank you. I think that was very thorough. Just to clarify, then, I guess, you think that it would help prevent unions and corporations from getting undue influence through these sorts of restrictions.

Ms Williams: Well, it'll limit it. What we're trying, I think, to do here is make sure there's a fair playing field, to make sure that people, just because they have a lot of money, in terms of whichever direction that money comes through, don't have unfair influence in a process. For that, certainly the spending limits are important but also transparency. There are provisions in here to make sure that advertisements are identified in terms of source and so forth, but that can deal with some of the transparency.

The Chair: Ms Williams, please finish your thought, but our time has expired.

Ms Williams: Okay. Thank you very much.

The Chair: Okay. Thank you very much, Ms Williams. We'll now go on to our next presenter. Ms Williams, you are welcome to stay on the line for the remainder of this meeting.

The Chair: We'll now go to our second presenter, who is Ryan O'Connor of Zayouna Law Firm.

Mr. O'Connor, are you on the line?

Mr. O'Connor: Hi there, Chair. Can you hear me?

The Chair: I certainly can. You can start, and when you start, we will begin the clock with five minutes.

Ryan O'Connor

Mr. O'Connor: Okay. Great. Good morning, everyone. Good morning, Mr. Chair and members of the committee. Thank you for the invitation to speak to you today about Alberta's elections financing regime. Just by way of introduction, my name is Ryan O'Connor. I'm a lawyer in Toronto, and I have a broad litigation in administrative law and regulatory affairs practice. I'm also the lawyer for and the founding director of Canada Proud and Ontario Proud. Both organizations, for those who don't know, are social media focused, not-for-profit advocacy groups which promote government ethics, personal freedom, fair taxes, fiscal probity, and Canadian culture. The network operates across all social media platforms and has over 750,000 followers. Millions throughout Canada view the Proud's content online and do so regularly. Ontario Proud was a third-party political advertiser in the 2018 provincial election, and Canada Proud was a third-party political advertiser in the 2019 federal election.

My remarks today will focus on third-party advertising regulation, being one of the areas of focus for your committee. Specifically, this committee should be concerned that a majority of the regulations currently governing third-party political advertising are, in fact, unconstitutional. These rules will not survive a Charter challenge and ought to be repealed. While I argue that there should be less regulation on citizen political advocacy, both to comply with the Constitution and because robust political debate is essential in a thriving liberal democracy, the committee should also consider strengthening the anticollusion provisions of the election financing legislation in order to discourage abuses if it elects to adopt a more open third-party advertising regime.

While regulations on third-party election advertising have been a feature of regimes throughout the country for many years, over the last decade several provinces and the federal government have seen fit to impose more stringent restrictions on third parties. In 2017 your previous Alberta government introduced the country's most onerous and significant restrictions on this advocacy outside of election periods. It not only imposed spending limits and registration requirements of parties for a minimum four-month period prior to a fixed-date provincial election; it required any resident or group engaged in political advertising at any time to register at Elections Alberta and produce quarterly reports on its contributions. Additionally, those legislative amendments broadly defined political advertising as not only advocacy for a political party or legislator or against them but encompassed advertising relating to taking a position on an issue associated with political parties and legislators, which effectively covers all political advocacy. Such between-election regulation of citizen political advocacy is also unique among the provinces.

A leading Supreme Court of Canada case, which some members of this committee may be familiar with, on the constitutionality of limits on third-party advertising is the 2004 case of Harper versus Canada. In that case, the majority of the court found that although the then third-party advertising restrictions in federal law violated the rights of free expression in the Charter, the limits were considered justified under section 1 as a reasonable limit on free speech. But it's critical to note that the spending limits at issue in that case only applied to third-party advertising during the writ period. The majority of the court found that the limited time period within which these limits were applied were minimally impairing the free expression guarantee and proportionate to the legislative objective of promoting electoral fairness. In disagreeing with the minority's position that spending limits meant that citizens cannot effectively communicate their views on election issues, the majority noted that this ignores the fact that third-party advertising is not restricted prior to the campaign period.

More recently, in 2012, the British Columbia Court of Appeal, in the case reference re Election Act, B.C., found that then proposed third-party advertising spending restrictions during a 40-day period prior to the issuance of the writs unjustifiably violated the Charter protection of free expression. Part of the court's rationale in that decision was that the B.C. government had advanced no evidence that the restrictions on third-party advocacy had the benefit of ensuring electoral fairness outside of a period when electors would actually be voting.

These two leading cases demonstrate that courts will skeptically view Alberta's current third-party regulations given that they not only create expense limits and registration requirements four months before an election period, but they go so far as to mandate registration of citizen advocacy groups at all times. Such restrictions cannot be justified. The courts have already held up less onerous restrictions on third parties as unconstitutional.

When those who regularly participate in policy advocacy or lobbying are forced to comply with onerous regulatory requirements which create or increase compliance costs, those groups or individuals may unfairly ignore the legislation, which is difficult to police in any event in an era of digital campaigning, like many third parties did in the 2018 Ontario election, or they will simply not participate in advocacy at all because they may not understand the rules or may not want to spend the time and the money to comply. More time spent on compliance is less time engaging in campaigning and debate, and public discourse would be poorer for it. This committee should respectfully refrain from any legislative

recommendations which may further overburden citizen advocacy groups while also undermining residents' free expression.

