



**First Session - Thirty-Seventh Legislature**

**of the**

**Legislative Assembly of Manitoba**

**Standing Committee**

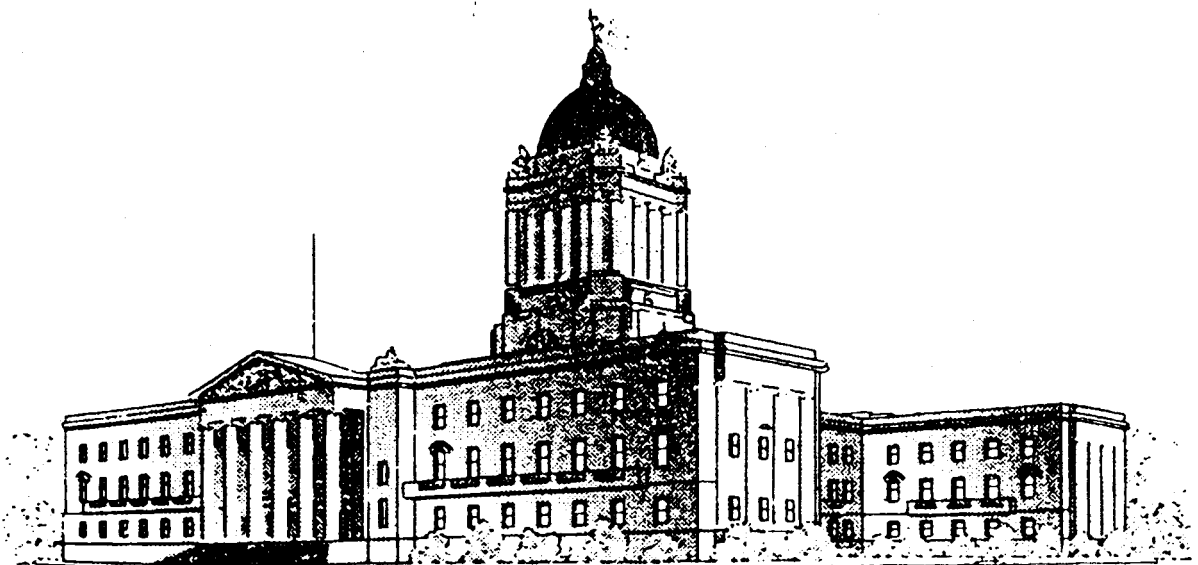
**on**

**Privileges and Elections**

*Chairperson*

*Mr. Conrad Santos*

*Constituency of Wellington*



**Vol. L No. 1 - 10 a.m., Monday, July 24, 2000**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Seventh Legislature**

<b>Member</b>	<b>Constituency</b>	<b>Political Affiliation</b>
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy	St. Vital	N.D.P.
ASHTON, Steve, Hon.	Thompson	N.D.P.
ASPER, Linda	Riel	N.D.P.
BARRETT, Becky, Hon.	Inkster	N.D.P.
CALDWELL, Drew, Hon.	Brandon East	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
CUMMINGS, Glen	St. Rose	P.C.
DACQUAY, Louise	Seine River	P.C.
DERKACH, Leonard	Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary, Hon.	Concordia	N.D.P.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
ENNS, Harry	Lakeside	P.C.
FAURSCHOU, David	Portage la Prairie	P.C.
FILMON, Gary	Tuxedo	P.C.
FRIESEN, Jean, Hon.	Wolseley	N.D.P.
GERRARD, Jon, Hon.	River Heights	Lib.
GILLESHAMMER, Harold	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
LOEWEN, John	Fort Whyte	P.C.
MACKINTOSH, Gord, Hon.	St. Johns	N.D.P.
MAGUIRE, Larry	Arthur-Virden	P.C.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MIHYCHUK, MaryAnn, Hon.	Minto	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
PENNER, Jack	Emerson	P.C.
PENNER, Jim	Steinbach	P.C.
PITURA, Frank	Morris	P.C.
PRAZNIK, Darren	Lac du Bonnet	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack	Southdale	P.C.
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ROCAN, Denis	Carman	P.C.
RONDEAU, Jim	Assiniboia	N.D.P.
SALE, Tim, Hon.	Fort Rouge	N.D.P.
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SMITH, Scott	Brandon West	N.D.P.
STEFANSON, Eric	Kirkfield Park	P.C.
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TWEED, Mervin	Turtle Mountain	P.C.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

**LEGISLATIVE ASSEMBLY OF MANITOBA**

**THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS**

**Monday, July 24, 2000**

**TIME – 10 a.m.**

1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998 Annual Reports on the Operations of The Elections Finances Act

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Conrad Santos  
(Wellington)**

\* \* \*

**VICE-CHAIRPERSON – Ms. Marianne Cerilli (Radisson)**

**Mr. Clerk Assistant (Rick Yarish):** The first order of business this morning is the election of a Chairperson. Are there nominations?

**ATTENDANCE -11 – QUORUM - 6**

**Mr. Gregory Dewar (Selkirk):** I nominate Mr. Santos.

*Members of the Committee present:*

Hon. Mr. Ashton, Hon. Ms. Barrett, Hon. Mr. Doer, Hon. Ms. Mihychuk

**Mr. Clerk Assistant:** Mr. Santos has been nominated. Are there any further nominations? Seeing none, Mr. Santos, will you please take the Chair.

Ms. Cerilli, Mrs. Dacquay, Mr. Dewar, Mrs. Mitchelson, Messrs. Penner (Emerson), Rocan, Santos

**Mr. Chairperson:** The next order of business this morning is the election of a Vice-Chairperson. Are there any nominations?

**APPEARING:**

Mr. Richard Balasko, Chief Electoral Officer

**Mr. Dewar:** I nominate Ms. Cerilli.

**MATTERS UNDER DISCUSSION: :**

**Mr. Chairperson:** Are there any further nominations? Hearing none, Marianne Cerilli is appointed Vice-Chairperson.

1988, 1990 and 1995 Statutory Reports on the Conduct of Provincial General Elections

Report of the Chief Electoral Officer on the Crescentwood and Portage la Prairie By-Elections Dated September 15, 1992

Report of the Chief Electoral Officer on the Osborne, Rossmere, Rupertsland, St. Johns and The Maples By-Elections Dated September 21, 1993

Statutory Report of the Chief Electoral Officer on the Charleswood By-Election Dated April 28, 1998

This morning the Standing Committee on Privileges and Elections has several reports before it. They are as follows: the 1988, 1990 and 1995 Statutory Reports on the Conduct of Provincial General Elections; the 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998 Annual Reports on the Operations of The Elections Finances Act; the Report of the Chief Electoral Officer on the Crescentwood and Portage la Prairie By-Elections Dated September 15, 1992; the Report of the Chief Electoral Officer on the Osborne, Rossmere, Rupertsland, St. Johns and The Maples By-Elections Dated September 21, 1993; the Statutory Report of the

Chief Electoral Officer on the Charleswood By-Election Dated April 28, 1998.

How does the Committee wish to proceed this morning with the consideration of these reports?

**Hon. Steve Ashton (Minister of Highways and Government Services):** I was going to suggest we deal in general, and then see where we are at at the end of the Committee hearings and then look at passing individual reports. Since we have a rather large number of reports, it might be better to deal in terms of general questioning.

**Mr. Chairperson:** Any other suggestion?

**An Honourable Member:** Agreed.

**Mr. Chairperson:** It is agreed. Does the Committee wish to indicate how long it will sit this morning? Until?

**An Honourable Member:** Twelve.

**Mr. Chairperson:** Twelve noon.

The Honourable First Minister, does he wish to make an opening statement, and would he please introduce the officials in attendance from Elections Manitoba?

**Hon. Gary Doer (Premier):** Yes. The Chief Electoral Officer, Mr. Balasko, is here and his staff, Mr. Gibson. I will allow him to introduce the rest of his staff. I believe he is going to make a statement to the Committee following the brief introductory comments of myself and the Leader of the Opposition.

I want to first of all thank the staff of the Chief Electoral Officer in dealing with these reports today in the Standing Committee on Privileges and Elections. This recommendation to refer these matters here was passed in legislation in '85. The '87 report actually was not dealt with as well before the defeat of the government in '88.

We have a number of reports over the last 12 years. The 1999 report has not yet been completed, and the '99 legislation which requires 60 days would therefore be in effect to have that

report upon its publication dealt with by this committee within the 60 days prescribed in the '99 law. Many of the matters that have been raised over the years have been dealt with in legislative changes by the previous government, particularly the 1999, after the Monnin recommendations that were forwarded to the CEO and dealt with by all political parties in legislation that was passed.

I certainly think it is appropriate that we deal with all the reports of the Standing Committee on Privileges and Elections because there is a continuum of recommendations. For example, the matter of the returning officers goes back in my research to at least '88, if not earlier, and is recommended in various reports from 1988 on to this legislature.

The whole issue of third-party issues has been referred to in the reports. However, the issue of cap was not recommended, but the issue of third-party rules was dealt with by the Chief Electoral Officer. I think it is important to note those recommendations to this legislature. There are some issues that are still outstanding. They are not contained within the Act of the Legislature in '99 or in the year 2000. The issue of leadership, for example, the rules for leadership races have been referred or referenced by the Elections office.

\* (10:10)

My personal view was it was inappropriate, given the timing of a potential leadership race to change the rules, or initiate rules in the middle of that process. The acts, Bill 4 and Bill 17 were tabled after a leadership race was initiated by a political party having standing in this Legislature, so I did not come forward with any recommendations in that area—certainly open to suggestions.

