

*Canada Elections Act*

where, in effect, there was no regulation of election practices, where in effect there was no electoral reform.

I think we have to be realists here and recognize that political parties and political candidates do not operate entirely on the basis of good will. We are in elections to win, and it is important, at least to our peace of mind, to know that the other side is limited by certain provisions and penalties. Just like other mortals, politicians and political parties need incentives to obey the law. We are not going to do so out of sheer belief that the law is good; we need incentives to obey the law. The problem with the legislation that we have passed is that as it now stands there is no such incentive.

When we were in committee, Madame Speaker, I attempted to introduce an amendment that would have built in an enforcement procedure making use of the office of the Auditor General, an office that is already well established as an effective watchdog over the procedures and expenditures of the House of Commons. This particular proposal was ruled out procedurally because it went beyond the original scope of the legislation which had been brought before the House and consequently was not a matter that we could entertain properly as an amendment at that time.

When it was ruled out, the hon. member for Greenwood (Mr. Brewin) of the New Democratic Party introduced an amendment of his own, an amendment that was subsequently accepted and which created a commissioner who is subject to and appointed by the Chief Electoral Officer. The language in the bill reads precisely thus:

The Chief Electoral Officer shall appoint a commissioner whose duties, under the supervision of the Chief Electoral Officer, shall be to ensure that the provisions of this act in regard to election expenses are complied with and enforced.

That was the best we could do in committee and it was the best latitude that the procedures of the House of Commons would allow. The procedures did not allow recourse to the Auditor General. The procedures did not allow recourse to the kind of independent commissioner that I am proposing in Bill C-107 before the House today. I think because we had spent a long time in the committee and had undertaken and achieved a number of changes, and because we were conscious that there was a certain public pressure to introduce these reforms to our electoral law quickly, most of us were prepared to accept the commissioner amendment as the best we could do to meet the problem of enforcement. But on reflection I, and I believe other members of the House in other parties, fear that it is not good enough simply to have a commissioner who is the creature of and is responsible to the Chief Electoral Officer. We carried the amendment with the design of creating an enforcement mechanism, but in fact we did not achieve what we set out to achieve since there is not an adequate enforcement mechanism.

I should like to bring to the attention of the House the concerns I have about the enforcement mechanism that was approved in the committee and which is in the bill. In effect, the provision to establish a commissioner as incorporated in Bill C-203 is simply a writing into the law of the existing practice. It already is, and it was before the passage of this most recent electoral reform, the duty of the Chief Electoral Officer to ensure that the provisions of

[Mr. Clark (Rocky Mountain).]

the previous election law are carried out. In practice, Madam Speaker, the Chief Electoral Officer, the incumbent now and the Chief Electoral Officers who preceded him, is and were not able, for reasons I will not go into, effectively to carry out that enforcement function.

I think we are being naive if we believe that the mere designation of a person, the mere writing of that silent function into the law, is going to change the practice. We have to bear in mind that the function of the Chief Electoral Officer is primarily administrative. The function of the commissioner is an investigative one. It is very difficult to mix the job of administration, the primary task of the Chief Electoral Officer, with the investigative job that must be done if we are going to have effective enforcement of electoral reform legislation in this country.

Just in the nature of things, work that must be carried out in investigation is bound to jeopardize the reputation for non-partisanship that is essential to the effective functioning of the administrative job of the Chief Electoral Officer. That office works only because all parties in the House and all parties in a campaign believe that the electoral officer is fair to all and beholden to no particular party. There is a very real danger that if he follows, or influences his commissioner to follow, the investigative work too rigorously, then the requirement of non-partisanship will suffer so seriously that he will not be able to carry out his administrative job. I think that by trying to answer this very real need for an enforcement mechanism we have inadvertently imposed upon the Chief Electoral Officer a burden that could well be crippling in the carrying out of his administrative functions, which are the essential functions that he has to perform.

Another reason that we have inadvertently created a major problem here is that the Chief Electoral officer is now simply overworked during election periods when offences, in the nature of things, are most likely to be committed. I think we must realize that while the functions of an investigative officer, of a commissioner, are to continue between elections as well as during an election period, the time when the need will be most acute will be when an election campaign is in progress. I suggest it is simply unrealistic for us to expect the Chief Electoral Officer to be able to devote the time, the attention or the staff to carrying out the investigative function during the period it is most required. So we are left with no particular improvement.

If I might, Madame Speaker, I should like to quote extensively, so there will be no fear that these notions about the dangers of enforcement are only mine, from a very considered and considerable brief presented to the standing committee by Professor Hugh Thorburn who is a recognized and independent Canadian authority on electoral processes and is a professor at Queen's University. I quote Professor Thorburn:

My major criticism of the bill—

That is Bill C-203 in draft form.

—as it stands is that it lacks an effective provision for its enforcement. If we consider the elections act in its many forms through the years, its major shortcoming has been the fact that many of its provisions have remained a virtual dead-letter. If we survey the record we will find that "on no occasion has a member of an established party initiated action against a candidate from another established party".