The Chair: Mr. O'Connor . . .

Mr. O'Connor: I'll turn now briefly to some comments about preventing collusion, as I alluded to earlier.

The Chair: Mr. O'Connor.

Mr. O'Connor: Yes?

The Chair: Your time has expired, so we do need now to go to the question-and-answer period. I suspect you'll get a chance to address some of those other issues.

We now go to a question-and-answer of 20 minutes. We got to about five questioners with the last presenter, so I would ask both questioners and Mr. O'Connor to try to keep our answers succinct so we can get as many in but also make sure that we address the issues in the questions.

This time we'll go to the government caucus first. I see Ms Fir for a question and a follow-up.

Ms Fir: Great. I'll talk fast.

Thanks so much for your presentation. Some of our stakeholders have expressed concern that during the last election the remedies available to the Chief Electoral Officer or Election Commissioner were limited to fines whereas the experience with Elections Canada was more collaborative to ensure compliance. Do you have any suggestions for how we could improve the remedies available to the Chief Electoral Officer and Election Commissioner to ensure that we have greater education in compliance without discouraging participation of local volunteers?

Mr. O'Connor: One thing that Elections Ontario does is that they hold information sessions prior to the regulated periods. They invite stakeholders, third-party groups, individuals to come and better understand the legislation so that they're not afraid to register and they're not afraid to participate. That's one collaborative aspect of what Elections Alberta could do in order to ensure that people wish to participate.

I think you need to take both a carrot and a stick approach. The carrot approach is telling individuals that they should want to be able to participate, but they also need to understand the rules. Just creating a regime of fines and overburdening regulation and compliance costs really discourages citizen political advocacy and participation in the public discourse. I think that collaborative approach, the one that Elections Ontario employs, is useful and is something that Elections Alberta may wish to look to as well.

Ms Fir: Thanks.

The Chair: And a follow-up? Okay.

Going now to the opposition caucus, I see Ms Sweet.

Ms Sweet: Thank you, Mr. Chair. I just want to go back to the conversation around freedom of speech and the ability for third parties to be able to express their views and whether or not that needs to be disclosed to the public. I support freedom of speech, and I believe that everybody and organizations have the right to do that, but I just want to clarify. Are you saying that you don't believe that third parties have to disclose their campaigns, then, that you don't believe there should be regulations around that?

Mr. O'Connor: Well, I don't think we should create restrictions on citizen political expression. I think we should have very few, if any,

restrictions on the ability to participate in the political process. Politicians and political parties already have a privileged position in our democracy in terms of their speech. They're protected; they have access to the media. A residents' group in Sherwood Park, for example, doesn't have that access, but they may wish to participate on an issue of concern to them or of a broader concern to the province. The restrictions should be few, if any, from a constitutional perspective in terms of protecting freedom of speech but also recognizing that parties and politicians have a privileged place in the political discourse. What I'm arguing is that the constitutional issue prevents this committee and prevents the legislator from restricting speech in between elections. We should minimize the restrictions on citizen political advocacy and speech during the election period and limit it to the election period, as has been done in other jurisdictions in the country.

9:40

Ms Sweet: Okay. I appreciate what you're saying. I guess I just want to follow up on the fact that, yes, organizations have the ability to express their views and have that freedom of speech, but my question is: do you not believe that that disclosure should occur to the citizens to ensure that they know who is driving those messages if it's on behalf of a third party?

Mr. O'Connor: Yeah. That disclosure already exists in the current regime in Alberta. It exists throughout the country, and it exists federally as well. If third parties are going to be required to register, I don't personally object that they should be required to disclose their contributors. But to do so in between elections – again I'll turn back to my comments about compliance costs. A small citizens' advocacy group or residents' association, for example, who wants to talk about property taxes, wants to talk about a broader provincial issue might just decide not to participate in political discourse because it's forced to register when it spends a certain amount of money on flyers; it's forced to, you know, report to Elections Alberta. All those things cause suppression of speech, and they're also unconstitutional, so all that should be limited. But I don't personally oppose transparency. I just think that the period within which citizen political advocacy should be regulated should be limited to the election period.

The Chair: Thank you.

We'll now go to Mr. Rutherford for a question and follow-up.

Mr. Rutherford: Thank you, Mr. Chair. You touched on it at the beginning of your presentation when you talked about collusion, one of the concerns we have on sharing a level playing field and addressing the issue of corporations or unions co-operating with one another and potentially with political parties to circumvent expense limits. What sort of tools have been used in other provincial jurisdictions to prevent collusion, and do any other jurisdictions outright ban third parties as a consequence of breaching anticollusion laws?

Mr. O'Connor: In Ontario, with respect to breaching the anticollusion provisions – there are specific fines for breaching the Election Finances Act, but there are specific fines associated with breaching the anticollusion provisions, which in Ontario are a fine up to five times the amount of the financial violations.

I'll use one example. In the 2018 election there was a large teachers' union that had spent to almost the maximum expense limit of \$600,000 and \$100,000 during the actual election period. In its disclosure that it filed with Elections Ontario after the election, it had been found that it donated \$30,000 to a smaller third party. That violated the anticollusion provisions because that donation caused

it to exceed its own expense limit. However, Elections Ontario, it appears, didn't conduct an investigation.