There are a number of other recommendations contained within bills 4 and 17 that were promises made in the election campaign, policy recommendations that we had made to the public and not contained within the Chief Electoral Officer's reports. Those were promises made in the election campaign which we are proceeding with in office. However, the Chief Electoral Officer has helped us not on the policy

side of the issues but on the technical implementation of those recommendations.

So I thank the staff or the Chief Electoral Officer for their visit here today, and I know we have a lot of work. That concludes my statement.

**Mr. Chairperson:** Thank you, Mr. First Minister. Does the critic from the official opposition party have an opening statement?

**Mrs. Bonnie Mitchelson (Interim Leader of the Official Opposition):** Yes, Mr. Chairperson. I thank the Premier for his opening remarks. I might just like to comment and indicate that we have all of these reports in front of us today, as a result of the amendments that were brought in, in 1999 that required that these reports come before a committee of the Legislature. It was never a rule that was in place before 1999 when that amendment was brought in, so these reports are here as a result. We do know that the Government today has already broken the law by not calling this committee within 60 days after the 1998 report was tabled, so those comments need to be put on the record.

We will be sort of asking some questions on the amendments that are before us today as a result of the Bill the Government has brought in, Bill 4. With just those few comments, we can proceed.

**Mr. Chairperson:** We thank the Leader of the Official Opposition for those comments. Do the officials in attendance from Elections Manitoba wish to make a statement to the committee?

**Mr. Richard Balasko (Chief Electoral Officer):** Mr. Chairperson, members of the Committee, I would like to take this opportunity to introduce to you a couple of other people from our office. This represents pretty much the full-time officer complement of our office. Some very hardworking people in the front office are still at our location having put the binders together for us today. But we have Scott Gordon, who is the Manager of Elections Finances, and Dave Wilkie, to his left, who is the Manager of Elections Operations and Communications.

I am pleased to have this opportunity this morning to appear before you to discuss the recommendations that have come from my office over the years. I want to thank you for inviting me. Perhaps it would be helpful if I gave you a little bit of a brief background to the reports themselves and how I think it may be of assistance this morning to focus on some of the items that are outstanding that have not yet been dealt with, because there are an awful lot of recommendations before you today. I think that will result in a manageable number of recommendations for discussion.

As had been mentioned, in 1999 it was recommended by Commissioner Monnin that the Legislature move rapidly when the Chief Electoral Officer requests amendments to the statutes. The former Chief Justice's recommendations were adopted by the Legislature in 1999 and both The Elections Act and The Elections Finances Act now call for this committee to begin consideration within 60 days. For your reference, The Elections Act, section 10(3) and The Elections Finances Act, section 99(3).

As I am sure you are aware, the Chief Electoral Officer also has the authority under both The Elections Act and The Elections Finances Act to make recommendations for legislative amendment to the acts, and as you may also know, in arriving at those recommendations we have two advisory committees and these committees consist of appointees of the leaders of the political parties, all registered political parties, not just those in the House. There is a committee on The Elections Act and there is a committee on The Elections Finances Act, and so as a matter of course we discuss with them the issues that we intend to bring forward.

You have before you today a good number of previous statutory reports. We went through the list earlier containing a great many recommendations, and to assist you this morning I would point out that the statutory report on the 1995 general election and the statutory report on the 1995 report under The Elections Finances Act really have the most commentary and the most detailed rationale included therein. Mr. Chairperson, 1995 was really a consolidation of

all the recommendations going back, so if the recommendation continued to be relevant we put them all together in 1995 following the election, in the light of the experience of '95, and we will be doing the same thing again following now the 1999 general election. When we come forward with our next reports, we will again consolidate any outstanding recommendations. We will look at it in the light of the experience of the last election.

We have additional copies, but I believe you have them before you. A great majority of these recommendations were in fact adopted in comprehensive amendments to The Elections Act and The Elections Finances Act in 1998 and some further amendments in 1999. As a matter of interest, the 1995 report made over 90 recommendations for amendment to The Elections Act and The Elections Finances Act and many sub-recommendations that were associated with those principal ones. But after the '98 and '99 amendments, there are very few that are left outstanding.

In 1998, the Legislature also adopted the recommendation that we had made to permit consolidation of reporting under both Elections and Elections Finances into one annual report. I direct you to the 1998 Annual Report of the Chief Electoral Officer, which has been tabled in the House. This is the first such combined report.

In this report, I have outlined by exception the remaining recommendations, principally from '95, that have not been included, and which I thought were particularly relevant to the impending election at the time. There are some other issues that I will touch on later that are not in the 1998 report that we would intend to bring back again in 1999, one of which, the matter of leadership, has already been touched on. I also noted in the 1998 report that we will again have the experience of the election to look at recommendations. We will also have the opportunity to consult again with the advisory committees of the political parties. That report, the reports on 1999, will be available in the fall of this year.

Therefore, because of the 1995 consolidation of recommendations, and because the

legislative amendments in 1998 and 1999 have incorporated the majority, overwhelmingly, of the recommendations, I would like to direct the Committee to the outstanding recommendations, specifically, to pages 18, 19 and 21 in the 1998 annual report. They dealt with The Elections Act on one hand and The Elections Finances Act on the other. Again, we have additional copies.

Of course, since this report has come out, some of these remaining recommendations in turn have now been included in Bills 4 and 17 that are presently before the Assembly. From my perspective, at least, this leaves very few outstanding recommendations for the Committee to consider, based on our reports up to and including 1998.

I would like to just briefly identify what those are under The Elections Act, the 1998 recommendations that were outstanding.

First, the appointment of returning officers, which matter is now dealt with in Bill 17.

Second, under The Elections Act, the issue of loitering around the polls. There were related amendments that dealt with this to a great extent. There is an amendment now that makes political activity within 50 metres a prohibited thing. By and large, in our experience, the issue of loitering has been dealt with. Our officials have been also proactive. Mostly, it is a case of people socially visiting at the door as they are coming out from voting. Our officials just tell people to move along, and we have not had reports that this issue was difficult in 1999. So, unless information comes to the contrary, I can give you notice now that we would not be pursuing this one. Some things do not require legislation to deal with.

Third, safeguarding the voters list. I will be elaborating on that in some detail in 1999, because now we have experience with an automated voters list. As you know, the list was prepared going door to door, but then was automated. It brings with it a whole new set of issues in terms of protecting that information and safeguarding it. So we will bringing that forward in 1999.

\* (10:20)

The final item under The Elections in the 1998 report on the elections side is the voting qualifications of inmates. Now, in 1998, there was a committee amendment that prohibited from voting prisoners serving a sentence of five years or more. That then also would prohibit those prisoners from being candidates. That has been struck down in Queen's Bench in Manitoba before the last election, and my information is that Manitoba Justice is holding that pending a determination of a federal case, the *Sauvé* case, that is also related to prisoner voting. So, until we get either an appeal or some further direction from the courts re *Sauvé* or through the Manitoba *Driskell* case, we will have to return to that point, I believe, a little later.

There were just two other recommendations from all the previous other reports that were not brought forward to 1998 that I would just touch on briefly, because the others, by and large, have been dealt with administratively or otherwise.

First is the whole issue of reuse of the voters list. In the 1995 report, we made some comments about possible use of the federal National Registry of voters, which is a continuous list. We made some reference to collecting information that perhaps we do not need but a school board might need for the purpose of their voters list. So, looking at how we can use the technology that is available, share it among jurisdictions who are doing the same job, and what is the very best way, the bottom line, what is the best way to register voters in the province, I can tell you that, again, we have had experience with automating a list, although it was door to door. We have results from that.

We also are, I suppose, expecting a federal election at some point which will be the first implementation of the National Registry of voters, so we will be able to look at that experience and see how that goes. We have exchanged some information with Elections Canada that allows us to look at what the National Registry looked like at the time our election was called, and we will be able to compare that to the enumeration list. We are going to have a lot more detail and more information, so again this is a study that we will

be initiating in the fall or later this year. We will be involving the ad-hoc committee as well. We will bring the political appointed representatives along every step of the way on that.

The final item on The Elections Act is a matter of absentee voting. This was a recommendation with a number of sub-recommendations, virtually all of which were accepted. They are in the law; we applied them in the 1999 general election. From our perspective they seem to have worked. There is one item that was not picked up that we will be bringing back in 1999, and that is for the Legislature to consider again those persons who are absent from the province for six months. That is the basic rule of residence. You are no longer qualified after that point to vote. But there may be certain classes of persons who are leaving the province for more than six months, and they have a specified return date. You might want to look at if there is a specified return date, should those people be entitled to absentee vote.

The example I would use would be peacekeepers, and that does certainly come up from time to time, persons resident in Manitoba who are sent abroad on the nation's business and unable to vote under the provincial laws. We will come back in 1999 and look at that.

By the way, these are all issues we have already had our first go-around with the political party advisory group, and we are developing our recommendations.

In terms of The Elections Finances Act, in the 1998 report there are three items. The first is the issue of a third-party disclosure and expenditures during election periods. That is addressed in Bill 4. The second is our recommendation that polling costs ought to be included as an election expense for clarity, and that is also accomplished in Bill 4. Thirdly, the issue—I am sorry.

