Modernizing the Electoral Process

Recommendations from the Chief Electoral Officer of Canada *following the 37th general election*

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Introduction

Introduction

To live in a democracy is to recognize the sovereign authority of the people. It is also to acknowledge that the people of a nation delegate that authority to a limited group of individuals to exercise on their behalf. These principles are inscribed in Canada's basic law. Canada's electoral history is punctuated by the efforts of succeeding generations to entrench these principles in the daily practice of political governance. Canadian society is not frozen in time. The conditions of democracy must be constantly rethought. At the beginning of a new millennium, one already marked by profound changes and challenges, we must find new civic connections that will ensure greater public participation in collective choices. The time has come to strengthen Canadian democracy.

The great revolutions that led to democratic modernity were, fundamentally, driven by the search for a fair balance between liberty and equality. This balance is difficult to achieve, but its value must always be measured against the ideal of democracy. As Ronald Dworkin points out in *Sovereign Virtue: The Theory and Practice of Equality* (2001), liberty and equality are not necessarily antithetical values; liberty can be considered a condition of equality. Thus, for example, limiting the freedom to spend on an election campaign promotes equal opportunity for all the participants in the electoral process.

Democracy, the basis of the Canadian political system, recognizes the intrinsic right of all citizens to participate in political governance through elections independent of their origins or social status. Democracy not only promotes respect for human rights, it contributes to their advancement. Notwithstanding American economist Kenneth J. Arrow's theorem that no voting method is capable of mathematically translating the electors' preferences, every electoral reform must be guided by the objective of strengthening democracy so that everyone can exercise their right to vote, and in an enlightened manner. Fair and equitable elections are an essential prerequisite of political legitimacy.

In my report on the 37th general election, tabled in March 2001, I announced that later this year I would be presenting to Parliament my recommendations for amendments to the *Canada Elections Act*. Those recommendations are the subject of this report. Taken as a whole, they are designed to ensure greater equality among all the participants in an electoral competition, to reinforce citizens' right to stand for office, to encourage electoral participation, to bolster the public's right to know with respect to electoral funding, to guarantee the independence of political parties and to protect privacy. Overall, they seek to clarify certain rules, define the roles of certain participants and modernize electoral administration.

These recommendations must be dealt with as a whole, because they proceed from the same basic principle: the public's right to know. This, in my opinion, is the basis of electoral democracy. Although each recommendation has its intrinsic importance, none of them, taken in isolation, can ensure the satisfactory application of this principle.

Some of these recommendations have been put forward in the past, in the *Report of the Royal Commission on Electoral Reform and Party Financing* (1992), in *Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election* (1996), or in the *Report of the Chief Electoral Officer of Canada on the 36th General Election* (1997). Other recommendations are new. They are the result of various post-electoral consultations conducted with electors, candidates, political parties and returning officers and of comments from members of the House and Senate.[1]

This report also proposes measures designed to strengthen Canada's electoral democracy in light of certain difficulties encountered during the 37th general election. The recommendations it contains are not definitive, because they do not cover the entire range of reforms that might be considered worthwhile in the wake of that electoral event. This report does not consider a number of current circumstances for which it is not yet possible to formulate recommendations. This is true for issues that the Commissioner of Canada Elections is currently reviewing (such as the publication of election results), or matters that are before the courts (such as third party election advertising or the number of candidates required for a party to maintain its status as a registered political party).

What follows is an invitation to reflect, on a more comprehensive level, on the future of the Canadian political process. The time has come to fortify the inherent principles of Canadian democracy through efforts to:

- increase the effectiveness and accessibility of the electoral process for the electorate, candidates and political parties;
- favour the emergence of a context in which the electoral process will be fully competitive;
- markedly increase the transparency of election financing;
- reflect on the future of political representation in Canada.

Increasing the effectiveness and accessibility of the electoral process for the electorate, candidates and political parties

The right to vote and the right to canvass for votes are an integral part of Canadian citizenship. They are the fruits of long struggles to eradicate from the electoral process undue influence and power based on money. These rights are the basis of Canadian democracy. All those who meet certain minimum requirements, particularly with respect to citizenship and age, can vote freely in elections and run for a seat in the House of Commons.

Under the terms of the Charter, the rights to vote and to stand for office cannot be limited in any way that is not justified in a free and democratic society. Thus, except under exceptional circumstances, electors should encounter no obstacle to the exercise of their right to vote. Similarly, any person who believes that he or she can contribute to the vitality of democracy by running for elected office should encounter the fewest obstacles possible in the process and should receive adequate support from the State. It is in that spirit that the Canadian state, under certain conditions, reimburses part of election spending.

In this report, I am submitting to Parliament's attention measures that would strengthen guarantees for all citizens of the right to vote and to run for office, will fortify the right of electors and candidates to accurate and transparent information, will consolidate the integrity of the electoral process and reinforce the authority and autonomy of Elections Canada and election officers. Essentially, these recommendations are intended to improve the administration of the electoral process by streamlining it, by opening it up to the electorate, candidates and parties, and by making it more flexible and sensitive to a variety of circumstances – in short, by modernizing the electoral system.

Political parties are an essential element of Canadian democracy. They bring together individuals with common political aims who seek to rally the largest possible number of their fellow citizens to those aims. In this way, they contribute to the political education of the public; they offer answers to certain collective questions through their electoral programs; and, they stimulate political debate.

Political parties are better able to carry out their democratic function if they have the administrative capacity to do so, and if access to administrative advantages is equally available to all parties. With that in mind, I am recommending legislative amendments whose objective is to establish fairer rules for the parties and to enhance their ability to express themselves and to act. These measures would produce a certain amount of administrative streamlining and ensure the parties greater access to information.

Favouring the Emergence of a Context in Which the Electoral Process Will Be Fully Competitive

Electoral democracy is based on freedom of expression. Parties must be able to present their political objectives clearly and electors must be able to make an informed choice on election day. In this respect, greater political coverage – in particular, by an increasing number of radio and television stations, as well as the advent of the Internet – has strengthened Canadian democracy. Such diversified sources have created a much richer discursive political environment in which electors may exercise their right to information about political issues and process.

Not all political parties necessarily have the same resources and, consequently, not all have access to the means of communication that would allow them to explain and promote their programs. This adversely affects the public's right to know the range of ideas being offered by the parties – especially small parties with limited resources. Furthermore, participants other than parties and candidates enliven electoral campaigns with their ideas. These participants must be subject to the same rules as the parties, insofar as they too, have the ability to influence the vote.

In that spirit, I am presenting a number of recommendations intended to ensure fair electoral competition, to strengthen the ability of political parties to act and express themselves, and to enhance the public's right to know. These recommendations involve greater access to communication media for all parties and greater authority for the Broadcasting Arbitrator.

Markedly Increasing the Transparency of Election Financing

The State's participation in the financing of election campaigns reflects the desire to limit the influence of money on the outcome of the vote, a concern that has deep roots in Canadian electoral history. The advent of the secret ballot, more than a century ago, did a great deal to free the will of the people from the undue influence of money. Electors were, from that time forward, able to express their choices without fear of reprisal. Since then, a good number of related changes have been made to the electoral process to better reflect the evolution of Canadian society.

The public funding of election campaigns helps strengthen Canadian democracy by reinforcing the citizen's right to run for office. The possibility of canvassing for votes is no longer a privilege reserved for the well off, but a right guaranteed to all Canadians who believe they have something to contribute to political governance. The result is a wider range of candidates and ideas, thus guaranteeing real electoral competition.

Public financing of election campaigns also helps put political parties on an even footing, in particular by offering greater support to political entities whose means are more modest and whose electoral challenges are sometimes greater. In an electoral democracy, all political participants, regardless of the size of their organization, must be able to present and promote their ideas and their plans for governing.

In controlling the role of money, it is important not to impair freedom of expression or privacy. Thus, the existence of public financing in no way excludes private contributions from individual or organizational members of society. Donations of this type are important, when all is said and done, because they contribute to democratic vitality. They not only encourage wide and diversified public participation in the political process, they also contribute to the sense of belonging to Canadian society.

However, Canadian electoral democracy would benefit from greater control over contributions to election campaigns in the same way it benefits from limiting election spending. Some participants should not be more able, by reason of their financial capacity, to influence the outcome of a vote or the public decisions made. This is a desire shared by a clear majority of the population. Nearly two-thirds of some 3 600 people interviewed during the Canadian Election Study 2000 felt there should be a limit on how much one person or organization could contribute to a candidate or party. As well, elected officials must be protected from the power that money could exercise over their freedom of thought, decision and action. However, limitations on financial contributions to election campaigns must also respect the right to privacy. It is in that spirit that I am presenting not only recommendations aimed at enhancing the right to vote and the right to privacy, but also a number of recommendations intended to increase certain authorities and tighten certain controls.

Financial transparency is a basic criterion for measuring the health of the entire electoral democracy. The public has the right to know how candidates and parties are financing their electoral activities. For parties and candidates, transparency means the obligation to render account, and for the public it means having access to that information. This is a widely accepted principle among the electorate. According to the Election Study 2000, 94.2% of Canadians feel that the public has the right to know how political participants are financing their election campaigns.

Over the past 25 years, a number of measures have been adopted to improve the transparency of election financing. However, the Canadian political process is not static; changing circumstances have produced new challenges. In a society that aspires to the highest standard of democracy, the supervision of election financing cannot be limited strictly to election campaigns. It must be seen as a comprehensive system that involves all political participants and covers all phases of the electoral process.

At present, the financial operations of riding associations, which are distinct entities in the electoral process, and which make a significant contribution to the overall financial resources of political parties, are shielded from public scrutiny. These riding associations choose the candidates in federal elections. The public currently has no right to scrutinize the nomination campaigns of these candidates, some of whom will eventually sit in the House of Commons. The same is true of party leadership contests, which are major events in electoral democracy and yet are shielded from public scrutiny. Another area that currently escapes public scrutiny is the trust funds set up by parties, which are not covered by the provisions of the *Canada Elections Act*. Eliminating these historically opaque elements of the electoral process is a requirement for streamlining, modernizing, and thus improving the performance of that process.

Ensuring the transparency of election financing is a constant challenge in a democracy. The public has the right to know who has given to whom and how much in order to eliminate any doubt about the role that money plays in politics. Divulging the sources of financing can help restore confidence in the electoral process, particularly in a period in which the Canadian public is looking more critically at its representative institutions.

In closing, I want to thank in particular the members of my staff who worked closely on the writing and production of this report for their professionalism and their unwavering support during this process. I also want to thank Manon Tremblay (University of Ottawa) and James Sprague (Senior Counsel, Elections Canada Legal Services) for their invaluable co-operation in the preparation of this report and the following people for their helpful comments on an earlier version: Jerome Black (McGill University), André Blais (Université de Montréal), John Courtney (University of Saskatchewan), William Cross (Mount Allison University), Donald Desserud (University of New Brunswick), Joanna Harrington (University of Western Ontario), Michael Kinnear (University of Manitoba), Jonathan Malloy (Carleton University), Louis Massicotte (Université de Montréal), Réjean Pelletier (Université Laval), Donald Savoie (Université de Moncton), Alan Siaroff (Lethbridge University), Brian Schwartz (University of Manitoba), Jennifer Smith (Dalhousie University) and Hugh Thorburn (Queen's University).

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Part 1

Providing a More Accessible and Efficient Electoral Process

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The elector must, before all else, be the central focus of a successful electoral system. The system must be designed to remove as much as possible obstacles to the ability of the elector to cast his or her vote.

Part I of this report contains recommendations which are intended, in chapter 1 to improve the ability of the elector to ensure that he or she is properly registered to be able to vote, and, in Chapter 2, to address issues respecting the ballot.

Chapter 1: Ensuring that Every Elector is Registered

The following recommendations respecting the ability of electors to register with and update either the National Register of Electors or the relevant list of electors, are based on the belief that the administrative processes should be structured as much as possible in a way that best serves the electorate, allowing them to exercise their rights without unduly prejudicing the efficiency and reliability of the process.

In order to be able to exercise the right to vote, an eligible elector must be on the list of electors for his or her electoral district. In the Canadian system, the mechanism for identifying electors and the electoral district in which they can vote is the list of electors, which is newly created for each election in each electoral district. The list of electors is created from information maintained in the electronic database constituting the National Register of Electors and from revisions made by electors during the election period.[2]

Elections Canada is currently monitoring Internet-based voter registration (and voting) initiatives around the world, and assessing the feasibility of implementing such a system for Canadian federal elections. Ideally, any Internet-based voter registration system would allow electors to both verify and change their registration status on-line.

Elections Canada's post-event surveys conducted after the November 2000 general election revealed support for on-line registration. When asked to think ahead three or four years, 70% of electors indicated that they would like to register to vote on-line, if technology allows. This support increases when security concerns are removed. In addition, other stakeholders such as aboriginal electors, special needs electors and the academic community, indicated strong support for on-line voter registration.

The recommendations that follow are aimed principally at reducing and simplifying the administrative burden, and at increasing the flexibility of the process for registering with the Register or on a list of electors. These measures will not compromise the integrity or reliability of those processes.[3]

In addition to those recommendations, one other recommendation is aimed at increasing confidence in the electoral process by providing deputy returning officers with the authority, in cases of reasonable doubt, to verify eligibility of a potential elector, through the provision of an affidavit or declaration of eligibility from that elector. This will complement the deputy returning officer's current authority to verify the identity of a potential elector on election day.

Background on the National Register of Electors and the Lists of Electors

Prior to 1997, the information needed to create lists of electors for federal elections was gathered through a resource-intensive system of door to door enumeration. Today, lists of electors for each electoral district are prepared for each election from information stored in the electronic database known as the National Register of Electors. While lists are specific to each election and to each electoral district, the Register is an on-going national collection of elector information managed by the Chief Electoral Officer. The Register is regularly updated and revised.[4]

Subject to the exception in s. 48(3) of the Act regarding electors whose names appear on lists of electors established under provincial law, an elector cannot be added to the Register without his or her consent. However, once an elector is registered, the information respecting that elector is continually updated and revised. (An elector can also request his or her removal from the Register.) This revised information comes from a number of sources specified in the Act: from electors themselves; from federal departments or bodies that electors have expressly authorized to give their information to the Chief Electoral Officer; from information held under an Act of a provincial legislature, as set out in schedule 2 of the Act (generally statutes respecting elections, vital statistics and motor vehicles), and from any other source listed in schedule 2.

When an election is called, the Chief Electoral Officer uses information from the National Register of Electors to create preliminary lists of electors for the use of returning officers in each electoral district. During the election period, it is these lists of electors that are the focal point of the registration effort. The lists are of vital importance, since an elector who is not on the list of electors for his or her electoral district cannot vote (s. 6, *Canada Elections Act*). The lists are used to identify a person as an eligible elector in a particular electoral district, to provide electors with information about the electoral process and to facilitate the elector's right to vote.[5]

Notwithstanding the ongoing collection of information in the Register that takes place between elections, there will likely be instances where an eligible elector may not appear on the relevant lists of electors, perhaps because a change in address or other information may not have been communicated to the Register, or because the Register may not have been advised of new electors acquiring the right to vote. The names of deceased electors may still appear on the list if the Register has not yet been advised of their deaths. There are inevitable time lags that occur between events occurring in the real world and when these events are recorded on administrative databases used to update the Register.[6]

As with any permanent register system, recent changes to elector information may not be reflected in the lists of electors produced from the Register. For this reason, the Act provides for a revision period during which the returning officer for each electoral district can deal with applications by electors for additions to, corrections to, or deletions from the lists of electors for that district. This revision period does not end until 6 p.m. (local time) on the sixth day before election day. For a part of this period, electors may also challenge the eligibility of other electors' names on a list.

Following the close of the revision period, official lists of electors are then created for use at the polling stations in each electoral district on election day. (As the advance polls are held before the end of the revision period, "revised lists" are created by the returning officers for use in the advance polls; these lists reflect changes made prior to the advance polls.)

An elector whose name still does not appear on the official lists of electors on election day still has one last chance to register. On election day, the elector can register either with a deputy returning officer authorized to receive registrations at the polling station, or with a registration officer at a registration desk established by the returning officer. For the purposes of s. 6 of the Act, electors who register on election day are deemed to be on the list of electors (as per s. 161(5)).[7]

After the election, the Chief Electoral Officer creates final lists of electors for each district. The final lists include information from the official lists and from election day registration activities. The changes that were made to the lists of electors during the election period, are fed back into the Register, which is then updated.

Recommendations Respecting the Registration Process

1.1.1 Signed Certification of Eligibility for Registration on National Register of Electors

A person who wishes to be registered on the National Register of Electors may request the Chief Electoral Officer to register the person under s. 49 of the Act. In addition to providing or confirming the necessary identification information, an elector must provide the Chief Electoral Officer with a signed certification that he or she is qualified as an elector. The Chief Electoral Officer must be satisfied of the identity of a person. The certification must be signed by the elector in question. This requirement for a signed certification reduces the means of communications open to an elector to request registration.

Nevertheless, because certification serves as a form of written personal assurance from the elector as to his or her eligibility, it contributes to the reliability of the resulting record.

Eligibility, however, can be determined on the basis of evidence other than a written certification personally signed by the relevant elector. For example, information respecting an elector who has been previously verified by another federal department (such as Citizenship and Immigration in the case of individuals who have recently acquired citizenship), may come to the Register. In that case, the personally signed certification adds little to the existing degree of reliability of the information.

The Act already recognizes one instance where information is sufficiently comprehensive and reliable as to not require personally signed certification – that being information coming to the Register via inclusion of the elector on a provincial list of electors.

Moreover, the Act does not uniformly require personally signed certification as a prerequisite to registration. For example, an elector who ultimately gets into the National Register of Electors by registering to vote with the returning officer during an election, is not required by the Act to provide signed certification. An elector who registers another elector on the list under s. 101(1)(*b*), is also not required by the Act to produce a certificate of eligibility personally signed by the elector being added.

Furthermore, it does not appear that, under s. 48(3), the Chief Electoral Officer is restricted to determining an elector's eligibility only on the basis of a signed certification when the elector requests registration following an enquiry from the Chief Electoral Officer.

In each of those cases, under the Act, the responsible officer is required to be satisfied that the person in question is an elector, but that assurance could be based on any sufficiently reliable evidence. (The CEO has issued instructions to returning officers to seek signed certifications in those cases, either from the elector himself or herself or the person requesting the change on behalf of the elector.)

Futhermore, there was no requirement for a personally signed certification under the earlier enumeration system. There too, the responsible officials could determine eligibility on the basis of any form of sufficient evidence.

The above is not to question the requirement for reliable information in establishing eligibility to register. The issue is the form that the evidence of eligibility takes. At the moment, the Act imposes a single form of acceptable proof – the signed certification – thus imposing a degree of rigidity that does not admit for other, equally reliable forms of evidence.

It is also interesting to note that while the Act imposes this rigid requirement for the form in which information must come, there is no corollary offence provision aimed at maintaining the integrity of that specific form. There is no express offence provision respecting the giving of a false certification (as there is in s. 549(3) for the taking of a false oath). The offence is the giving of false information under s. 480 of the Act, which would be equally applicable regardless of the form in which the false information was given. If a person voted without being eligible, the offence would be for voting, not for providing a false certificate. Thus, the enforcement provisions of the Act indicate that it is the substance of the information provided, not the specific form in which it comes, that is the central point of the provision.

A corollary restriction respecting registration also exists in s. 48 (2), which only allows one way for an elector who wishes to be registered, to confirm registration information provided by the alternative sources of information listed in s. 48. The confirmation must be done in writing. This restriction constitutes an administrative burden and makes it more difficult for electors to register, in much the same way as the requirement for a personally signed certification does. Furthermore, the requirement for confirmation in writing in s. 48 (2) is inconsistent with s. 50, which allows electors, once registered, to request changes to their information by several means in addition to writing.

Recommendation: A certification of eligibility, signed by the elector, should no longer be a necessity for being added to the Register. This would recognize the facts that:

- a personally signed written certification is not the sole reliable method of establishing eligibility;
- an elector, under the *Canada Elections Act*, can currently be registered on a list of electors (and thus indirectly with the Register) without the use of a personally signed written certification of eligibility from that elector;
- requiring a personally signed certification to register directly with the Register creates a significant obstacle to registration through alternative means of communication and through the statutory mandated methods of updating the Register.

This change would maximize the ability of electors to register, including the ability to register on-line where alternative evidence of sufficient reliability was available.[8]

Similarly, the recommendation is made to drop the requirement in s. 48(2) of the Act that an elector wishing to register must confirm in writing information provided to the Chief Electoral Officer from sources other than those set out in s. 46. The provision should allow alternative methods of confirmation.[9]

It should be made clear that this recommendation is not to eliminate the need for evidence of eligibility, signed certification in all circumstances, or confirmation in writing in all circumstances. The recommendation is made to permit the registration process to become more flexible by allowing proof of eligibility, or proof of confirmation, to be established by a range of sufficiently reliable evidence. This will facilitate elector registration without compromising the reliability of their information.

1.1.2 Revision of Register on Initiative of the Chief Electoral Officer

Currently, the Act specifies the sources of information available to the Chief Electoral Officer to maintain the Register. These sources generally refer to databases maintained by bodies other than Elections Canada, such as provincial electoral agencies and motor vehicle registrars.

Elections Canada, however, already maintains a local presence throughout the various electoral districts in the person of the returning officer. Returning officers already play an important role, during elections, in the correction and updating of the lists of electors (which subsequently feeds into and updates the Register). If the Chief Electoral Officer was provided with the express authority to conduct local initiatives using returning officers to verify, correct and update the Register between electoral events, the ability of Elections Canada to maintain the accuracy of the Register would be substantially increased.

Under the current provisions of the Act, the Chief Electoral Officer could add returning officers as a reliable source of information under s. 46(1)(*b*)(ii) by adding them to Schedule 2. However, while that would be a step forward, it might leave questions as to the authority of returning officers to actually undertake initiatives, in addition to simply passing on information that came into their hands through other means. Also, it would only provide one method by which Elections Canada could conduct local initiatives outside the electoral period. It would not authorize the Chief Electoral Officer to undertake other forms of inquiry.[10]

Recommendation: In order to increase the capacity of the Chief Electoral Officer to maintain the integrity of the Register, the *Canada Elections Act* should be amended to authorize the Chief Electoral Officer to undertake initiatives to verify, correct and update the Register and to authorize returning officers, and others, to conduct such initiatives outside of electoral events, when requested by the Chief Electoral Officer.

Recommendations Respecting the Lists of Electors

1.1.3 Notice of Confirmation of Registration (Voter Information Card)

There is undue rigidity in the current legislative requirements respecting notices of confirmation of registration.

The Act requires that each returning officer, as soon as possible after the issue of the writ, but not later than the 24th day before election day, send a notice of confirmation of registration to each elector whose name appears on a preliminary list. The notice and time limit serves to assure an elector as soon as possible that he or she is on a list. It also allows an elector who does not receive a notice within that period to know that he or she is not on the list. It allows sufficient time to register or make necessary corrections during the revision period.[11]

Electors who register during the election period are sent a voter confirmation card by day 5 of the election period.

In addition to confirmation of an elector's registered status, the notice is also required by the Act to set out the necessary voting information, which the elector will need to know in order to vote on election day. This includes the address of the elector's advance and the ordinary polling stations, as well as the dates and hours for voting.

The current statutory requirement to have the notices of confirmation of registration both inform an elector of his or her registered status and provide the required voting information caused difficulties in the 37th general election.

In a number of ridings, problems were encountered in meeting the statutory deadline. As a result, mailing of the notices was either delayed or the notices went out with unconfirmed polling station information. The latter necessitated subsequent mailings of revised notices when the polling station originally selected was no longer available.[12]

Secondly, in order to ensure delivery of local voting information to the elector currently living at a given address, notices of confirmation of registration had to be addressed to the registered elector *or occupant* to meet the Canada Post requirement for avoiding automatic forwarding of the notice to an elector who had moved. Even though instructions were clearly stated on the voter information card, this gave rise to confusion in a number of cases where receipt of the notice addressed in this way led new occupants to believe they were on the correct list of electors, when they were not.[13]

It is important that the existing time limit be retained for providing confirmation of registration. The existing time frame ensures that electors have sufficient notice to take advantage of the revision period for updating or correcting their information on the preliminary lists. There is more leeway available for the provision of voting information (dates of advance polls, voting hours, polling station locations, etc.).

During the 37th general election, it was the returning officers, using address labels provided by Elections Canada, who carried out the task of sending notices of confirmation of registration, as required under the Act. With the technology available today, it may no longer be necessary for the returning officer to do so.

There may still be a practical reason for the returning officers to notify electors of their specific voting location and hours, since the returning officers are responsible for confirming the location of polling stations. However, from the perspective of the elector, what is important is that the correct information is received at the right time.

The experience of the 37th general election has demonstrated that while it is important for the Act to specify what information should be sent to electors and when it should be sent, more flexibility is needed respecting who sends the information and the manner in which it is sent.

Recommendation: The current legislative scheme for notices of confirmation of registration should be revised to include more flexibility as to who is to provide electors with the required notices and how that notification is to be done. However, the Act should continue to specify what information is to be provided and when.

This can be accomplished by amending s. 95 of the Act to provide that the Chief Electoral Officer shall cause, as soon as possible after the issue of a writ, but not later than the 24th day before election day, a notice of confirmation of registration to be sent to every elector whose name appears on a preliminary list of electors (subject to the existing exceptions).

The Chief Electoral Officer should also be directed to have sent, to every household or registered elector, the voting information necessary for registered electors in that household to vote (as currently set out in s. 95(2). It should be required that this information be sent as soon as practical, and in any event, not later than a day keyed to the advance polls. In this way, the Chief Electoral Officer can decide who is responsible for sending out the required information to best suit the administrative and technological resources and the circumstances of the day. However, the Act will continue to direct exactly what information is to be sent and the timelines for providing that information.

Whether the above information is sent out in one or more notices should also be left to the discretion of the Chief Electoral Officer, who can adjust the practice to the realities of the circumstances. (A different practice may be adopted for by-elections than for general elections, for example.) The form of those notices should also be established by the Chief Electoral Officer (which reflects the existing legislative direction).

As a corollary, the Act should continue to provide that any elector registered during the election period receives both notice of confirmation of registration and voting information in the manner established by the Chief Electoral Officer.

1.1.4 Allowing Returning Officers to Update Lists on the Basis of Information from the Chief Electoral Officer

Under the current system, once an election is called, the focus of changes to the lists of electors is on initiatives undertaken by the elector. Section 101 provides for a request by an elector to be added to a list of electors. Section 101, however, does not address the updating of a list of electors on the basis of information that comes to the Register after the preliminary lists of electors are created.