There need to be strong fines for breaches of the anticollusion provisions. There should be a ban on third parties donating to one another. That could be addressed through fines. It can also be addressed through potentially preventing a third party from being registered in a subsequent election period if it has been found to breach those anticollusion provisions. But if you're going to loosen, as you should, restrictions on third-party advertising, you should also concurrently strengthen the anticollusion provisions.

The Chair: Okay. Mr. Rutherford does not have a follow-up.

We'll then go to I believe it was Ms Sweet. Go ahead.

Ms Sweet: Thank you, Mr. Chair. I just want to go back and follow up again on the infringement on the Constitution and freedom of speech. You referenced already that there was a court case with the Supreme Court that decided that spending limits do not actually impact the Constitution and the ability for freedom of speech. I want to go back to some of the statements that you've made in regard to small organizations having those costs associated with having to register as third parties. Do you believe, then, based on the Supreme Court ruling that it doesn't impede freedom of speech, that maybe there should just be a cap or a minimal amount for third parties, that if they fund raise to such a point, they now have to disclose?

Mr. O'Connor: Well, the Supreme Court didn't opine in the Harper decision on fundraising. It opined on spending. That was the issue before the court.

In terms of fundraising, again, anything that occurs between the end of the preceding election and the start of the election period, so when the writs are issued, any sort of regulation of third-party advocacy in that respect is probably unconstitutional if you read the Harper decision. Now, that's a 16-year-old decision, so courts may take a slightly different view, but that is the leading Supreme Court decision, and again it only focused on spending limits during the election period, citing the potential for election unfairness.

Look, disclosure and transparency is always a good thing, and I think there are different means which this committee, when making recommendations to the Legislature, can use to enforce and encourage transparency, but again I turn back to compliance costs. If you're a citizen advocacy group that's required to hire an auditor, hire a lawyer just to comply with this overbearing and complex and cumbersome election financing machine, you may not wish to participate in the political process at all. And I think the political discourse in this province would be worse for it if those groups just didn't participate.

Ms Sweet: Well, thank you. I think that this is where I'm trying to get an answer from you, to be honest. You keep referring to the compliance costs. If we were looking at the compliance costs and then the number of organizations that were registering as third parties, based on the compliance costs – although I believe that those could be minimal – do you not believe, then, that there could be a spending cap or a financial audit that would be associated to make sure that we are not, then, putting a financial burden on organizations?

Mr. O'Connor: Sure. Requiring that third parties register and participate in some sort of regulatory process prior to the election period: again, my position is that it's unconstitutional. This committee is welcome to make those recommendations, and the Legislature is welcome to create those restrictions, but it's unlikely that those would survive a court challenge.

Now, with respect to your concerns about transparency of who's donating to third parties: of course it's important to disclose that. I mean, the legislation already requires that, but again this committee should be focused on ensuring that citizens have the right to free expression, that citizen groups have the right to free expression, and focusing the regulation on a defined period – that would be the writ period or, potentially, a short amount of time prior to the writ period – but again it's unclear as to whether or not that would be constitutional as well.

I think the objectives of transparency and accountability – who's funding third-party groups, who supports them, and who's behind them? – all of that can be addressed in a way that complies with the Constitution, but having an overbearing and cumbersome process where anyone engaged in advocacy between elections has to register with Elections Alberta, I think, with all due respect, is unnecessary but also is unconstitutional.

The Chair: Thank you for that.

We'll now go to Ms Goodridge. Just as a point of reference, we're at the nine-minute mark.

Ms Goodridge: Wonderful. Thank you, and I really thank you for your presentation. It's been very enlightening hearing from you on many of these pieces.

I was just wondering. When you were talking about the collusion piece in answering Mr. Rutherford's question, you talked about how, if we were going to change, we would need to strengthen the anticollusion stick, for lack of a better term. I was just wondering if you could describe if there's a bit of crossjurisdictional information as to how certain provinces have risen to that occasion and some of the things that we could consider putting into our own legislation.

Mr. O'Connor: I'll answer that last part of the question first and maybe, if I have time, go back to the first. Some suggestions that I would have for strengthening the anticollusion provisions would be to specifically prohibit related organizations, so that could be, for example, a corporation and a subsidiary, a provincial union and a union local, or an umbrella trade union and a constituent union, from each being able to register.

We've seen in Ontario that we have provincial unions that have registered as third parties, and then union locals have registered as third parties. I'm not certain of, you know, the legal statuses between union local 1 and its parent trade union, but there's an issue there with respect to, potentially, collusion. So I would suggest that when you're dealing with related organizations, only one be permitted to register as a third party, and then the rules would apply to it.

Again, I mentioned earlier – and this is one thing I think the Chief Electoral Officer has recommended – that there be a specific ban on donating from some third parties to other third parties. Again, as I mentioned earlier, strengthening fines: that's something that Ontario has done I think quite appropriately. If there's an overcontribution, so one third party donating to another and it exceeds the spending limits, the fine is not just defined in the legislation – \$100,000, which you have here – but five times the amount of the violation.

Those are all suggestions that this committee may wish to consider.

9:50

Ms Goodridge: Wonderful. As a bit of a follow-up, as you were talking about the different organizations that might be interconnected, unions or corporations that would have, like, a subsidiary company, I really think that that's an interesting piece. That's not something that I've necessarily considered or heard

about thus far in our deliberations, and I was just wondering if you could touch on that a little bit further.