**An Honourable Member:** Would you just repeat that second part?

**Mr. Balasko:** Oh, sure. Polling costs, and maybe I will just take a half a minute on that.

Polling costs have always been a matter of interpretation and guideline as to whether those are election expenses or not. So in 1995 our recommendation was the cost for polling ought to be an election expense. But, if it was not to be an election expense—because it is, of course, a government bill—if it was not to be, it should be clear that it is not. So what happened in '95 is it was made clear that it was not an election expense. It was excluded. We are going back to our original recommendation, which is that the cost for polling that takes place during an election in relation to the election is a reimbursable election expense subject to the limits, and Bill 4 does that.

The final item is the issue of administrative fines. That is a very narrow sort of regulatory tool that we want to propose, and we will be developing further again in 1999. It relates really to late filing of returns. You know, the vast majority of candidates' campaigns file their returns on time. Some do not. It is an incentive to know, for those that do not, that there will be a regulatory process, that maybe it is so many dollars a day, so many dollars a week that are ticking away every day outside their deadline, even as extended outside the deadline, that they do not file a return with us. It is, I think, a practical alternative to prosecution, because the only tool we have now is prosecution. So, when someone is late filing, we just continue to make every effort to assist them to get their return in to get the public disclosure. This also is just in the recently enacted federal legislation. They have picked up on that idea as well. But I will elaborate on those.

There was the issue of disclosure of spending in party leadership campaigns which has been raised. We will come back, following the election, and raise that again in 1999. There were some other items from previous reports, but again those are basically administrative. They have been dealt with in one way or another through related amendments or through just experience.

So that is a rundown of the handful, and I think there are maybe seven or eight or maybe ten from among the ninety or so that are sitting before you now. Mr. Chairperson, if you wish or it is the Committee's desire, I could elaborate on

any or all of those, or I could stop and take those questions that the committee members may have.

**Mr. Doer:** Our reading and our advice from your office, or at least I believe our advice—I will leave it generally—is that the 1999 committee report or the Report of the Chief Electoral Officer must go to this committee within 60 days. But the '98 and previous reports right to '85, when the law was changed, are referred to this committee if there are recommendations and the Committee has not dealt with them. In other words, the '99 report is enforced by 60 days, as opposed to the '98 report which is in effect from the '85 legislation.

**Mr. Balasko:** You are certainly correct that the '99 report stands referred within 60 days. The interpretation on where the 1998 report sits is not something we provide advice on. I suppose it would be the Clerk or other advisers.

**Mr. Doer:** Just another question. The returning officer issue has been recommended to your office since I believe 1988 but certainly from 1990 on. As regards the sections that deal with the returning officer that are proposed, will they implement a recommendation that you have had for a long time, and how will this work moving from a cabinet system? How does it purport to work moving from a cabinet system to the Chief Electoral Officer having responsibility for this function?

**Mr. Balasko:** Thank you for the question. First, I would feel comfortable commenting on the Bill, because it relates to a recommendation that we have made directly. It is not a government initiative. It is our recommendation. The Bill achieves the recommendation. Similar recommendations are made in other jurisdictions, and this is the case in some other jurisdictions in Canada as well where the returning officers are now non-political appointments.

How will the process work as it is removed from cabinet and put into a completely independent light? Well, you know, there are some things to work through on that certainly, but the basic premise is that there will be a competition. It will be an open competition. It will be a public competition. We will encourage



and do our very best to select the best qualified person that applies for the position. We will involve persons with the necessary human resource background. I intend to go to the political party advisory committees at the time that we establish the criteria for selection which have existed for some time, and governments making appointments have had these going back many years. I will share the criteria with the political party advisory committee and get their helpful perspective. Are there other types of traits that we are looking for in an individual's skills? I will also outline the process that we will follow to the political party advisory committee for their input on the process. Following that, I see as a straight-ahead public competition in the normal sort of human resource rules, and we will make appointments on that basis.

\* (10:30)

**Mr. Ashton:** Mr. Chairperson, I would like to ask a question actually on something I think is a great deal of concern to myself and many Manitobans, and that is the progress of the investigation into, well, I suppose I have to use, the smear campaign in the Interlake in 1999. According to many reports, I understand that Elections Manitoba is investigating the allegations.

I think it is particularly of concern to Manitobans. Now we have got more information, clearly indicating that Heather Campbell-Dewar was the author of the letter. We obviously have some very senior people who were involved with this in what I thought was rather an incredible attempt to influence an election, and particularly given the events of the last number of years in Manitoba, in '95, and the Monnin recommendations. Ironically, one of the reasons we are here today with the recommendation reports is because of the Monnin report, which, I think, was a landmark for us as a province in trying to clean up the dangerous low actually that I think Monnin referred to that we had hit in '95.

What really concerned me in '99 was to see something that was, I would say, equally as bad, if not worse, given the context. I mean, after the Monnin inquiry, for somebody to attempt to smear a candidate, I just find to be absolutely

incredible, particularly given the ties directly to the same party that was involved in '95.

I would like to ask the Chief Electoral Officer if he could advise the Committee on the progress of that report, if there are any preliminary findings, and in particular, when we are going to have the opportunity to receive the report and get to the bottom of what did happen in the Interlake in 1999.

**Mr. Balasko:** I appreciate the question. I understand the interest. I can take this opportunity to remind all that the Legislative Assembly has passed a provision which specifies that investigations are to be conducted in private, and that is exactly what we do. Any investigation will be concluded at the point that the investigators are satisfied that they have collected all the information that is necessary. That is all I can say at this point.

**Mr. Ashton:** Well, I appreciate that. So I take from the response, and I appreciate the difficulties in terms of getting into some of the specifics, but that the investigation is still ongoing.

**Mr. Chairperson:** He is asking whether the investigation is still going on.

**Mr. Balasko:** I can inform you also of the process. That is yes, as has been reported in the newspapers, but in terms of the process, it might also be helpful to put that before all members too. At the conclusion of any investigation, one of two things happens: Either charges are laid, and if charges are laid, they are laid in court, they are open to the public, and that is where the full detail on the cases is built and will be presented; or the investigation does not result in charges. If the investigation does not result in charges, in every case then that will result in direct notification to the complainants of the fact that the investigation has been terminated and that charges will not be forthcoming. So I can give you sort of notification that it does become certainly known to the principals involved at the conclusion of the investigation either through charges or through direct written information being provided to the complainants.

**Mr. Ashton:** Just to follow up, and I appreciate the comments, one of the main reasons I am raising this today is because I go back to '95, and the fact that originally there was an investigation. It was not until a number of years later that we really found out the full extent of what had happened in '95, and the number of people in senior positions that were involved. I think that is really critical.

What I am particularly interested in is to make sure that obviously there is a thorough investigation this time, without being critical of what may or may not have happened in '95. I think if here is one lesson that came out of that, it is that when you get any indication of impropriety, you have to follow it through to the greatest degree. One of the reasons I am asking the question is because there have been reports, and there have been reports indicating what is happening in the media. I realize I am not trying to get into details of what was there, but basically what you are looking at now is based, again, on media reports.

Now the initial investigation was into the smear campaign, as I understand it. I mean, this was immediately raised at the time, and there are now suggestions in terms of illegal activity in searching for criminal records. I am just wondering is your office looking at that aspect of it. Just to sort of put the dilemma we are dealing with here on the narrow scope, obviously you could just look at the smear campaign itself. What I think a lot of Manitobans are concerned about is this was not an isolated smear campaign. I mean, there is every indication that criminal records were accessed, that they were then doctored to smear a particular individual.

So I am wondering is the scope of the investigation going to look not only at the smear campaign, but the illegal activity related to the smear campaign.

**Mr. Balasko:** Thank you for the question. Again, it is inappropriate for me—I appreciate the way you framed the question—to comment on any particular matter under review, but again I can provide an answer by way of the process.

If in any investigation information is uncovered which would lead to an offence, for example, the Criminal Code offence, that information would be forwarded on to the appropriate authorities, our authorities in The Elections Act and The Elections Finances Act.

Secondly, in terms of your preamble, certainly there are lessons learned by all in the Monnin inquiry. One of the things that we are pleased to say today is that we are dealing with one of the recommendations. In Monnin we are looking at the recommendations of the CEO which have, for some time, included recommendations on investigation powers and recommendations on the time limit for prosecutions.

I am very pleased that the Legislature has endorsed those recommendations. I am very pleased to say that today when we go forward on any matter, we have a full set of investigative authorities for the first time as a result of those recommendations. We also have a time limit on prosecution which allows us that time which is necessary to get to the bottom of any matter. So, again, I hope that is a helpful response.

**Mr. Ashton:** I appreciate the comment, and I guess what I will do is, recognizing your difficulty in terms of the confidential nature of the discussions, urge that the investigation look at the very important related matters which I think are important to the smear itself of how information was accessed.

According to reports that we have seen, Cubby Barrett asked a former RCMP officer to access confidential information which is relevant to the smear. I think that has to be investigated. The whole question of how that information was obtained—I just want to say on the record that I do not know how low we can go in this province in terms of elections. But this is about the lowest I can imagine, to smear somebody based on doctored police reports obtained through normal channels. I just do not know how anyone involved with this could not have seen that this was unethical, quite frankly, disgusting where it gets to the point in this province that we have to smear people to try and get elected. It was bad enough with the vote-rigging scandal. But to smear people's character, I can tell you, is about

the lowest I have seen. I certainly hope the investigation will look into that.

I just note at the time some of the criticism of the people that raised this. Ed Schreyer and others—there were suggestions that Ed Schreyer be investigated. Quite frankly I thought he blew the lid off what was an incredible example of smearing a candidate. I wanted to put that on the record. I appreciate the difficulties that you have in terms of getting into the details of the investigation, but I just want to make sure we do learn from '95, and in this case, make sure the investigation looks at every aspect.