In the 37th general election substantial numbers of address changes, and notifications of deaths, came to the Register through statutorily authorized routes just before and after the writs were issued. Had this information come to the Register earlier, it would have been incorporated and the revised information reflected in the preparation of the preliminary lists. Because of the timing, a significant number of changes would need to have been made by electors themselves – an undue, but avoidable administrative burden. A decision was made to provide the new information from the Register to returning officers who made 481 400 revisions to the lists. This is an important method to update the lists which should be made express in the Act.

Recommendation: It is recommended that s. 101 of the Act be amended to expressly provide that returning officers can update lists of electors by adding or deleting electors, or making other changes on the basis of information provided by the Chief Electoral Officer.

1.1.5 Inter-District Changes of Address

When an elector moves from one electoral district to another and the Register has not been updated to reflect a change of address prior to the calling of an election, that elector may face unnecessary administrative hurdles in registering that change on the list of electors after an election is called.[14]

Currently, s. 101(6) of the Act provides that an elector who changes his or her address *within* the same electoral district may contact a returning officer by phone or by any other means, and, on providing satisfactory proof of identity and residence, apply to have the relevant corrections made to the appropriate lists of electors. Such changes of address can also be done by one elector on behalf of all electors living at the same residential address.

This can be done only where the elector changes his or her address within the same electoral district. A registered elector whose change of address takes him or her into a different electoral district cannot correct the relevant list as easily. In order to be added to the list of the electoral district into which the elector has moved, the elector must apply to the returning officer. This requires the completion of the prescribed registration form under s. 101 (or one of the alternative registration processes under that section), a more demanding and onerous administrative process.

It is only because of historic technological limitations that the ability of a registered elector to record a change in his or her address on the list is restricted in this way.

Technological and software advancements, however, have now made it possible for returning officers to verify that an elector is already registered on a list of electors in some other electoral district.

Since the returning officer can now verify that an elector is already on a list of electors, there is no longer any need for the returning officer to independently verify an elector's eligibility to register. The verifiable registration of the elector on an existing list of electors means that the returning officer could treat this kind of address change in the same way as a change of address within the same electoral district is treated.

Recommendation: Subsection 101(6) should be amended to extend the ability of returning officers to record changes of address in cases where a registered elector moves from a different electoral district.

1.1.6 Proof of Identity on Requested Change of Address on List

Section 101 of the Act also authorizes a returning officer (or assistant returning officer) to add the name of any elector to a preliminary list of electors if, among other circumstances, another elector who lives at the same residence completes the prescribed registration form, establishes that the elector should be included on the list and provides satisfactory proof of identity for the elector whose address is to be changed.

The requirement for proof of identify is logical and not onerous when an application is being made at the office of the returning officer or somewhere other than at the residence of the electors in question. In those instances, it is likely that the necessary proof would have been secured from the subject elector.

However, where a request is made at the actual residence of the electors in question, the requirement that the elector requesting the change have proof of identity becomes more onerous. In those instances, one or more of the electors may not be home. They would generally carry with them their proofs of identity. The elector who is found at home is not likely to have the documentation to prove the identity of all of the other electors who also reside there.

In such cases, the need for proof of identity is much reduced. The fact that the elector is found at his or her residence (and, implicitly, can be required to provide proof of his or her own identity if the need arises) reduces substantially the likelihood of fraud. For a similar reason, the corollary requirement in section 101(1)(*a*) that an elector requesting to be added to the list must provide proof of his own identity, should be dropped as an automatic requirement when the elector is found at his or her residence and makes the request there. Finding the elector at his or her own residence should be sufficient evidence of identity in the absence of some circumstance that might give rise to concern.

Proof of identity was not required under the earlier enumeration system. Under that system, as long as the enumerators were satisfied of the propriety of doing so, they were authorized to register electors on the word of one elector regarding the other electors resident in the same location, without requiring the "at home" elector to provide proof of identify for the electors who were not available at that time.

Recommendation: It is recommended that s. 101(1)(*a*) and (*b*) be amended to provide that where a request to add an elector's name to the preliminary lists of electors is made by that elector, or by another elector who lives at the same residence, proof of identity would not be required where the request is made to an election officer at the residence of the elector. The elector requesting the change will still be required to complete the prescribed registration form and establish that the elector in question may be included on the list.

1.1.7 Authority of Deputy Returning Officer to Verify Eligibility

Under the current Act, a deputy returning officer, poll clerk, candidate or candidate's representative who has doubts concerning the identity or right of a person intending to vote at a polling station, may request that the person show satisfactory proof of identity and residence (s. 144(1)). Instead of showing satisfactory proof of identity, the person is authorized to take the prescribed oath.

Where some question arises at the poll as to the eligibility (citizenship and age) of a person who is on the list of electors, a deputy returning officer has no authority to require any form of proof of eligibility with respect to questions of identity. The individual's presence on the list of electors is deemed, under the current Act, to be sufficient proof of eligibility.[15]

There would be little resulting burden on individual electors or on the system if, in cases where reasonable questions of eligibility arise, potential electors were required to verify their eligibility to vote by providing a written affidavit or solemn declaration of their eligibility. The requirement for the oath or affirmation to be in writing would be to ensure a record. The current enforcement provisions respecting oaths would be available respecting these oaths or declarations.

Recommendation: It is recommended that s. 144 be amended to include the authority to require a written affidavit or solemn affirmation of eligibility by a potential elector where reasonable doubt is raised concerning that person's eligibility by a deputy returning officer, poll clerk, candidate or candidate's representative.

Chapter 2: Ensuring that Every Vote Counts

1.2.1 Same Names on Ballot

In the 37th general election, two candidates in one electoral district filed nomination papers with identical names. This created some confusion in the preparation of the ballot because, while s. 117 of the *Canada Elections Act* directs that names are to appear on the ballot alphabetically, the Act fails to make allowance for a situation where two candidates with no political affiliation have identical names. Listing the candidates in alphabetical order according to party name does not appear to be an option as the names of parties may differ in English and French. Furthermore, in Quebec, political party names appear in French first, before the English version, and in other provinces, the English version precedes the French version.

The statute currently provides a resolution mechanism respecting identical names for independent candidates: the address or occupation of the candidates is to be listed and the names ordered accordingly. This method serves two purposes. It not only provides a mechanism for determining order of appearance, but it also serves to distinguish the otherwise identical candidates.

The Act does not address the issue of identical names for party-affiliated candidates. In the past, the informal practice has been to assign order on the ballot by the simple expedience of the luck of the draw.[16]

Recommendation: Section 117 of the Act should be amended to reflect the practice adopted by returning officers in the past, by providing that where the names of two or more candidates are identical, the order of their appearance on the ballot is to be determined by the luck of the draw. This would apply both to candidates who are independent and to candidates who are endorsed by parties.

1.2.2 Option to Decline Ballot

There is a growing perception among some of Canada's electorate that there should be a way in which an elector can register his or her dissatisfaction with the political process by declining his or her ballot. The *Canada Elections Act* currently does not provide any authority for that to be done.[17]

In order to remain vital and meaningful, the vote must remain responsive to the needs of all Canadians. The time may have come to allow an elector a formal means of expressing dissatisfaction with the political system in a manner that is not only peaceful, but is meaningful as well. Such a change at the federal level would mirror similar innovations that have taken place in a number of provinces: Ontario, Alberta, Manitoba, Nova Scotia and the

Yukon – all of which have provisions in their electoral statutes for ballots to be declined and of which Manitoba's may serve as a model.[18]

Recommendation: The *Canada Elections Act* should be amended to provide for the means for a ballot to be declined, recorded and reported as such in the official ballot results and which respects the principle of the secrecy of the vote.

1.2.3 Deadline to Obtain Transfer Certificate

Every effort is made to ensure that all polling stations provide level access. However, the limited time frames of an election and questions of space availability, sometimes result in less than optimal locations having to serve as polling stations.[19]

Section 159 of the Act provides the means whereby an elector with a physical disability who cannot vote without difficulty in his or her polling division, may vote at another polling station where level access is provided. In order to do so, the elector must request a transfer certificate from the returning officer for the elector's electoral district before 10:00 p.m. of the Friday immediately before election day. The elector may apply either personally or through one of a number of individuals identified in the Act, acting on his or her behalf. A transfer certificate is then issued by the returning officer, which allows the elector to vote in another polling station in the same electoral district.[20]

The ability of s. 159 to adequately address this concern, however, is compromised by the time limit imposed by that section for making the application for the certificate. Subsection 95(3) of the Act expressly provides that the notice of confirmation of registration sent out by a returning officer must invite the elector to advise the returning officer if the elector requires level access, and that his or her polling station does not have it. Sometimes electors are not aware of the accessibility of the relevant polling station until the deadline for application has passed. Also, sometimes returning officers may be unable to verify the availability of level access (as defined by Elections Canada) at a polling site because of distance, and must rely on information obtained from landlords, which may or may not be accurate. In the past, the Chief Electoral Officer has used his authority under s. 17 of the Act to extend the time for application and issuance of the required certificate if an elector found himself or herself assigned to a polling station that did not provide level access.

The purpose of the deadline is to allow sufficient time for a copy of the certificate to be sent to the deputy returning officer for the normal polling station, for the person to whom the certificate has been issued. However, this copy does not have to be received in order for the elector to vote in the new polling division, provided he or she presents the original of the required transfer certificate in that division. The time limit is a matter of administrative convenience only.[21]

The value of this time limit is questionable compared to the importance of the right to vote that could be lost as a result of administrative convenience. In most cases, with modern technology, the relevant copy of the certificate can be forwarded to the deputy returning officer very quickly, or the deputy returning officer can be advised in some other fashion.

Furthermore, the imposition of the time limit is inconsistent with the practice in the Act for other forms of transfer certificates. Transfer certificates are available under s. 158 of the Act to candidates and to persons who have been appointed after the last day of the advance polls to serve as election officers for a polling station other than their own. No time limit is imposed by the Act respecting those certificates.

Recommendation: Section 159 of the Act should be amended to remove any time limit for application for a transfer certificate respecting level access. The removal of the time limit will not create an undue administrative burden, will recognize further the constitutional right of all individuals to have access to the voting process and will be consistent with the statutory practice set out in s. 158.[22]

1.2.4 Time Frames for Special Voting Rules

Under s. 232 of the Act, electors who wish to vote by special ballot and who are not resident in Canada may apply for a special ballot any time after the issue of the writ and before 6:00 p.m. on the sixth day before election day. Effectively, however, this right cannot truly be exercised immediately after the issue of the writ. Before an application can be made, the required forms must be available and the necessary returning office must be operational.[23]

A similar difficulty was avoided with respect to the revision period. The Act expressly does not create the right to revise one's information on the list until the revision period commences on a date fixed by the Chief Electoral Officer (which date is to be as soon as possible after the issue of the writ).

Recommendation: Section 232 should be amended to provide that the period for making an application under Division 4 of Part 11 for a special ballot, commence at the date fixed by the Chief Electoral Officer. This date is to be as soon as possible after the issue of the writ.

1.2.5 Requiring Affidavit When Another Person Has Already Voted in Elector's Name

On occasion, an elector may discover at a polling station that he or she has been shown as having voted on the list of electors when he or she has not done so. Section 147 of the Act addresses this concern by providing that if a person asks for a ballot at a polling station after someone else has voted under that person's name, the person is entitled to receive a ballot and to vote, after having taken the prescribed oath and having satisfied the deputy returning officer as to their identity and entitlement to vote at the polling station.[24]

It is an offence to swear a false oath under the Act (s. 549), however, in the event of a prosecution, the taking of the oath would have to be proven. In order to provide for the better enforcement of the Act, it would be preferable if the person were required to swear a written affidavit or solemn declaration rather than taking the oath orally. The only extra burden upon the person in question would be a signature.

Recommendation: It is recommended that the Act be amended to allow an elector who has not voted, but who is shown on a list of electors to have voted, to vote once he or she swears a written affidavit or solemn declaration before the deputy returning officer.

Part 2

Greater Accessibility for Candidates and Political Parties

Part 2: Greater Accessibility for Candidates and Political Parties

The object of the electoral system is, of course, the casting of votes to select representatives to the House of Commons from the various candidates who have come forward. The process by which a person becomes a candidate can be as important as the actual final casting of the elector's vote. The best person in the world cannot be elected if he or she does not successfully complete the process to become a candidate. Also, the electorate will not be able to fully exercise an informed vote unless that person, and, if he or she is endorsed by a political party, that party, has a reasonable opportunity to participate in the election.

Part 2 of this report addresses aspects of the electoral process which impact upon the ability of persons and political parties to participate fairly and fully in the electoral process. It is divided into two chapters. Chapter 1 addresses the specific process by which a person is nominated as a candidate. Chapter 2 looks at the current party system in the *Canada Elections Act* and sets out recommendations which are designed to enhance, and rationalize, the participation rights of smaller parties.

Chapter 1: Enhancing Candidates' Participation

Nomination

It is a constitutional right of electors to run as candidates in federal elections. The ultimate goal of the nomination process should be to maximize the ability of eligible persons to exercise this constitutional right without compromising the effective and efficient operation of the process.[25]

It is reasonable to require that those seeking elected office be serious in their willingness to undertake the burdens involved in seeking public office. It is also reasonable to ensure that those seeking public office are entitled to so do and to require that the information in support of candidature be reliable and accurate. In the pursuit of these goals, however, the current system has become unduly complex, with multiple and redundant checks aimed at ensuring the seriousness of the prospective candidate and the reliability of submitted information. Furthermore, some of these checks serve outdated notions that no longer reflect modern views of public office or they fail to serve their intended goal.[26]

Cumulatively, these checks create an administrative burden for both those seeking office and for the electoral system charged with verification of those requirements. The section that follows, explores how the complexity of the current nomination process can be reduced and simplified, with little or no reduction in the certainty respecting a candidate.

The section below also deals with the issue of equality of opportunity as it relates to employee leave of absence to be a candidate in an election. Only employers to whom Part III of the *Canada Labour Code* applies are required to grant such leave. This inequality could be dispensed with by extending the obligation to all employers, as discussed below.

Technically, under the current system, a person who wishes to be a candidate in an election does not put his or her candidature forward. The prospective candidate must be nominated by a minimum number of electors, as specified in the Act.[27]

The nomination paper must have the names, addresses and signatures, recorded in the presence of a witness, of at least 100 electors resident in the electoral district in which the candidate wishes to run (only 50 electors are necessary for electoral districts listed in Schedule 3 of the Act – which are generally the more remote and sparsely populated districts). The paper must also have the name and address of each witness to those signatures. The witness to the candidate's consent (discussed below) is under an obligation to use due diligence to ensure that each of the nominating electors is a person resident in the electoral district.[28]

The Act specifies additional information that must be included in the nomination paper. This includes personal and administrative information necessary to compete in the election and information establishing compliance with administrative requirements of the Act respecting the prospective candidate's official agent (including his or her signed consent) and the proposed auditor. If the candidacy is endorsed by a registered or eligible political party, the name of that party must be given. If there is no party affiliation, prospective candidates must indicate their choice of whether they will have the word "independent" or no designation of political affiliation recorded under their name in election documents.

The nomination papers must also include a statement by the prospective candidate consenting to the nomination. This statement must be signed and sworn in the presence of a witness who is an elector, but is not the person who administers the oath to the candidate; it must have the signature of that witness.

Currently, a nomination paper must be received by the returning officer or designate, in the electoral district in which the nominee wishes to be a candidate. This paper can be filed at any time after the issue of the notice of election, but must be received no later than 2:00 p.m. on the Monday that is the 21st day before election day. The paper must be filed by the person who witnessed the prospective candidate's consent to be a candidate. A candidate cannot file his or her own nomination papers.

The nomination paper may also be submitted by electronic means within the statutory time period, provided that the original documents are received by the returning officer not later than 48 hours after the close of nominations.[29]

When the witness to the prospective candidate's consent files the nomination paper, the Act requires the witness to swear an additional oath before the returning officer confirming that the witness knows the prospective candidate, that the witness is qualified as an elector, and that the prospective candidate signed the consent to the nomination in the presence of the witness.

When the witness files the nomination paper, a deposit of $1 000 must be made (which is refundable if the nomination is not accepted by the returning officer, or on the candidate's compliance with the filing requirements of the Act). There must be a statement by an auditor and an official agent consenting to act in that capacity, and, if applicable, an instrument in writing signed by the leader of the registered party or eligible party (or designated representative) that states that the prospective candidate is endorsed by the party in accordance with the Act.[30]

The Act imposes an express duty upon the returning officer and the assistant returning officer to be in the office of the returning officer between 12:00 noon and 2:00 p.m. on the closing day for nominations to receive nominations respecting prospective candidates whose nomination papers have not yet been received.

The nomination having been received, the returning officer must then confirm whether the candidacy is accepted or refused. This must be done within 48 hours after a nomination paper is filed. The returning officer is required to verify, in accordance with the instructions of the Chief Electoral Officer, that the nomination paper is complete. This includes verifying that the paper has the required number of nominating electors' signatures and that those electors are entitled to vote in the electoral district in which the prospective candidate seeks to be a candidate. If the returning officer refuses to accept the paper, it can be replaced with a new nomination paper or it can be corrected, provided that the new or corrected paper is filed with the returning officer before the close of nominations.

2.1.1 Signatures of Nominating Electors

The requirement that a nomination paper be accompanied by a specific number of signatures of supportive electors is an old one, originating in 1874. As the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) stated in its 1992 report *Reforming Electoral Democracy,* the requirement exists so prospective candidates can demonstrate that they have a degree of support for their candidature and is justified by the need to have elections contested only by candidates who have shown that they represent the political preference of some voters.

The requirement for the signatures of 100 (or 50) eligible electors imposes a serious demand upon the resources of both the candidate in securing those signatures and upon the electoral system in verifying them. There were three official rejections of nominations during the course of the 37th general election, each of which was due to the fact that the confirmation process revealed that too few of the submitted signatures were from electors residing in the candidate's electoral district. One further rejection was referred to the Commissioner of Canada Elections.[31]

The value being served by the current requirement is nominal at best. In the case of candidates who are nominated by parties, that nomination in itself (in light of the statutory requirements for an organization to be considered an eligible party) serves as an indication of some electoral support and the fact that a candidate enjoys the political preference of some voters. The nomination process within political parties can itself be arduous, and can serve as a greater indication of political seriousness than the ability to induce 100 (or 50) individuals to sign one's nomination papers.

Even for those candidates who run under an independent banner, the modern reality is that the ability to secure 100 (or 50) signatures as part of one's nomination does not demonstrate any real electoral support. Past elections are rife with candidacies endorsed by the required nominating signatures, but which, in fact, enjoyed little serious support. More than anything else, the current requirement is more a measure of a prospective candidate's administrative abilities than of his or her electoral support.

In addition to the benefits of the requirement being questionable, it imposes a strain on the resources of the electoral system. It has proven to be administratively difficult to verify the submitted signatures within the 48 hours provided for the decision on candidacy to be made. At best, the time available allows only the verification that the address of a nominating elector falls within the relevant electoral district. It is not possible to verify the other *bona fides* of the signatures. This surely reduces further, whatever benefit is seen to flow from the requirement to have the signatures in the first place. Also, the answer does not appear to be to make more time available for the verification of signatures. Parties have voiced concerns that the 48-hour period for verification is too long.

Recommendation: In order to reduce the administrative burden on a prospective candidate, the requirement for the signatures of 100 (or 50) eligible electors should be dropped from the nomination process.

2.1.2 Requirement for Witness to File Papers and Swear Oath

The value of the requirements that nominating papers be filed with and sworn before the returning officer by the witness to the candidate's consent is also questionable. The witness is required to swear before the returning officer that he or she knows the prospective candidate, that the witness is a qualified elector, and that the prospective candidate signed the consent in the presence of the witness. This requirement demands the personal attendance of the witness before the returning officer and the swearing of an oath there, which is an additional administrative burden, both upon the parties and the electoral system.

Furthermore, the Act is not consistent in its requirement for the witness to file and swear an oath. Section 73 of the Act permits a candidate to send his or her nomination papers and supporting documents directly and personally to the returning officer by electronic means. In that case, the witness is not required to file the papers and does not have to take an oath.

Recommendation: Prospective candidates should be permitted to file their nomination papers themselves. The requirement for a witness to the candidate's consent to file the nomination papers and swear an oath before the returning officer should be dropped.

This will make the statutory practice consistent, whether the papers are filed manually or electronically.

2.1.3 Candidate's Consent Under Oath to Run

The requirement that a candidate's consent be sworn is likely intended to ensure the seriousness of a candidature in three ways: to impress upon the candidate the seriousness of the act which he or she is about to embark upon; to discourage frivolous candidacy because of the religious or moral implications of the oath; and, to increase the certainty of the information being given in light of the penalties under the Act for giving false oaths.

(Punishable under the *Criminal Code* as perjury under s. 131, or under the *Canada Elections Act* as a breach of s. 549(3).)[32]

At the same time, while the requirement for the prospective candidate's oath likely imposes no great burden upon residents of urban centers where officials capable of taking oaths are easily at hand, the same is not true for all prospective candidates residing in more remote areas. Difficulties in locating persons before whom oaths may be sworn also loom larger when the time limits for filing nomination papers are at stake.

Whatever one's view as to the ethical or moral impact of modern oath taking, the question must be asked as to whether the value added by the requirement for the candidate's oath is truly necessary. In modern times, the $1 000 deposit required to file a nomination likely results in a similar degree of certainty respecting a candidate's commitment to participate in the electoral process and comply with the electoral requirements.

If the requirement for an oath were dropped, the enforcement aspects of the Act respecting the veracity of submitted information can be maintained by making it an offence for a candidate to make a false statement on a nomination paper, similar to various other prohibitions in the Act respecting false or misleading statements (such as ss. 56, 91, 92 and 281).

Recommendation: The current requirement for the prospective candidate's consent to be made under oath should be dropped. Statutory prohibition against making a false or misleading statement in a nomination paper should be added.

2.1.4 Period to Confirm Nomination

If the above recommendations respecting the simplification of the nomination process are adopted, returning officers will not require 48 hours to verify a nomination, once filed. The verification can be almost immediate. Furthermore, removing the current 48-hour verification period from the Act will facilitate the printing of ballots.

Recommendation: The Act should be amended to provide that a returning officer must verify a nomination paper no later than the end of the nomination period on the 21st day before election day.

2.1.5 Candidate's Deposit

The candidate's deposit acts not only as a performance guarantee, which is its principal role under the *Canada Elections Act*, but also indirectly operates to reduce the likelihood of candidatures that have little or no intent to participate seriously in the process. The requirement to post a $1 000 refundable deposit contributes in a practical sense to reducing the likelihood of a candidate putting forth his or her candidature when that person has no real intention of running. However, it appears that the effectiveness of this tool has been

inadvertently diminished. Prior to 1993, the Act stipulated that the deposit (which was then only $200) had to be in legal tender or certified cheque made payable to the Receiver General for Canada. This requirement was removed with the 1993 adoption of Bill C-114. As a result, at every general election since the removal of the requirement for cash or certified cheque, there have been a few incidences of cheques being returned for lack of sufficient funds. The Act is silent on the consequences of NSF cheques.

Recommendation: The Act should be amended to require that a candidate's deposit be made by way of cash, certified cheque, money order or other guarantee of funds as approved by the Chief Electoral Officer.

2.1.6 Party Filing of Candidate's Deposit

The Act currently requires that when a candidate's nomination papers are filed with the returning officer, they must be accompanied by the candidate's deposit (s. 67(4)). This is one of the older electoral process requirements and originally appeared in the *Dominion Elections Act, 1874* (at which time the deposit was $50).

When candidates are endorsed by political parties, it is not uncommon for the candidate's deposit to be provided by the endorsing party. The current requirement for nomination papers to be accompanied by the deposit, results in the party having to undertake numerous transfers of funds from party accounts to the various candidates before it is then filed with the relevant returning officers. Political parties have requested that provision be made to allow parties to deposit directly with the Receiver General for Canada, the appropriate sum representing the deposit for all of the candidates endorsed by the party. Direct deposit would appear to be a practical and effective amendment that takes into account the modern realities of electronic fund transfer, provided that the administrative process can be developed to adequately accommodate this innovation.[33]

Recommendation: The Act should be amended to provide, once the Chief Electoral Officer is satisfied of the implementation of an adequate administrative process, that a political party may remit the deposits required for those candidates endorsed by the party to the Receiver General through the Chief Electoral Officer.

As a corollary provision, s. 67(4) of the Act should also be amended to provide that where the returning officer is satisfied that a candidate's deposit has been filed directly with the Receiver General for Canada through the Chief Electoral Officer by the political party endorsing the candidate, the nomination papers need not be accompanied by the deposit.

In order to prevent miscommunication and inadvertent errors in the process, the Act should further provide that a returning officer must consult with the Chief Electoral Officer before refusing a candidature, including for failure to file the required deposit.

2.1.7 Party Filing of Leader's Endorsement of Candidate

When a candidate has been endorsed by a political party, the candidate is required to file with his or her nomination papers, a signed statement by the leader of the relevant party indicating that the candidate has been endorsed by the party (s. 67(4)). Unlike other aspects of a candidate's nomination material, which are generated locally, party leader endorsements are generated at party headquarters. Parties have advised Elections Canada that the requirement for the party to generate and send individual endorsements for each candidate to each relevant returning officer imposes a considerable resource demand upon the party.[34]

Recommendation: The Act should be amended to allow parties to file with the Chief Electoral Officer, a confirmation of the full names, addresses, and number of candidates who have been endorsed by the party, and to allow returning officers to accept a nomination paper on being satisfied that the Chief Electoral Officer has received a party endorsement of that candidate. In order to prevent miscommunication and inadvertent errors in the process, the Act should further provide that a returning officer must consult with the Chief Electoral Officer before refusing a candidature, including a refusal because of a lack of leader's endorsement.

2.1.8 Equal Opportunity to Be a Candidate

In *Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election,* it was recommended that the right of an employee to a leave of absence to seek office in a federal election be extended to all employees, not simply those included under Part III of the *Canada Labour Code*. Specifically, it was stated that:

> Section 87 of the *Canada Elections Act* [now s. 80] requires every employer to grant an employee a leave of absence, with or without pay, to seek nomination as a candidate and to be a candidate for election. This section does not extend to those working outside of federal jurisdiction because its application is currently restricted to employees included under Part III of the *Canada Labour Code*.
>
> This provision can thus be viewed as discriminating against those who work outside of federal jurisdiction. The extension of this right to all employees would be in accordance with s. 3 of the *Canadian Charter of Rights and Freedoms*. It is relevant to note that s. 148 of the Act [now s. 132], which guarantees every employee four consecutive [now three] hours for the purpose of casting his or her vote, applies to all employers.

This recommendation, which was also made by the Lortie Commission in 1992, has not yet been implemented.