Mr. O'Connor: Fair enough. You know, again, you don't want a situation where – the third-party regulations prevent collusion, because you don't want an individual controlling 10 organizations to just have 10 times the spending limit. So if you're going to loosen regulations, as I've suggested the committee does, then you have to conversely strengthen the anticollusion provisions. I'll use the provincial example. In the 2018 election, as I mentioned earlier, we had one trade union donating to other third parties, which obviously violates both the letter and the spirit of the legislation. You don't want a situation where a numbered company, for example, has a whole bunch of subsidiaries that it controls. And then – let's say that there are 10 of them – you have 11 third parties.

Elections Alberta needs to focus its consideration on enforcement. At the registration process any related third parties should not all be permitted to register. There should be a ban on that. Again, strengthening fines would prevent corporations from breaking themselves up into subsidiaries, related organizations, and prevent unions from doing the same thing with its union locals and umbrella groups, so that you don't have a situation where the spirit of the legislation is being violated and, frankly, the letter of it as well.

The Chair: Thank you.

Now we'll go to the phone, with Ms Pancholi for a question and follow-up.

Ms Pancholi: Thank you, Mr. O'Connor, for your presentation today. I'm just trying to get some clarity around where you're drawing the line or what kind of limitations, as you view them, around transparency and accountability are appropriate. As we've noted, the 2004 Harper decision: I mean, it did indicate that it was a reasonable limit, the regulations that were required there around third-party registration and spending during the election period. To date I'm not aware of any challenges to the Alberta prewrit requirements around that as well. When you say that it's unconstitutional yet you still do agree that there is some level of, you know, accountability and transparency that's required, I'm just trying to find out what would be appropriate, then, in terms of accountability and transparency for third-party advertisers, in your view, in that prewrit period. I'll leave that there for you.

Mr. O'Connor: I don't think that, you know, three years before an election a citizens' group in some small community, that wants to hand out flyers and talk about an issue of concern to it and local residents, should have to ask permission from Elections Alberta to hand out those flyers, should have to ask permission from Elections Alberta to even participate in the political discourse of this province. That's not constitutional. That's not a justified limit on free expression.

Getting back to your question about the Harper decision, the decision specifically focused on, during the writ period, spending restrictions and transparency requirements, so disclosure of donations. I don't think there's anyone that objects to the tenor of that decision, but bear in mind that that decision didn't apply to even a prewrit period, like your approximately four-month prewrit period that you have where spending is regulated in Alberta, let alone talk about registration requirements with the government before you can even advertise in the in-between-election period.

I would draw the line at the election period. I think it's really clear that the Supreme Court has said that that's appropriate. Transparency requirements during the writ period are appropriate, and registration requirements are. This committee can decide what

it feels is appropriate when it's making recommendations in terms of what those spending limits should be. But I would limit it to the period that the Supreme Court of Canada said was appropriate to regulate – and that's the election period – and leave citizens to participate in political discourse, you know, from the time of the last election until that election period free of interference from Elections Alberta, free of interference from the government, so that we can encourage robust political discourse.

Ms Pancholi: Thank you.

Just to be clear, I mean, in the prewrit period nothing actually prevents the example you described of a couple of interested citizens getting together and handing out flyers. There are limits. It's not that any kind of collaborative advocacy by individuals is prohibited under the current limitations in the Election Act and the Election Finances and Contributions Disclosure Act. There are still thresholds that have to be met before there are any of those restrictions, and similarly any nonprofit society, charitable organization, has to do things like register and provide financial disclosure and get audited statements. It's a pretty standard thing for any organization. I'm wondering why you think, then, it sounds like, that in the prewrit period there should be absolutely no limitations or regulation on that activity.

Mr. O'Connor: Well, again, this committee can look at, you know, how long that regulated period should be prior to the election. But, again, I turn to the B.C. Court of Appeal's decision in 2012, which said that a 40-day prewrit restricted period, where registration was required and spending limits were imposed, was also unconstitutional, citing the Harper decision, where the Supreme Court had said that regulations during the writ period were appropriate. We have a senior appellate court in this country, as recently as 2012, saying that a 40-day prewrit period, not four months like Alberta, six months like Ontario – a 40-day period – was an onerous restriction on free speech and not justified. That's the most senior decision from a senior appellate court in this country on that issue, so it stands to reason that the Alberta courts have challenged, might not uphold even, a prewrit spending cap. We'll see what happens if that issue ever gets challenged. I think this committee and the Legislature should focus on what we know is constitutional, and that's regulating during the prewrit period, and letting citizens participate in the process otherwise.

Now, with respect to, you know, certain thresholds having to be met for registration, we know of an example in Ontario where a prominent local advocacy group took down its website during the six-month prewrit period of the 2018 election because it was unclear whether or not the website, where it had been advocating about political issues for the preceding three years, may have somehow violated the registration restrictions because they weren't intending to register as an election advertiser, so they needed to take down all of their advocacy work on their website. There are examples of . . .

The Chair: Mr. O'Connor.

Mr. O'Connor: . . . citizens groups not wanting to participate because they don't know what the rules are and they don't know if they're going to run afoul of it. My suggestion, respectfully to this committee, would be, you know: let citizens participate in speech . . .

