Chief Justice, my lords, I would like to point out in advance that I'm not a lawyer. I ask for the Court's indulgence in this regard and after listening to the oral statements yesterday and today, I may need a great deal of indulgence.

Yesterday, the Court heard of six figure and seven figure advertising campaigns, but this reference is also about four figure and five figure grassroots campaigns.

It's about the right of British Columbians – ordinary British Columbians – to participate fully in our province's political life in a manner that is reasonable, equitable and constitutional.

The rights of chambers of commerce, of ratepayer associations, of dance companies and art galleries, of churches and homeless shelters, of environmental organizations and Rotary Clubs to stand up and speak out on the future of their communities and our province in the weeks leading to an election.

It goes to the core of whether a small non-profit organization can even operate during a pre-campaign period or an election period without fear of violating the Election Act.

Will the curtain fall on the Belfry Theatre in Victoria if it presents and "advertises" a political satire such as "FAAANTASTIC!" during a pre-campaign or election period?

Books are expressly exempted from the definition of election advertising, plays are not. Paragraph 41 of our factum.

I would draw the chief justice and my lords attention to the contrast in the definition of election advertising between Ontario and B.C. in that paragraph as well.

Hopefully, this reference may also provide some clarity as to whether a citizen or the local parish needs to retain a lawyer to help decipher third party

spending rules that to a layperson – indeed even to Elections BC – are sometimes at best indecipherable, as is well detailed in the Affidavit of Shannon Daub.

IntegrityBC will focus our remarks on four themes:

1. Rights

2. Mack Truck loopholes

3. Our reply to the replies

and

4. As was touched on yesterday just plain old legislative common sense

Rights are rights

Charter rights are not political baubles dangled before the electorate when politically expedient and yanked away when they're not. And politicians should never be left with the power to cherry pick when and where they will apply.

A cursory review of existing election laws, recall, referenda and initiative legislation in British Columbia reveals a hodge-podge of rules that are contradictory and ill-defined.

And if this Court is being asked to defer to the Legislature in this reference, we submit that the legislation in its totality is relevant to the reference.

The “pre-campaign” period restrictions before the Court today, would only exist for a fixed date provincial election, a legislative principle that still only exists at the pleasure of the government.

Indeed, there's a private member's bill before the Legislature that would, if adopted, move the May fixed date election to an October fixed date.

“Pre-campaign” periods won’t exist in a by-election or when a minority government falls on a confidence vote.

They likely would not exist if a governing party changes leaders and the new premier chooses to call a snap election, as was a very real possibility last fall, as we note in paragraph 30 of our Factum.

The B.C. Recall and Initiative Act doesn’t have a pre-referendum, pre-initiative or pre-recall campaign period.

Not only is there no pre-campaign period in local elections, where a province-wide common fixed date election has been in place since 1996, there’s also no spending limit, whatsoever, for third parties.

If unbridled third party spending is a threat before a fixed date provincial election, then surely it's also an equivalent threat in a fixed date local election.

But the government isn't seeking guidance in regards to “pre-campaign” limits in that legislation.

The legislature has already shown its willingness to even repeal constitutionally compliant third party spending restrictions on a legislative whim for a one-off, special occasion vote, as was done in last summer's HST referendum. Paragraph 33 of our Factum.

All of which raises the remote possibility that maybe – with respect my lords, Chief Justice – this reference is more about serving partisan interests, rather than the public's interest.

Anomalies in the laws governing elections in British Columbia

This reference also needs to be seen in the broader context of the Election Act and the various other legislation in the province that governs elections and referenda.

If I may, let's consider for a moment what is already permissible in local and provincial elections in British Columbia and what is not.

It's legal for a corporation to donate $210,000 to a political party, as one company did in 2011 and finance nearly 20 per cent of a party's existing pre-campaign spending limit; but it is illegal for the Kelowna Chamber of Commerce to spend more than $3,000 in the electoral district of Kelowna Lake Country during a “pre-campaign” and election period.

It's legal for the BCGEU to donate $100,000 to a political party, as it did in 2011. But only until this past Friday that union faced a $3.2 million fine for a province-wide ad campaign that overlapped – for a matter of days – with last April's byelections in Chilliwack-Hope and Port Moody-Coquitlam, because Elections BC deemed the collective bargaining ads election advertising.

It's legal for an individual to donate $960,000 to a municipal political party in Vancouver, as one businessperson did in 2011.

And it's legal for the Kelowna Chamber of Commerce and the BCGEU to spend like drunken sailors should they choose in races for City Halls across B.C. – held on a fixed date election.

It's legal for any two citizens in British Columbia to form a political party and spend up to $5.5 million in the pre-campaign and election periods. Two people. That's it.

Were we all so inclined to pair off and do so, there are 8 political parties just waiting to be formed with those gathered in this courtroom today. Together, we could spend $44 million, not even taking into account what our candidates could spend.

And with a Mack Truck revving its engines at all of these loopholes, the government's preoccupation is nothing more than a $3,000 third party spending limit in an artificially conceived “pre-campaign” period in just one of the three Acts that govern votes in the province.

A period that we learned yesterday might be better called the “incredible shrinking pre-campaign period,” indeed capable of shrinking itself right out of existence. A gift horse that politicians won't look in the mouth once they see it.