Recommendation: The right to a leave of absence without pay for the purpose of being a candidate at a federal election should be extended to all employees, whether the individual is employed under federal, provincial or territorial law. This should not preclude an employer from authorizing paid leave. On the understanding that there may be instances where an employee's leave of absence could be seriously detrimental to an employer's operations, the Act should provide for an exception in such cases, along with a mechanism to determine the effect of an absence where the issue is in dispute. An example of such a mechanism already exists in the Manitoba *Elections Act*.[35]

Chapter 2: Enhancing Political Parties' Participation

The vitality of any political system can be seen in its capacity to evolve and reflect changes in the society in which it operates. The continuing strength of the Canadian political system is demonstrated by the gradual emergence and continuing development of our party system. That evolution can be traced in the growth of the rights and responsibilities of political parties in the history of the *Canada Elections Act*.[36]

The reforms suggested below are aimed at redressing inequities that have developed under the current legislative scheme as a result of the expanding role accorded to parties in the Act. Some of these inequities arose in pursuing political ends that are either no longer necessary or no longer supportable in the face of the political rights guaranteed by the *Charter of Rights and Freedoms*.

The Royal Commission on Electoral Reform and Party Financing, the Lortie Commission, stated in its 1992 report (*Electoral Reform and Party Financing*), that political parties are the "primary political organizations" in the Canadian system of representative electoral democracy. As noted in that report, political parties serve three important functions. They:

- structure electoral choice and thus, make the vote meaningful;
- provide mechanisms for political participation and thus, enhance democratic self-government; and
- organize elected representation in Parliament and thus, contribute to the effective operation of responsible government.

Thus, parties have a role in the political process, not because of any inherent political right of parties themselves, but because these organizations have been proven to be powerful and vital tools for the development of political thought and the marshalling of the political process. It is this contribution of the party system that ultimately enhances the electoral rights of electors. Reforming inequities in party participation, therefore, should be seen as useful, not simply from the perspective of the party organization, but from the perspective of the public, which benefits from the electoral role played by parties.

2.2.1 Status of Eligible Party

The current party system under the *Canada Elections Act* is unduly complex and creates unnecessary distinctions between parties. It needs to be simplified and clarified.

The concept of "party" is integral to the *Canada Elections Act*. A political party is a group of people who share a common political ideology and who come together in a formal organization with rules and structure, a leader and other officers, for the primary purpose of electing their members to the House of Commons. The modern Canadian electoral system is, for the most part, predicated on the existence of political parties.

The *Canada Elections Act* recognizes several types of status for political parties: eligible parties, registered parties, suspended parties, parties with a right to have their name on the ballot, and third parties (the last of which may not even be a political party as defined above).

The central focus of the party structure of the *Canada Elections* Act is the registered party. A registered party is a party that has registered with the Chief Electoral Officer and fields at least fifty confirmed candidates in a general election.[37]

The Act is currently structured around the idea that the registered party is the organizational form which is most likely, and best able, to form governments. For that reason, the participatory rights and obligations of political parties in the Act are organized around the registered party. Registered parties are given greater participation rights under the Act than other parties (e.g. the right to party name on the ballot, access to information respecting electors, ability to put forward nominees to work as revising officers, the ability of their candidates to put forward nominees to work as deputy returning officers and poll clerks, the right to maintain a party name from election to election, the right to receive finance surpluses from candidates at the end of a campaign, etc.). Registered parties also receive public funding, which other parties do not, and have greater reporting obligations.

When the concept of a registered party was first introduced in the Act in 1970, the requirement that the party run at least 50 candidates in a general election was imposed primarily as an indication of a serious commitment to the political process.

However, when the *Election Expenses Act* created the first legislative regulation of spending limits and public funding in 1974, the concept of registered party began to evolve from simply the hallmark of a major political party, to the touchstone for apportioning public funding and the apportionment of other finite resources, such as broadcasting time. Insofar as public funding and other resources could not be given to everyone who wished to participate in an election, the ability to field 50 candidates began to serve as the basis for eligibility for apportionment. This was, in effect, an enhancement of the original concept of a registered party. The fielding of 50 candidates was viewed as demonstrating serious intent to engage in the rigors of electoral competition at a level indicating relatively broad appeal for its programs and ideas (as stated by the Lortie Commission), which would in turn justify access to legislatively mandated resources.[38]

A political party applies to the Chief Electoral Officer for registration as a registered party. At that time, it must satisfy the Chief Electoral Officer regarding a number of administrative requirements. They include the name, the short form name, and logo of the party (which must not be confusing with that of other already registered parties), its address, its officers, names and addresses of one hundred electors who are members of the party, and so forth. These

details establish the standing of the applicant as a "party" and provide the administrative information for operational purposes. Until the calling of a general election, at which time it has the opportunity to field the required number of candidates, a party that has passed this administrative stage of the process is known as an "eligible" party. Subsequently, at the close of the period for the confirmation of nominations at the next general election, if that eligible party is unable to field the required number of candidates, it loses its eligible status.

A registered party that fails to maintain the requisite number of candidates in a general election loses its registered status and becomes a suspended party. Because that party will have been subject to certain reporting requirements as a registered party, because it will have been subject to specific limitations and because it may have enjoyed certain economic advantages because of its status as a registered party, it is required, as a suspended party, to file specific reports with the Chief Electoral Officer to complete the record of its activities. A suspended party is also required to turn over the cash equivalent of its assets, after debts, to the Chief Electoral Officer, who forwards it to the Receiver General for Canada. Once these steps are taken by the suspended party, the Chief Electoral Officer officially deregisters the party (notwithstanding that it was, in fact, deemed to be deregistered on suspension). The party can apply again to be registered (which, with compliance to a number of accompanying administrative responsibilities – s. 394) will stop the required passing of assets), at which point the process begins anew as it assumes the status of an eligible party.

Both eligible parties and registered parties may also lose their status for failure to comply with various reporting requirements of the Act. This penalty is at the discretion of the Chief Electoral Officer. In such cases, an eligible party loses its eligibility and a registered party becomes a suspended party.

A party may also apply for the withdrawal of its application for registration or for withdrawal of its deregistration.

The current flaw in the existing party structure of the Act lies in its focus on registered parties in its grant of rights and imposition of obligations.

There have been disparities in rights between registered parties and other political parties since the introduction of the concept of registered parties in the 1970s. These disparities continue under the current *Canada Elections Act*. For example, only registered parties enjoy access to lists of electors under s. 45 of the Act and only registered parties (or their relevant local electoral district association) are entitled to a candidate's financial surplus at the end of an election. Only registered parties are entitled to the broadcasting rights under the Act. Only registered parties are entitled to the reimbursement from the public purse of a portion of election expenses. Furthermore, prior to the amendments made by S.C. 2001, c. 21, only a registered party candidate had the right to the inclusion of his or her party affiliation on the ballot, while a candidate fielded by another party did not. While this distinction was partially addressed by amendment under S.C. 2001, c. 21, other distinctions were not resolved (the amendment provided that an eligible party fielding at least twelve candidates will have the right to be included on a ballot).[39]

With the passage of Bill C-2, non-registered political parties were subjected to a further inequality, this time respecting their spending limits. Prior to Bill C-2, only registered parties and candidates were subject to spending limits on election expenses, and only registered parties and candidates were subject to the reporting requirements of the Act, since they were the only organizations benefiting from public funding support.

The introduction of restrictions upon third party election advertising changed that.

As originally conceived for the purposes of Bill C-2, a third party would not strive for the election of itself or its members to the House of Commons. Its participation was thought of as being limited to supporting (or opposing) the election of some other person to the House, in the belief that the third party's particular interest would be advanced by its support or opposition for the person seeking election.[40]

However, the definition of "third party" in the Act is drawn so broadly that it technically results in every group or person not registered as a party or candidate, being considered a third party. The Act defines a third party as "a person or a group, other than a candidate, registered party or electoral district association of a registered party". Thus, a political party, which is not a registered party, becomes by default a "third party", notwithstanding that the party may be attempting to secure the election of its members to the House of Commons rather than operating to support (or oppose) the election of others.

The problem with this is that the spending limits and reporting obligations imposed upon third parties by the *Canada Elections Act* are designed to reflect the status of a third party as a body supporting (or opposing) the election of others, rather than attempting to secure the election of its own members. These spending limits are imposed only on election advertising expenses, unlike the broader limits imposed upon a registered party's election expenses, and they are much lower than the limits for registered parties. The reporting obligations, insofar as they are focused upon contributions and expenses relating to advertising expenses, are much less comprehensive than the reporting obligations of registered parties.

Prior to the third party scheme, political parties, which, because they were new or because they were not sufficiently mainline to qualify as registered parties (thereby securing a portion of public funding support), were nonetheless able to participate fully in an election to the limits of their financial resources. Thus, the electoral system continued to benefit from their participation.

Under Bill C-2, unregistered political parties default to the status of a third party and are thereby subject to the third party regime in the Act. This misrepresents the nature of those parties. It highlights and expands existing disparities in electoral participation, and imposes an inappropriate reporting regime upon those parties.

There are three essential sets of rights and obligations respecting participation in federal elections under the *Canada Elections Act*: public funding rights, participation rights, and voter identification rights.

A party's right to public funding (whether through the tax credit scheme, or through direct partial reimbursement of election expenses) warrants evidence of some meaningful support by the Canadian electorate. This requirement is justified by the recognition that public funds cannot reasonably be expected to be extended to everybody who may wish to seek election to the House of Commons. The same argument would apply to broadcasting rights, which, even though they do not involve a claim upon the public purse, draw upon finite resources (broadcasting time) and have a cost to the broadcaster.

Voter participation and voter identification rights are not subject to the same constraints as public funding and, therefore, should be approached on a different basis. In other words, the concept of "registered" party, as indicative of the extent of a party's participation in an election, which is useful and justifiable in the context of the apportionment of finite resources, may not be as useful in the context of participation and voter identification rights.

The fact that a party does not field at least fifty candidates should not preclude the organization from political party status, nor should it affect the right of the electorate to know the party affiliation of candidates being run by that party.

The current party structure of the Act is unduly focused upon public funding aspects of party participation. It fails to recognize the true role of those parties that may not participate to a degree warranting public funding, but nonetheless play an important and historic role in the electoral process.

While parties may enhance the development of policy and the selection and campaigns of candidates, they may also operate to impose practical restraints upon those who wish to stand for election and represent the views of that party. Consequently, it is important to the concept of an informed vote that electors know if a candidate is a member of a political party.

More than one person is required to form a political party. This is implicitly recognized in s. 366(2) of the Act, which requires a party to have at least 100 members who are qualified electors. By definition, the concept of a political party involves the coming together of numbers of people. However, from the perspective of the informed vote, the identification of a candidate as being endorsed by a party does not depend on the number of other candidates that party chooses to endorse. It is important that every candidate endorsed by that party be so identified. This is so even if a party chooses to endorse only one candidate. Just as in the case of a by-election (where there will be only one candidate for a party), the voters in a general election who must consider a candidate should know if that individual is associated with a party and may have party commitments.

The ability of parties to participate in an election should also not be tied to candidate numbers in other matters, except those involving public funding or broadcasting rights (which will be discussed in Part 4). Once it is granted that party participation in an election is a beneficial thing, as many participation rights as possible should be extended equally to all parties. There appears to be no reason why participation rights not tied to public resources should be extended only to parties that field a specific number of candidates.

Extending participation rights to all parties will enhance the ability of those parties to get their messages to the public and will further the possibility for an informed vote. Emerging parties, or parties that otherwise do not meet the requirements for registered party status, should not be denied planning tools, such as voter information, that are made available to registered parties. This makes it more difficult for new parties to get their messages across to the public as efficiently or effectively as registered parties. It makes it harder for new ideas to be put before the electorate.

The imposition of third party spending limits upon non-registered political parties also ultimately increases the difficulty those parties experience in putting their policies and positions before the electorate.

The right to maintain a party name between elections should also not be restricted only to registered parties. Even a party that runs 12 candidates at a general election, and has the right to have its name appear on the ballot, does not enjoy any protection under the Act respecting future incursions against its name by other parties. It may lose its ability to run in future elections under that name, if the name is appropriated by another party. The registration requirements of the Act respecting confusing names only apply to names of registered parties and parties that have been designated eligible for registration. It is possible for a party to apply for registration under the statute with a name that may be confused with that of another, non-registered party. In determining whether the applicant's party name may be confusing, the Chief Electoral Officer may take into account only the names of other registered parties and parties that are eligible for registration. A party that had its party name on the ballot in the last general election because it ran between 12 and 49 candidates, will not be considered in that process unless it has re-applied for registration after that general election and was again designated eligible. Thus, it is possible for an emerging party, through the loss of its name, to lose its party recognition and the advances it has made in getting its message across to the electorate.

Lastly, reporting obligations, which currently apply only to registered parties, should apply to eligible parties as well. The fact that a party does not field 50 or more candidates does not diminish the importance of disclosure for smaller parties in the context of the principle of the informed vote.

Consequently, for all of the above reasons, it is important that the party structure of the *Canada Elections Act* be amended to better reflect the realities of political party participation in an election. The following recommendations should facilitate the emergence of new parties, provide more complete financial disclosure by eligible parties, and bring all political parties into a similar and appropriate regime in the Act.

Recommendations: There should be only two types of political parties under the *Canada Elections Act* – eligible parties and registered parties.

The definition of eligible parties should be expanded to include all organizations that exist as political parties, that satisfy the administrative requirements respecting the existence and structure of the party under s. 366 of the Act, and that have, in a general election, between 1 and 49 confirmed candidates for election to the House of Commons.

A registered party would be a party that has in a general election at least 50 confirmed candidates for election to the House of Commons.

All eligible and registered parties should be entitled to the same rights and obligations except those involving the division of limited resources; they should further be subject to the same disclosure and reporting obligations.

Spending limits for an eligible party should be determined in the same manner as spending limits for a registered party.

The status of an eligible party would continue unchanged from one general election until the close of the period for the confirmation of nominations in the next general election, in the same way that registered parties currently maintain their registered status from one general election until the next.

A registered party that in a subsequent general election has only 1 to 49 confirmed candidates would resume the status of an eligible party and continue to be entitled to the rights and obligations, including reporting obligations, of an eligible party.

Failure to have at least one confirmed candidate at the close of nominations in a general election would cause a party, whether it was previously designated registered or eligible, to lose its party status.

To avoid the loss of party status that might result due to merely temporary circumstances, a party that has lost its status as an eligible party because it lacks the required confirmed candidates at a general election, could preserve its name if it advises the Chief Electoral Officer of its intention to field at least one candidate in the next general election. This would avoid unnecessary duplication of effort, which would result if the party were required to start afresh and provide the Chief Electoral Officer with sufficient evidence of party status. Failure in the next general election to secure the required number of confirmed candidates to maintain party status would result in the loss of that status. The party should continue to be subject to its reporting obligations during this period.

The category of “suspended” parties should be eliminated in order to reduce the complexity of the Act.

A political party that wished to cease being treated as a party under the Act could relinquish that status. It would be subject to final reporting obligations.

Appendix 2 illustrates the application of these recommendations.

2.2.2 Distribution of Lists of Electors

Aside from being a necessary tool to manage the actual voting process, the list of electors is an important planning and campaigning tool. For this reason, the *Canada Elections Act* provides limited rights of access to these lists to parties and to candidates. Section 94 provides that during an election, returning officers are to distribute copies of the preliminary lists of electors to each candidate in the electoral district who requests it. Outside of the electoral period, s. 45 directs that the Chief Electoral Officer is to provide annually, to each member for each electoral district, and on request, to each registered party that endorsed a candidate in the electoral district in the last election, a copy (in electronic form) of the list of electors for that district (taken from the National Register of Electors). Also, under s. 109, the Chief Electoral Officer is required, after election day, to provide copies of the final list of electors for each electoral district to each registered party that endorsed a candidate in the electoral district and to the member who was elected for that district.[41]

Receipt of a list of electors carries with it the duty to use that list responsibly and to protect the privacy rights of electors. Section 110 imposes limitations upon the use that parties, members, and candidates can make of the lists that they receive. (Generally, recipients are restricted to using the lists to communicate with electors, including soliciting contributions. The extent of the use of the lists for such communication varies, depending on the status of the user as a registered party, a member or a candidate.) Section 111 prohibits any person from knowingly using personal information recorded in a list of electors for a purpose other than to enable registered parties, members or candidates to communicate with electors in accordance with s. 110 or in a federal election or referendum. It is an offence to breach these restrictions (s. 487), punishable on summary conviction by a fine of not more than $1 000, or imprisonment of not more than three months, or both.

The distribution provisions of the Act in s. 45 (respecting the annual distribution of lists) and s. 109 (respecting the distribution of final lists of electors after election day) are inequitable both in their failure to make eligible parties entitled to a copy of the list and in their restriction of the right of distribution only to parties that ran a candidate in that district in the last election.[42]

Restricting the distribution of the list to registered parties that ran a candidate in the electoral district in the last election, makes it difficult for parties that do not meet these requirements to expand into new electoral districts or districts in which they have hitherto not run a candidate. In the case of electoral districts, it creates an advantage for parties that already have a presence in the electoral district over parties seeking to expand.

The existing restrictions on the distribution of lists in ss. 45 and 109 were likely aimed at protecting the privacy of electors by limiting unnecessary distribution of the lists. However, as explained above, distribution to eligible parties and to parties planning to expand into new districts is a useful and necessary aspect of fair competition in the electoral process.

Concerns may be raised that a wider distribution of the list may carry with it a greater risk to privacy concerns. In order to avoid unnecessary distribution, where parties had not run a candidate in the district in the last election, distribution could be restricted to where the lists were requested by those parties as is the case with distribution of the list to registered parties now. Beyond this, it is important to recognize that while distribution of the lists is currently controlled, the universe of distribution to registered parties and candidates cannot be viewed as being narrow. The real protection respecting the privacy interests of the lists lies in the offence provisions respecting abuse of the information on the lists. These provisions will continue to apply to the expanded distribution. All parties receiving the lists would also continue to be guided by guidelines issued by Elections Canada.

Recommendation: Sections 45 and 109 of the Canada Elections Act should be amended to give eligible parties the same rights as registered parties respecting access to annual and final lists of electors, and to provide that the list for a district should be distributed to all registered and eligible parties on request whether or not they had run a candidate in that district in the last election.

Part 3

The Use of Public Monies to Advance Access and Accountability

Part 3: The Use of Public Monies to Advance Access and Accountability

To ensure that the electoral process does not become dominated by those with the most resources, the *Canada Elections Act* both limits election expenses and provides a degree of public support to increase the ability of those with more limited resources to participate in elections.

Part 3 of this report contains recommendations intended to improve public funding aspects of the Act.

Chapter 1: Public Monies to Advance Access

A measure of public funding has been part of the federal electoral system since 1974 and serves to increase access to the process. That funding is provided both directly, through a scheme for the payment of candidate and registered party expenses, and indirectly, through a scheme of income tax credits.

The purpose of public funding is to increase access to the electoral process. Together with election expense limits, public funding is intended to contribute towards a more level playing field in the electoral process.[43]

Even given the commitment to access that public funding signifies, the practical reality is that it is not reasonable, or possible, to fully fund whatever campaign any and all persons might want to conduct in order to seek election to the House.

Public funding must therefore be provided on a fair basis. Public funding must be dependent upon compliance with the various financial requirements and limitations of the Act. The public funding of non-compliant campaigns would undermine confidence in the system.

The balance achieved by the current public funding legislative scheme with respect to its goals and realities – access to the electoral process, the practical limitations upon the public purse, and compliance – on the whole works well. However, a number of concerns have arisen about how that balance could be better adjusted and about how inefficiencies might be reduced and improvements made.

3.1.1 Reimbursement of Candidates' Expenses

Direct funding for campaigns is provided in two ways – through the direct payment of a portion of auditors' expenses and through the partial reimbursement of other campaign expenses. In the reimbursement of electoral expenses, the limitations of the public purse are reflected in the current scheme by including in the calculation the degree to which a candidate's participation in the process has secured public support.

Direct reimbursement of candidates is provided under the *Canada Elections Act* through a two-stage process. A candidate must first qualify for reimbursement. Once qualified, a candidate is entitled to reimbursement of a fixed percentage of his or her election expenses. Concerns have arisen respecting the threshold for qualification for candidates.[44]

Qualification is achieved either by being elected, or by securing a fixed percentage of the vote (s. 464). This is intended to reflect the public support of the campaign in question. Currently, the qualification standards differ for candidates and parties. A candidate who failed to be elected must have received 15% of the valid votes cast in his or her electoral district in order to qualify. Party qualification for reimbursement is set at a lower percentage.

The party must garner either 5% of the vote in the electoral districts in which it has confirmed candidates, or an overall 2% of the national vote.

3.1.1.1 Qualification Threshold for Candidates' Reimbursement

The existing qualification level for candidates places more emphasis on public support and less emphasis on enhancing access to the system. Re-balancing these two aspects, by lowering the qualification level, would better accomplish the overall goal of increasing access to the process without imposing an undue burden upon public finances.[45]

Many electoral districts have five or more candidates and it is not uncommon for three or four of those candidates to fail to reach the 15% threshold. This is particularly true if the winning candidate has a large share of the vote. This does not argue against the appropriateness of a threshold, but it does argue against a threshold that is too high.[46]

Fifteen percent of the vote reflects much more than a basic level of public support. A candidate with less than 15% of the vote may well have received over 6 000 votes in an average district. This should not be regarded as a minimum degree of public support.

The current 5% threshold for party qualification would serve as a better measurement of reasonable public support for candidates. Reducing the threshold qualification limit for candidates to 5% of the votes cast would require that a candidate receive about 2 000 votes in an average district to qualify for public funding. Two thousand votes is a significant amount of public support and is an adequate measure to warrant public funding.

Reducing the current 15% threshold to 5% would also make the thresholds for candidates and parties consistent and it would make it easier for candidates to contest seats not in their party's traditional area of strength. This would result in a broader national participation as it would also improve access for new parties to public funding for their candidates' campaigns.[47]

Recommendation: The threshold for candidates to be qualified for reimbursement should be set at 5% of the valid votes cast in his or her electoral district.

See appendix 1 for a table illustrating the effect of the recommended 5% threshold to candidate reimbursement in the 2000 general election.

3.1.2 Issue of Tax Receipts by Registered Parties for Pre-Registration Contributions

As noted earlier, public funding for the electoral process is also provided indirectly through a scheme of income tax credits for political contributions (under s. 127(3) of the *Income Tax Act*).[48] However, as is the case with direct public funding of electoral expenses, the income tax credit scheme also seeks a balance between the desire to increase access to the process

and the reality that public resources cannot reasonably support every person or party seeking public office. As a result, only certain political contributions qualify for the tax credit (contributions to registered political parties and to candidates) and only a portion of those qualified contributions will be reflected in the credit. This is similar to the approach followed in the direct funding for election expenses. There is a concern, however, that the basis for qualification used in the current tax scheme results in a financial advantage for some political parties.

Under the *Income Tax Act*, a registered political party can only give a tax receipt for a contribution that was received by the party after it achieved registered party status.

Registration is a two-stage process. A political party first applies to the Chief Electoral Officer for registered status. If it meets the administrative requirements for registration, it becomes an eligible party. Full registered status cannot be secured until the calling of a general election. At that time, if the party fields at least 50 confirmed candidates for election, it secures full registered party status. Once registered, a party retains its status as a registered party until the next general election, at which time it must again field at least 50 confirmed candidates in order to retain that status.

This continuing registered party status provides registered parties with an economic advantage over non-registered parties during the period between elections. This advantage exists even over parties that have successfully applied to the Chief Electoral Officer for registered status and are awaiting the calling of a general election in order to field the necessary candidates. Contributions to the registered parties will be qualified for the tax credit, while contributions to the other parties will not. It will, thus, be easier for the registered parties to solicit financial support.

This advantage continues even once a general election is called. Even if the previously non-registered party fields 50 confirmed candidates, and qualifies to be registered, only those contributions received after its registration will be eligible for the tax credit. Thus, while both registered and previously non-registered parties in the general election may demonstrate the same qualifying degree of participation in the election to warrant public support, the earlier registered party goes into the election with a financial advantage, simply because it participated in an earlier election. This financial advantage of a registered party over a non-registered party cannot currently be addressed between elections, regardless of the public support or political commitment the non-registered party may achieve during that period.

The current process also results in a further financial advantage to the registered party. Its superior ability to attract contributions will likely result in the registered party being better positioned to meet the early expenses of a campaign. Much of the expense of an election must be incurred or committed before the close of the nomination period. A party that is eligible, but not yet registered, suffers a significant barrier to raising the funds to meet expenses incurred before the close of nominations.

While the inequity resulting from this process cannot be perfectly resolved, it can be lessened. Allowing an eligible party, which subsequently achieves registered party status, to issue tax receipts for contributions received in the period following its successful application for political party status, will reduce somewhat the existing inequity in the current system.

Recommendation: A party that achieves registered party status in a general election should be allowed to issue tax receipts for contributions received by that party either from the time that its application for registration was accepted by the Chief Electoral Officer, or from the time of the last general election, whichever is later.

3.1.3 Disposition of Surplus Funds of Independent Candidates

Subsection 473(2) of the *Canada Elections Act* currently provides that after an election, an independent candidate's surplus funds are to be transferred to the Receiver General for Canada. This requirement applies whether or not the independent candidate was elected.

By contrast, the surplus funds of a candidate endorsed by a registered party are to be transferred to his or her registered party, or to the party's electoral district association.

Surplus funds transferred to the registered party may be, in subsequent elections, used to fund the campaigns of that party's endorsed candidates. Thus, endorsed candidates have a financial advantage over independent candidates, who must start from scratch with each new campaign.

The reason the surpluses of independent candidates are treated differently from those of endorsed candidates lies in the simple reality that, in the case of independent candidates, there is no registered party, or electoral district association of a registered party, to which surpluses may be turned over. Furthermore, there may be concerns about leaving the surplus in the hands of the independent candidates, who may not run again or who may not be in a position to ensure sufficient safeguards for those funds between elections.

Independent candidates are an important part of our Parliamentary tradition. However, the requirement that each campaign be started from scratch financially can discourage independent candidates from making subsequent attempts at election. The current system may also discourage contributors from supporting independent candidates.

To the extent possible, the electoral process should not be constructed in a manner that handicaps independent candidates. Any such disadvantages should be justifiable and reasonably unavoidable.

The fact is that concerns respecting independent candidate's surpluses can be easily addressed without resort to the draconian form of forfeiture that is currently employed.

All that would be necessary, both to adequately ensure the integrity of the surpluses between elections and to avoid the existing inequity in the system, would be to provide that any surplus funds transferred by an independent candidate to the Receiver General for Canada should be returnable to the independent candidate if that person is an independent candidate in the next general election or a by-election.

A similar recommendation was made in the earlier *Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election*.

Recommendation: Any surplus funds transferred by an independent candidate to the Receiver General for Canada should be returnable to the candidate if he or she is nominated as an independent candidate in the next general election or a by-election.