The Chair: Mr. O'Connor. Can you hear me?

Mr. O'Connor: You know, you can regulate constitutionally and let the winner of the public debate be the last person standing.

The Chair: Thank you, Mr. O'Connor. Were you able to hear me there by the end? I just want to make sure our microphones are working.

Mr. O'Connor: Yeah.

The Chair: Excellent. Okay. All right. I appreciate your time, Mr. O'Connor, and for you coming on for this committee. You're welcome to stay on the channel until we are completed.

We'll now go on to our third and final presenter, which is Dr. Ian Brodie of the University of Calgary. Dr. Brodie, are you on the call?

Dr. Brodie: Sorry. Yes, I am. Can you hear me?

The Chair: I can hear you; I can't see you. Ah, now I can see you. Always good to see you, Dr. Brodie. You will have five minutes to present. When you begin, we'll start the clock, and then I'll interrupt you at five minutes.

Dr. Ian Brodie

Dr. Brodie: Great. Thank you very much, and thank you to you and your colleagues for this opportunity to speak to the committee. Thirty years ago the province of Alberta provided this Ontario resident, at the time, with a very generous scholarship to let me move to Alberta and to pursue my higher studies. I hope I can put down my time today helping the committee as part of the ledger in partial repayment of that early investment.

I wanted to start my conversation today with, first, principles, so I think it's best to go back to the most obvious point about elections and election finances, to say that provincial elections are here. We hold them in order to let voters judge which parties they would like to see on the government side and which on the opposition side in the Legislative Assembly. It's the purpose of elections. Politics is a team sport. We call the teams parties, and in a Westminster-style system, like ours, when we speak of government, we mean party government. The most important constitutional rule in the Westminster system is the confidence convention. The confidence convention is primarily about parties and about party competition.

Just as the standing orders of the Legislature are designed to facilitate the work of parties, the competition between parties, while respecting the privileges of MLAs and the role of independent MLAs, in the same way the province's election laws and election finance regime is designed to allow the parties to compete for votes while respecting the role of candidates, especially the independent ones.

10:00

The existence of multiple parties encourages politicians to recognize the pluralism of legitimate political views. The privileged position of the loyal opposition tells citizens that they are free to oppose the government and still be loyal to our system of government. A system of government is democratic not because it recognizes the power of the governing team but because it recognizes the status of legitimacy of those who oppose the governing team while respecting the pluralism of our governing order.

There are good reasons, then, when designing a system of election finance, to recognize the special status of political parties. The freedoms of expression, association, and assembly, from the last presentation, of course, give a legitimate role to other political organizations and expression during an election and in between elections.

But elections are about parties, and election law must therefore give special recognition to political parties. Interest groups, individuals, and independent candidates have their rights, but only parties can form government or the Official Opposition in the Legislature.

Since political parties have this special role in our political system, the financing of political parties is subject to special regulations. For example, small-dollar donations to political parties get more generous tax treatment than small-dollar donations to charities do, and in my view this is well justified. Donations to political parties and candidates are also capped whereas charitable donations are not. A political tax credit encourages a lot of citizens to donate small amounts to their political parties, and political contribution caps limit the influence that individual donors might have on political parties. Encouraging political parties to expand the number of small-dollar donors they attract serves to make the political process more diverse and more inclusive.

But putting a cap on party election spending works in the opposite way. This is the argument I want to make about election spending caps. Forcing parties to limit their spending discourages them from bringing more citizens into the political process. Spending caps hurt the diversity and inclusion of our election. Spending caps are typically justified as a way of reducing the influence of large donors over public policy, but frankly this argument is not persuasive. The less a party can spend during an election, the more influence each donor has even when the donation limit is low. A party that can only spend \$2 million during an election has no incentive to expand its base of donors very far even if the donation cap is set at \$4,000 a year. It's easier to appeal to highly motivated and well-heeled donors than to others, and if a small group of highly motivated and well-heeled donors can get a party to a fully funded \$2 million election campaign, there's not much incentive to expand your base to other groups.

Spending caps hurt the diversity and inclusion of our political process in other ways. A party's election campaign needs to reach a lot of voters, and reaching a lot of voters costs money. In 21st-century elections political parties compete to find amongst the millions of Albertans who are eligible to vote those who can be persuaded to come to the polls.

In the 1970s political parties could assume that the vast majority of voting-age citizens would vote. Most adults at the time felt a social responsibility to cast their ballot. But today, despite the proliferation of opportunities to cast ballots, election turnout rates have fallen sharply. Political parties cannot begin their campaigns with the assumption that most voters will cast a ballot. Therefore, each party must sort through the electorate to find, basically, three groups of voters: first, its dependable supporters, its partisans, if you will; secondly, the habitual voters it can persuade to vote for its candidate; and finally, the nonvoters it can persuade to vote for its candidates in the first place, just to turn out to the polls. In my experience, the largest group of eligible voters and the most expensive voters to reach and get to the polls are nonvoters. These are naturalized citizens, young people, and so on. Getting them to the polls expands the diversity and inclusion of our election, and it's worth allowing parties to spend whatever money is necessary in order to let that happen.

The Chair: Thank you, Dr. Brodie. I appreciate that. Your time has expired.