\* (10:40)

I think it has to be understood that in this case the smear campaign was based on what was purported to be a police record. In fact, what had happened is that somebody accessed police records, and this is what I understand from the information that is public, and then basically, doctored those police records and, in fact, smeared a person by putting out a document that was a lie. It was a complete and absolute lie. It contained charges that had never been laid, did not exist. I want to make sure that that is part of it, because from what I can see, and I realize you will have more knowledge of this through the investigation—but unless we deal with how Cubby Barrett got this information and what role others then had afterwards, I do not think we will get to the bottom. It is not just the transmission of a document; it is a question of where that documentation came from. I think, in particular, the fact that the document that was brought in, the attempt was made to make it look like it was a real police document.

That is why I want to make sure that we not only get to the bottom of this in terms of the electoral sense, but if we are going to send a clear message to people that this kind of thing is not going to be tolerated in Manitoba, I think it is going to be by making sure that any and every potential charge, criminal charge, is laid against any and every one that was involved with that, because any and every one that was involved with that is party to it. Whether they knew what was going to happen or not. I mean, someone who would access police information as a favour to someone, I think, is in violation of their oath

as a police officer. You do not just access information at random without asking questions. The reason I am saying this again is because, if there is one thing that we have learned—and I would have thought the Monnin report and the vote-rigging scandal would have sent a chill on anybody in this province that would ever think of trying to fix an election again.

Well, Mr. Chairperson, it did not. I think if that is the case, what we are going to have to look at is making sure that this investigation looks at any and every potential criminal charge that may be laid against individuals involved. If the scandal of '95 did not send a clear message, maybe some criminal charges based on what I consider, certainly, a prima facie case right now to be criminal activity, I think that may be the only way we clear this up. We tried to raise the standards of politics in Manitoba after the Monnin inquiry. I think we are seeing now with some of the legislative changes that are being brought in, many of which are recommended by the Chief Electoral Officer. But, if trying to raise the standards, trying to look at some of the comments that Monnin made about how low the political mores had gone are not going to work, then we had better make sure whoever is responsible for what happened in the Interlake, has the book thrown at them.

I want to note that many of the key figures in '95, essentially what they suffered in terms of, was not criminal charges. There were professional misconduct aspects. Certainly Mr. Benson, but I know lot of people who are brought before the courts for a lot less than this, a lot of ordinary people. I am not saying that they should not be brought before the courts, but I can tell you, after what happened in '95, the Monnin inquiry of '98, and after what happened in the '99 election, we better throw the book at any and everybody that was involved. I would urge you, and I appreciate the role of the investigation, but I really would suggest that it be a full-scope investigation, because I really believe to get to the bottom of the smear you have got to look at how that information was obtained. I do believe when we get to the end of the day on this, I will be very surprised if there are not grounds for laying criminal charges, because I do not know how someone can obtain

police records and be part of a conspiracy to smear somebody.

I can tell you it is tough enough running for public office as it is. When I look at what the MLA for Interlake faced this time around, it is any wonder that we can get anybody to run for political office. I mean, this kind of tactic, we should never approach that low level in this province.

That is why I would urge you again, and I realize it is not the Chief Electoral Officer who would necessarily be dealing with charges directly related to other aspects, but I think any and everybody who was involved in this should have the book thrown at them. Maybe then in the next election people like Cubby Barrett and others who just did not get it in '95 will get the message next time that if you mess around with democracy in this province there are going to be people who are going to take action and have the book thrown at you and maybe you will be up in courts yourself and maybe you will be facing not a doctored police record but a real police record for some of what I consider, and I say this on the record, when I look at what happened in this particular case, it is either criminal or it is unethical or it is both. We have to get to the bottom of it.

**Mrs. Mitchelson:** I listened intently to the comments from the Member for Thompson. Contrary to what he seems to be saying, I have every confidence in the process that has been put in place in legislation for the chief electoral office. I believe that they will and they do not really need any advice from members of the Legislature. They have the teeth in the legislation to undertake a full investigation. I have every confidence that they will come to the right conclusions. We want to see justice done, very much so. So I will not go into any long dissertation, because I do have the confidence and the trust in the office to do the job that is set out. I would ask them to continue to move along. I am glad that the legislation that was passed in 1999 put the teeth in the law so that the process could be undertaken.

I would like to ask just a few questions, if I might, of the Chief Electoral Officer. Could he give me any indication on, you know, would

they have an estimated time or a date around when the 1999 report will be ready and might be tabled? Can he give us any indication of the timing of that?

**Mr. Balasko:** Thank you for those comments and the question. Right now we are still pending meetings with The Elections Finances Act advisory group. We have had The Elections Act advisory group. So, again, late in the fall, October—I can almost feel the stares to the back of my head as I say that, with the hardworking people in my office—but perhaps at the end of that month or early November, I would expect to have it. I hope that is helpful.

**Mrs. Mitchelson:** That is helpful. We would not want to tie you to a specific date and hold you to that, just sort of some indication. You explained to us that there two different advisory groups, one for The Elections Act and one for The Elections Finances Act, that are comprised of members. I guess all leaders have representatives. You indicated that you had met with the group that deals with The Elections Act, but since the election you have not had a chance to meet with the group that deals with The Election Finances Act, if I am clear on that understanding.

But, normally speaking, I guess the question I would like to ask is: Would either one of those advisory groups take a look at proposed amendments to the legislation that might be introduced and give some advice to your office?

**Mr. Balasko:** Yes, I understand the question very clearly. That has not been a function, nor do I consider it to be a function of the advisory committees. One of them is statutory. Under The Elections Finances Act it is required. I just think this is such a good idea in The Elections Act and I think it is also a good idea to have a committee there. The committees provide advice to the CEO within the CEO's authority. So my authority includes making recommendations; they advise me on the recommendations I make. Then the legislators take it from there and whatever you collectively provide us as law will apply. So, no, they do not consider those matters unless it is a matter of being able to implement something. Once we have some experience, we

may come back with some further recommendations that makes it more effective.

\* (10:50)

**Mrs. Mitchelson:** Can the Chief Electoral Officer indicate to us how many times over the past, when Elections Finances Acts have been amended, how many times have there been policy amendments introduced? Could he give me any indication over the last number of years? Would the normal process be that the Chief Electoral Officer makes recommendations, government of the day would take those recommendations, implement some, maybe not implement others? Obviously that has been the case over the years. There has been recommendations that maybe have been put forward for a decade, and we are seeing some of them in The Elections Act amendments today, but how often, over the last number of times that the acts have been amended, have there been policy amendments rather than amendments that were put forward by the Chief Electoral Officer?

**Mr. Balasko:** I will do my best to reply to that. I think that there are a couple parts to it. Firstly, I do not have a count or even a clear line between policy and not policy, but in terms of the process by which legislation is created, of course, that is the entire prerogative of the Legislature, and so you are quite right. Sometimes governments bring in the bills, look at our recommendations. They think some of them they like and introduce them, and others they do not support; they do not introduce them. But we also just perceive, you know, we bring one element to this. We bring the element of we are the people charged and entrusted with applying the laws that you as legislators create; so, when we determine that there are issues that bear on that law, then we bring them forward to you. But we also appreciate that, of course, legislators, candidates, caucuses, other ideas and good ideas, other ideas, generally, they come from all sorts of places. So, as acts have been amended over time, it has been the combination of government initiative as well as Chief Electoral Officer recommendations.

**Mrs. Mitchelson:** If in fact the amendments that are implemented are as a result of the Chief Electoral Officer's or Office's recommendations,

you would have, I guess, legal advice on how those amendments should look and whether, in fact, they might meet the test of a Charter challenge.

**Mr. Balasko:** We make the recommendations. From that point forward it has always been the case that it goes to the government bringing in the Bill. In some cases there have been private members' bills too. They define what they want to see in the law, and then it is a matter of dealing with the legislative drafters and constitutional and other advice that is available to the government because, of course, at the end of day, it is not a bill of a CEO. We can make recommendations, raise issues and give you our thoughts, but then it is up to the government to bring in the Bill, and they get that advice.

**Mrs. Mitchelson:** So then you are telling us that the recommendations are made, but you would not have any input necessarily into how they would be drafted. You would not make recommendations on that. That would go to legal counsel within the Government.

**Mr. Balasko:** No. I do not mean to indicate that at all. What I am indicating is that a bill is a government matter. The Government is, of course, accountable for their legal advice and arriving at the Bill. We have had, we did have in 1998, in 1999, 1986, the year 2000, have always had a role, principally with the drafters, going through the amendments that we have recommended. Also, when government initiatives are in play, we have a role to make sure that, not to endorse or to endorse the government recommendation, but to say, if the government has an initiative, can a law be written that will make it work because, at the end of day, we are left with the law, and we have to make it work. So we do have a role together with, principally, the legislative drafters, but also we do communicate directly with government, have always, going back to the '80s, and that has not changed, to make sure, whatever the Bill is left with at the end of the day, that it works. But some of those issues, of course, you referred to the current bills, some of those arise from our recommendations and others do not. Others are government initiatives, but, in all cases, we would be involved in that process.

**Mrs. Mitchelson:** Then I guess that sort of begs the question of, if you are involved in sort of assessing or analysing the amendments and looking at practical application, I guess, is basically what you are saying, and will it work under law, would you then seek legal opinions or legal advice on your own about certain amendments that might come forward?