Chapter 2: Public Monies to Advance Accountability

The *Canada Elections Act* provides that, where a party or a candidate is required to file a return, the return must be audited by an independent auditor.[49] The auditor generally reviews the return and provides a report in which he or she is required to state whether: the return does not present fairly the information contained in the financial records on which it is based; the auditor has not received all of the information and explanation which the auditor requires; or, it appears that proper accounting records have not been kept. (The actual wording may vary depending on the specific type of return being reviewed by the auditor.)

The auditor's report thus serves as a valuable compliance tool. This nature of the auditor's services is recognized in the Act's treatment of auditor's fees separately and differently from other electoral expenses. For example, public money that goes towards auditors' fees are dealt with as direct payments to the auditor, rather than through the reimbursement mechanism. As well, payment of a candidate's auditor fees is not dependent on the candidate's success in the election, as is the case with the reimbursement of other candidate expenses (s. 466).

The recommendations that follow address elements of the current system respecting the reimbursement of auditor's fees that do not fairly reflect the work the auditor is to do, or that do not fully recognize the nature of the compliance role played by the auditor in the process. One of the recommendations will rectify an existing uncertainty respecting an auditor's eligibility.[50]

3.2.1 Auditor Acting for More than One Candidate

An inadvertent confusion is created in the *Canada Elections Act* by the direction in s. 85.1 respecting the auditor for a candidate. Section 85.1 provides that (subject to ss. 84 and 85) a person may be appointed as official agent or auditor for a candidate notwithstanding that the person is a member of a partnership that has been appointed as an auditor either for a candidate in an electoral district *other* than the electoral district of the candidate for whom the appointment is being made, or for a registered party.

This provision is useful in the context of official agents, as it resolves a concern respecting the prohibition in s. 84 against a person who is already appointed as an auditor also being appointed as an official agent. It makes it clear that the appointment of one's business partner as an *auditor* for a candidate or for a registered party does not preclude one from being appointed as the *official agent* for a candidate in a *different* electoral district.

However, it is possible to construe the provision in s. 85.1 as an implied prohibition against a person being appointed an auditor for a candidate where that person's partner has been appointed an auditor for another candidate in the *same* electoral district or for a registered party.[51]

Section 85 of the Act contains no prohibition against a person who is appointed an auditor for one candidate or for a registered party also being appointed an auditor for another candidate. There is no such prohibition anywhere in the *Canada Elections Act*. Since there is no prohibition against acting as an auditor for more than one candidate, there should be no confusion as to a person's ability to act as an auditor when his or her partner has also been appointed as an auditor for another candidate or a registered party.

The fact that s. 85.1 is expressly stated to be subject to ss. 84 and 85 indicates that s. 85.1 was intended to eliminate potential confusion respecting partnerships, rather than as an implied prohibition against anything else. To avoid future uncertainty, it would be preferable to make that clear rather than relying on principles of statutory interpretation. This can be done by removing the unnecessary reference in s. 85.1 to the situation of partners serving as auditors.

Recommendation: Section 85.1 should be amended to avoid confusion as to the ability of an auditor to act for more than one candidate regardless of the electoral district. This can be done by rewording the provision to refer only to the ability of a person to serve as an official agent where his or her partner has been appointed as an auditor.

3.2.2 Free the Payment of Auditor's Fees from Requirement for Unqualified Report

The *Canada Elections Act* currently provides for payment of a portion of the fees that an auditor charges a candidate (s. 467). However, fees are payable only if the auditor's report does not contain any of the noted reservations respecting the return (s. 465(1)(*b*)).

The requirement appears to be imposed in order that a candidate will comply with the various requirements of the Act. Where a candidate's actions have been such that his or her auditor can only make a qualified report, the right to public payment of a portion of the auditor's fees will be lost and the candidate will be personally responsible for the full payment of those fees.

This requirement indirectly results in exposing the auditor to greater risk respecting the collection of his or her fees, and may be perceived as acting as a disincentive to a fully impartial report. The auditor who submits a report with reservations or qualifications will lose his or her right to direct payment of a portion of his or her fees from the state and leave him or her in the position of having to secure the full payment from the candidate – who may not always be in the position to make that full payment promptly. Yet the auditor, in submitting a qualified report, has carried out the very duty imposed upon him or her by the Act.

The direct payment from public funds of a portion of the auditor's fees to the auditor, rather than to the candidate, is in recognition that the services provided by the auditor benefit the public as well as the candidate. The auditor should not be penalized in the recovery of that portion for performing precisely the public function that he or she was mandated by the Act to perform.

Recommendation: The payment of the public funding portion of an auditor's fees should not be dependent on the auditor submitting an unqualified report.

3.2.3 Amount of Public Payment of a Candidate's Auditor Fees

Currently, the public portion of a candidate's auditor fees are set at 3% of the candidate's *election expenses* (with a minimum of $250 and a maximum of $1 500). However, in preparing his or her report, an auditor is required by the Act to review and report not simply upon the candidate's election expenses, but upon the candidate's electoral campaign expenses, which includes a candidate's personal expenses and disputed and unpaid claims (ss. 451(2) and 453).

As noted, the auditor reviews these expenses in large part for the compliance purposes of the Act. Consequently, the public payment of the fees should be set as a percentage of all of the campaign expenses that the auditor has been required by the Act to review.[52]

Also, as noted, the Act currently sets a minimum and maximum amount on auditor's expenses of $250 and $1 500 respectively. However, the Act makes no provision for adjusting these fees to reflect inflation.

Recommendation: The public payment of auditor fees should be based on the total of the expenses (set out in s. 451(2)(*a*) to (*e*)), which the auditor is required to review in order to comply with his or her mandate under s. 453.

The minimum and maximum payments should be adjusted for inflation.

3.2.4 Public Payment of a Portion of a Party's Auditor Fees

Like candidates, registered parties are required by the *Canada Elections Act* to make financial returns appropriate to their circumstances. As registered parties have a continuing existence between elections, and operate for political purposes in that time, they are required to file two types of financial returns under the Act. A fiscal return must be filed annually (s. 424) and an election expenses return must be filed following every general election (s. 429).

The annual fiscal return sets out information respecting the party's activities during the year, including: information on contributions received in that year; a statement of the party's assets and liabilities and any surplus or deficit; a statement of its revenues and expenses; a statement for each electoral district of transfers of funds from the party to one of its candidates or to one of its electoral district associations, or a trust fund established for the election of one of its candidates; a return for election expenses for each by-election in that fiscal period; and, a statement of loans or securities.

The election expenses return focuses on the party's election expenses during the general election to which it relates.

As is the case with candidates' returns, both of the registered party returns must be audited and the auditor's report included with the return. However, the Act does not provide for any public payment of the auditor's fees relating to these reports, unlike the provision for public payment in the case of candidates' reports. Yet, the work involved with the audit of these returns can be extensive, expensive, and a potential financial burden to smaller parties.

The role of the auditor respecting the financial returns of a party is the same as that played respecting candidates' returns. While the auditor may be seen as performing a service to the party in ensuring that it's books and records are complete and adequate, the auditor must also be seen as playing an important public compliance role in the system.

Therefore, the Act should also provide for the payment of some portion of the registered party's auditor fees. In recognition of the fact that the principal statutory purpose of the audit is to assist in the administration of the Act, it would not be unreasonable if the state's portion of the auditor fees were set at 75% of the total fee.[53]

The payment for party auditor fees should be subject to a maximum (as is the case with the existing payment for the candidate auditor fees). Based on survey results the maximum cap on the payment of audit fees for annual returns could be set at approximately $18 000, with a cap of $15 000 being used for the election returns (which involve less work). These caps should be subject to inflationary adjustment.

Recommendation: The Act should provide for the payment of 75% of the auditor fees of a registered party respecting its financial returns under the Act, subject to a maximum cap. A cap of $18 000 could be set for the portion of fees that would be paid from the public purse for the fiscal return and a cap of $15 000 for the election return. These caps should be subject to an inflationary adjustment.

Part 4

Ensuring Fair Competition – Broadcasting

Part 4: Ensuring Fair Competition – Broadcasting

The communication of ideas is vital to the electoral process; and broadcasting has proven to be one of the most powerful and effective tools for the communication of ideas. It is also a very expensive and limited resource. As noted by the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) in its 1992 report, *Reforming Electoral Democracy*, "fairness in electoral competition requires that the contenders be given reasonable access to those media channels that are likely to be most effective in carrying their arguments to voters". Equally, the public has a right to be informed in a "fair and objective way".[54]

The recommendations in this Part are aimed at the creation of an efficient legislated broadcasting regime that recognizes radio and television broadcasting as an important means of communication during an election; that recognizes that broadcasting resources are not unlimited or without cost; that allows the electorate adequate access to the views of parties that have demonstrated their reflection of the public's aspirations and beliefs, as well as to new or emerging views; that recognizes the importance of parties being able to determine when and how they wish to communicate their views to the electorate; and that ensures adequate and real access to broadcasting time by the parties.

Political Broadcasting

The importance of broadcasting is recognized in the *Canada Elections Act* by its provision of a specific regulatory scheme within the statute. That scheme is administered by the Broadcasting Arbitrator. (Communications are also regulated by the CRTC under the *Broadcasting Act*.) The communications scheme under the *Canada Elections Act* aims to ensure adequate broadcasting access for political views during an election. It does this in two ways. In order to ensure that prime broadcasting time cannot be monopolized, it requires that prime time be available for purchase by all parties. Secondly, to ensure that the communication of ideas is not totally dependent on financial resources, the Act provides for a specified amount of free broadcasting time for all registered parties (and to a limited extent to eligible parties).

There is no legal limitation on the amount of prime time broadcasting that a registered or eligible party may purchase under the existing provisions of the Act, other than for the general spending limits imposed by the Act. However, in recognition of the limited amount of prime time broadcasting actually available for purchase, the Act sets out a scheme whereby a basic amount of prime time (390 minutes) must be made available for purchase by registered parties. That available prime time is apportioned among the various registered parties according to a specified formula. Parties are free to purchase more prime time above this guaranteed amount, provided that the broadcaster is prepared to sell such time to the party.

As eligible parties are not entitled to a portion of this 390 minute pool of paid time, the Act provides that those eligible parties are entitled to purchase, from a total pool of 39 minutes, the lesser of the smallest apportionment of time allocated to a registered party, or 6 minutes. This time is not counted in the initial computation of the 390 minute pool.

The statutorily mandated apportionment of the 390 minutes of base amount of prime time available for purchase is based on factors that give equal weight to the percentage of seats in the House of Commons and the percentage of the popular vote obtained by each of the registered parties in the previous general election, and half weight to the number of candidates endorsed by each of the registered parties as a proportion of all candidates endorsed. The Broadcasting Arbitrator has the discretion to modify this apportionment where he or she considers that an allocation made in accordance with that calculation would be unfair to a registered party or to the public interest.

The Act also provides for disputes over the purchase of actual time, under this allocation, to be arbitrated by the Broadcasting Arbitrator.

It should be noted that the allocation of paid broadcasting time does not necessarily result in the actual utilization of the resources available. For example, in the 1995 decision of the Alberta Court of Appeal in *Reform Party of Canada* v. *Canada (Attorney General)* (1995), 123 D.L.R. (4th) 366 (Alta. C.A.), the Court noted that, at that time, while the full allotment of time was purchased on a limited number of radio stations, no political party had purchased all of its allotment of broadcasting time on any television station. In fact, the experience of the last few elections, as related by the Broadcasting Arbitrator, is that smaller parties rarely utilize any of the paid time apportioned to them because they are unable to afford to buy it. Even the larger parties rarely, if ever, utilize their full allocation on any station, and all of them purchase time only on a select number of networks or stations.

In order to ensure that broadcasting is not totally dependent on financial resources, the Act also requires the provision by certain networks of minimum free broadcasting time to parties that is no less than the amount of free broadcasting time made available at the last general election. This pool of free time is apportioned among the parties as follows. Two minutes is first apportioned to every registered party and to every eligible party which has elected not to take part in the paid time apportionment. That time is deducted from the pool. The remainder is then apportioned between the other registered and eligible parties in the same proportion that the paid time apportioned to them bears to the overall paid time available for apportionment (390 + 39 minutes).

The apportionment of paid and free broadcasting time to eligible parties is carried out only to address the situation where the eligible party achieves registered party status during a general election. An eligible party which does not achieve registered status loses its eligible status and with the accompanying broadcasting time otherwise apportioned to it.

While the existing system is laudable in its goals, it is not wholly effective or efficient in its accomplishment. A number of concerns have been identified. The current statutory apportionment of paid time unduly fetters the ability of emerging parties to purchase enough time to make a meaningful case to the Canadian public. In an attempt to offset the adverse discriminatory effects of the existing formula, the Broadcasting Arbitrator, since 1992, has exercised his discretionary authority under the Act to modify the statutory apportionment formula, by apportioning one-third of the base time equally among all parties.[55]

In addition, the current reliance of the free time broadcasting regime upon the paid time regime introduces a substantial degree of artificiality into the system because parties are required to participate in the apportionment of paid time (which they may never use) in order to secure their free time allocation.

Furthermore, the current requirement that free time need only be provided by “networks” makes that regime dependent upon an organizational arrangement of diminishing national importance.[56]

While many radio stations and most television stations in Quebec are part of a network, most of the radio and television stations in English Canada are not part of a network. Only CBC and CTV television stations currently so qualify.

Under the current free time regime, networks are entitled to provide the required free time at whatever time the network feels is appropriate, and to package time in broadcasts of specific lengths, as they see fit. The Broadcasting Arbitrator has noted that free time is usually given out in five or ten minute blocks and that it is typically packaged with other free-time blocks.

Lastly, although the Act purports to give political parties the benefit of the lowest applicable rates for paid time, the Broadcasting Arbitrator believes that the provision is badly worded and does not achieve this purpose. The Arbitrator is of the view that the provision does not give candidates and parties access to the same rates that are given the station's most favoured commercial advertisers, and that it allows stations to charge much higher rates for political broadcasts.[57]

Ultimately, one wants an efficient legislated system that recognizes radio and television broadcasting as an important means of communication during an election; that recognizes that broadcasting resources are not unlimited or without cost; that allows the electorate adequate access to the views of parties that have demonstrated their reflection of the public's aspirations and beliefs, as well as to new or emerging views; that recognizes the importance of parties being able to determine when and how they wish to communicate their views to the electorate; and that ensures adequate and real access to broadcasting time by the parties.

4.1.1 Sever Free and Paid Time Regimes

To this end, the existing inter-relationship between paid time and free time should be severed and each should be made operationally independent. This will remove the need for registered parties that have no intention or ability to buy paid time to participate in a paid time apportionment exercise. In the following recommendations, all suggestions respecting particular amounts of time are based on suggestions submitted by the Broadcasting Arbitrator.[58]

Recommendation: A party's entitlement to free broadcasting time should not be dependent upon that party's entitlement to paid broadcasting time.

4.1.2 Broadcasting Rights Restricted to Registered Parties

Insofar as broadcasting time is a finite resource, the statutory rights to the provision of free time, should be restricted to registered parties. Eligible parties would be entitled to be treated as registered parties up to nomination day, at which point they must become a registered party. A party that failed to achieve registered status would forfeit the broadcasting rights apportioned up to that point. Eligible parties would, in any event, be able to purchase paid

time at lowest unit rates, if a station were prepared to sell it at that rate subject to the parties' election expense limits.

Recommendation: Only registered parties should have the right to free broadcasting time.

4.1.3 Free Time Regime

To offset the declining importance of networks in the Canadian broadcasting system, the Act should be amended to provide for free time provision by all conventional television stations (not just networks) that broadcast news or public affairs program, all news/talk radio stations, and all specialty television services that focus on news or public affairs. This time would be apportioned equally between all registered parties that request such time. For this purpose, eligible parties would be treated as registered parties unless they fail to achieve registered status by the deadline.

While imposing the requirement to provide free time upon all stations and services has the advantage of simplicity, the Broadcasting Arbitrator has suggested that an overly broad approach would give rise to some practical concerns. Imposing the obligation upon all radio stations for example, would raise the possibility of parties having to make requests to hundreds of individual stations, some of which may not be capable of coping with such requests, or their music programming may not be compatible with extensive spoken-word programming.

Political broadcasting is essentially public affairs broadcasting and there is a logic in imposing the obligation to provide free time political broadcasts upon stations or services that include significant news or public affairs programming as part of their mandate. This targeted universe would be comprised of the following stations:

Radio Stations
CBC (Radio One)
Private English radio (limited to news/talk radio stations)
SRC (Première Chaîne)
Private French radio (limited to news/talk radio stations)

Conventional Television Stations
CBC
CTV
CanWest Global
Other (e.g. CHUM, Craig)
SRC
TVA
TQS

Specialty Television Services
CBC Newsworld
CPAC
CTV Newsnet
Pulse24
ROBTv
RCI
RDI
Canal Nouvelles

Increasing the universe of stations and services obliged to provide free time would increase the reach of free time broadcasting and necessitate less time being required of each station. For this reason, each subject station would be required to provide only 60 minutes of free time broadcasting over the course of the campaign.

It has been suggested by the Broadcasting Arbitrator that extending the requirement to provide free time to all television stations in this manner would not affect the situation in French Canada, where all stations are already covered, but would render the situation in English Canada much more equitable, reducing significantly the number of minutes provided (from 214 to 60) and by making all television stations subject to the same requirement. The net exposure for free time advertising would increase because of the greater combined reach.

The Act should not direct when free time is provided or the length of any broadcast provided.

The Act should, however, direct that free time be scheduled reasonably evenly over the last three weeks of the election period, i.e. following the nomination date cutoff.

In order to accommodate the participation of eligible parties in this process, free broadcasts should only be permitted after the nomination date cutoff, to allow for the readjustment of apportionment should an eligible party fail to achieve registered party status or a registered party fail to keep its registered party status.

Recommendations: The *Canada Elections Act* should specify that 60 minutes of free time, divided equally between all registered parties that request it, is to be provided by all television stations (not just networks) that broadcast news or public affairs programs, and by all news/talk radio stations and specialty television services focusing on news or public affairs.

The Act should not direct when free time is provided or the length of any broadcast provided.

The Act should specify that free time be scheduled reasonably evenly over the election period to avoid parties attempting to schedule all of their free time within the last week of the election.

In order to accommodate the participation of eligible parties in this process, free broadcasts should only be permitted after the nomination date cut-off to allow for the readjustment of apportionment in the event of the failure of an eligible party to achieve registered party status or a registered party to maintain its status.

4.1.4 Paid Time Regime

The paid time regime of the Act should be amended to provide for 100 minutes of paid time, which each party has a right to buy at the lowest unit charge, subject only to the party's election expense spending limit. The scheduling of purchased time should be at the discretion of the registered party (as at present), pre-empting regular commercial ads if necessary. (However, the Broadcasting Arbitrator suggests this should rarely be necessary. CRTC regulations do not count political ads towards the twelve minute limit per hour of commercial messages on television stations.)

There should be an overall cap of 300 minutes, which each station must make available for purchase by all parties. Where the number of parties seeking to purchase paid time at the lowest unit rate would require the station to provide more than this cap, the station should be allowed to reduce every party's requested time on a *pro rata* basis, subject to the moderation of any disputes by the Broadcasting Arbitrator. The Broadcasting Arbitrator should also be authorized to arbitrate disputes over the purchase of specific time slots.[59]

The Broadcasting Arbitrator has suggested that the statutory rate for the sale of paid broadcast time be based upon a comparable provision in s. 315(*b*) of the United States *Communications Act*, which employs the concept of "lowest unit charge". This is calculated to avoid the current uncertainty arising out of the Act's present use of the term "equivalent time" (which, according to the Broadcasting Arbitrator, makes complaints about rates difficult to compare and assess). It is suggested that stations not be allowed to charge an amount exceeding the lowest unit charge made for the same class and amount of time on the same facilities made available to any other person for the same period.

A party wishing to buy more than the 100 minutes of preferential-rate time would be free to do so subject only to its election expense limits and the agreement of the stations, which would be obliged to treat all parties equitably in this regard. In the unlikely event of one party attempting to dominate the market unfairly, disputes could be resolved by the Broadcasting Arbitrator.

The existing statutory provisions in s. 344 of the Act require each registered party and each eligible party wishing to buy paid time, to give notice of its desire to purchase paid time no later than ten days following the issue of the writs for a general election. Disputes in this regard would continue to be arbitrated by the Broadcasting Arbitrator, according to the principles currently set out in s. 344.

Recommendations: The Act should be amended so that each registered party has the right to buy up to 100 minutes per station of paid time at the lowest unit rate, subject to their election expense spending limits.

The scheduling of purchased time should be at the discretion of the registered party, pre-empting regular commercial advertisements if necessary (same as the existing system).

Registered parties would be required to pre-notify the station of their scheduling intentions within ten days of the issue of the writs (same as the existing system).

There should be an overall cap of 300 minutes on the amount of paid time, which each station must provide overall to all parties. Where the number of parties seeking to purchase paid time at the lowest unit rate would require the station to provide more than this cap, the station should be allowed to reduce every party's requested time on a *pro rata* basis, subject to the moderation of any disputes by the Broadcasting Arbitrator.

The Broadcasting Arbitrator should be authorized to arbitrate disputes over the purchase of specific time slots.

The statutory rate for the sale of paid broadcast time should be based on the concept of "lowest unit charge" in order to avoid the current uncertainty arising out of the Act's use of the phrase "equivalent time".

Any registered party wishing to buy more than the 100 minutes of paid time, and any eligible party wishing to buy paid time, would be free to do so at the lowest unit rate, subject only to its election expense limits and the willingness of the station to sell the time. Again, in the unlikely event of one party attempting to dominate the market unfairly, disputes could be resolved by the Broadcasting Arbitrator.

4.1.5 Election Opinion Surveys

To provide electors with the means of judging the reliability of election opinion surveys, the *Canada Elections Act* currently contains a two-stage disclosure scheme respecting the transmission of such surveys. Section 326 requires the first person transmitting an election opinion survey, and any person who subsequently transmits the survey within 24 hours of its first transmission, to provide a basic package of information respecting it. This package indicates the name of the sponsor of the survey, the name of the person or organization who conducted it, the date on which the survey was conducted, the population from which the sample of respondents was drawn, the number of people who were contacted to participate in the survey, and, if applicable, the margin of error in respect of the data obtained.

This obligation falls equally upon the print and broadcast media.

A person who wishes to analyze the survey in more detail may contact the sponsor of the survey for a more detailed report respecting its methodology and how it was conducted. The obligation upon the sponsor to provide the report, and the requested content, is set out in s. 326(3).

To ensure that the public is aware of the right to secure the more detailed report set out in s. 326(3), the print media, and any broadcast media not regulated by the CRTC (e.g. the Internet) are required to include, with the basic package of information, the wording of the questions used in the survey and the means by which the more comprehensive report referred to in s. 326(3) may be obtained.

This obligation does not extend to the broadcast media regulated by the CRTC.

Admittedly, it may not be as feasible in a broadcast transmission to include the information required by s. 326(2) as it is in a print or electronic print transmission. However, there appears to be no reason why broadcasters subject to the disclosure obligations of s. 326(1) could not, as a minimum, be required to have the information on hand and to advise the public how to secure it from them if desired. For example, most broadcasters maintain Web sites. The information required by s. 326(2) could be posted on the broadcaster's Web site and the broadcast could refer the listener to that Web site for the information required under s. 326(2).

Recommendation: Subsection 326(2) should be amended so that broadcast media regulated by the CRTC are subject to the same requirements that broadcast media not regulated by the CRTC (e.g. the Internet) must meet with respect to disclosure of the wording of the questions used in political opinion surveys and the means by which further details about such surveys may be obtained.

Part 5

Transparency in Election Financing

Part 5: Transparency in Election Financing

This Part addresses the issue of political financing. The *Canada Elections Act* contains a reporting regime under which registered parties and candidates are required to report contributions (and expenses). This disclosure is an aspect of the informed vote and is intended to maintain elector confidence in the system.

The recommendations in this Part are aimed at enhancing electoral confidence by improving and extending the disclosure obligations of the Act by implementing controls upon large political contributions, by clarifying and streamlining the provisions related to the filing of the candidate's return.

Chapter 1: Financial Disclosure

5.1.1 Preventing Contributions Intended to Hide the Identity of the Original Source

This report recommends tightening the reporting requirements of the Act with respect to donations received by candidates through intermediate bodies. Steps should also be taken to prevent the use of other indirect routes to hide the original source of a contribution.

There is a provision in the Act (405(1)) that no person may make a contribution to a registered party from money belonging to another person. This is intended to prevent transactions that hide the true identity of the owner, but it is possible to circumvent its intent by transferring ownership of the money to an intermediary, on the understanding that it later be contributed to a candidate, political party, political trust or local association. In such a case, the money is considered to belong to the intermediary who actually makes the contribution. To improve the effectiveness of s. 405(1), a prohibition should be added to the Act against making a contribution in a manner intended to effectively hide the identity of the true donor.

Recommendation: The Act should be amended to make it an offence to make a contribution in a manner intended to hide the identity of the source of the contribution.

5.1.2 Reporting Conditions on Loans

Many election campaigns are financed partly by loans in order to bridge the gap between the early expenditures and the flow of contributions. Although many loans to campaign are essentially personal loans from commercial lenders to the candidate, it is not uncommon for another person to co-sign or guarantee the loan.

A loan to a candidate is, for the purpose of the return, regarded as a contribution. In some cases, the co-signor may become liable for payment and thus, become a contributor.

The Act at present requires the candidate's return to include a statement of contributions, which in this context includes loans. However, in order to provide full transparency of financial support, the return should reveal all the conditions of a loan, including its terms, interest rate and the identity of any co-signor or guarantor.

Recommendation: The Act should be amended to require a candidate's return to reveal all the conditions of any loan, including its term and interest rate. Disclosure of the name and address of any guarantor should be required in the case of loans above the reporting threshold.

5.1.3 Reporting Transfers from Provincial Political Entities

The original source of contributions to parties or candidates is not necessarily reported when the contribution is made through transfers from provincial political parties and provincial electoral district associations. Money raised by a provincial party or association can be transferred to a federal party or candidate. In this case, it will be disclosed on the relevant federal return simply as a contribution from the provincial body, with no indication of the original contributors to that body.

It is important to close this gap and enhance transparency.

Recommendation: It is recommended that all transfers made from provincial political entities to registered and eligible parties, to local electoral district associations of a registered or eligible party, or to a candidate, be fully reported to the Chief Electoral Officer.

5.1.4 More Accurate Reporting of Source of Indirect Contributions Through Local Electoral District Associations and Trust Funds

Specified types of trust funds and local electoral district associations may collect individual contributions and pool them under the umbrella of the trust or association. Amounts can then be transferred from the trust or the association to a party or candidate.