We'll now go to questions and answers. We'll begin with the opposition caucus for a question and a follow-up and in 20 minutes. Ms Sweet.

Ms Sweet: Thank you, Mr. Chair, and thank you, Dr. Brodie, for your presentation. I just want to clarify, then, that what you're saying is that there shouldn't be any type of spending cap because it limits the ability for political parties to engage with the citizens. I struggle with this only in the sense that: why would the legislation be responsible for ensuring political engagement for political parties? Political parties have a responsibility to engage the citizens on their platforms. That is part of the political process. Why would there be an open legislative ability for no spending cap and zero accountability, then, just to allow for political parties to spread their message?

Dr. Brodie: Well, an excellent question. Let me clarify in case I've left some misimpression here. I'm not saying that the legislation has a responsibility to encourage parties to engage with voters. Of course, parties have lots of incentives to engage with voters. I'm saying that the legislation should not limit the ability of political parties to engage with voters by imposing arbitrary spending caps during or between elections.

I mean, there's no question that parties have an incentive to engage with as many voters as possible, but given a fixed pool of money to spend during an election or, for that matter, in between elections, there's no question that parties have to make difficult decisions about who they'll engage with and who they won't. The very fact that the spending is limited during an election or between elections in some circumstances means that parties have to limit their ability to reach out to individual voters, and I don't see how that serves the interests of voters or of the political process as a whole.

Ms Sweet: Just to follow up with that, there is no fundraising cap. An individual party can fund raise as much as they want; they just can't spend. In the conscience of a party who wants to engage with the citizens, they can continuously reach out to the citizens for engagement, like, for fundraising. I'm not sure I understand how having a spending cap limits a political party from engaging with the citizens in between elections.

Dr. Brodie: Well, let's take it down to the level of your individual campaign at the riding level, then. Of course, you could raise as much money as you like. You could spend 24 hours a day and 365 days of the year just raising money and engaging with your own constituents in that way, but of course there's a limit to how much money you can spend. There's therefore no incentive to raise money past a few of the well-heeled donors that you collect money from on a regular basis in order to finance your re-election campaign. What I'm saying is that if you had an unlimited opportunity to spend whatever money you raised, you would then have an incentive to engage more people through the fundraising process and then to use that money to engage further voters who aren't your donors come election time or in between election time. Of course, the same rule applies for political parties as well.

As long as there is a spending limit in the legislation, either during the writ period or in between elections, there's going to be a limit to your incentive to engage individual voters and during the election, when the spending is limited, a very real cap on your ability to engage voters. You will naturally engage voters who are already committed supporters of yours, who you may know about from previous elections, and it will restrict the ability of you and, of course, of the other candidates each to reach out to less traditional voters, to people who are recent immigrants, who may have language issues with the English language, who may work shift work or own independent businesses and therefore not have quite the same attention span for politics. The very existence of spending

limits systemically discourages political parties from reaching out to nontraditional voting blocks.

The Chair: Thank you.

We'll now go to Mr. Smith.

Mr. Smith: Thank you, Dr. Brodie. Is it Dr. Brodie?

Dr. Brodie: Sure, or Ian or Mr. Brodie.

Mr. Smith: Okay. Well, we'll try to respect your position.

You know, I have a daughter that works with an NGO reaching out to immigrant populations in Edmonton. You've touched on this whole idea that spending limits actually reduce a party's ability to reach out to that nonvoting group. I think that in many cases some of those nonvoting groups – as a former high school teacher I know that many times it's youth coming straight out of high school, the 18 to 24 range, in there. Sometimes it's the new Canadians, and you alluded to that. Can you elaborate a little more on the concept of how removing or increasing the spending cap could allow parties to actually broaden their span and actually make democracies more democratic by reaching out to those youth or new Canadians?

Dr. Brodie: Certainly. I appreciate the opportunity to expand on the point. Different political scientists divide up the election strategy of political parties or of political candidates in different ways. I'll try to take the simplest possible approach here. We could make it more complicated if you wanted.

When you think about all the potential voters who could possibly vote in the next provincial election campaign, there's a group of people, probably half of the population, maybe a little bit higher, depending on whose numbers you believe, who we call habitual voters. They're going to go and turn out to vote no matter what goes on in the election campaign. They're 90 per cent or 85 per cent likely to turn out. Unless something really serious happens, they're going to feel it's their democratic responsibility to vote. Some number of those are either going to be UCP supporters or habitual NDP supporters or habitual supporters of another political party.

10:10

Of course, political parties design their campaign strategies accordingly. The easiest people to get out to the polls, the least expensive people to get to vote are habitual voters who are your own partisans. The UCP is well aware. Certainly, when I was executive director of the federal Conservative Party, we had a pretty good idea of who the habitual voters were, who were dependable federal Conservative Party supporters. The NDP and the federal Liberals and other political parties all have similar programs in order to identify habitual partisan voters from election to election and get them out to vote.

The next most expensive people are people who are disposed to vote anyway but who might switch their votes from election to election. You don't have to spend a lot of money finding them and getting them to the polls. What you have to do is spend money persuading them to vote for you or vote for your candidate.