**Mr. Balasko:** We do not seek independent legal advice on amendments. We may get opinions when we are trying to make a section work, formulating a recommendation. For example, I will use administrative fines. We would go to our lawyer who is independent of government and say, okay, administrative fines, is that double jeopardy? Are we going to collect money from people on the one hand and then still be able to prosecute them? What do you think about that? So that is the kind of information we get, but we do not take a bill before the House and second guess the Legislature and take it to our own lawyers and ask them whether it is appropriate.

**Mrs. Mitchelson:** I guess, no, you would not. Then you are telling me you would not get independent legal advice, but would there be any sort of discussion with the government of the day at the time on whether a clause might be workable or whether you might have some concerns or issues with that clause and give them advice that there needs to be clarification or there needs to be work done around the wording or the direction?

**Mr. Balasko:** I will perhaps use the structure that you brought out at the beginning when you talked about policy and things that are non-policy and administrative. We will, in every case where we think that there is an administrative issue or clause B does not hang together with clause A, we will point these things out and we will try to come up with a workable issue.

But on matters that are policy matters that are not recommendations of the CEO, those are things that are determined or initiated by the government of the day. That has always been the case. On those matters, no, we are not seeking legal advice on those matters.

**Mr. Chairperson:** Do you have any more questions?

**Mrs. Mitchelson:** Yes, can the Chief Electoral Officer indicate whether he recommended banning contributions from unions and corporations? Was that one of the recommendations that came from his office?

**Mr. Balasko:** That is an initiative of the Government.

**Mrs. Mitchelson:** Would the Chief Electoral Officer, in the process, comment one way or the other on whether he agrees with this change? I mean, is that something that he would do? I think maybe in a previous answer he indicated that this would have been a policy decision and, in fact, if it was a policy decision, he would not get involved. Would he comment, or has there ever been any recommendations from the Chief Electoral Officer around contributions from unions and corporations?

**Mr. Balasko:** Again, the two parts to that, just to reiterate, the issue is a government initiative. Secondly, I do not believe that I am the appropriate person to comment on a bill before the Legislature dealing with a government initiative. I hope you will appreciate that.

**Mrs. Mitchelson:** Thanks. I might just ask the Chief Electoral Officer if he has looked at and analyzed the Bill, and whether in fact he believes he has the resources available to him to monitor the requirements that will be put in place if the bills are passed. Does he have any indication, or has he done any analysis within his office to indicate whether additional resources might be needed?

\* (11:00)

**Mr. Balasko:** Thank you for raising the issue of resources, but in a general sense, when the amendments were also brought in, in 1998 and 1999, we felt at that point we required additional resources to implement those. We did get some relief through statutory funding, but that funding can only be used directly related to an election. It cannot be used for ongoing annual activities.

So we have given some thought to this but do not have any final numbers or details. We do know that, when annual requirements are included in the legislation, and there are some annual requirements here, that will require resources, yes. But I cannot tell you right now exactly what that would be. We will be following, ultimately, I understand, the procedure with LAMC, and I have committed to do that.

**Mrs. Mitchelson:** As far as some of the amendments that have been brought forward this session, there is an amendment that says that a non-resident Canadian, a Canadian that does not live within the province of Manitoba, cannot contribute to a political party in Manitoba, but a non-Canadian who might reside in Manitoba, so a person who is not a Canadian citizen and does not have the right to vote in Manitoba, can make a contribution to a political party in Manitoba. Was there any assessment done by your office on what the implications of this might be?

**Mr. Balasko:** Thanks for the question. First, I have to admit to you that I came prepared this morning before the Committee dealing with the outstanding recommendations from the CEO report, and so I do not have those bills before me. Secondly, just in terms of policy about who can make contributions and who cannot make contributions, as I have mentioned, those are government initiatives. Those are things that I feel it is inappropriate for me to comment on because it is being debated among the legislators. Ultimately, you will craft a law, you will return it to us and our job is to get it done.

#### Point of Order

**Mr. Doer:** I think, as I recall in '99 and '98, Mr. Balasko was a technical expert before the Legislative Committee dealing with the legislation. He was here when the legislation was being drafted, or at least available. I certainly know he gave us advice on the '98 bills, what it meant and what it did not mean. I do not want to misrepresent that.

**Mr. Chairperson:** This is not a point of order; this is a point of information.

\* \* \*

**Mrs. Mitchelson:** I guess what the Premier is saying, in fact, is that when we get this bill to committee the Chief Electoral Officer will be available for comment and clarification during that process.

**Mr. Chairperson:** Order, please.

**Mr. Doer:** I do not want to have my memory misrepresent what Mr. Balasko did. I know that we have found him, in opposition, to be a person who gave us technical advice. We would have policy differences perhaps with the government, for example, on polling or returning officers. We disagreed with the policy of the government. We brought in, for example, a private member's bill. But what the Bill meant, he gave us technical information. I know that he is a servant of the Legislature, not of the government, in that sense.

**Mrs. Mitchelson:** So then, as far as any technical questions on the legislation that are before us today, Mr. Balasko would be then available at committee, when that legislation—*[interjection]* I am just trying to find out—

**Mr. Chairperson:** Mr. Balasko, to provide an answer: Will you be available? That is the question before this committee.

**Mr. Balasko:** I appreciate that. I think part of finding our way through it is that election amendments seem to be infrequent, but now they have a certain momentum going with them.

The first part to this is, as was mentioned by the Premier, we are always a source, this afternoon, tomorrow, to sit down and go through and provide an overview to the Bill. We did that last time around when the bills were being developed in '98 and gave a briefing. We have provided some information to some members who have approached us already on the current legislation, just asking what does this mean? What is the implication? Not challenging the policy issues.

In terms of the CEO at the Committee, there is really a mixed bag on that, I guess, if you would like. Traditionally speaking, it has not been the CEO sitting at the table defending government legislation. It is legislation brought in by the government; defended by the

government. We provide information to explain the bills, so that is available. We work together with the drafters from day one so that they are current with what is happening. Normally, that has been the process.

In 1999, we did take part, but those amendments were very narrow. They arose directly from Commissioner Monnin. In 1999, there was not a report that we had dealing with Commissioner Monnin's recommendations. We took those. We met with the advisory committees. We wrote a letter, a document, in a sense, a sort of a mini-report. We did not have a committee to present it to, so we went right to the Committee and they said: Well, please tell us, what do you think about the recommendations? What can we do? So we went: one, two, three, four, in that unique case.

Generally speaking, no. We have provided the information, the background, the technical expertise. It is now with the drafters and on the spreadsheets. So that is a government bill. I suppose any time we are dealing with amendments, it is a government initiative.

**Mrs. Mitchelson:** Maybe I could ask the Chief Electoral Officer, usually, how many times in a government's mandate amendments have been made, traditionally, to The Elections Act or The Elections Finances Act. It probably does not happen on a yearly basis. It may. I do not know that. I guess I am just asking that question because I have not done that research. Normally speaking, how many times over the last number of years have amendments been made to The Elections Act or The Elections Finances Act?

**Mr. Chairperson:** Mr. Balasko? *[interjection]* Order, please. When you have the floor, you can speak. Mr. Balasko has the floor.

**Mr. Balasko:** Thank you for the question. Particularly the second part of it I can give you a direct answer to: How often is it amended?

We happen to analyze in terms of mandates of government, but it was amended in 1999. It was amended in 1998. There were some amendments in 1986, and in 1995 also were some amendments on the voters list and the

protection of the voters list. So if you look at '86, '95, '98, '99, then I will leave the counting.

**Mrs. Mitchelson:** I thank Mr. Balasko for that answer. It is not really fair for me to ask him to analyze which government's mandate it was under. I realize that.

I guess what we are dealing with here today are the reports that have already been presented and the passing of those reports. As far as dealing with questions of your office on the two bills that are before us in the Legislature today, those would be more appropriately dealt with and questions would be more appropriately asked of you just for information or technical briefing outside of this committee. Is that my understanding?

**Mr. Chairperson:** Are you asking him a question?

**Mrs. Mitchelson:** I could ask him. I guess I could ask him or the Premier to give us some indication of whether the questions should be more on the reports than on the proposed legislation that is before the House.

\* (11:10)

**Mr. Chairperson:** The question is directed either to the Electoral Officer or to the Premier.

**Mr. Doer:** I am speaking as a person who has been more experienced in opposition than in government. With that caveat, I can recall being briefed by the Chief Electoral Officer on amendments that were being proposed by the government of the day and being briefed by Mr. Balasko on what were the technical implications of various amendments and the policy decisions that were left to us to deal with, for example, the Chief Returning Officer, the returning officers in districts, in the various constituencies. That recommendation had been ongoing and obviously was a policy decision of the previous government not to implement the recommendation. We decided, then, we got an interpretation of that and we tried to determine the reason for that recommendation, and then we made a policy decision ourselves in opposition to bring in a private member's bill.



I think the other issue was the issue of polling, for example, the clarity on polling. The issue of third-party was left as an issue we had to resolve. There was not a recommendation for capping or anything else that was there.

I have always been briefed in opposition on a technical basis by the Chief Electoral Officer, but he always informed me what was political in policy versus what were the technical interpretations of things. I think that my personal view is we may disagree on policy. We may disagree on policy initiatives in the Legislature. Fair enough. Some of the technical parts, though, that have been developed by the Government, the Chief Electoral Officer, in consultation with the legislative draftsman and sometimes with the Constitutional Law branch, particularly the advice of the Chief Electoral Officer who is a person who works with all the Legislature, all 57 of us, that technical advice should be available.