The current provisions do not fully address the issue of the source of contributions under the umbrella of a trust or local association. Where a trust or association receives contributions in excess of the reporting threshold (currently $200), the source of the original contributions may not be disclosed where the association transfers less than the full pool of contributions to a party or a candidate. For example, if the association receives contributions from A, B, C, and D of $1 500 each (forming a pool of $6 000), but only transfers $2 000 to a candidate, the association has the option of identifying only two of A, B, C, or D as the source of the contributions. The nature of the association's pooled contributions makes it impossible to determine whether $500 from each of the original four contributions was transferred, whether the full contribution from one of the original contributors was transferred, or whether it was some other combination. This failing can be addressed by requiring the identification of all contributors over the reporting threshold to a trust or association since the last election, or since the end of the last reporting period, as the case may be.

Recommendation: The Act should be amended to provide that where a reporting party or candidate receives indirect contributions from a trust or electoral district association, the names and addresses of all of the contributors who made contributions over the reporting threshold to the trust or the association since the last report (in the case of the fiscal returns of parties), or since the last election (in the case of candidates), must be disclosed.

5.1.5 Threshold for Reporting Contributions

The reporting of election contributions is a balance between transparency and privacy – both of which serve important ends.

The purpose of electoral campaign disclosure is for the public to know the source of contributions to parties, candidates and third parties to allow it to judge the potential influence which those contributors may exercise upon the recipient or the commitment to which the recipient may be bound. The concept of the informed vote precludes the public being in the position of having to vote in ignorance of an important facet of political life.

The value of privacy is obvious. It is a matter of personal integrity and a constitutionally protected right. However, beyond this, confidentiality also plays an important role in the electoral process. Just as confidentiality preserves the integrity of the vote, confidentiality respecting contributions also allows individuals to financially support political options without fear of persecution or social pressure. It can thus enhance the political process and encourage participation in the political process. It indirectly enhances commitment to the democratic foundation of the nation.

The question is, and has always been, where the line is to be drawn between disclosure and privacy. At what point does the harm of undisclosed influence begin to outweigh the benefits served by the maintenance of confidentiality respecting contributions?

In the context of the reporting of political contributions, at the federal level the line between transparency and privacy is currently drawn at the relatively modest sum of $200. Where a party, candidate or third party is required to report contributions the total of all contributions must be reported by class of donor, but names and addresses of contributors need only be reported respecting those contributions which are in excess of $200.

The federal reporting threshold was originally set in 1974 at $100. The Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) recommended in its report that this $100 limit be raised to $250. The Committee stated that “Raising the threshold for reporting at the federal level would not impair the public’s knowledge of contributions that are large enough to be politically significant.” Following the Royal Commission Report, the threshold for reporting was set at $250 for the purposes of the *Referendum Act* (s. 19) and raised to $200 in 2000 for the *Canada Elections Act*.

In the context of the 37th general election, the breakdown of the total reported contributions to candidates was as set out below. These contributions came from individuals, businesses, governments, trade unions, corporations and unincorporated groups. This breakdown indicates that, while only 3% of contributions to candidates were in excess of $1 075, that small body of contributions accounted for almost half (45%) of the total dollar amount of contributions made. The remaining 55% of the total dollar amount of contributions made came from the remaining 97% of contributions.

It is evident from these numbers that anyone making a political contribution of less than $1 075 will not stand out from the crowd nor would any contribution below that level likely carry with it much individual influence. A contribution in excess of $1 075, however, would fall into a small universe consisting of the top 3% of a candidate's contributors and would likely be noticed.

In the context of impact on an individual candidate, the current threshold for detailed reporting of $200 amounts to less than 1 percent of the average election expenses of a candidate in the 37th general election. A contribution of $1 075 amounts to 5% of that average. (The average election expenses for an individual candidate in that election amounted to $20 824 -$37 442 329 total candidate election expenses divided by 1798 candidates.)

The numbers grow even more distant when placed in the context of party expenses and contributions.

In the above breakdowns, the figure of $1 075 was chosen with a view to the existing tax credit system. The maximum tax benefit to a contributor occurs at the $1 075 level.

Thus, the intended purpose of detailed election contribution disclosure does not appear to be particularly served by a requirement to report contributions of less than $1 075. The detailed reporting of such contributions, consequently, does not allow the public to judge the ties of the recipient in any better way than the required general reporting of total contributions and the reporting of contributions on the basis of category of donor. It remains important that detailed records of all contributions be kept and available for inspection by the Chief Electoral Officer, particularly as a necessary enforcement mechanism respecting the recommendations in this report relating to limits on contributions. However, there appears to be no particular public interest served in the public disclosure of these small amounts generally or in the public dissemination of the names and addresses of the contributors who make contributions up to $1 075.

Permitting small contributions of this nature to be made in confidence may also have the beneficial effect of increasing the willingness of persons to support the electoral process by alleviating concerns that by so doing they publicize their personal political views.

Recommendations: In order to enhance the privacy interests of Canadians and to encourage the political participation of Canadians, where contributions are required to be reported to the Chief Electoral Officer, the reporting threshold for the specific reporting of names and addresses for contributions should be raised to $1 075.

Reporting entities should be required to continue to keep detailed records of contributions, including the names and addresses of contributors who make contributions in excess of $200.

These detailed records should be producible on request to the Chief Electoral Officer or the Commissioner of Canada Elections, and be available for the purposes of the Act, including for the purposes of any enforcement action by the Commissioner of Canada Elections. There would be no obligation to publish them, nor should they be publicly available except as may be required in a prosecution by the Commissioner of Canada Elections.

It should be an offence for a person who is required to produce a detailed record of contributions to wilfully fail to do so on the request of the Chief Electoral Officer or the Commissioner of Canada Elections.

Chapter 2: Streamlining and Clarifying the Reporting Requirements for Candidates

5.2.1 No Bank Account Required if No Financial Transactions Other than Payment of Deposit

At the beginning of an election campaign, every candidate has to appoint an official agent to deal with the finances of the campaign. The official agent has to open a bank account. However, for candidates who receive no contributions and incur no expenses (other than the nomination deposit), opening a bank account and submitting detailed returns seems unnecessary and may be a barrier to new candidates. Removing the unnecessary paperwork is not only good administration, but encourages participation by new candidates.

Furthermore, the nomination deposit should not be considered a loan, contribution or election expense. In the interests of transparency, and for refund purposes, the source of funding for the deposit should be declared.

Recommendations: Opening a bank account should only be required of a candidate when a monetary transaction occurs, other than the payment of the nomination deposit.

A declaration of "nil return" should be provided by the candidate and official agent in cases where there have been no contributions, election expenses, or personal expenses. The candidate's deposit should be excluded from the definition of loan, contribution, and election expense. The source of funding for the deposit should be disclosed.[60]

5.2.2 Removal of the Requirement for a Witness to the Official Agent, Chief Agent and Candidate Declarations Accompanying the Return

Section 451 of the *Canada Elections Act* requires that the official agent and the candidate must both make a declaration in the prescribed form respecting the return. These declarations essentially certify the correctness of the information. They must be witnessed. The witness is not required to know anything about the return. The witnessing is merely to attest to the execution and adds nothing to the validity of the information. Furthermore, s. 463(1) of the Act prohibits the inclusion of a false statement in a return by the official agent or candidate and s. 497(3)(*v*) makes such an act an offence. This further reduces the necessity for a witness to these declarations.

Recommendation: The requirement for a witness to the signatures of the chief agent, the official agent and the candidate on the declarations respecting returns should be dropped.

5.2.3 Clarification of the Nature of the Candidate's Declaration of Personal Expenses

The *Canada Elections Act* (s. 456(1)) requires a candidate to submit a statement of personal expenses to the official agent within three months after election day. Paragraph 451(2)(*c*) requires the agent to include this statement with the electoral campaign return.

Confusion has arisen concerning the nature of this statement and in some cases this has unnecessarily delayed the submission of the return. The statement is not itself intended to be a return to the Chief Electoral Officer. It is intended to serve as supporting documentation for information contained in the return. If it is not sent with the return, this should be treated as a late claim, not as an invalid return.

Recommendation: The Act should be clarified to show that the candidate's statement of personal expenses is a claim for payment and that if it is not submitted within the timeframe prescribed by the Act, the matter should be treated as a late claim for payment, but it should not render the return invalid.

5.2.4 Clarification of Responsibilities of the Official Agent and the Candidate for Filing the Campaign Report and Their Exposure to Penalties

The *Canada Elections Act* requires the official agent to prepare and submit the electoral campaign return (s. 451). Most of the responsibility for the return is on the shoulders of the official agent. However, the return has to include two documents prepared by the candidate:

1. the candidate's statement of personal expenses, which is essentially a listing of personal expenses paid by the candidate, and included pursuant to s. 451(2)(*c*); and
2. the candidate's declaration in the prescribed form referred to in s. 451(1)(*e*), which states essentially that, to the best of the candidate's knowledge, the information in the return is correct.

The candidate is not directly responsible for preparing the rest of the electoral campaign return. However, the agent is appointed by and may be removed and replaced by the candidate. The candidate is responsible for the completion of the agent's duties and cannot simply divorce himself or herself from the requirement to file. The Act contains a provision that a judge may relieve a candidate of the consequences of failing to provide the return (s. 461), but only if the candidate shows that the failure was without the candidate's knowledge or acquiescence and the candidate exercised due diligence to avoid it.

It appears that there is some confusion among candidates and official agents concerning the particular responsibility of the candidate in the filing process. In order to make the responsibility clear, the Act could expressly stipulate that the candidate is responsible for filing the return, while the official agent is responsible for its completion. This should not prohibit the official agent from submitting a return on behalf of a candidate. It would merely require that the ultimate responsibility for proper filing reside with the candidate.

Recommendation: The Act should be amended to expressly provide that the responsibility for properly submitting a return resides with the candidate, while the duty for completing that return rests with the official agent.

5.2.5 Vouchers

After an election, a candidate's official agent must provide to the Chief Electoral Officer an audited electoral campaign return. This has to show contributions and expenses and also has to include the vouchers relating to the expenses. Vouchers are the documents that evidence expenses shown in the return and consist of such items as bank statements, deposit slips and cancelled cheques. The requirement for vouchers is presently provided for in s. 451(1) of the *Canada Elections Act*. Subsection 451(4) provides that all the documents referred to in s. 451(1) must be provided to the Chief Electoral Officer by the deadline of four months after election day. There are potentially serious consequences for failing to comply with this requirement, as it renders the return invalid.

Not all of the documents listed in s. 451(1) are critical to the return itself. Those documents that are critical are the auditor's report and the agent's and candidate's declarations of the accuracy of the report. However, although the vouchers are needed as evidence to support the financial return, they are not so critical that their late presentation should render the return invalid. Experience has shown that many delays or failures to provide the return by the deadline are caused by delays in receiving all these supporting documents.

Recommendations: The requirement for vouchers should be removed from s. 451 and moved to a new s. 451.1; the failure to file complete vouchers should not affect the validity of a return.

However, in the event that insufficient vouchers are filed, the Chief Electoral Officer should be given the authority to direct the filing of additional vouchers in order to evidence the expenses set out in the return. It would be an offence to wilfully fail to comply with a direction by the Chief Electoral Officer for supporting vouchers.

5.2.6 Receipt and Reporting of Contributions Made After Election Day

Complete and accurate disclosure of all contributions and expenses related to an election campaign is fundamental to the principle of transparency in election financing.

In addition, various provisions of the Act support the principle that a person should not receive personal financial gain from running as a candidate. In particular, the calculation and disposal of surplus campaign funds, which is based on the complete and accurate recording of all contributions and expenses, underlines this principle. In order to properly disclose all transactions related to the election and to arrive at an accurate calculation of campaign surplus, there must be timeframes established both for the presentation and payment of claims and the receipt of contributions.

In this regard, the Act is clear on the treatment of campaign expenses, and provides for strict control concerning reporting and deadlines. For example, claims are to be submitted no later than three months after election day, and if this deadline is not met, a claimant or an official agent can apply for authorization to present a late claim for payment. In addition, authorization to pay an unpaid claim must also be obtained for claims presented that remain unpaid four months following election day. In these circumstances, the official agent must update the candidate's return to reflect these new transactions.

The Act provides for the receipt of contributions after election day, however, the reporting requirements for those transactions are somewhat unclear. There are some restrictions on the conditions under which those contributions can be made. For example, there is a provision (s. 476), which prohibits the transfer of contributions to a candidate after election day except to pay unpaid claims as disclosed in the candidate's return. However, this restriction only applies to transfers from parties and local associations. The receipt and recording of contributions after election day should be clarified.

Recommendations: No contribution should be allowed to a candidate's campaign later than four months after election day, unless the contribution is expressly allowed under the Act.

All contributions received after election day must be disclosed in the candidate's return, or in an updated version, thereof, if the contribution is received subsequent to the filing of the return.

Chapter 3: Deadlines for the Filing of Returns

5.3.1 Evidence Required to Support Application to the Chief Electoral Officer to Extend Filing Deadlines or to Make Corrections or File Updated Documents

Section 458 of the *Canada Elections Act* provides the means whereby a candidate or his or her official agent may apply to the Chief Electoral Officer, in writing, for an extension to filing deadlines respecting an election campaign return or a correction to such a return, or for authorization to correct or update information. The Chief Electoral Officer can only grant the authorization sought if he is satisfied that the need for the extension was caused by: (a) illness of the applicant; (b) absence, death, illness or misconduct of the official agent; (c) absence, death, illness or misconduct of an agent, a clerk or an officer of the official agent; or, (d) inadvertence or honest mistake of fact.[61]

However, the Act does not provide any guidance as to what information the applicant should provide with the application to enable the Chief Electoral Officer to make the required determination. Although, under the common law, the Chief Electoral Officer can accept a wide variety of information provided that it may logically establish the required fact on a balance of probabilities, most applicants fail to provide any supporting information beyond their simple assertion of the fact in the application. In practice, the Chief Electoral Officer would be better placed to make the necessary determination if the need to make an adequate case was made clearly known to the applicants in the statutory authority. Although it would not, in fact, change the substantive operation of the process, the process would be made clearer to the applicants if the Act expressly referred to the need to provide support for claims advanced in applications. As the application is a written process, the Act could be improved by providing that an application be supported by a statutory declaration or other evidence to establish the grounds on which the application is sought.

Recommendations: The Act should provide that an application to the Chief Electoral Officer under s. 458 be supported by a statutory declaration or other evidence to establish the grounds on which the application is sought.

For the sake of clarity and consistency, s. 447 (irregular claims or payments) should be similarly amended.

5.3.2 Deadlines Respecting Applications to Judge

Under s. 459, a candidate or his or her official agent may apply to a judge for an order relieving the candidate or official agent from various filing deadlines or requirements to file documents or corrections, or updates to documents. This application would be made if a prior application had been made to the Chief Electoral Officer under s. 458, and either a further authorization has been deemed necessary, or the Chief Electoral Officer has refused the

original application. Generally, the section requires that the application be made to the judge within two weeks of the expiry of the relevant deadline.[62]

This two-week period does not allow sufficient time for Elections Canada to check the relevant return and advise the candidate or official agent if the return is defective. The candidate or official agent will often, therefore, not be aware of the need to make the application to the judge before the expiry of the deadline.

At the same time, the Act does not set any limit to the additional time that a judge may allow as a result of the application.

Both of these problems could be addressed if the two-week deadline to make an application to a judge, as specified in s. 459, were expanded to two months. The Act could also specify that the judge cannot authorize a filing deadline any later than two months after the event that triggered the application.

Recommendation: The current time limit of two weeks to make an application to a judge as specified in s. 459, should be extended to two months. This period should also be the maximum period which the judge may authorize as a result of an application to the court.

5.3.3 Party Failure to File Return

It is an offence under the Act for a chief agent to fail to file a financial return required under the Act (ss. 497(1)(*m*), 497(1)(*q*)). The Chief Electoral Officer also has the discretion to deregister any registered party whose chief officer fails to make a required return (s. 387). The failure also results in the automatic loss of the right to reimbursement of election expenses (s. 435).

The loss of party status, and the consequent loss of all rights associated with that status, is a harsh penalty for the failure to file a return or to file a late return. It carries with it consequences that are not always logically connected with the failure to file. It will, for example, result in the loss of the right to have one's party name on the ballot in any by-election called before the next general election (which may operate to the confusion of the electorate) and it will remove the party's right to receive lists of electors. However, habitual non-compliance should result in serious consequences.

Recommendation: Loss of political party status should be removed as a potential consequence of failing to file a single financial return as required under the Act. However, a party that consecutively fails to file two required reports in accordance with the Act should automatically lose its party status under the Act.

Chapter 4: The Problem of Unregulated Contributions

5.4.1 Regulatory Controls upon Contributions – A Necessary Counterpart to Disclosure

Controls upon contribution amounts serve a different role than regulatory controls based on disclosure. As noted by the Lortie Commission, "regulatory systems based on contribution limits … are not primarily concerned with the amount of money spent, but with preventing undue influence by eliminating donations whose size and/or source might make them suspect." (*Final Report of the Royal Commission on Electoral Reform and Party Spending*, 1992, vol. 1, p. 435.)

The Lortie Commission chose not to recommend controls upon contributions because of implementation concerns, because compelling evidence of undue influence being gained through large contributions was lacking, and, ultimately, because it believed its recommendations respecting spending limits and disclosure would be sufficient to maintain the confidence of the public in the electoral system.

While disclosure allows the public to consider the existence of contributions to various political entities, it does little to actually reduce the perception of influence that contributions may have upon the recipient.

Spending limits also do not fully address concerns arising from unrestricted contributions. Not every aspect of spending is controlled by spending limits.

For the public to have confidence in the electoral system, it is as important that electors believe a party or candidate to be unmotivated by purchased influence as it is that a party or candidate be actually free of such influence. Reasonable perceptions can be as important in elections as reality. There is evidence that the current regulatory controls respecting spending and disclosure do not fully engender that confidence. In the 2000 *Canadian Election Study*, which asked if people should be allowed to give as much money as they wanted to parties and candidates, 62.6% of respondents felt that there should be a limit. Just over a third (34.6%) felt that no limits were required.

The time has come to consider the value of imposing regulatory controls upon contributions, to ensure that political parties, their local electoral district associations, and candidates do not become enmeshed in nets of financial obligation or inclination arising from substantial contributions from specific interest groups, bodies or individuals – contributions that the electorate may be unaware of at voting time, or simply not in a position to consider adequately. Such controls would not be particularly innovative in Canadian politics. Seven provinces and territories have already imposed controls, to differing degrees, on political contributions: Ontario, Quebec, Alberta, Manitoba, New Brunswick, Northwest Territories, Nunavut.[63]

Appendices 3 and 4 set out contribution figures made to candidates and registered parties in the year 2000.

In order for controls to be effective, the application of the *Canada Elections Act* should also be extended to contests for candidate nominations. The rationale for subjecting these contests to some electoral regulation is explained in more detail in Part 8 of this report, in the discussion respecting the extension of reporting requirements under the Act. The effectiveness of controls placed solely on contributions to parties, local associations and candidates might be reduced if nomination contests remain unregulated. Substantial contributions that may have been made to winning contestants, could readily be carried forward to other electoral events. In any event, the connection of nomination contests to the actual electoral event is so intimate that the rationale for controls on electoral contributions extends equally to nomination contests.

There may be, similarly, a need to impose controls upon contributions to leadership contests. However, there is insufficient data available at this time upon which to formulate a recommendation.

Recommendations: Limits should be placed on contributions to registered and eligible parties, local electoral district associations, and candidates.

The duty to comply with the limit should be imposed upon the entity making the contribution, rather than the recipient, to avoid the imposition of an undue administrative burden upon that recipient.

Entities making contributions to political recipients should be restricted to the following limitations:

Annual:	$50 000 to each registered/eligible party
	$7 500 aggregate to all local electoral district associations of each party
General election:	(In addition to the annual limits)
	$50 000 to each registered/eligible party
	$7 500 aggregate to one or more candidates of each party

Single or simulatenous by-elections:	(In addition to the annual limits) $7 500 aggregate to one or more candidates of the same party
Nomination contests:	(In addition to the annual limits) $7 500 aggregate to all contestants of the same party

It should be an offence for a contributor to breach these limits knowingly.

Part 6

Effectively Enforcing the Electoral System

Part 6: Effectively Enforcing the Electoral System

A regulatory scheme that cannot be effectively enforced cannot be effectively maintained. While the *Canada Elections Act* is fortunate in possessing a multi-tooled enforcement scheme, a number of subtle holes have been identified whose correction will ensure that breaches cannot be immunized by technical defects of the Act. The recommendations that follow cover a number of topics, all of which are aimed at ameliorating technical gaps in the enforcement scheme of the statute.[64]

6.1 A General "Attempt" Offence

There are essentially two methods of enforcement available under the *Canada Elections Act*. During an election period, the Commissioner of Canada Elections can seek an injunction requiring a person to comply with the directions of the statute. That is a civil remedy. A criminal remedy is also available whereby breaches of the Act, that are expressly declared to be offences may be prosecuted by the Commissioner. (The Commissioner may also elect to deal with the commission of an offence through compliance agreements). Not all breaches of the Act amount to the commission of an offence. The general offence scheme of the *Canada Elections Act* is based upon the creation of specific prohibitions against breaching particular provisions of the statute. The breach of a prohibition is then declared to be an offence. There are also a few freestanding offence provisions that make it an offence to commit actions set out directly in the offence provision, rather than indirectly through a reference to an earlier prohibition. (See ss. 480 to 482.)

In most cases, whether the electoral process suffers harm from a prohibited act is not dependent upon the success or failure of the action in question. The mere attempt to commit the act harms the process. For example, as much harm results to the process from an attempt to interfere with an elector who is marking his or her ballot as results from successfully carrying out that interference. This reality is recognized in many cases in the *Canada Elections Act* where the statute makes it as much an offence to attempt a specific act as it is to succeed in that act. This is sometimes done directly by expressly prohibiting attempts. Section 5 is an example of such a provision. It is also sometimes done indirectly by wording the prohibition so broadly that it catches both a successful and unsuccessful action. Subsection 481(1) is an example of this approach. This section makes it an offence to directly or indirectly offer a bribe to influence an elector to vote or refrain from voting for a particular candidate.

However, this case-by-case approach is not universally successful. Approaching the issue of attempts on the basis of each particular prohibition, rather than through the creation of a general attempt clause (as was done in s. 24 of the *Criminal Code*) creates the possibility that only the successful commission of some offences can be prosecuted. For example, s. 482(2) states that "every person is guilty of an offence who by any pretence or contrivance, including by representing that the ballot or the manner of voting at an election is not secret, induces a person to vote or refrain from voting for a particular candidate at an election." As worded, s. 482(2) only creates an offence when an elector is successfully induced to vote or refrain from voting, but it is the subjection of the elector to the pretence or contrivance that is as offensive to the process as is the fact that the elector was successfully induced.

In cases where attempts have fallen through the cracks as a result of the case-by-case approach taken in the Act, the attempt can be prosecuted under s. 24 of the *Criminal Code*, but such prosecutions would not be part of the enforcement scheme of the *Canada Elections Act*, and would be prosecuted by the Attorney General. This would be inconsistent with the demonstrated desire, in Bill C-2, for offences under the *Canada Elections Act* to be dealt with under this Act.

Recommendation: A general offence should be created respecting an attempt to commit an offence under the Act.

6.2 Collusion

To "collude" means to enter into an agreement for some unlawful purpose or to accomplish some legitimate purpose by unlawful means. For a collusion to be established, it is not necessary that all of the parties must intend to commit the prohibited act personally. It is sufficient if the parties simply have the common goal of doing so and that the individuals are part of a common undertaking.

Sections 351, 423(2) and 443(2) of the *Canada Elections Act* aim at enforcing various spending limits imposed by the Act by prohibiting collusions aimed at avoiding those limits. Section 351 is aimed at supporting the spending limits imposed upon third parties. Subsection 423(2) is aimed at enforcing the spending limits imposed upon registered parties, and s. 443(2) is aimed at supporting the spending limits imposed upon candidates. Unfortunately, it appears that the wording of these provisions leaves large, illogical gaps.

Section 351 is drafted broadly to prohibit a third party from circumventing, or attempting to circumvent in any manner, a third party spending limit. This will catch any circumvention, or attempted circumvention by a third party. However, if the third party partners with a registered party or a candidate in that circumvention or attempted circumvention, the registered party or candidate will not be committing an offence under the Act, as s. 351 is aimed only at third parties.

Subsection 423(2) prohibits a registered party and a third party from colluding with each other for the purpose of circumventing a registered party spending limit. However, s. 423(2) does not prohibit a candidate from entering into such a collusion. Thus, in the event that a candidate is part of the common undertaking to circumvent the registered party spending limit, that candidate will not be committing a breach of s. 423(2). Furthermore, if the registered party only colludes with a candidate to avoid the registered party spending limit, neither will have breached s. 423(2), as that section only prohibits a collusion between a registered party and a third party.

Similarly, while s. 443(2) prohibits collusions between candidates, official agents of candidates, persons authorized to enter into contracts under s. 446(c), or third parties, to avoid the spending limits imposed upon candidates, it does not prohibit a collusion between any of those persons and a registered party to do so. Also, if a registered party is part of a collusion between any two of those specified persons, it will be guilty of a breach of s. 443(2), because registered parties are not included in the list of specified individuals.

It is not proper that some parties to an improper agreement should be guilty of collusion while other parties to the same agreement should not. The weakness in all of the above provisions is that in attempting undue specificity in defining the collusion, they may fail to catch all of the potential partners to a circumvention or attempted circumvention.

Recommendation: Sections 351, 423(2) and 443(2) should be replaced with a general provision prohibiting any person from circumventing, or attempting to circumvent, the respective spending limits.

6.3 Investigative Status for the Commissioner of Canada Elections

There are essentially two legal sources at the federal level that affect the ability of the Commissioner of Canada Elections to secure from government organizations personal information held under the control of those government organizations. The first is the constitutional guarantee against unreasonable search and seizure set out in s. 8 of the Charter, which protects all persons from unreasonable search and seizure, by any state body, of information that the person may reasonably expect to remain private, and which discloses information about the personal lifestyle and private decisions of the person. A further protection is afforded by s. 8(1) of the *Privacy Act* which prohibits a government institution (defined in the *Privacy Act as* any department or ministry of state of the Government of Canada listed in the schedule or any body or office listed in the schedule to the Act) from disclosing identifiable personal information under the control of a government institution, without the consent of the individual to whom it relates. Much more information falls into the definition of "personal information" in the context of the *Privacy Act* than is protected by s. 8 of the Charter. For the purposes of the *Privacy Act*, "personal information" means, very broadly, any information about an identifiable individual. As noted, in order to fall under the protection of s. 8 of the Charter, there must be a reasonable expectation of privacy of information. These are two separate protections. There may be instances where s. 8 of the Charter would not prohibit disclosure (because of the absence of a reasonable expectation of privacy) where the prohibition in the *Privacy Act* would continue to apply. The recommendation that follows is directed only at the capacity for access under the *Privacy Act*.