Then there's a whole group of people, a very large chunk of the potential electorate, who are not habitual voters. It's not so much that you have to persuade them to vote for you or not to vote for your opponent; you have to persuade them that it matters to vote in the first place. In the 2006 federal election campaign, the one I was most directly involved in, we had a special program at the federal level to reach out to certain segments of the not habitual voting population, people who traditionally did not vote. We encouraged them to vote Conservative. That was by far on a per-vote basis the most expensive part of our election program of that year.

When you cap spending, that makes the parties, in effect, risk averse in the way that they attribute their money. It means there's a zero-sum game, a zero-sum competition amongst all the different ways that political parties can spend their money, and that puts a premium, then, on spending money on turning out your habitual voters, your partisans, or habitual voters who might be persuaded to vote for your party. It's a fight to try to get money assigned to any kind of outreach effort that touches on – in the case of the 2006 campaign we were trying to get people who were involved in trades training programs, blue-collar trades, red seal trades, training as apprentices or as recently apprenticed tradespersons, tradesmen and tradeswomen. There is historically not a very high turnout rate amongst those types of voters. It is extremely difficult to find them, extremely difficult to get them out to vote.

We could have expanded a similar program for youth voters, for example, first-time voters. I mean, I work at the university. I've spent most of my career at the university dealing with people who are in those sorts of early years, mostly early years, of their voting careers. It's difficult to get them engaged in the political process and to get them out to vote. We had to make the decision to focus on one set of not habitual voters and to ignore the rest. Why? Because we had at that point an \$18 million national spending cap. Every dollar that we spent reaching out to a nontraditional voter was a dollar that we couldn't spend ensuring our own partisans turned out or ensuring habitual voters who weren't necessarily our supporters turned out to vote.

What I'm saying is that as soon as you impose that limit on spending, the tradeoffs are a zero sum between different parts of a campaign's budget, and that automatically means that the parties are going to spend money on the least expensive voters and have to make difficult decisions about what kinds of nontraditional voters they want to appeal to.

Mr. Smith: Can I have one quick follow-up?

The Chair: Certainly, but I will just caution you: if we can have quick answers and quick questions. I do want to get to everybody as much as possible.

Mr. Smith: Real quickly, what percentage of the population, of the Canadian population, would be a part of that large chunk of nonvoters that you talked about?

Dr. Brodie: Well, it would depend on whether we were talking about federal or provincial. Let's say that it's 40 per cent or 50 per cent. I mean, in an era where we struggle to get up to 50 per cent turnout, if we calculate turnout the same way the Americans do, we're not that different from, until the most recent presidential campaign, presidential campaigns, habitual voters being maybe 50 per cent of the electorate and people who are not habitual voters being probably 40 cent.

The Chair: Thank you.

We'll now go to the phones. Ms Pancholi.

Ms Pancholi: Thank you, Dr. Brodie, for your presentation today. I have a question about how your position that there should be no spending cap by parties in elections, in your view, would impact the attraction of minority candidates. I say that as a woman of colour who ran in the last provincial election. Certainly, part of my consideration when choosing to run was that I felt that there was a level playing field. I knew that certainly, however much money I raised – of course, we all know that individual candidates also bear a big responsibility with respect to fundraising. It's not just the central party. I knew that I was going in and fundraising and that

my opponents in whatever political party they were part of would be bound by the same limits. We do know – there is plenty of research to support it – that it discourages candidates of colour, women, candidates with disabilities to run when they believe that they can't stand a chance against a party, for example, that has a very efficient fundraising machine. How would that impact attracting those minority candidates?

Dr. Brodie: Look, I think there are all sorts of issues around the sophistication of party and individual candidates' political organizations. The cost of becoming a candidate has dropped remarkably in the course of my career as a political staffer. Compared to 30 years ago, the cost of becoming a candidate for a local nomination is probably one-tenth, maybe one one-hundredth of what it was 30 years ago. The democratization of tools for online organization and the ability to start up an online organization at almost no start-up cost is unparalleled compared to 30 years ago. We have made extraordinary progress, not as a political process – I mean, these are private-sector companies that provide these tools for organization and nonprofit companies that provide these tools for organization – but there are extraordinary amounts of organizational ability now that are available at absolutely no start-up cost or very low start-up cost for people that are running for nominations.

I think the success of expanding the pool, expanding the diversity of candidates across the board for all of our political parties – certainly, in the last provincial election here it was quite remarkable – is in part due to that tremendous democratization of the tools of organization.

It remains that once you become a candidate, in particular a candidate from perhaps a historically not-included group in the political process, the challenge becomes reaching out to voters who are also not traditional voters, who we know are hugely disproportionately recently naturalized Canadians or recent arrivals and young people. Getting a hold of those people, getting in touch with them, getting them mobilized into the political process is expensive. There's just no way that having a spending cap serves the purpose of encouraging parties or, for that matter, local candidates to reach out beyond the traditional, habitual voter group into those less advantaged groups of nonhabitual voters.

Ms Pancholi: Thank you. As a follow-up, it sounds like your concern is about engaging, I guess, nonvoters or people who are not traditionally engaged, but what I'm talking about is levelling the playing field during the election period. Certainly, it's about knowing that all parties are beginning from the same position in terms of how much they can spend during the election. Minority candidates might look at it and say – I'm not even saying "might." We know that this is a factor that discourages minorities from choosing to run, that they're up against political parties that have far more capacity to fund raise and not just fundraising for the purposes of engaging more nonvoters. We know that the capacity to fund raise actually comes from having very wealthy donors.