And in reply to your Lord's questions from yesterday, under our Parliamentary system, a Speech from the Throne only takes place when the Lieutenant-Governor – upon request of the government – prorogues the Legislature. Constitutional convention gives the latitude to the Premier at recommending when the Legislature will be prorogued.

British Columbia did not have a Speech from the Throne on February 1st of this year. In fact, there has not been a Speech from the Throne in 2012.

And, just as an illustration, I would note that from June 2010 till April 2011, the Legislature sat for a total of seven days. This hearing alone is set for three.

Current third party spending limits are also neither reasonable nor equitable, because the disparity in the size of electoral districts in British Columbia is so great that a $3,000 limit in the electoral district of Stitkine is equivalent to 24.4 cents per voter, while in Comox Valley it's only 6.3 cents per voter. Paragraphs 36 to 39 of IntegrityBC's factum.

Our reply to the replies

In their reply factum, paragraph 4, the Attorney General attempts to diminish the significance of the “pre-campaign” period by stating: “that it is, at most, an additional 40 days every four years.”

With respect, creeping encroachment on democratic rights is the precipice of a very slippery constitutional slope. And while God may have needed 40 days and 40 nights to cleanse the world, the government of British Columbia does not.

The Attorney General goes on to note that: “the government considers itself bound by the restrictions,” paragraph 9 of their reply.

“Considers itself bound” is not bound, as the Amicus well pointed out for the Chief Justice and my Lords yesterday.

And even if it considers itself bound, that is within their prerogative. However, it doesn't flow that a government can then impose restrictions that are not constitutionally compliant on others, just because it voluntarily imposes them on itself first.

The Attorney General notes that: “It must be remembered that British Columbia was the first jurisdiction in Canada to adopt fixed-date elections,” paragraph 16 of their reply.

And as the pioneer in fixed date election legislation, it defies belief that other provinces did not consider British Columbia's legislative leadership in this regard.

And not one of those provinces chose to incorporate a “pre-campaign” period in their legislation. Not one. Paragraphs 14 to 18 of IntegrityBC's Factum.

The Attorney General correctly notes that “Quebec...provides an extreme example in generally prohibiting third parties from incurring any “election expenses” during an election campaign,” paragraph 18.

However, this needs to be seen in the broader context of Quebec's legislation. Unlike British Columbia, corporations, unions and third parties are prohibited from donating to a political party or candidate in Quebec.

Strict limits are placed on individual donors who can give no more than $1,000 annually. Additionally, political parties receive a per vote annual public allowance, on top of the 50 per cent election expense rebate that the Amicus referred to yesterday. Allowing third party spending, in this context, defeats the very purposes of their legislation.

We contend that when Quebec's Court of Appeal deferred to the National Assembly in United Steelworkers of America, Local 7649 v. Quebec, they did so to the totality of that legislation.

Finally, it is incorrect for the Attorney General to state in paragraph 21 of their reply factum that IntegrityBC opposes spending limits by third parties in a “campaign” period. Quite the opposite, as we state in paragraphs 3 and 45 of our factum.

Gloria Laurence reply

In her reply factum, Gloria Laurence states: “The Elementary Teachers' Federation of Ontario alone spent $2.6 million on ads, which is 300 times as much (as) they would have been permitted to donate to a party,” paragraph 10.

As an aside, nothing – absolutely nothing – would stop the Elementary Teachers' Federation of Ontario – not B.C.'s, but Ontario's – from donating

$2.6 million to any political party in British Columbia, under the B.C. Election Act.

And while this reference with respect is really not about perpetual campaigns or the U.S. Constitution, I would note that the attack ads against Bob Rae were not commissioned by a third party, but by a political party intent on creating a little mischief on the eve of another party's leadership convention.

What political party in its right mind would launch the 2015 federal election in 2012 with attack ads against an *interim* political leader?

Common sense rule

In their reply, the Attorney General writes: “The disparity between the solutions put forward even by those united in opposition to the Amendments simply underscores the challenge faced by the Legislature of British Columbia in fashioning a response,” paragraph 22.

Regrettably though, left out of this process, British Columbians, who were never given an opportunity to help the government fashion a response before it presented these amendments.

The laws which govern one of our most fundamental rights in a democratic society, should never be drafted behind caucus doors and then tossed into an Omnibus Bill.

We submit, British Columbians deserve better.

The loopholes that I spoke of earlier demand far more than the one-off tinkering of this reference.

The government would have been far wiser to draft comprehensive legislation; consistent across all elections and referendums; with rules that are not so convoluted as to require a PHD in Comparative Literature and Interpretive Techniques to figure out what they mean; and legislation that reflected the input of all political parties and interested British Columbians.

If ever there was a time for a Citizens' Assembly, this is it.

Your Lord was right yesterday when he stated that a federal campaign must be no less than 36 days. And in 2006, it was in fact 55 days.

And the Amicus is right, if the government wants a simple out: lengthen the election period – a period with real legal implications, don't create an artificial pre-campaign period that does not exist in any other province in Canada, which sometimes applies and sometimes doesn't, and which is contained in some legislation, but not in some legislation.

Subject to any questions Chief Justice, my Lords, those are my submissions.