Paragraph 8(2)(*e*) of the *Privacy Act* provides that, notwithstanding the prohibition in s. 8(1), personal information may be disclosed to an investigative body specified in the regulations to the Act, on the written request of the body, for the purpose of enforcing any law of Canada or a province in carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed. The Act provides (in s. 77(1)(*d*)), that the

Governor in Council may make regulations specifying which bodies are "investigative" for the purposes of s. 8(2)(*e*).

A number of bodies have been designated "investigative bodies" for the purposes of s. 8(2)(*e*) of the *Privacy Act*, including: the Audit Directorate of the Department of National Revenue (Taxation), the Audit Division of the Department of National Revenue (Customs and Excise); the Royal Canadian Mounted Police; the Security Intelligence Review Committee; Park Wardens of the Canadian Parks Service; and, the Control Branch (Insurance) of the Canada Employment and Immigration Commission.

It is the responsibility of the Commissioner of Canada Elections to ensure that the *Canada Elections Act* is complied with and enforced. That office is responsible for the investigation and prosecution of all offences under the Act. Yet the Commissioner is not an investigative body for the purposes of s. 8(2)(*e*) of the *Privacy Act*. As a result, under the *Privacy Act*, government institutions are not required to disclose personal information under their control to the Commissioner for the purposes of enforcing the *Canada Elections Act*, even if the information could be disclosed without a warrant under the search and seizure provisions of s. 8 of the Charter. The Commissioner must secure a search warrant for disclosure to be made.

The anomaly of this situation becomes evident in the context of breaches of the *Canada Elections Act* that also constitute breaches of the *Criminal Code*. In those cases, the same information respecting the same prohibited conduct may be disclosed by the government institution to the R.C.M.P without a search warrant, in the course of an investigation of the *Criminal Code* aspects of the breach, but not to the Commissioner of Canada Elections respecting the *Canada Elections Act* breach, unless the Commissioner first secures a search warrant.

In order to secure a search warrant, the Commissioner must first demonstrate that there is a reasonable suspicion of the commission of an offence. This puts the Commissioner in the position of first having to secure sufficient information from alternative sources to support such a reasonable suspicion before the Commissioner can secure a search warrant allowing the Commissioner access to the personal information. This imposes a further hurdle for the Commissioner to surmount in order to effectively enforce the Act. The personal information in the hands of the government institution may be necessary in order to establish the commission of an offence.[65]

If the Commissioner's Office were given the status of an investigative body for the purposes of s. 8(2)(*e*) of the *Privacy Act*, his investigations, like those of the other bodies designated investigative bodies, would still remain subject to the protection against unreasonable search and seizure set out in s. 8 of the Charter.

The Commissioner of Canada Elections is the only person who is authorized to enforce the provisions of the *Canada Elections Act*. He needs to be accorded the same investigative authority in the enforcement of the Act with respect to the *Privacy Act* as is possessed by the Royal Canadian Mounted Police, the Security Intelligence Review Committee, and the other bodies designated as investigative bodies with respect to their enforcement mandates.

Recommendation: The Commissioner of Canada Elections should be deemed to be an investigative body for the purposes of s. 8(2)(*e*) of the *Privacy Act* for the enforcement of the *Canada Elections Act*.

6.4 Appeal Rights of the Commissioner of Canada Elections

The Commissioner of Canada Elections prosecutes offences under the *Canada Elections Act* as either summary or indictable offences under the *Criminal Code*. While it is clear, under s. 813 of the *Criminal Code*, that the Commissioner possess the right of appeal from the first level decision in a summary proceeding (as he is an "informant"), it is not clear that the Commissioner, as the prosecutor, possess a right of appeal in proceedings prosecuted by indictment. It is also clear that the defendant in an indictable proceeding under the *Criminal Code* may appeal a decision (see s. 675 for example). However, the wording of the appeal rights in the *Criminal Code* for indictable offences is not as broadly worded as the rights of appeal in summary proceedings. In the context of the prosecutor, s. 676 of the *Criminal Code* only expressly provides for the right of appeal in the case of the Attorney General.

The Commissioner of Canada Elections, not the Attorney General, is the prosecutor in proceedings by indictment respecting breaches of the *Canada Elections Act.* It is clearly logical that the Commissioner, as well as the defendant, should be able to appeal a decision in indictable proceedings. Insofar as prosecutions are serious matters, particularly prosecutions by indictment, the authority of the Commissioner of Canada Elections should be made clear.

Recommendation: The Act should provide that the Commissioner of Canada Elections has the same appeal rights in prosecutions for breaches of the *Canada Elections Act* as does the Attorney General in other prosecutions under the *Criminal Code*.

6.5 Obstruction of Investigations

It is not currently an offence under the *Canada Elections Act* to mislead or obstruct an investigation by the Commissioner of Canada Elections. However, to knowingly mislead or obstruct an investigation into a possible prosecution is an offence under s. 139(2) of the *Criminal Code*. To be consistent with the underlying philosophy of the *Canada Elections Act*, election offences should be dealt with under the *Canada Elections Act*, rather than under the *Criminal Code*. A precedent for this change can be seen in s. 163.2 of the Manitoba *Elections Act*, which makes it an offence under that Act to obstruct, hinder or make a false or misleading statement to the Chief Electoral Officer (there is no Commissioner in the

Manitoba statute), or a person appointed by the Chief Electoral Officer, when conducting an investigation.

Recommendation: It should be an offence under the *Canada Elections Act* to obstruct, hinder or make a false or misleading statement to the Commissioner of Canada Elections, or a person appointed by the Commissioner of Canada Elections, when conducting an investigation under the *Canada Elections Act*.

6.6 Failure to Return Ballot

While s. 167 of the *Canada Elections Act* sets out various prohibitions respecting ballots (destruction, alteration, defacement, removal from a polling station) there is no general offence for simply failing to return a ballot. This creates an evidentiary difficulty in the prosecution of a ballot offence, where the Commissioner can establish that a person did not return the ballot he or she was given, but is unable to establish beyond a reasonable doubt exactly what the person did with it. The essence of the various ballot offences is the removal of a ballot from the due electoral process. As a result, there should be an additional, more general prohibition designed to ensure that ballots, once given to electors, must be returned to the deputy returning officer.

Recommendation: It should be an offence under the *Canada Elections Act* for an elector who has been given a ballot by a deputy returning officer to fail to return that ballot.

Part 7

Managing the Electoral Process

Part 7: Managing the Electoral Process

An effective process requires effective machinery. The recommendations in this part address useful legislative improvements to the Office of the Chief Electoral Officer and to the administrative processes involved in running elections.

7.1 Appointment of Returning Officers

Returning officers are currently appointed by the Governor in Council under s. 24(1) of the Act. Once appointed, a returning officer may only be removed for cause. Their appointments also cease if they die, resign, cease to live in their electoral district, or if the boundaries of that district are revised under the *Electoral Boundaries Readjustment Act* (s. 24(4)).

The current system of appointment creates several difficulties.

Appointees are often not given enough advance information about the nature of the work expected of them.

Failure to perform or poor performance by a returning officer cannot effectively be addressed under the current system. Although the Chief Electoral Officer has the statutory authority to issue binding instructions to a returning officer (s. 16(*c*)), the Chief Electoral Officer has no authority to discipline or otherwise remove a returning officer for inability or failure to follow such instructions. Only the Governor in Council may remove a returning officer and appoint a replacement. However, it is not practical to expect the Governor in Council to be able to fairly and efficiently exercise such authority within the limited time frame of an election.

Returning officers are instrumental in delivering elections in their electoral district. In light of this important role, candidates have raised concerns in the past that the control of the governing party over the appointment process gives rise to perceptions of bias.

There are now six provincial and territorial jurisdictions in which returning officers are appointed by the Chief Electoral Officer (Quebec, British Columbia, Manitoba, Newfoundland, Northwest Territories, and Nunavut.) In the Yukon, all persons recommended by the Chief Electoral Officer for appointment as returning officers have subsequently been appointed by the government. This demonstrates a real recognition of the concerns raised in this and earlier reports, as well as a trend towards returning officer appointments by the Chief Electoral Officer.[66]

These are not minor concerns. The returning officer plays a core role in the conduct of an election. He or she is the single most important election officer in each electoral district. The effectiveness and efficiency of the electoral machinery in that district is dependent on the abilities, knowledge, operational skills and neutrality of that officer. As a result, in *Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election*, and in the 1997 *Report of the Chief Electoral Officer on the 36th General Election*, the recommendation was made that returning officers be appointed by the Chief Electoral Officer on the basis of merit. That recommendation is repeated in this report with the sincere urging that remedial action will soon be taken.

Recommendation: It is recommended that provision be made for returning officers to be appointed by the Chief Electoral Officer on the basis of merit. New returning officers would be appointed for a 10-year term, be eligible for re-appointment, and could be removed by the Chief Electoral Officer in the event of incompetence or unsatisfactory performance.

7.2 The Office of Assistant Chief Electoral Officer

The current statutory concept of the office of Assistant Chief Electoral Officer remains rooted in historical anachronism and fails to reflect its actual role. As a result, not only are there important concerns respecting the independence of that office, but the holder of that office suffers a serious impairment of his or her constitutional democratic rights.

A number of important concerns flow from the current statutory provisions respecting this office.

Firstly, insofar as the Assistant Chief Electoral Officer holds no specific mandate and performs no operational role, other than what may be assigned from time to time by the Chief Electoral Officer, there appears to be no substantive reason why the Assistant Chief Electoral Officer should not have the right to vote. All other officers under the Chief Electoral Officer have that right. Any of those officers may at any time be assigned the same duties or responsibilities that could be assigned to the Assistant Chief Electoral Officer. This is an important intrusion upon the constitutional democratic rights of the holder of the office of Assistant Chief Electoral Officer, the justification for which appears dubious.

Secondly, there appears to be no pressing reason why the officers under the Chief Electoral Officer should be divided into two classes – the Assistant Chief Electoral Officer and everyone else. There are several administrative officers who perform tasks that are equally important to the operation of the electoral process. The existence of the office of Assistant Chief Electoral Officer appears to be a historical anachronism, the origin of which lies in the time when the Chief Electoral Officer had only three staff members, including the Assistant Chief Electoral Officer who was the only officer of the three.

Since its creation in 1920, the Office of the Chief Electoral Officer of Canada has expanded in mandate and in operational demands far beyond its original concept of a simple three-person office. The Chief Electoral Officer now presides over a complex, modern organization with continuing national and international obligations and extensive demands for expertise in many fields – in finance, law, geography, computer technology, and public administration. However, this evolution of the mandate and structure of the Office of the Chief Electoral Officer of Canada has not been reflected by an evolution in the statutory concept of the Assistant Chief Electoral Officer that would integrate that office into modern reality.

Lastly, insofar as the Assistant Chief Electoral Officer serves no particular statutory mandate, there appears to be no statutory purpose served by the requirement that the Assistant Chief Electoral Officer be appointed by the Governor in Council. Yet, while serving no apparent statutory purpose, that appointment process operates negatively to undermine the perceived impartiality of Elections Canada's operations. The influence of the governing party in this appointment is inconsistent with the independence and impartiality required of Elections Canada. As noted above, the appointment authority of the Governor in Council appears to be merely historical in origin rather than purposive.[67] This last point reflects a similar recommendation made in the 1996 *Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer on the 35th General Election.*

Recommendation: The statutory office of Assistant Chief Electoral Officer should be removed from the Act.

7.3 Appointment of Revising Agents

To assist the returning officer in the revision of the lists of electors during electoral periods, s. 32 of the Act directs that returning officers appoint such revising agents that the returning officer considers necessary for the task (subject to the approval of the Chief Electoral Officer as to the number). Under s. 33, a returning officer is required to solicit the names of suitable persons from the registered parties whose candidates finished first and second in the last election in the electoral district. If sufficient names are not provided by those parties within three days after receipt of the request, the returning officer may solicit names from other sources. The returning officer is required to appoint half of the revising agents from among persons recommended by the registered party whose candidate finished first in the last election in the electoral district, and half from among persons recommended by the registered party whose candidate finished second in that election. Because of the political nature of their appointments, these agents are required by s. 99 to work in pairs, and their decisions must be approved by the returning officer or assistant returning officer.

Unfortunately, the relevant registered parties are not always able to provide sufficient names within the required time frame. Furthermore, the time frame for consultation with the political parties creates a delay in the selection and training of revising agents. If the returning officer were able to secure revising agents without first receiving recommendations by the registered parties, the returning officer could identify and train individuals at the call of an election and begin revising the lists of electors as soon as the 33rd day before election day.

Recommendation: It is recommended that s. 33 be amended to remove the requirement for returning officers to solicit names from registered parties in the hiring of revising agents.

7.4 Appointment of Deputy Returning Officers and Poll Clerks

Under ss. 34 and 35 of the Act, deputy returning officers and poll clerks are appointed from lists of suitable persons provided by the candidates of the registered parties that finished first (the deputy returning officer) and second (the poll clerk) in that electoral district in the last election. If the candidates have not made their recommendations or have not recommended a sufficient number of suitable persons by the 17th day before election day, the returning officer can make the appointments from other sources (s. 36). A similar requirement applies to the hiring of registration officers (s. 39(3)).

There is a timing problem with this requirement. Practically speaking, a list of potential officers cannot be sought from candidates before the 17th day before election day because the deadline for the confirmation of the last candidates to file their nominations is the 19th day before election day. This is only four days before the deadline for the submission of the lists, and candidates are often simply not organizationally prepared to provide the lists within the deadline.[68]

Removing the requirement for returning officers to solicit from candidates the names of potential deputy returning officers, poll clerks and registration officers would allow returning officers to begin recruiting qualified individuals for these positions earlier in the process. This would allow them more time to train the new people adequately and ensure that they have the skills required to fulfill their duties.

Recommendation: It is recommended that the Act be amended to remove the requirement for returning officers to solicit names from the candidates for appointments of deputy returning officers, poll clerks and registration officers.[69]

7.5 Leave of Absence to Be a Deputy Returning Officer or Poll Clerk

Deputy returning officers and poll clerks perform an essential service to the conduct of elections. Historically, deputy returning officers and poll clerks were principally drawn from a pool of persons who were not otherwise engaged in full-time employment. However, both the growing trend in Canadian society for two income households and the aging of the population have had the indirect effect of reducing the pool of available individuals. As Elections Canada has been advised by the Political Parties' Advisory Committee, and as confirmed by returning officers during the last election, it is becoming increasingly difficult to locate individuals who are free to serve as deputy returning officers and poll clerks on election day. Generally, aside from a short training course of two hours (to which travelling time should be added), a person need only commit one day to serving as a deputy returning officer or poll clerk on election day. Individuals who work as deputy returning officers and poll clerks at advance polls work for three days plus the evening after the polls close to count the ballots. Nonetheless, not all employers are prepared to provide the required time off to employees who may wish to work in this capacity.[70]

Recommendation: The Act should provide that an employer be under an obligation to provide an employee with leave of absence in order to serve as a deputy returning officer or a poll clerk. A mechanism should be provided, similar to that in the Manitoba *Elections Act*, by which an employer may obtain an exemption for persons whose absence would be seriously detrimental to the employer's business.[71]

7.6 Posting Names and Addresses of Deputy Returning Officers and Poll Clerks

Section 112 requires that, at least three days before election day, a returning officer post in his or her office, a list of the names and addresses of all deputy returning officers and poll clerks appointed to act in the electoral district, along with the number of the polling station in which each is to act. Interested persons have the right to inspect this list at any reasonable time. The returning officer is also required to provide this list to each candidate or candidate's representative. The underlying purpose of this provision is to allow candidates to know who will be working as a deputy returning officer or poll clerk and where they will be working. However, the existing public access to the list allows any interested person to not only know who is working where, but also that person's home address.

Allowing public access to the home addresses of persons serving as election officers allows verification by the public of compliance with s. 22(4) (election officers must reside in the electoral district in which duties are to be performed). However, it also amounts to a substantial intrusion upon the privacy of the persons serving in those capacities and could potentially pose a security risk for those individuals.

This degree of disclosure is also inconsistent with the statutory practice respecting the list of revising agents under s. 33(5). Those lists are not required to set out the home address of persons appointed as revising agents.

Recommendation: It is recommended that the Act be amended to remove the requirement for home addresses to be shown on the list of deputy returning officers and poll clerks that is publicly available.

7.7 Location of Returning Office

Subsection 60(1) of the Act directs that the returning office for an electoral district is to be located in that electoral district, but there is no direction as to where in an electoral district the returning office is to be located, other than the very loose requirement that it must be "convenient". Subject to those restrictions, a returning officer may locate the returning office anywhere he or she feels is appropriate (which is usually in the municipality where the returning officer resides). There is no requirement that the office be located in a part of the electoral district that will provide the best service or the easiest access to the electorate of that riding. For example, in a riding like Nunavut, which covers over 3 000 000 sq. km., an office located in Iqaluit, the municipality where the majority of the electors reside, would make

more sense than one located in Igloolik, a much smaller community located farther north in the territory.

Recommendation: Subsection 60(1) of the Act should be amended to provide that the Chief Electoral Officer may direct the establishment of a returning office at a location within an electoral district that, in the opinion of the Chief Electoral Officer, will provide the best service or easiest access to the electorate of that district.

7.8 Election Officers at Advance Polls

Section 171 of the Act directs that advance polls shall be conducted in the same manner as the vote at a polling station on election day, unless otherwise provided. In light of the number of electors now using the advance polling option, the Act needs some adjustment. For example, s. 39(1) allows a returning officer to provide for registration desks at polling stations on election day to receive applications for registration by electors who are not on the lists. This allows for faster registration and fewer delays to other properly registered electors, than would be the case if electors had to register with a deputy returning officer at the polling station. Registration desks, however, cannot be created for advance polls because s. 169 directs that the revision of a list at an advance poll be conducted by the deputy returning officer and the poll clerk. At the 37th general election, the Chief Electoral Officer had to use his powers under s. 17(1) of the Act to permit the hiring of registration officers at advance polls, enabling poll officials to better handle the flow of electors at central polling stations.[72]

Similarly, there is currently no authority for a returning officer to group advance polls together in one central polling place in the same way that a returning officer can group together polling stations on election day, as set out under s. 123. Although there is authority for the returning officer to merge two advance polling districts into one, that would result in only one advance polling station for both of the merged districts, rather than a central place with two advance polling stations.

There is no current purpose served by these limitations. They arose in a time when advance polling stations were not as busy as they have become in recent times.

Recommendation: Section 169 of the Act should be removed. This will allow elector registration to proceed at an advance poll in the same way it does on election day, through the general authority of s. 171. In addition, an authority similar to s. 123 should be extended to the returning officer to group advance polling stations together in one place. This authority would be subject to the approval of the Chief Electoral Officer to ensure that too many stations, representing too wide an area, were not being grouped at one polling location. The definition of “central polling place” in s. 124 should be amended to include advance polling stations that have been grouped together.

7.9 Criteria for Appointment of Central Poll Supervisors

Subsection 124(2) provides that where a returning officer establishes a central polling place that contains four or more polling stations, the returning officer may appoint a central poll supervisor to supervise proceedings at the central polling place and to keep the returning officer informed of any matter that may adversely affect the proceedings.

Greater flexibility is required respecting this provision. There can be as many as 1 000 electors being served at three polling stations, which, particularly when combined with the number of election officers manning such stations, warrants the assistance of a central poll supervisor. However, the ability to appoint a central poll supervisor should be based on need, rather than simply the number of polls grouped together. There may be circumstances in particular polls (for example where a heavy turnout is expected) where the presence of a central poll supervisor would be useful.

Recommendation: Subsection 124(2) should be amended to allow a returning officer to appoint a central poll supervisor whenever the returning officer believes it would be appropriate to do so.

7.10 Authority of a Judge to Summon Witnesses for Recount

A judge conducting a judicial recount only has the authority to summon persons specified in the Act, and that authority varies depending on the question before him or her. The judge may summon any witness for the purpose of arriving at the facts with respect to a missing ballot box or statement of a vote (s. 304(4)). However, the judge's authority is much narrower respecting the conduct of the recount itself. In that case, he or she can only summon a deputy returning officer or poll clerk as a witness (s. 304(5)). This latter authority is too narrow, insofar as ballots or envelopes containing ballots may have been handled by officers other than the deputy returning officer and poll clerk. The evidence of these other officers may also be relevant to the recount. For example, in the last general election, the evidence of a special ballot coordinator, (an administrative position in each returning office), was required in one recount. Judges have raised concerns with the limited nature of their authority to summon required witnesses. Also, it is not unusual to accord a judicial officer the authority to summon witnesses who may be necessary for the due administration of that officer's mandate. For that reason, the authority of the judge to summon witnesses in s. 304(5) should be expanded to include any witness necessary for conducting the recount.

Recommendation: Subsection 304(5) should be amended to provide that a judge may compel the attendance of any witness for the purpose of conducting a recount.

7.11 Assistance of Elections Canada Officials with Recount

Subsections 300(4) and 301(6) provide for the presence of the returning officer during the recount conducted by the appropriate judge for the electoral district. The logistics of the recount (i.e. provision of resources, delivery of ballot boxes and statements of the vote) are organized by the returning officer, in accordance with the judge's instructions. Returning officers are supported by Elections Canada in their interpretation of the relevant sections of the Act, and in providing information and guidance to the judge, who, in most cases, is unfamiliar with this rather rare process and may request assistance. The Act, however, does not specifically provide for a member of the staff of the Chief Electoral Officer to be present to assist the returning officer and the judge in understanding the process, where requested.

Recommendation: In order to increase the administrative efficiency of the recount process, it is recommended that s. 303 be amended to make clear that, upon the request of the judge, an officer provided by the Chief Electoral Officer may also be present at a recount for the provision of assistance to the judge.

7.12 Greater Flexibility Respecting the Tariff of Fees

Subsection 542(1) of the Act provides that, on the recommendation of the Chief Electoral Officer, the Governor in Council may make a tariff *fixing or providing for the determination* of fees, costs, allowances and expenses to be paid and allowed to returning officers and other persons employed at or in relation to elections under the Act.

A difficulty has arisen in the past respecting the restrictive nature of the authority of the Governor in Council to make this tariff. The Standing Joint Committee of the Senate and of the House of Commons for the Scrutiny of Regulations has suggested that the tariff in question must either set specific fees, costs, allowance etc., or provide a means whereby that fee, cost, allowance, etc., may be calculated. The former would amount to "fixing" a fee, while the latter would amount to "providing for the determination" of the fee.[73]

A restrictive tariff power of this nature may not contemplate fees being set at rates by referentially incorporating fees set out in other instruments (such as specific Treasury Board Directives) as they may be amended from time to time. Such a practice could, arguably, amount to a delegation of authority by the Governor in Council to the body whose instruments were being referentially incorporated.

More flexibility, however, would bring a desirable advantage to the tariff. The tariff of fees covers items such as: the remuneration of returning officers for services in conjunction with holding a poll, for attending at a recount, for travel expenses, and for storing materials; the hourly rate of registration officers; and, the remuneration of deputy returning officers and poll clerks. While some of these items are specific to the tasks of election officers, others, such as travel expenses, are similarly incurred by federal government employees. In those cases, an attempt is made to ensure that the tariff reflect the allowances set by Treasury Board Directive. However, the requirement that the Governor in Council expressly prescribe

or provide the means of calculating a fee precludes the tariff referentially incorporating a Treasury Board Directive as it may be amended from time to time. The Directive can only be incorporated as it exists at a specific date. This imposes an undue rigidity upon the tariff, which requires its frequent amendment. Flexibility would allow the tariff to better deal with changing circumstances by, for example, a flexible incorporation of other instruments.

Recommendation: It is recommended that s. 542 be amended to provide that the Governor in Council may referentially incorporate into the tariff instruments made by other bodies, as they may be amended from time to time. This will allow the Governor in Council greater flexibility in providing for the required fees. In order to avoid confusion respecting incorporated instruments amended in the midst of an election, the Act should further provide that in such a circumstance, the Chief Electoral Officer have the authority to delay the effective date of the amended incorporated instrument until a date after the end of the election.

7.13 Political Rights of Staff of Elections Canada

That elections should be conducted by an objective authority has been a fundamental principle of federal elections since the creation of the Office of the Chief Electoral Officer in 1920. Neutrality is essential for a number of reasons. It ensures that the performance of electoral tasks is not affected, consciously or unconsciously, by an election official's commitment to a particular party, candidate or issue. It allows candidates and other electoral participants to have confidence that their relations with Elections Canada staff, and the service and advice rendered by that staff, is free from bias. Also, it allows the public to have confidence that the electoral process is conducted in a fair and unbiased manner.

Not only must the election of governments be conducted in a fair and impartial manner, but it is vital to their ability to govern that governments are perceived to be elected fairly and impartially. There must be no reasonable grounds for a candidate or a party to suspect that the Office of the Chief Electoral Officer is favouring one party over another. Suspicions of this nature may lead to reluctance to accept advice or directions from the Office of the Chief Electoral Officer, may increase acrimony in the campaign and may threaten the ability of Elections Canada to function as a neutral arbitrator of the event. Equally, governments must be perceived by the citizenry to have been elected fairly.

The integrity of elections would be at risk if Elections Canada staff members were perceived by the public and election participants as actively preferring any particular candidate or party in the election. The public endorsement of a candidate or party, or the active campaigning for, or against, the election of a particular candidate or party by a member of election staff may undermine that person's neutrality.

This is not to say that staff members who actively campaign for or against a particular party, candidate or position outside of their employment could not put aside personal views and perform electoral duties efficiently and impartially as the law requires. However, the more active the "after hours" commitment to a particular party, the greater the difficulty staff

members may face in divorcing themselves from that commitment during work hours. Furthermore, attitudes may be unconsciously affected. Beyond this, it would only be human nature for a candidate or party to be uncomfortable with the services rendered by a staff member who is publicly committed to the election of an opponent.

The principle of neutrality in election delivery is deeply ingrained in the *Canada Elections Act*, so deeply ingrained that the person who is charged with the ultimate responsibility for the delivery of those services, the Chief Electoral Officer, is denied his basic constitutional rights to vote. This is to ensure that he is not consciously or unconsciously affected in the performance of his statutory mandate by considerations and commitments he might undertake in exercising his democratic rights. Beyond this, s. 23 imposes the express duty upon all election officers to swear an oath, in writing, to perform the duties of their office in an impartial manner. The section also expressly prohibits any election officer from communicating information obtained in the course of performing his or her duties under the Act for a purpose not related to the performance of those duties. These provisions go far in securing the necessary neutrality of election officers, but most staff members of Elections Canada are not election officers under the Act as that term refers to returning officers, assistant returning officers, revising agents, deputy returning officers, poll clerks, registration officers, and other similar officials.