Certainly, levelling the playing field gives – you know, candidates run because they believe in certain values but also because they believe there's an opportunity to win to some extent, right? If you know that there's no chance because the other party far outfundraised you and can far outspend you, then it discourages people from not just putting their name forward as a nominated candidate because that bar might be low, but in the election period they don't stand a chance against a party that has deep pockets and wealthy donors who can far outspend them. That's not all about engaging nonvoters.

Dr. Brodie: Look, again, I'll take an opportunity to clarify the beginning of my remarks. I support the donation cap for

individuals. Your comment about, you know, wealthy or well-heeled donors: I think it was a legitimate one before the individual donation cap was limited. Should it be \$4,000? Should it be a thousand dollars? Should it be \$5,000? I was involved in those debates when I was connected with the federal government in some detail. I was part of the group that reduced the federal donation limit from \$5,000 per year per person to a thousand dollars, so I am sympathetic to these concerns. It's possible that the donation limit should be changed in some way. I think that's a useful discussion.

What I'm saying is that once you cap the amount of spending that a particular political party can do, you are, of course, encouraging the political party just to fund raise amongst a small group of its most well-heeled donors. The only way to encourage political parties to cast a broader net than that is to allow them to raise what they wish, given the individual donation caps, and then to be able to spend it.

The Chair: Thank you, Dr. Brodie.

We will now go to Ms Goodridge. We have four minutes remaining.

10:20

Ms Goodridge: Wonderful. Thank you, Mr. Chair, and thank you, Dr. Brodie, for your presentation. I will just jump straight into this. Volunteers are critical in election campaigns, as you're well aware. One of the concerns I've heard from many grassroots volunteers is the challenge of keeping track of donations to a party and to the constituency association and that there's currently an aggregated limit here in Alberta. Do you believe that there would be value in separating the limits between the CA and a party to help reduce confusion similar to what we have in the federal pocket?

Dr. Brodie: Well, Ms Goodridge, first of all, it's very good to see you again. Thank you for this question. I was directly involved, as a result of my experience as being director of the Conservative Party before I became Mr. Harper's chief of staff, in implementing this disaggregation or untangling of the donation limits. In the federal party we were worried about the national campaign office, the local candidates, individual candidates for nomination, so in some cases candidates for leadership races, competing against each other for what was at the time a \$5,000 individual limit per year.

Well, we moved the individual limit from \$5,000 down to \$1,000, and we also disentangled all of the limits. You could give up to, at the time – the numbers have changed – \$1,000 to the party's national office, \$1,000 at all of the local levels, either the candidate or the individual EDAs, and then \$1,000 to a leadership candidate and \$1,000 to a nomination candidate.

Lumping all of that together creates an enormous administrative headache, not just for volunteers but for the party's provincial, in this case, organizational office, and it sets up this competition between, as Ms Pancholi said, individual nomination contestants, who might not have a great network for fundraising, and the party's EDA riding associations or provincial or federal office. I could not be a bigger fan of disentangling those donation limits, and I think

that was a success at the federal level. In fact, of all of the complaints about that piece of legislation, I've never heard anyone question the disentangling of the donation limits.

Ms Goodridge: Spectacular. I much appreciate that. In many other provinces and federally legislation that governs elections and election financing are a single act. Do you believe that combining these two acts would make it easier for volunteers to comply with the rules, and in that same vein, do you believe that there would be value in harmonizing provincial and federal rules to a certain extent, again, to make things a little bit easier for volunteers? I know many of my volunteers campaigned both federally and provincially, and the difference between the rules has proven to be a little bit challenging.

Dr. Brodie: Look, I'm a fan of harmonizing as much as possible. I think that having a single piece of legislation, if it helps with the legislative drafting of definitions and standardization of processes and rules and deadlines, of course, yes, that's an excellent idea. I think the committee might also think about advocating just the contracting out of provincial election administration to Elections Canada. I'm not completely convinced that there needs to be an Elections Alberta organization and the whole duplicate of the federal organization here. For people who are active both in federal politics and provincial politics, I'm asking Elections Canada to decentralize its administration of federal election law in Alberta to Elections Alberta. Just phasing out the Elections Alberta organization and turning it over to Elections Canada would help all of us comply with all of this.

The Chair: Okay. We have about 36 seconds left, if it's just a really quick question and a really quick answer.

Member Ceci: What do you think about mandatory voting?

Dr. Brodie: I think people have the right to participate or not participate as they see fit.

Member Ceci: Thanks.

The Chair: Okay. That's about the time we have. Thank you very much, Dr. Brodie. I appreciate you coming out here. That also concludes the time we have with our stakeholders today. I'd like to thank all of them who have joined us this morning.

We'll go now on to item 5 of the agenda. Is there any other business to bring forward at this time for members of the committee?

Seeing none, the date of the next meeting is tomorrow, Friday, November 6, 2020, at 9 a.m.

Can I please have a member move to adjourn this meeting? Mr. Sigurdson moved that the November 5, 2020, meeting of the Select Special Democratic Accountability Committee be adjourned. All those in favour, please say aye. Any opposed? This meeting is adjourned.

[The committee adjourned at 10:24 a.m.]