I am sure I am not speaking for him, but I know he has been available to us in the past to provide us technical interpretation but to not give us any policy advice. That was something we had to determine or take our own initiative on, as he has stated in this statement.

**Mr. Chairperson:** Only the Chief Electoral Officer can express his own opinion. Would you like to say something?

**Mr. Balasko:** Yes, if I may, just to build on those. I certainly agree with all those points and, again, reiterate or, as some have done, we are happy to provide a technical briefing to any member on any aspect of the bills. I think you are also getting behind some of the rationale, maybe, behind some of the things in the Bill.

If those things relate directly to our recommendations, for example, if we want to discuss returning officers, clearly this is a matter the Chair will determine the appropriateness of this. If you want to talk about returning officers, what is behind our recommendation, because the legislation delivers it, great. Polling, what is behind our thinking on that? It delivers it, great. Third-party disclosure, what is our thinking on that? It deals with it, great. What is the status of the law in Canada on limitations? Fine, I can

provide you all that information. But, with those three issues aside, the remainder of the Bill is essentially, if memory serves me correctly here, government initiatives. So there would not be a point on which we would be providing the logic of the thinking behind, that is for someone else more appropriate.

**Mrs. Mitchelson:** I think that clarifies in my mind a little bit the kinds of things that I can ask. Can I go back then to the third-party disclosure and spending limits? My understanding is there have been recommendations in the past around this issue by the Chief Electoral Officer. Could I maybe just ask, then, for the rationale or the thinking that maybe went on before making these recommendations?

**Mr. Balasko:** Thank you very much for that question. The rationale behind the recommendations on third-party is simply that the election legislation in Manitoba, and a number of other jurisdiction as well, makes an important assumption that money plays an important role in politics and regulates that through, in particular, The Elections Finances Act by having disclosure, by having limitations and some other things too, tax credits and reimbursement, things that are not directly transferable. The rationale then is that if we accept that money being spent on election can impact an election campaign, then you limit one group, the group being candidates and political parties, I should say regulate rather than limit, and you do not regulate the larger arena in which it is taking place in any manner, and our issue in particular has been disclosure, that it creates an uneven playing field. That is the rationale. That is the rationale concluded by the Royal Commission on Electoral Reform in 1992.

Also, I can mention to you that in the *Libman* decision, as well, the Supreme Court of Canada has recognized that regulation in some form is, as they called it, a laudable public policy goal.

Again, those are just opinions. It is my recommendation and my rationale, consistent with the company of the Royal Commission and the Supreme Court. Our main issue has been disclosure. As you are well aware, this similar

type of legislation has been subject to constitutional challenge in a number of jurisdictions. To my knowledge, even when the first Canada Elections Act was struck down in a Court of Appeal in Alberta, the Court of Appeal in Alberta found limits to be unconstitutional, but they suggested in its place very stringent disclosure requirements—so even the court in Alberta. Since that time, the Supreme Court and *Liebman* decision has expressly drawn the line between themselves and the court of Alberta in saying, and, of course, these are my words, as I read it many times, with respect, we understand what the appeal court in Alberta has said. We do not agree, but disclosure, again, has been upheld or mentioned.

British Columbia has a law, as well, that has been challenged in court and found to be unconstitutional on the limit issue, but they had many disclosure provisions. It is unclear, even today, in B.C. whether or not the disclosure provisions have been set aside.

I mention this to you by way of our rationale and our background. We think third-party regulation is important because of the playing field issue. We think that there are other very credible sources that recognize it also to be important. We believe certainly let the sun shine on it. Let us get public disclosure, at a minimum, going forward.

In the *Liebman* decision in particular, the Supreme Court of Canada said that limiting the expenditures is a laudable public policy goal, but it has to be reasonable. It cannot be a virtual ban, it cannot be an effective ban, it cannot be a ban, it has got to be a reasonable limit. That is the core issue when you talk about limitations, and a reasonable limit is a matter for the legislators to determine, I believe. So we have raised the issue saying *Liebman* has opened the door. The Supreme Court has said that if you find that reasonable balance and the Supreme Court says if you want to proceed with that on a policy basis, get your constitutional advice and do what you can.

I apologize if that seems to be a lengthy answer, but in terms of third-party spending and all the judgments and the rationale and the rest, I tried to put kind of a cap on it.

**Mrs. Mitchelson:** Mr. Chairperson, but if I am hearing you correctly, you are indicating that your recommendations in the past, to the Legislature, have been around very strict disclosure of third-party contributions. Am I correct in that assumption? That was your thinking behind the recommendation? Did your recommendation ever include spending limits as part of that?

**Mr. Balasko:** Some time ago, quite a number of years ago, we came out on disclosure and said disclosure as a matter of fact today would put us in a position to look back and talk about limits and see whether they are worthwhile. As far as limitations go, we have said that based on the *Liebman* decision where the Supreme Court of Canada recognizes that limits as a laudable goal of public policy. We have put that directly back before the legislators saying that disclosure, yes it is our recommendation. Part two of our recommendation, Legislature look at whether or not you can agree on reasonable limitations because although there have been a number of laws struck down, the Supreme Court seems to advise that they are open to the issue of reasonable. So disclosure, absolutely. Limitations, we have said reasonable limitations ought to be a matter discussed by the Legislative Assembly, in our opinion. But again, our recommendations collectively are law.

**Mrs. Mitchelson:** Could the Chief Electoral Officer indicate whether he is aware of whether a constitutional lawyer has been consulted on the amendments to Bill 4 regarding third-party spending, whether that process has been undertaken?

**Mr. Balasko:** I am not sure if—

**Mr. Chairperson:** She wants to know if you have consulted a constitutional lawyer.

**Mr. Balasko:** I will go ahead with what I understand to be the case. Certainly we have raised in our recommendations the constitutional aspect to it. It is a clash of values, freedom of speech and competitive elections, the right to vote. My understanding is that there has been constitutional advice sought by the Government.

**Mrs. Mitchelson:** Mr. Chairperson, maybe I could ask the Premier whether in fact he has

sought that constitutional advice and whether he might share that advice with us.

**Mr. Doer:** We personally have read the *Libman* decision. The Constitutional Law branch of the provincial government has been consulted by the drafting process in the preparation of this proposed legislation, taking in mind the *Libman* case in particular, which is the only, as I understand, the only Supreme Court decision. There have been courts in Alberta and B.C. at one level that have dealt with some of these issues. The only Supreme Court decisions that, well, I should not talk as a constitutional lawyer. The answer to your question is constitutional experts were consulted on the drafting of the Bill.

\* (11:20)

**Mrs. Mitchelson:** If the Premier can clarify for me: Was it those constitutional lawyers that drafted the clause in the Bill, or who actually drafted it? I am not clear on what his answer is telling me.

**Mr. Doer:** I will take the specific as notice, but there is obviously a legislative drafting office and there is a Constitutional Law branch in the Department of Justice.

**Mrs. Mitchelson:** It would appear to me from the Premier's answer that there was some consultation by the drafting arm of the Department of Justice to the constitutional arm. My question would be: Is there written advice from the constitutional arm of the Department of Justice to the drafting people that indicates whether they felt this would be constitutional or not constitutional?

**Mr. Chairperson:** Whom are you directing your question to?

**Mrs. Mitchelson:** The Premier.

**Mr. Doer:** Well, as a former government member knows, you get constant advice about the drafting of a bill and how consistent it is with decisions and how consistent it is with constitutional law. There is no such thing in constitutional law in black-and-white terms. Certainly the *Libman* case was considered by the

people involved in this, and we feel confident that, in terms of the clash of values as outlined by the Chief Electoral Officer, the freedom of speech and the competitive playing field of electoral politics, that this is a good balance in the Act Even as late as a couple of months ago, we had to deal with something that was thrown out in court after, I am sure, they got legal advice on the courtroom security.

I know the Sunday shopping law that we passed in the '80s had to be revised and changed. Then, of course, the members opposite did it retroactively in the '90s, and then got constitutional advice against catechists and other cases that had been ruled on in the Manitoba Court of Appeal.

The advice was sought and advice was incorporated. Advice was incorporated as part of the policy announcements we made during the election campaign.

**Mrs. Mitchelson:** Mr. Chairperson, the Premier has not—well, maybe I will ask my question a little different way. Was there any written advice from the Constitutional branch within the Government that was provided to the drafting branch? Was there anything in writing from the Constitutional branch, and if there is something on paper, would the Premier be prepared to share that with members of the Legislature?

**Mr. Doer:** The practice of consulting the Constitutional branch in government for the preparation of a law through the legislative draftspeople is consistent with what was in practice in the past, and that advice is incorporated in writing in the law proposed to the Legislature.

**Mrs. Mitchelson:** Well, Mr. Chairperson, I am not sure I got an answer to the question. Would there have been a written opinion from the Constitutional branch within the Department of Justice around the third-party spending limits, and what was that advice?

**Mr. Doer:** The advice is contained within writing in the proposed amendments. The *Libman* case has been read. The Chief Electoral

Officer has referred to it. The *Libman* case was considered extensively in the drafting of this law of reasonable limits, and we feel, I feel, based on the advice I have received, that the amendments contained will stand the test. We will only find out, ultimately, in the courts. The advice was incorporated in the drafting, as it was normally done by the former government.