Susceptibility to being unconsciously affected by personal views and beliefs in the performance of one's tasks is only human. This cannot be legally prohibited in any effective way. However, the more actively a person, on his or her own time, campaigns for a particular candidate, party or position, the more difficult it is for that person to ensure that those attitudes do not intrude, consciously or unconsciously, upon the private performance of his or her duties.

Furthermore, regardless of the personal ability of individuals to divorce their professional duties from their personal actions, the public perception of neutrality cannot help but be threatened by active public support for particular issues by the very officials charged with providing a neutral and fair means for the public to choose between competing issues.

While it is tempting to say that only openly public action can threaten public perception, private actions can have the same effect if discovered, or even if suspected. Perception is a matter of reasonable belief, not simply objectively demonstrable fact. Thus, the reasonable suspicion by a candidate, party or the public that Elections Canada officials may be actively supporting a particular position may undermine the integrity of the electoral process.

The *Referendum Act* expressly recognizes the principles espoused here. The *Referendum Act* is essentially a mechanism for providing the process for opposing positions to be considered and endorsed by the public. The Act expressly recognizes the importance of the delivery of that process being neutral. To this end, it indirectly provides, in ss. 2(1) and 32, by reference to s. 33 of the *Public Service Employment Act*, that no person on the staff of the Chief Electoral Officer can participate in a referendum.

Prior to the decision of the Supreme Court of Canada in 1991 in *Osborne* v. *Canada (Treasury Board)* (1991), 82 D.L.R. (4th) 321 (S.C.C.) the political neutrality of Elections Canada staff (and other public servants) was secured by s. 33(1) of the *Public Service Employment Act*, which directed that no deputy head, and, except as authorized under the section, no employee of the public service could engage in work for or against a candidate or political party, nor could an employee be a candidate. The Supreme Court, in *Osborne* v. *Canada*, however, declared s. 33 to be of no force and effect, except with respect to deputy heads, as a result of its overly broad intrusion upon Charter rights of free expression and association. The Supreme Court was concerned that, in its broad application to all public servants, regardless of role or visibility, s. 33 was broader than it had to be in order to protect the important principle of public service neutrality. That concern is not relevant in the context of a similar prohibition applied to staff of the Chief Electoral Officer, because this is a much narrower population than the public service as a whole, all of whom perform only functions directly, or indirectly, related to electoral events.

Since *Osborne* v. *Canada*, neutrality in Elections Canada staff has been secured by the administrative requirement for all staff to agree that during their term of employment with Elections Canada, they will not work for or on behalf of any federal or provincial political party, candidate for federal or provincial elective office, nor any person, body, agency or institution with partisan political purposes or objectives, nor for any federal or provincial referendum committee. They agree, during the term of their employment, not to actively or publicly support or oppose the election of any federal or provincial party or candidate for federal or provincial elective office, nor to actively or publicly support or oppose any option in a federal or provincial referendum. Lastly, they declare that they are not presently engaged in politically partisan activities at the federal or provincial level.

The concern with this approach is that should this requirement be found to infringe the Charter rights of free expression or association, it cannot be saved under s. 1 of the Charter, as it is an administrative policy and not a law. Only laws can be saved under s. 1 of the Charter.

Therefore, in order to preserve and continue the actual and perceived neutrality of Elections Canada, the *Canada Elections Act* should adopt a similar position to that adopted in the *Referendum Act* respecting the neutrality of staff of the Chief Electoral Officer.

Recommendation: It is recommended that the Act be amended to prohibit any member of the staff of the Chief Electoral Officer, except when on a leave of absence from Elections Canada, from being a candidate in a federal or provincial election; from engaging in work for or against a candidate, party or issue, in a federal or provincial election; from supporting any candidate or party, or organization with partisan political purposes, at the federal or provincial levels; and, from supporting or opposing any option in a federal or provincial referendum.

The Act should further provide that a leave of absence be granted by the Chief Electoral Officer where, in the opinion of the Chief Electoral Officer, the future usefulness of a staff member will not be impaired by that person's participation in the electoral process.

7.14 The Right to Strike of Elections Canada Staff

Employees of Elections Canada have the right to strike under the *Public Service Staff Relations Act*, except for those whose positions are excluded from collective bargaining and those whose positions have been made "designated positions" under that Act. It was recommended earlier, in the 1996 *Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election*, that the PSSRA be amended to remove the right to strike for Elections Canada employees. This recommendation is repeated here.

The importance of the right to strike and the social benefits that have been achieved in Canada, partly as a result of the right of labour to withhold its services, are recognized facts of Canadian life. However, concerns were expressed in the 1996 *Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election* respecting the significant effect on the electoral process that legal strikes could have.

Under the *Public Service Staff Relations Act*, there are two ways in which the right of public servants to strike can be suspended.

First, if a strike takes place when Parliament has been dissolved and a general election called, the Governor in Council can defer the right to strike if, in the opinion of the Governor in Council, the strike adversely affects or would adversely affect the national interest. That deferment can only last until the 21st day following the date fixed for the return of the writs.

Second, persons who occupy "designated positions" cannot strike. These positions are designated by the Public Service Staff Relations Board under s. 78.1 of the *Public Service Staff Relations Act* and relate to the safety or security of the public. Generally, the union and the employer determine through negotiation which positions meet these criteria, but there is also a process under the PSSRA whereby the designation can be determined in the absence of agreement. Currently all positions in Elections Canada have been made designated positions for the period during a general election or a referendum. Only some positions have been "designated" for the period of a by-election.

Normally, Parliament can legislate a return to work if necessary, although this is not an option when Parliament has been dissolved for a general election.

None of these provisions should be considered adequate in the context of the performance of the democratic mandate of the Office of the Chief Electoral Officer of Canada. They are either unduly reactive and time-consuming in the context of the limited time frames of unpredictable electoral events (particularly applicable to deferment by the Governor in Council), unavailable (legislation in the context of a general election), or insufficient (designated positions).

The current approach, which frees Elections Canada from the threat of legal strikes only during actual election campaigns, does not reflect the reality of electoral operations.

The successful conduct of an electoral event does not depend solely on what is done during the campaign period. The successful delivery of an event depends upon significant advance preparation. This includes the procurement of materials, updating of systems, staffing and training of personnel, training of returning officers and assistant returning officers, establishment of communications plans, and the mobilization of impressive numbers of personnel to serve a culturally diverse and geographically dispersed population. The regular progress of this advance preparation could be disrupted by a legal strike.

Furthermore, general elections, referendums and frequent by-elections can be called at any time without advance notice to Elections Canada. Consequently, the Office of the Chief Electoral Officer of Canada must maintain a continual state of election readiness. This state of election readiness cannot be maintained between elections during a period in which a strike may be underway.

The existing exemption for elections is itself insufficient during actual election periods. If an election were called during a legal strike, triggering the strike exemption respecting designated positions, it would be difficult to impossible to bring staff back into effective functional operation within the short time frames of electoral events. Also, it would not be desirable for the conduct of an election to be mixed with the high feelings of a labour action.

The only effective way to ensure that a strike does not undermine the very social democratic basis upon which modern labour relations rests, is to legislatively remove the right to strike from employees of the Office of the Chief Electoral Officer of Canada.

Such action would not prejudice the right of employees to benefit from the success of any strike action carried out by their union. And, while it would prohibit them from physically joining any such strike, it would not prohibit them from supporting their co-unionists through other means, such as financial support. The basic effect of this prohibition would be to preclude the transformation of the democratic process into a bargaining tool. As noted in the 1996 Annex, other jurisdictions, including Quebec, Ontario, Manitoba and British Columbia, prohibit employees of the election agency from striking.

Recommendation: The *Public Service Staff Relations Act* should be amended so that the right to strike is removed for employees of the Office of the Chief Electoral Officer of Canada.

Part 8

Extending the Application of the *Canada Elections Act*

Part 8: Extending the Application of the *Canada Elections Act*

Not all events which are central to an election take place in the 36-day electoral period. Political parties, for example, operate on a continuing basis and can collect significant amounts of money outside of the election period. Some events are intimately connected with elections although they take place outside of the election period. Party nomination contests, for example, can take place well before any election. Yet the whole purpose of the contest is to put forward a party candidate.

The recommendations in this Part deal with extending aspects of the *Canada Elections Act* into new areas which, although they can take place outside of an election period, are nonetheless, intimately connected with elections. The recommendations recommend extending the disclosure obligations of the Act to trusts established primarily for electoral purposes, local electoral district associations and party nomination and leadership contests in the recognition that these areas are so intimately connected to elections that disclosure is necessary in the interest of the public's right to know and the concept of the informed vote.

In the same vein, in recognition of the ability of parties and local electoral district associations to use funds which may have indirectly come from public sources for the purposes of party nomination and leadership contests, the concluding recommendation of this Part recommends that the principles respecting the surpluses of election candidates be extended to contestants for party nomination and leadership contests.

8.1 Extending the Disclosure Obligations of the Act

Financial disclosure obligations have been part of the *Canada Elections Act* since its inception in 1874, with the obligation of official agents to file statements of election expenses. The history of the *Canada Elections Act* is a history of the growing realization of the importance of disclosure. The duty to provide a detailed statement of "all contributions, payments, loans, advances, deposits or promises of money" was imposed upon official agents in 1908. Names of contributors were first required in 1920. Registered parties first came under disclosure obligations in 1974, with the *Election Expenses Act*, and third parties were brought into a disclosure scheme respecting contributions used for election advertising in 2000.

The guiding minimum principle of disclosure is that it should be made respecting transactions that meet two criteria: the transaction must reasonably be seen as being capable of creating commitment in the policy or actions of persons who seek election to the House, or of the parties that sponsor them; and, it must have a reasonable connection to the business of Parliament. The areas of increased disclosure recommended in this part meet both of these criteria.[74]

The *Canada Elections Act* already recognizes the principle of disclosure in a number of ways, as referred to above. The time has come to recognize that there are transactions in other areas linked so closely to the electoral process that they must also be disclosed so it can be truly said that the public has an informed choice.

The recommendations that follow focus on areas that meet the criteria for disclosure that have been articulated above – that is, they involve transactions capable of creating commitment; and, they have a reasonable connection to the business of governance.

8.1.1 Reporting the Original Source of Contributions Received by Candidates from Political Trust Funds

Significant amounts of money are paid into political trust funds. Transfers from these trusts may be a significant part of the financing of a party, or a candidate, in an election. To enhance the principle of transparency in election financing, the original source of these transfers should be disclosed.

Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election, pointed out that political trust funds have become a major source of unidentifiable support for election activity, which runs counter to the principle of transparency in election financing. It quoted W.T. Stanbury (*Money in Politics: Financing Federal Parties and Candidates in Canada*, 1991, p. 434), who discussed the influence of

political trust funds on election finance and recommended that new political trust funds not be permitted and that existing ones be prevented from accepting more contributions. *Strengthening the Foundation* recognized that political trust funds established by parties represent an area of election finance that is not disclosed to the public. It recommended that trust funds established for political purposes be required to appoint an agent, register with the Chief Electoral Officer and file annual audited reports with the chief financial agent of the party and the Chief Electoral Officer.

The *Canada Elections Act* now has a provision (s. 428) that requires trust funds established by registered parties to be used for an election, to file a return including contributions and expenses. That provision applies only to trusts established by a party for an election. However, donors to trusts which do not fall under s. 428, but are used to fund activities related to an election are not currently disclosed, which is contrary to the principle that election financing should be fully disclosed.[75] A similar concern exists respecting trusts established for candidates which are referred to in ss. 451(h) and (i).

The provisions of the Act governing political trusts have to be widened in scope from trust funds "established by a registered party to be used for an election" to cover "trusts or other entities that have as a principal function the funding of any activity related to an election". Furthermore, in connection with the concept of financial transparency in leadership contests, the definition should include trusts established principally for the funding of a leadership contestant or the nomination of a candidate.

Recommendation: The definition of a political trust should be widened to include any trust that has election purposes as its principal function, including leadership and nomination contests.

8.1.2 Reporting by Electoral District Associations

The introduction, in 2000, of the third party election-advertising regime in the current *Canada Elections Act*, was a formal recognition that parties and candidates are not the only participants in a modern election. The important role and impact of third party advertising in elections warranted their recognition as a type of electoral player with significant electoral responsibilities respecting disclosure. Similarly, and coincidentally with this report's recommendation that eligible parties be brought more fully into the existing electoral scheme of rights and reporting responsibilities, the time has also come to recognize that there remains another body of electoral players whose political impact is not yet fully recognized in the *Canada Elections Act.* These are the parties' local electoral district associations. These district associations exist for electoral purposes and play a significant role in the electoral process. They already enjoy rights under the *Canada Elections Act* (notably the ability to transfer funds to parties and candidates) and they receive public funds (through the receipt of candidates' surplus funds). Yet, they are only partially subject to disclosure.[76]

The role of the local electoral district association in the electoral process is significant. They can finance a candidate's pre-writ activities, raise money between elections from non-receipted sources, and receive substantial amounts of money (a proportion of which is publicly subsidized) in the form of transfers of their candidates' election surpluses. It was noted in the 1996 Annex that often officials in the national party know little about their local association's finances. These associations are not required at the federal level to register or to disclose their financial activities, notwithstanding the requirements to do so at the provincial level in a number of the provinces (Ontario, Quebec, British Columbia, Alberta, Nova Scotia, and New Brunswick).

Both the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) and the Special Committee on Electoral Reform pointed out that there is a notable gap in the information available to the public about the financial operations of local associations.[77]

The *Canada Elections Act* at present requires that the fiscal returns of registered parties and the election return of candidates must include with the return the name and address of every contributor who contributed more than $200 where the local association has transferred contributions to the candidate's campaign (ss. 424(2)(*c*), 451(2)(*h*)). Where the original contributor cannot be specifically identified, as in the case of contributions from a pooled fund in the hands of a trust or association, the candidate must disclose all contributors to the trust or association who contributed in excess of $200 since the last election.

These current disclosure obligations recognize electoral district associations, but only in the context of their direct pass through of contributions to parties and candidates. Yet, as noted above, the electoral district association is an important political mechanism whereby candidates or prospective candidates can be supported between elections and parties can function at the local level. The same principles, which require annual fiscal returns by parties, argue for annual returns by local associations. Without registration and financial reporting by local associations, a proportion of the financing available to parties and candidates can remain undisclosed. Any regime in which disclosure is only partial allows for transactions to take place that avoid publicity and frustrate the general intent of one of the basic principles of the Act.

This recommendation was made in a similar form in *Strengthening the Foundation.*

Recommendation: There should be reporting obligations where an electoral district association, which is related to a party that is subject to a reporting regime under the Act, has financial transactions.

The person who is authorized by the association to carry out those financial transactions should be required to report those transactions annually to the Chief Electoral Officer.

8.1.3 Reporting the Finances of Contestants for Party Endorsement

Although most of the financing for an election is now reported and made public, the sources of funding for those who are contestants for a party's endorsement in a riding do not have to be reported.

The selection of a candidate for endorsement is obviously a key element in the election process. Donations to the successful contestant for endorsement by the party likely to win an election contest constitute, in effect, undisclosed contributions. In any event, candidates play an active part in the political process of the election and any financial influences they may be subject to, should be known.[78]

To secure real transparency in election financing, the law must secure transparency in the financing of all stages of the process that leads to the selection of a member. Any surplus should be dealt with in the same way as the campaign surplus – that is to say, it will be returned to the local association or the registered party.[79]

A second issue relating to contests for endorsement is whether there should be a limit on expenditure. The amount that can be spent on nomination contests is currently unregulated by the Act, except for a limit on how much can be spent on the notices for nomination meetings that take place during the election. This cannot be more than 1% of a candidate's election expense limit in that electoral district during the previous election.

There is, however, a concern that since spending to seek the nomination is excluded from the election expense limit, excessive spending on nomination meetings could undermine the intent of the election spending limits and run contrary to the principle of fairness. Not only could candidates benefit from the spill-over effect that these expenditures may have on the election campaign itself, but if spending for nomination contests is not regulated, those who have access to greater financial resources have an advantage over those who do not. Since winning the party nomination is the first hurdle that an affiliated candidate must overcome, unnecessary barriers to participation in the nomination process should be minimized.

The Royal Commission on Electoral Reform and Party Financing recommended that spending limits be set for nomination contests, that these limits be established as a maximum threshold, and that any party could choose to set a lower spending limit.

Recommendations: Contributions made to and expenses incurred by a contestant for party endorsement, should be reported and published in the same manner as contributions to a candidate during the campaign.

The return should be filed by the same deadline as the electoral campaign return and the same right to request extensions should be available.

Spending limits on nomination contests should be established based on the estimated election expenses limit calculated each year in accordance with s. 442 of the Act.

8.1.4 Reporting the Finances of Contestants for Party Leadership

There is at present no requirement in the *Canada Elections Act* for a contestant for party leadership to disclose finances. Such events are treated as private matters. Consequently, leadership contests are not governed by public law. However, selection of a leader of a party can be an extremely important political event. Transparency in financing such a contest is arguably just as important as it is in an election.[80]

Leadership contests have always been treated as internal events within a party, rather than public events. The party view of this is that they choose their leader through the internal process and then present the party, its proposed political program, the leader and the candidates as a "package" to the electorate in a general election. In this package, there is no doubt that the leader of a party has a great influence on the party's success and is always a significant element in voter choice.

A further problem is that funding for candidates in a contest may be routed through the party's chief agent, and come from tax-deductible donations. However, usually there is no published information concerning which candidates received funding.

Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election, quoted Stanbury, who advocated disclosure: "they [leadership contests] can involve the raising and expenditure of millions of dollars and are often financed in part by contributions for which a tax receipt is issued." (Stanbury 1991, p. 368).[81]

In his study entitled *Do Conventions Matter: Choosing National Party Leaders in Canada* (1995, p. 77), John Courtney said: " … the time is propitious for state involvement in setting the terms for financing future [leadership] contests." He also suggested spending limits, arguing that such contests are part of the public domain.

Leadership contests are the venues where future Prime Ministers and opposition leaders are chosen. Even unsuccessful contestants may remain influential in Parliament. The argument for financial transparency respecting all of them is compelling.

There should also be spending limits respecting leadership contests with the specific amount of those limits being set by Parliament.

Recommendation: It is recommended that contributions to and expenses of a party leadership contestant, whether successful or not, be reported four months after the leader is elected and published in the same manner as a candidate's electoral campaign return.

8.2 Surpluses in Leadership and Nomination Contests

In support of the principle that no person should personally profit from contributions while seeking election to the House of Commons, the Act currently requires that when a candidate who has been endorsed by a registered party has a financial surplus at the end of a campaign, that surplus must be turned over, either to the registered party, or to that party's electoral district association in the candidate's district. Surpluses of candidates who have not been endorsed by a registered party must be turned over to the Receiver General for Canada.

This principle need not be adopted strictly in the case of leadership and nomination contests insofar as it is a matter of party constitution if contestants should be able to benefit personally from their party activities. However, where a contestant's participation in a contest is financially supported by public funds, his or her participation ceases to be solely a matter of private concern to the party. Public funds cannot accrue to the personal benefit of a contestant.

Public funds can come to individual contestants when parties or local associations make contributions that have come from funds for which tax receipts have been issued. Once a contestant elects to receive contributions flowing from tax-receipted funds, the contestant should come under the obligation to turn over any surplus from his or her contest in the same way as surpluses are dealt with that arise from a candidate's campaign. If a candidate receives any tax-receipted funding, all of that candidate's funding must be subject to this obligation. Otherwise, it may be difficult to determine if expenses are paid from public or private funds.

Recommendation: When any leadership/nomination contestant receives contributions from a tax-receipted source, any surplus funds remaining to the contestant after the leadership/nomination contest must be turned over, in the case of a leadership contest, to the contestant's party, and in the case of a nomination contest, to the party or local electoral district association.

Appendices

Appendix 1

Projected Impact of Lowered Threshold for Candidates' Reimbursement, Based on the November 2000 General Election

Political party	Actual reimbursements with present 15% threshold[1]	Reimbursement scenario with recommended 5% threshold[2]	Variance
	B ($)	A ($)	A - B ($)
Bloc Québécois	2 128 027	2 163 384	35 357
Canadian Action Party	–	–	–
Canadian Reform Conservative Alliance	4 130 945	4 541 156	410 211
Communist Party of Canada	–	–	–
Independent	–	22 794	22 794
Liberal Party of Canada	6 914 592	7 003 372	88 780
Marijuana Party	–	–	–
Marxist–Leninist Party of Canada	–	–	–
Natural Law Party of Canada	–	–	–
New Democratic Party	1 162 085	1 727 618	565 532
No Affiliation	43 456	51 732	8 276
Progressive Conservative Party of Canada	1 513 455	2 195 692	682 237
The Green Party of Canada	–	24 363	24 363
Total	**15 892 560**	**17 730 111**	**1 837 551**

[1] Under subsection 464(1) of the *Canada Elections Act*, candidates must obtain at least 15% of valid votes cast in their electoral district in order to qualify for partial reimbursement of their election expenses.

[2] Amounts that would have been paid with the qualification threshold set at 5% as recommended by the Chief Electoral Officer of Canada.

Appendix 2

Illustration of Recommended Party Status

Summary

A party which applies to the Chief Electoral Officer for party status becomes an eligible party when it satisfies the administrative requirements of s. 366.

An eligible party which subsequently meets the requirements to be a registered party becomes a registered party at that time.

A registered party which fails to meet the requirements for registered status, but meets the requirements for eligible status, becomes an eligible party.

A registered or eligible party which fails to meet either the requirements for registered or eligible status loses its party status under the Act.

Illustrative Table

1. A party applies to the CEO for party status and satisfies administrative requirements of s. 366 (name, officers, administrative info, signatures of electors, etc.)

   Status: eligible party

   Rights and obligations:
   - name reserved as long as remains an eligible or registered party
   - reporting obligation
   - auditor fee payment

2. If by-election called and party runs a candidate

   Status: eligible party

   Rights and obligations:
   - party spending limit
   - political participation rights (name on ballot, access to lists, candidate surplus)
   - election reporting obligation
   - auditor fee payment

3. At next general election

(a) Party runs 50 or more candidates

Status: registered party

Rights and obligations:
- party spending limits
- ability to give tax receipts for contributions received since more recent of either last general election/date party passed administrative hurdles for eligible status
- broadcasting rights
- election expense reimbursement
- political participation rights
- auditor fee payment

(b) Party runs 1 to 49 candidates

Status: eligible party

Rights and obligations:
- party spending limits
- political participation rights
- auditor fee payment

(c) Party runs 0 candidates

Status: loses party status

Rights and obligations:
- final reporting obligation
- auditor fee payment
- winding up duties (which may be delayed)

Appendix 3

Summary of Contributions to Candidates, by Political Affiliation – 37th General Election[1]

Political party	Contributions of $7 500 or less		Contributions of $7 501 and over[2]		Total	
	Number	Value ($)	Number	Value ($)	Number	Value ($)
Bloc Québécois	10 740	2 237 087	89	1 662 810	10 829	3 899 897
Canadian Action Party	465	213 207	3	48 834	468	262 041
Canadian Reform Conservative Alliance	33 046	7 011 353	118	2 179 711	33 164	9 191 065
Communist Party of Canada	141	23 224	–	–	141	23 224
Independent	320	74 904	2	18 398	322	93 302
Liberal Party of Canada	28 530	9 939 550	239	5 265 856	28 769	15 205 406
Marijuana Party	45	9 276	–	–	45	9 276
Marxist-Leninist Party of Canada	49	10 771	–	–	49	10 771
Natural Law Party of Canada	31	7 124	–	–	31	7 124
New Democratic Party	13 910	3 243 317	78	1 451 015	13 988	4 694 332
No Affilliation	2 113	255 825	1	9 731	2 114	265 556
Progressive Conservative Party of Canada	13 590	3 257 723	54	820 248	13 644	4 077 971
The Green Party of Canada	1 129	207 609	1	10 000	1 130	217 609
Total	**104 109**	**26 490 971**	**585**	**11 466 602**	**104 694**	**37 957 574**

[1]Based on data available as of October 26, 2001

[2]Includes contributions from local associations and political parties

Appendix 4

Summary of Contributions, by Registered Political Party – Fiscal 2000

Registered political party	Contributions of $50 000 or less		Contributions of $50 001 and over		Total	
	Number	Value ($)	Number	Value ($)	Number	Value ($)
Bloc Québécois	20 632	2 093 352	1	166 400	20 633	2 259 752
Canadian Action Party	198	51 477	–	–	198	51 477
Canadian Reform Conservative Alliance	266 698	17 745 473	22	1 895 533	266 720	19 641 006
Christian Heritage Party of Canada	284	163 653	–	–	284	163 653
Liberal Party of Canada	42 323	17 428 359	25	2 639 461	42 348	20 067 820
Marxist-Leninist Party of Canada	66	28 885	–	–	66	28 885
Natural Law Party of Canada	221	82 203	–	–	221	82 203
New Democratic Party	57 926	6 782 827	8	2 195 309	57 934	8 978 136
Progressive Conservative Party of Canada	14 771	5 147 537	6	474 157	14 777	5 621 694
Total	**403 119**	**49 523 766**	**62**	**7 370 860**	**403 181**	**56 894 626**

Summary of the Chief Electoral Officer's Recommendations to Parliament

Part 1: Providing a More Accessible and Efficient Electoral Process

Chapter 1: Ensuring that Every Elector is Registered

Recommendations Respecting the Registration Process

Signed Certification of Eligibility for Registration on National Register of Electors

A certification of eligibility, signed by the elector, should no longer be a necessity for being added to the Register. This would recognize the facts that:

- a personally signed written certification is not the sole reliable method of establishing eligibility;
- an elector, under the *Canada Elections Act*, can currently be registered on a list of electors (and thus indirectly with the Register) without the use of a personally signed written certification of eligibility from that elector;
- requiring a personally signed certification to register directly with the Register creates a significant obstacle to registration through alternative means of communication and through the statutory mandated methods of updating the Register.

This change would maximize the ability of electors to register, including the ability to register on-line where alternative evidence of sufficient reliability was available.

Similarly, the recommendation is made to drop the requirement in s. 48(2) of the Act that an elector wishing to register must confirm in writing information provided to the Chief Electoral Officer from sources other than those set out in s. 46. The provision should allow alternative methods of confirmation.

It should be made clear that this recommendation is not to eliminate the need for evidence of eligibility, signed certification in all circumstances, or confirmation in writing in all circumstances. The recommendation is made to permit the registration process to become more flexible by allowing proof of eligibility, or proof of confirmation, to be established by a range of sufficiently reliable evidence. This will facilitate elector registration without compromising the reliability of their information.

Revision of Register on Initiative of the Chief Electoral Officer

In order to increase the capacity of the Chief Electoral Officer to maintain the integrity of the Register, the *Canada Elections Act* should be amended to authorize the Chief Electoral Officer to undertake initiatives to verify, correct and update the Register and to authorize returning officers, and others, to conduct such initiatives outside of electoral events, when requested by the Chief Electoral Officer.