**Mrs. Mitchelson:** Mr. Chairperson, will the Premier table that advice that he was given?

**Mr. Doer:** I will table it in Bill 4 and Bill 17. That is the advice we received.

**Mrs. Mitchelson:** I am still not getting a straight answer from the Premier. There was advice that was provided. He has indicated clearly on the record that there was advice that was obtained, and that, as a result of that advice, he has drafted Bill 4 and Bill 17. I do not know why he would hesitate to table that advice that was provided to him. All he has to do is table the briefing note or the letter, or whatever, that was provided to him and his government by the Constitutional branch of the Department of Justice. He should have nothing to hide.

**Mr. Chairperson:** Order, please.

**Mr. Doer:** If you want to vote against third-party advertising, go ahead, have the courage of your convictions. It is a matter that has been dealt with and given to you for years and you did not deal with it in government. We received constitutional advice. The drafter of the Bill worked with the Constitutional Law branch. That work is contained within the Bill. You asked the question whether we received constitutional advice. Yes, it is in the Bill. You have the choice then to vote for or against it. The answer to the question is the *Libman* case was strongly considered in the preparation of this bill, as it had to be.

### Point of Order

**Mr. Ashton:** I think we are getting into debate on a bill that is not before this committee. That discussion debate is clearly out of order. *Beauchesne's* is very clear in terms of not anticipating debate on a bill that is before the House. I realize there is some sensitivity about

other issues, the Monnin inquiry, et cetera. I do believe, Mr. Chairperson, apart from questions that might relate to the reports underlying this, to get into debate about the Bill is out of order. I would like to ask you to urge the Interim Leader of the Opposition to come to order on that.

\* (11:30)

**Mr. Chairperson:** On the same point of order?

**Mrs. Mitchelson:** Yes, Mr. Chairperson, but it was agreed to at the beginning of this committee that we would have general discussion around information that was provided to this committee and then at the end we would pass several reports. *[interjection]* Just a minute. The Member for Thompson raised an issue that was not in any of these reports and had significant comment and discussion and put the Chief Electoral Officer in a very uncomfortable position. I think it showed disrespect for the office and the law that has been put in place for the Chief Electoral Officer to deal with issues.

He cannot have it both ways, Mr. Chairperson. He cannot say that he has the ability, as a member of this committee, to talk about something that was not in the report and yet try to limit or gag any other member of this committee from having the ability to have general discussion around issues that are not contained in the reports. He is showing very much disrespect, and I think he should be called to order, and he does not have a point of order.

**Mr. Chairperson:** The point of order raised has a basis in that the Bill is not before this committee. So he has a point of order.

On the matter of relevance, it is another issue. If you depart too far away from what is before this committee, we have an agenda. That is a matter of relevance. Please confine your remarks to the matters before us.

\* \* \*

**Mrs. Mitchelson:** I listened carefully to your words, and I would agree. We must stick to the issues that are before us. But we are discussing third-party spending, which is contained in the reports by the Chief Electoral Officer. He has

raised concerns that court cases could affect the terms that are in this legislation. We are dealing with a major recommendation that has come out of previous reports. I think it is helpful to this committee to have the kind of discussion that we are having, so we have an understanding of what the Chief Electoral Officer's recommendations were and how it might impact those within Manitoba who might be impacted by the changes or the amendments that are in the legislation. I feel that we can or should continue to explore this area.

I will continue on with some questioning. I know that not every question would be for the Chief Electoral Officer because some of the parts of the legislation that have been introduced are policy decisions that were not necessarily recommended by the Chief Electoral Officer. They were government policy. It is important because we have had many concerns raised to us as a result of Bill 4 and Bill 17 being introduced into the legislature by many concerned Manitobans, who come from several different aspects of our province, really feeling that they were somewhat disenfranchised as a result of this legislation being introduced. They were not consulted in any way.

When we look at the changes to the legislation that are policy driven, we see very much a one-sided approach. I am not sure whether we have any indication, and it is clear that many—

#### Point of Order

**Ms. Marianne Cerilli (Radisson):** Mr. Chairperson, I just want to ask you to remind the Member of the ruling that you just made. You just made a ruling that this committee is not here to discuss legislation that is currently before the House and the Member continues to make reference and discuss that legislation. There will be a separate committee to discuss that legislation before the House where members opposite can get on the record and talk about that legislation for 40 minutes and say whatever they like. This is not the time.

I know that I have some other questions related to the reports before us and the matters that have been placed before us at this

committee. So I ask that you call the Member to order.

**Mr. Doer:** On the same point of order, I think that we did make some policy recommendations. In the election campaign, we made promises on union and corporate donations to the public. We made promises on limitations on third-party. It is certainly within our responsibility to respond to those public promises we made. We are prepared to do so.

The Chief Electoral Officer has been very careful, as he should, to separate between the implementation of technical issues from policy decisions that he has stated has been the prerogative of legislatures for the last number of years over different governments. There is a Supreme Court decision out. I will make that copy available to members of this committee.

I think the *Libman* case would be a very good document for everyone to read. It deals with the conflicting values, which of course has been so eloquently put by the Chief Electoral Officer. It deals with the laudable objectives and the Supreme Court decision of reasonable regulations for limits. I will provide a copy to the Member opposite of the *Libman* decision, which is in writing on a Supreme Court Decision.

**Mr. Chairperson:** On the point of order, the Member for Radisson had a point of order. We should confine ourselves to matters before us and should not extend a discussion to bills that are not before us.

\* \* \*

**Mrs. Mitchelson:** I would like then to relate my comments back to the reports that have been produced by the Chief Electoral Officer that talk about limits on third-party spending and disclosure. Maybe I could ask for some detail from the Chief Electoral Officer around the third-party disclosure and what shortfalls he saw within the legislation that would have caused him to recommend third-party disclosure.

**Mr. Balasko:** On your first point, as I understand it from your comment, some detail on it, the detail that we have suggested for third-

party disclosure would involve from our reports registration above a threshold level and the appointment of a financial officer as accountable to then file an audited statement and also, and I am glad to have the opportunity to highlight this, the requirement to have a statement of authorization on materials. Again the rationale behind this is that during an election campaign, if things are popping up, people ought to know who is behind them and disclosure of the amount of money that people are spending above a threshold level.

How this comes up, this comes up on the basis that we have spending limits for candidates in political parties. It is dealt with directly by the Supreme Court and several decisions in various jurisdictions and the Royal Commission. So you have had the result over time in our reports for several years. Yes, disclosure, absolutely, I still feel that very strongly. Yes, I think the door is open to reasonable limits based on *Libman*.

**Mrs. Mitchelson:** Has the Chief Electoral Officer's office had any discussion on what reasonable spending limits might be?

\* (11:40)

**Mr. Balasko:** We have reviewed the court decisions. I am not a constitutional lawyer. I am not a lawyer. But we have read the decisions. As I say, the decisions to me say that there cannot be a total ban on third-party. It says it cannot be effectively a total ban, which was the case, for example, the Québec law had a \$300 limit, concluded it effectively, a total ban. It cannot be a ban. It cannot be, effectively, a total ban. The Supreme Court is saying there is a limit somewhere. But where that reasonable limit is is a matter of balancing these values that I referred to earlier, which I think is a very good discussion in the Legislature. So I do not have a dollar number to put to a reasonable limit.

**Mrs. Mitchelson:** In discussions around spending limits, did the Chief Electoral Officer's office, he or his office, have any discussion around spending limits pre-writ or outside of the writ period versus the writ period? Could he

maybe help us understand where his thoughts were coming from? Were they just for the writ period or was he talking about spending limits both pre-writ and during an election writ period?

**Mr. Balasko:** I want to make sure that I understand the question, if we are moving from third-party. Certainly third-party was election period third-party spending. That has been our concern. That is exclusively it.

**Mrs. Mitchelson:** So there was no sort of discussion or recommendation outside of the election period for third-party spending by his office?

**Mr. Balasko:** I can confirm our recommendation dealt with only the election period, from the writ to polling day. That has been our recommendation on third-party.

**Mrs. Mitchelson:** Was there any discussion in the Chief Electoral Officer's office around spending limits for political parties during the writ period?

**Mr. Balasko:** I heard you say at the end, and if I heard you correctly, during the writ period.

**Mr. Chairperson:** Kindly repeat the question, please.

**Mrs. Mitchelson:** Either during the writ period or between elections.

**Mr. Chairperson:** What is your question, Honourable Leader of the Opposition? State it precisely.

**Mrs. Mitchelson:** Okay. My question is: Was there any discussion in the Chief Electoral Officer's office around spending limits for political parties either during the writ period or prior to or in between?

**Mr. Balasko:** Again, two parts to that, the first is, in terms of the writ period itself. Our recommendation on polling, for example, has said that if we bring polling, which is an excluded cost, into the election, which to us makes sense, it is an election expense, it seems to stand the first test of reasonableness, that is bringing in a big cost. So our recommendation in

our report going back was take a look at the spending limits to see—and also gives us disclosure.

So these are all good things that would be achieved by bringing it in. So during the writ period we said look at the spending limits. So we just referred that. If someone wants to bring in a big cost, let us accomplish it in the limits. That is a policy decision. Otherwise you do not change that.

As far as spending limits on political parties outside the writ period, we have not made a recommendation on that. If I can understand, probably, I think, I know where that is coming from. That is not our initiative. That is a government initiative.

**Mrs. Mitchelson:** So I guess what I am hearing then is that the recommendations that came from the Chief Electoral Officer would have been recommendations that deal with the writ period only, that they have never had discussions beyond and they do not really feel that it is part of their mandate to look at what happens between elections or outside of the writ period. But the recommendations were specifically then for the writ period and disclosure during the writ period.

**Mr. Balasko:** I would not want to confirm that first comment about we do not have a role between election—I mean, sort of the writ, because we have many existing and have had lots of annual responsibilities in terms of filings, et cetera, and no, we do not limit our perspective, because you have given us a job on an annual basis outside of elections. If I understand the question to be on third-party expenditures, our recommendations on disclosure and to look at reasonable limitations are exclusive. Our recommendations are exclusive to the writ period, and the flip side of that is we have not made any recommendations on limitations on political parties or third parties for that matter, spending limitations outside the writ period.

**Mrs. Mitchelson:** Would you consider or do you think that given you do have that responsibility sort of year round during the writ and you have certain functions and

responsibilities outside of the writ period, would you consider taking a look at the other times of the year that there are not elections being held and making recommendations on what might or should take place in those periods of time?

**Mr. Balasko:** My apologies to you because I am not understanding clearly enough. I am sure you are putting it very well but I am just not—

**Mrs. Mitchelson:** No. I am probably not.

**Mr. Chairperson:** Order, please. The Leader of the Opposition will clarify.

**Mrs. Mitchelson:** Because the recommendations that have been made deal only with the writ period, have there ever been any discussions or would you consider discussions around what should happen to third-party spending outside of the writ period? My question would be: Why only deal with the writ period and not look at the total picture? The writ period is five weeks. It will probably be a little less as a result of changes to The Elections Act. I guess I am wondering why you would deal with spending limits or disclosure only during the writ period and not take into consideration what happens outside of the writ period.

**Mr. Balasko:** The reason that we looked at, in our recommendations, is that the regime in place deals with election spending during election periods. So the principal argument that has been advanced by the Royal Commission, the Supreme Court and others, has said well, when you are eliminating these people during this time, then the counterbalance is the third parties at the same time during the election period. So that was the natural thing for us to look at. That is how we arrived at the conclusion just in the writ period. There has not been extensive regulation outside that. Most things in the current act deal with the writ period. That is how we came to that.

**Mrs. Mitchelson:** Most things within the Act then you say deal with the writ period. Any comments or observations on why The Elections Act seems to be growing and expanding then, and putting rules and regulations in place beyond the writ period?

**Mr. Balasko:** Often, time to time, when they would say fearless leader or something good, until I saw Rocky and Bullwinkle, and I now understand why I just do not take comfort in it anymore. Let me be clear on the writ period. When I am referring to the writ period regulation, that is primarily the spending side, that is primarily regulated during the writ period. There are, of course, disclosures, I mentioned annual activities. There is candidate deficit disclosure, constituency association disclosure, annual political. There are all kinds of disclosure. So I am referring really to spending.

As to the second question, again, I just do not believe I am the appropriate person to comment on a bill which—you were referring to a government initiative in that bill.

\* (11:50)

**Mrs. Mitchelson:** Might I then ask the Premier, because it sounded like he maybe had wanted to answer this question for the Chief Electoral Officer on why, in fact, there are so many policy amendments that are taking place outside of the writ period that seemed to be presenting a bit of an imbalance in the whole process for Manitobans, or those that feel that they want a voice within the electoral process either before, after or during an election campaign.

**Mr. Doer:** The question you asked the Chief Electoral Officer that was the issue of are there requirements in law in periods of time for political parties outside of the writ period, and of course, just to give you one example, the requirement to have fully accounted for all contributions above \$250 was annually for individuals, corporation, and unions, was clearly in the law in the past and it is proposed that the union and corporation donations be proposed to be not eligible for those contributions in the future.

So the answer is there are requirements outside of the writ period. The whole issue of other issues you may want to raise, I think, that, again, we are attempting to bring in laws that affect the Chief Electoral Officer, the financial, The Elections Act, The Elections Finances Act is something that applies to this Legislature throughout the year. Some rules are much more

limiting in a writ period and require more resources to be applied, both by the Chief Electoral Officer's office and all political parties. But certainly the question, there are requirements under the Act now, and we are proposing to change requirements under the Act.

We are proposing to ban union and corporate donations, for example, which would be in effect in the period of time that is an annual report or an annual financial report that is proposed in the law, but I think, from the 1983 act on, the requirement to disclose fully those contributions has been a rule and law in Manitoba. Some of the changes that were recommended in 1990 to the former government dealt with requirements to improve those provisions. For example, the 1990 act required that loans be fully disclosed. The Chief Electoral Officer's report in 1990 dealt with loans, as I recall, just going back by memory. It is regrettable, in hindsight, that we did not deal with that recommendation of the Chief Electoral Officer because some of the items that arose out of the 1995 Interlake issue were "loans" that "individuals" would "work off." So if the former government had implemented that recommendation inside an election period or outside of an election period, perhaps we could have prevented some—well, I think the Interlake incident of '95 was regrettable by all standards.

**Mrs. Mitchelson:** Could the Chief Electoral Officer comment on, within the writ period, there are third-party groups that are limited to the amount of money that they can spend on communications in the proposed spending limits for third parties, and there is a definition or a distinction between groups that promote or oppose a party. I think in the new legislation groups—that you are not allowed to advertise to promote any party, or is that the 5000?

**Floor Comment:** There is a partisan—

**Mr. Chairperson:** Order, please.

**Mrs. Mitchelson:** Okay. Just for clarification

**Mr. Chairperson:** The question has not been put yet.

**Mrs. Mitchelson:** Third parties can advertise to a limit of \$5,000 to promote a certain political



party, but there are no spending limits, it is my understanding, on groups that promote their own position. So if they do not promote any one political party, but they have a position to promote, there is no limit on the amount of money that they can spend. I was wondering whether the Chief Electoral Officer might comment on how that definition might be put in place under the law.

**Mr. Chairperson:** You are directing it to the Chief Electoral Officer?

**Mrs. Mitchelson:** Yes.

**Mr. Balasko:** Within the context of the recommendation, because there is certainly a linkage here in terms of our advice in the past, one of the issues that you are touching on is the issue of express versus issue advocacy. It is a good one to raise because some people take the view that if you only limit express advertising, vote for someone or do not vote for someone, that allows all kinds of people sort of to skitter along the edge. On the other hand, you have the counterargument, if you try to limit entirely issue advertising, that may amount to a ban or effective ban on expression. So what we are back to again is that clash of values is the kind of constitutional position that the Legislature will have to deal with if they want to set a limitation. It will have to be the balance between the two things, and you are right. Our advice in the past has been what you want to disclose is the spending by the third parties above a threshold. That is what you want to make sure you disclose. So maybe you have a bottom threshold and you disclose it, and then you look at limitations, but that of course is, as I have mentioned, an issue properly, I believe, for the Legislature to work through the judgments and the clash of values.

**Mr. Chairperson:** We are about to have determination. What is the wish of this committee? Do we want to pass all these reports since '88, or do we want to meet another time?

**Mr. Doer:** I know the Chief Electoral Officer has got a lot of work, and he is hosting a major meeting this week of other Chief Electoral Officers in our fine community and his staff. So I know they are going to be very busy. We are

certainly able to consult with our House leaders. I know Doctor Gerrard has not asked any questions yet, and I am sure—

**Mr. Chairperson:** He is next in line, but he had no chance.

**Mr. Doer:** There are a lot of reports here and we also have the bills. I would suggest we get our House leaders together and work with the Chief Electoral Officer again on a time that allows him to meet with us, but does not allow him to delay his 1999 report.

**Mrs. Mitchelson:** I just wanted to comment before we close for today that I just find it very strange that we would be dealing with such significant amendments to The Elections Finances Act and The Elections Act prematurely before the results of the 1999 Chief Electoral Officer's report came out. I mean, he is indicating that within a few months, before the end of this calendar year, he is anticipating or expecting that his report will be out and will be public. Normally speaking, there are recommendations that do come forward from that report, and I find it very strange that we have a government that seems to be in such a rush to make amendments to The Elections Act and The Elections Finances Act when we are not anticipating an election within the next three or three and a half or possibly four years.

\* (12:00)

**Mr. Chairperson:** Order, please.

#### Point of Order

**Mr. Doer:** I do not believe the Honourable Interim Leader of the Opposition is acting in a manner consistent with your advice to the Committee. Some of the recommendations that are in the legislation have been in the report. If it is premature, some of the recommendations in 1998, 1999, 1993, 1994, 1995, 1996, 1997 to take the Cabinet out of the appointment of chief electoral officers, the recommendation for disclosure on third-party limits, the recommendations for other matters that would be very consistent with polling being limited as a reasonable expense, those are issues that are in the legislation.

Mr. Chairperson, the Member points out in her other comments about the frequency of electoral changes in 1995, 1998, 1999. If there are matters that are raised, this Legislature will have to deal with it after the 1999 report. There are other matters in this legislation, Bill 4 and Bill 17, that are matters of promises made to the people of Manitoba, and the Chief Electoral Officer has said, quite correctly, that there are policy decisions the government of the day make including the rejection of the advice on getting cabinet out of the returning officer appointments. That is a policy decision of the Government.

This legislation will not be in place within a year after the promise was made.

**Mr. Chairperson:** I have to rule on the point of order before we close. Sorry to cut you off, Mr. Premier. We should not get off topic. We should get into what is before us.

\* \* \*

**Mr. Chairperson:** Time being twelve o'clock, committee rise.