Recommendations Respecting the Lists of Electors

Notice of Confirmation of Registration (Voter Information Card)

The current legislative scheme for notices of confirmation of registration should be revised to include more flexibility as to who is to provide electors with the required notices and how that notification is to be done. However, the Act should continue to specify what information is to be provided and when.

This can be accomplished by amending s. 95 of the Act to provide that the Chief Electoral Officer shall cause, as soon as possible after the issue of a writ, but not later than the 24th day before election day, a notice of confirmation of registration to be sent to every elector whose name appears on a preliminary list of electors (subject to the existing exceptions).

The Chief Electoral Officer should also be directed to have sent, to every household or registered elector, the voting information necessary for registered electors in that household to vote (as currently set out in s. 95(2). It should be required that this information be sent as soon as practical, and in any event, not later than a day keyed to the advance polls. In this way, the Chief Electoral Officer can decide who is responsible for sending out the required information to best suit the administrative and technological resources and the circumstances of the day. However, the Act will continue to direct exactly what information is to be sent and the timelines for providing that information.

Whether the above information is sent out in one or more notices should also be left to the discretion of the Chief Electoral Officer, who can adjust the practice to the realities of the circumstances. (A different practice may be adopted for by-elections than for general elections, for example.) The form of those notices should also be established by the Chief Electoral Officer (which reflects the existing legislative direction).

As a corollary, the Act should continue to provide that any elector registered during the election period receives both notice of confirmation of registration and voting information in the manner established by the Chief Electoral Officer.

Allowing Returning Officers to Update Lists on the Basis of Information from the Chief Electoral Officer

It is recommended that s. 101 of the Act be amended to expressly provide that returning officers can update lists of electors by adding or deleting electors, or making other changes on the basis of information provided by the Chief Electoral Officer.

Inter-District Changes of Address

Subsection 101(6) should be amended to extend the ability of returning officers to record changes of address in cases where a registered elector moves from a different electoral district.

Proof of Identity on Requested Change of Address on List

It is recommended that s. 101(1)(*a*) and (*b*) be amended to provide that where a request to add an elector's name to the preliminary list of electors is made by that elector, or by another elector who lives at the same residence, proof of identity would not be required where the request is made to an election officer at the residence of the elector. The elector requesting the change will still be required to complete the prescribed registration form and establish that the elector in question may be included on the list.

Authority of Deputy Returning Officer to Verify Eligibility

It is recommended that s. 144 be amended to include the authority to require a written affidavit or solemn affirmation of eligibility by a potential elector where reasonable doubt is raised concerning that person's eligibility by a deputy returning officer, poll clerk, candidate or candidate's representative.

Chapter 2: Ensuring that Every Vote Counts

Same Names on Ballot

Section 117 of the Act should be amended to reflect the practice adopted by returning officers in the past, by providing that where the names of two or more candidates are identical, the order of their appearance on the ballot is to be determined by the luck of the draw. This would apply both to candidates who are independent and to candidates who are endorsed by parties.

Option to Decline Ballot

The *Canada Elections Act* should be amended to provide for the means for a ballot to be declined, recorded and reported as such in the official ballot results and which respects the principle of the secrecy of the vote.

Deadline to Obtain Transfer Certificate

Section 159 of the Act should be amended to remove any time limit for application for a transfer certificate respecting level access. The removal of the time limit will not create an undue administrative burden, will recognize further the constitutional right of all individuals to have access to the voting process and will be consistent with the statutory practice set out in s. 158.

Time Frames for Special Voting Rules

Section 232 should be amended to provide that the period for making an application under Division 4 of Part 11 for a special ballot, commence at the date fixed by the Chief Electoral Officer. This date is to be as soon as possible after the issue of the writ.

Requiring Affidavit When Another Person Has Already Voted in Elector's Name

It is recommended that the Act be amended to allow an elector who has not voted, but who is shown on a list of electors to have voted, to vote once he or she swears a written affidavit or solemn declaration before the deputy returning officer.

Part 2: Greater Accessibility for Candidates and Political Parties

Chapter 1: Enhancing Candidates' Participation

Signatures of Nominating Electors

In order to reduce the administrative burden on a prospective candidate, the requirement for the signatures of 100 (or 50) eligible electors should be dropped from the nomination process.

Requirement for Witness to File Papers and Swear Oath

Prospective candidates should be permitted to file their nomination papers themselves. The requirement for a witness to the candidate's consent to file the nomination papers and swear an oath before the returning officer should be dropped.

This will make the statutory practice consistent, whether the papers are filed manually or electronically.

Candidate's Consent Under Oath to Run

The current requirement for the prospective candidate's consent to be made under oath should be dropped. Statutory prohibition against making a false or misleading statement in a nomination paper should be added.

Period to Confirm Nomination

The Act should be amended to provide that a returning officer must verify a nomination paper no later than the end of the nomination period on the 21st day before election day.

Candidate's Deposit

The Act should be amended to require that a candidate's deposit be made by way of cash, certified cheque, money order or other guarantee of funds as approved by the Chief Electoral Officer.

Party Filing of Candidate's Deposit

The Act should be amended to provide, once the Chief Electoral Officer is satisfied of the implementation of an adequate administrative process, that a political party may remit the deposits required for those candidates endorsed by the party to the Receiver General through the Chief Electoral Officer.

As a corollary provision, s. 67(4) of the Act should also be amended to provide that where the returning officer is satisfied that a candidate's deposit has been filed directly with the Receiver General for Canada by the political party endorsing the candidate, the nomination papers need not be accompanied by the deposit.

In order to prevent miscommunication and inadvertent errors in the process, the Act should further provide that a returning officer must consult with the Chief Electoral Officer before refusing a candidature, including for failure to file the required deposit.

Party Filing of Leader's Endorsement of Candidate

The Act should be amended to allow parties to file with the Chief Electoral Officer, a confirmation of the full names, addresses, and number of candidates who have been endorsed by the party, and to allow returning officers to accept a nomination paper on being satisfied that the Chief Electoral Officer has received a party endorsement of that candidate. In order to prevent miscommunication and inadvertent errors in the process, the Act should further provide that a returning officer must consult with the Chief Electoral Officer before refusing a candidature, including a refusal because of a lack of leader's endorsement.

Equal Opportunity to Be a Candidate

The right to a leave of absence without pay for the purpose of being a candidate at a federal election should be extended to all employees, whether the individual is employed under federal, provincial or territorial law. This should not preclude an employer from authorizing paid leave. On the understanding that there may be instances where an employee's leave of absence could be seriously detrimental to an employer's operations, the Act should provide for an exception in such cases, along with a mechanism to determine the effect of an absence where the issue is in dispute. An example of such a mechanism already exists in the Manitoba *Elections Act*.

Chapter 2: Enhancing Political Parties' Participation

Status of Eligible Party

There should be only two types of political parties under the *Canada Elections Act* – eligible parties and registered parties.

The definition of eligible parties should be expanded to include all organizations that exist as political parties, that satisfy the administrative requirements respecting the existence and structure of the party under s. 366 of the Act, and that have, in a general election, between 1 and 49 confirmed candidates for election to the House of Commons.

A registered party would be a party that has in a general election at least 50 confirmed candidates for election to the House of Commons.

All eligible and registered parties should be entitled to the same rights and obligations except those involving the division of limited resources; they should further be subject to the same disclosure and reporting obligations.

Spending limits for an eligible party should be determined in the same manner as spending limits for a registered party.

The status of an eligible party would continue unchanged from one general election until the close of the period for the confirmation of nominations in the next general election, in the same way that registered parties currently maintain their registered status from one general election until the next.

A registered party that in a subsequent general election has only 1 to 49 confirmed candidates would resume the status of an eligible party and continue to be entitled to the rights and obligations, including reporting obligations, of an eligible party.

Failure to have at least one confirmed candidate at the close of nominations in a general election would cause a party, whether it was previously designated registered or eligible, to lose its party status.

To avoid the loss of party status that might result due to merely temporary circumstances, a party that has lost its status as an eligible party because it lacks the required confirmed candidates at a general election, could preserve its name if it advises the Chief Electoral Officer of its intention to field at least one candidate in the next general election. This would avoid unnecessary duplication of effort, which would result if the party were required to start afresh and provide the Chief Electoral Officer with sufficient evidence of party status. Failure in the next general election to secure the required number of confirmed candidates to maintain party status would result in the loss of that status. The party should continue to be subject to its reporting obligations during this period.

The category of "suspended" parties should be eliminated in order to reduce the complexity of the Act.

A political party that wished to cease being treated as a party under the Act could relinquish that status. It would be subject to final reporting obligations.

Distribution of Lists of Electors

Sections 45 and 109 of the Canada Elections Act should be amended to give eligible parties the same rights as registered parties respecting access to annual and final lists of electors, and to provide that the list for a district should be distributed to all registered and eligible parties on request whether or not they had run a candidate in that district in the last election.

Part 3: The Use of Public Monies to Advance Access and Accountability

Chapter 1: Public Monies to Advance Access

Qualification Threshold for Candidates' Reimbursement

The threshold for candidates to be qualified for reimbursement should be set at 5% of the valid votes cast in his or her electoral district.

Issue of Tax Receipts by Registered Parties for Pre-Registration Contributions

A party that achieves registered party status in a general election should be allowed to issue tax receipts for contributions received by that party either from the time that its application for registration was accepted by the Chief Electoral Officer, or from the time of the last general election, whichever is later.

Disposition of Surplus Funds of Independent Candidates

Any surplus funds transferred by an independent candidate to the Receiver General for Canada should be returnable to the candidate if he or she is nominated as an independent candidate in the next general election or a by-election.

Chapter 2: Public Monies to Advance Accountability

Auditor Acting for More than One Candidate

Section 85.1 should be amended to avoid confusion as to the ability of an auditor to act for more than one candidate regardless of the electoral district. This can be done by rewording the provision to refer only to the ability of a person to serve as an official agent where his or her partner has been appointed as an auditor.

Free the Payment of Auditor's Fees from Requirement for Unqualified Report

The payment of the public funding portion of an auditor's fees should not be dependent on the auditor submitting an unqualified report.

Amount of Public Payment of a Candidate's Auditor Fees

The public payment of auditor fees should be based on the total of the expenses (set out in s. 451(2)(*a*) to (*e*)), which the auditor is required to review in order to comply with his or her mandate under s. 453.

The minimum and maximum payments should be adjusted for inflation.

Public Payment of a Portion of a Party's Auditor Fees

The Act should provide for the payment of 75% of the auditor fees of a registered party respecting its financial returns under the Act, subject to a maximum cap. A cap of $18 000 could be set for the portion of fees that would be paid from the public purse for the fiscal return and a cap of $15 000 for the election return. These caps should be subject to an inflationary adjustment.

Part 4: Ensuring Fair Competition – Broadcasting

Sever Free and Paid Time Regimes

A party's entitlement to free broadcasting time should not be dependent upon that party's entitlement to paid broadcasting time.

Broadcasting Rights Restricted to Registered Parties

Only registered parties should have the right to free broadcasting time.

Free Time Regime

The *Canada Elections Act* should specify that 60 minutes of free time, divided equally between all registered parties that request it, is to be provided by all television stations (not just networks) that broadcast news or public affairs programs, and by all news/talk radio stations and specialty television services focusing on news or public affairs.

The Act should not direct when free time is provided or the length of any broadcast provided.

The Act should specify that free time be scheduled reasonably evenly over the election period to avoid parties attempting to schedule all of their free time within the last week of the election.

In order to accommodate the participation of eligible parties in this process, free broadcasts should only be permitted after the nomination date cut-off to allow for the readjustment of apportionment in the event of the failure of an eligible party to achieve registered party status or a registered party to maintain its status.

Paid Time Regime

The Act should be amended so that each registered party has the right to buy up to 100 minutes per station of paid time at the lowest unit rate, subject to their election expense spending limits.

The scheduling of purchased time should be at the discretion of the registered party, pre-empting regular commercial advertisements if necessary (same as the existing system).

Registered parties would be required to pre-notify the station of their scheduling intentions within ten days of the issue of the writs (same as the existing system).

There should be an overall cap of 300 minutes on the amount of paid time, which each station must provide overall to all parties. Where the number of parties seeking to purchase paid time at the lowest unit rate would require the station to provide more than this cap, the station should be allowed to reduce every party's requested time on a *pro rata* basis, subject to the moderation of any disputes by the Broadcasting Arbitrator.

The Broadcasting Arbitrator should be authorized to arbitrate disputes over the purchase of specific time slots.

The statutory rate for the sale of paid broadcast time should be based on the concept of "lowest unit charge" in order to avoid the current uncertainty arising out of the Act's use of the phrase "equivalent time".

Any registered party wishing to buy more than the 100 minutes of paid time, and any eligible party wishing to buy paid time, would be free to do so at the rate the station chooses to set, subject only to its election expense limits and the willingness of the station to sell the time. Again, in the unlikely event of one party attempting to dominate the market unfairly, disputes could be resolved by the Broadcasting Arbitrator.

Election Opinion Surveys

Subsection 326(2) should be amended so that broadcast media regulated by the CRTC are subject to the same requirements that broadcast media not regulated by the CRTC (e.g. the Internet) must meet with respect to disclosure of the wording of the questions used in political opinion surveys and the means by which further details about such surveys may be obtained.

Part 5: Transparency in Election Financing

Chapter 1: Financial Disclosure

Preventing Contributions Intended to Hide the Identity of the Original Source

The Act should be amended to make it an offence to make a contribution in a manner intended to hide the identity of the source of the contribution.

Reporting Conditions on Loans

The Act should be amended to require a candidate's return to reveal all the conditions of any loan, including its term and interest rate. Disclosure of the name and address of any guarantor should be required in the case of loans above the reporting threshold.

Reporting Transfers from Provincial Political Entities

It is recommended that all transfers made from provincial political entities to registered and eligible parties, to local electoral district associations of a registered or eligible party, or to a candidate, be fully reported to the Chief Electoral Officer.

More Accurate Reporting of Source of Indirect Contributions Through Local Electoral District Associations and Trust Funds

The Act should be amended to provide that where a reporting party or candidate receives indirect contributions from a trust or electoral district association, the names and addresses of all of the contributors who made contributions over the reporting threshold to the trust or the association since the last report (in the case of the fiscal returns of parties), or since the last election (in the case of candidates), must be disclosed.

Threshold for Reporting Contributions

In order to enhance the privacy interests of Canadians and to encourage the political participation of Canadians, where contributions are required to be reported to the Chief Electoral Officer, the reporting threshold for the specific reporting of names and addresses for contributions should be raised to $1 075.

Reporting entities should be required to continue to keep detailed records of contributions, including the names and addresses of contributors who make contributions in excess of $200.

These detailed records should be producible on request to the Chief Electoral Officer or the Commissioner of Canada Elections, and be available for the purposes of the Act, including for the purposes of any enforcement action by the Commissioner of Canada Elections. There would be no obligation to publish them, nor should they be publicly available except as may be required in a prosecution by the Commissioner of Canada Elections.

It should be an offence for a person who is required to produce a detailed record of contributions to wilfully fail to do so on the request of the Chief Electoral Officer or the Commissioner of Canada Elections.

Chapter 2: Streamlining and Clarifying the Reporting Requirements for Candidates

No Bank Account Required if No Financial Transactions Other than Payment of Deposit

Opening a bank account should only be required of a candidate when a monetary transaction occurs, other than the payment of the nomination deposit.

A declaration of "nil return" should be provided by the candidate and official agent in cases where there have been no contributions, election expenses, or personal expenses. The candidate's deposit should be excluded from the definition of loan, contribution, and election expense. The source of funding for the deposit should be disclosed.

Removal of the Requirement for a Witness to the Official Agent, Chief Agent and Candidate Declarations Accompanying the Return

The requirement for a witness to the signatures of the chief agent, the official agent and the candidate on the declarations respecting returns should be dropped.

Clarification of the Nature of the Candidate's Declaration of Personal Expenses

The Act should be clarified to show that the candidate's statement of personal expenses is a claim for payment and that if it is not submitted within the timeframe prescribed by the Act, the matter should be treated as a late claim for payment, but it should not render the return invalid.

Clarification of Responsibilities of the Official Agent and the Candidate for Filing the Campaign Report and Their Exposure to Penalties

The Act should be amended to expressly provide that the responsibility for properly submitting a return resides with the candidate, while the duty for completing that return rests with the official agent.

Vouchers

The requirement for vouchers should be removed from s. 451 and moved to a new s. 451.1; the failure to file complete vouchers should not affect the validity of a return.

However, in the event that insufficient vouchers are filed, the Chief Electoral Officer should be given the authority to direct the filing of additional vouchers in order to evidence the expenses set out in the return. It would be an offence to wilfully fail to comply with a direction by the Chief Electoral Officer for supporting vouchers.

Receipt and Reporting of Contributions Made After Election Day

No contribution should be allowed to a candidate's campaign later than four months after election day, unless the contribution is expressly allowed under the Act.

All contributions received after election day must be disclosed in the candidate's return, or in an updated version, thereof, if the contribution is received subsequent to the filing of the return.

Chapter 3: Deadlines for the Filing of Returns

Evidence Required to Support Application to the Chief Electoral Officer to Extend Filing Deadlines or to Make Corrections or File Updated Documents

The Act should provide that an application to the Chief Electoral Officer under s. 458 be supported by a statutory declaration or other evidence to establish the grounds on which the application is sought.

For the sake of clarity and consistency, s. 447 (irregular claims or payments) should be similarly amended.

Deadlines Respecting Applications to Judge

The current time limit of two weeks to make an application to a judge as specified in s. 459, should be extended to two months. This period should also be the maximum period which the judge may authorize as a result of an application to the court.

Party Failure to File Return

Loss of political party status should be removed as a potential consequence of failing to file a single financial return as required under the Act. However, a party that consecutively fails to file two required reports in accordance with the Act should automatically lose its party status under the Act.

Chapter 4: The Problem of Unregulated Contributions

Regulatory Controls upon Contributions – A Necessary Counterpart to Disclosure

Limits should be placed on contributions to registered and eligible parties, local electoral district associations, and candidates.

The duty to comply with the limit should be imposed upon the entity making the contribution, rather than the recipient, to avoid the imposition of an undue administrative burden upon that recipient.

Entities making contributions to political recipients should be restricted to the following limitations:

Annual:	$50 000 to each registered/eligible party
	$7 500 aggregate to all local electoral district associations of each party
General election:	(In addition to the annual limits)
	$50 000 to each registered/eligible party $7 500 aggregate to one or more candidates of each party
Single or simulatenous by-elections:	(In addition to the annual limits)
	$7 500 aggregate to one or more candidates of the same party
Nomination contests:	(In addition to the annual limits)
	$ 7 500 aggregate to all contestants of the same party

It should be an offence for a contributor to breach these limits knowingly.

Part 6: Effectively Enforcing the Electoral System

A General "Attempt" Offence

A general offence should be created respecting an attempt to commit an offence under the Act.

Collusion

Sections 351, 423(2) and 443(2) should be replaced with a general provision prohibiting any person from circumventing, or attempting to circumvent, the respective spending limits.

Investigative Status for the Commissioner of Canada Elections

The Commissioner of Canada Elections should be deemed to be an investigative body for the purposes of s. 8(2)(*e*) of the *Privacy Act* for the enforcement of the *Canada Elections Act*.

Appeal Rights of the Commissioner of Canada Elections

The Act should provide that the Commissioner of Canada Elections has the same appeal rights in prosecutions for breaches of the *Canada Elections Act,* as does the Attorney General in other prosecutions under the *Criminal Code*.

Obstruction of Investigations

It should be an offence under the *Canada Elections Act* to obstruct, hinder or make a false or misleading statement to the Commissioner of Canada Elections, or a person appointed by the Commissioner of Canada Elections, when conducting an investigation under the *Canada Elections Act*.

Failure to Return Ballot

It should be an offence under the *Canada Elections Act* for an elector who has been given a ballot by a deputy returning officer to fail to return that ballot.

Part 7: Managing the Electoral Process

Appointment of Returning Officers

It is recommended that provision be made for returning officers to be appointed by the Chief Electoral Officer on the basis of merit. New returning officers would be appointed for a 10-year term, be eligible for re-appointment, and could be removed by the Chief Electoral Officer in the event of incompetence or unsatisfactory performance.

The Office of Assistant Chief Electoral Officer

The statutory office of Assistant Chief Electoral Officer should be removed from the Act.

Appointment of Revising Agents

It is recommended that s. 33 be amended to remove the requirement for returning officers to solicit names from registered parties in the hiring of revising agents.

Appointment of Deputy Returning Officers and Poll Clerks

It is recommended that the Act be amended to remove the requirement for returning officers to solicit names from the candidates for appointments of deputy returning officers, poll clerks and registration officers.

Leave of Absence to Be a Deputy Returning Officer or Poll Clerk

The Act should provide that an employer be under an obligation to provide an employee with leave of absence in order to serve as a deputy returning officer or a poll clerk. A mechanism should be provided, similar to that in the Manitoba *Elections Act*, by which an employer may obtain an exemption for persons whose absence would be seriously detrimental to the employer's business.

Posting Names and Addresses of Deputy Returning Officers and Poll Clerks

It is recommended that the Act be amended to remove the requirement for home addresses to be shown on the list of deputy returning officers and poll clerks that is publicly available.

Location of Returning Office

Subsection 60(1) of the Act should be amended to provide that the Chief Electoral Officer may direct the establishment of a returning office at a location within an electoral district that, in the opinion of the Chief Electoral Officer, will provide the best service or easiest access to the electorate of that district.

Election Officers at Advance Polls

Section 169 of the Act should be removed. This will allow elector registration to proceed at an advance poll in the same way it does on election day, through the general authority of s. 171. In addition, an authority similar to s. 123 should be extended to the returning officer to group advance polling stations together in one place. This authority would be subject to the approval of the Chief Electoral Officer to ensure that too many stations, representing too wide an area, were not being grouped at one polling location. The definition of "central polling place" in s. 124 should be amended to include advance polling stations that have been grouped together.

Criteria for Appointment of Central Poll Supervisors

Section 124(2) should be amended to allow a returning officer to appoint a central poll supervisor whenever the returning officer believes it would be appropriate to do so.

Authority of a Judge to Summon Witnesses for Recount

Subsection 304(5) should be amended to provide that a judge may compel the attendance of any witness for the purpose of conducting a recount.

Assistance of Elections Canada Officials with Recount

In order to increase the administrative efficiency of the recount process, it is recommended that s. 303 be amended to make clear that, upon the request of the judge, an officer provided by the Chief Electoral Officer may also be present at a recount for the provision of assistance to the judge.

Greater Flexibility Respecting the Tariff of Fees

It is recommended that s. 542 be amended to provide that the Governor in Council may referentially incorporate into the tariff instruments made by other bodies, as they may be amended from time to time. This will allow the Governor in Council greater flexibility in providing for the required fees. In order to avoid confusion respecting incorporated instruments amended in the midst of an election, the Act should further provide that in such a circumstance, the Chief Electoral Officer have the authority to delay the effective date of the amended incorporated instrument until a date after the end of the election.

Political Rights of Staff of Elections Canada

It is recommended that the Act be amended to prohibit any member of the staff of the Chief Electoral Officer, except when on a leave of absence from Elections Canada, from being a candidate in a federal or provincial election; from engaging in work for or against a candidate, party or issue, in a federal or provincial election; from supporting any candidate or party, or organization with partisan political purposes, at the federal or provincial levels; and from supporting or opposing any option in a federal or provincial referendum.

The Act should further provide that a leave of absence be granted by the Chief Electoral Officer where, in the opinion of the Chief Electoral Officer, the future usefulness of a staff member will not be impaired by that person's participation in the electoral process.

The Right to Strike of Elections Canada Staff

The *Public Service Staff Relations Act* should be amended so that the right to strike is removed for employees of the Office of the Chief Electoral Officer of Canada.

Part 8: Extending the Application of the *Canada Elections Act*

Reporting the Original Source of Contributions Received by Candidates from Political Trust Funds

The definition of a political trust should be widened to include any trust that has election purposes as its principal function, including leadership and nomination contests.

Reporting by Electoral District Associations

There should be reporting obligation where an electoral district association, which is related to a party that is subject to a reporting regime under the Act, has financial transactions.

The person who is authorized by the association to carry out those financial transactions should be required to report those transactions annually to the Chief Electoral Officer.

Reporting the Finances of Contestants for Party Endorsement

Contributions made to and expenses incurred by a contestant for party endorsement, should be reported and published in the same manner as contributions to a candidate during the campaign.

The return should be filed by the same deadline as the electoral campaign return and the same right to request extensions should be available.

Spending limits on nomination contests should be established based on the estimated election expenses limit calculated each year in accordance with s. 442 of the Act.

Reporting the Finances of Contestants for Party Leadership

It is recommended that contributions to and expenses of a party leadership contestant, whether successful or not, be reported four months after the leader is elected and published in the same manner as a candidate's electoral campaign return.

Surpluses in Leadership and Nomination Contests

When any leadership/nomination contestant receives contributions from a tax-receipted source, any surplus funds remaining to the contestant after the leadership/nomination contest must be turned over, in the case of a leadership contest, to the contestant's party, and in the case of a nomination contest, to the party or local electoral district association.

Endnotes

Endnotes

[1] For an overview of the various post-events, see the summary entitled *2000 General Election Post-Event*, published by Elections Canada.

[2] Bill C-63, which received royal assent on December 18, 1996, provided for the establishment of the National Register of Electors in April 1997, following a final general enumeration of electors. Although this occurred prior to the June 1997 federal general election, in practice, the November 2000 federal general election was the first to be conducted using the National Register of Electors to produce preliminary lists of electors.

The use of a permanent list of electors at the federal level had been considered by the Royal Commission on Electoral Reform and Party Financing in 1992. The Royal Commission recommended the production of federal lists of electors based on provincial and territorial enumeration or voter registers (rec. 2.4.2). At that time, technology did not allow for a national database of electors. This possibility was enabled in 1992 by the establishment of the first automated federal list of electors.

Currently, the legislation of six Canadian jurisdictions provides for a permanent list of electors (Newfoundland, New Brunswick, Quebec, Ontario, Alberta, and British Columbia).

[3] In addition to these legislative recommendations, to better serve its stakeholders, Elections Canada is also reviewing and enhancing its administrative programs, systems and services.

[4] Subsection 55(1) of the *Canada Elections Act* states that the Chief Electoral Officer may enter into an agreement with any body responsible under provincial law for establishing a list of electors. Such agreements enable the Chief Electoral Officer to share information contained in the National Register of Electors for establishing a list of electors in another jurisdiction.

The National Register of Electors is regularly updated with data from the Canada Customs and Revenue Agency and Citizenship and Immigration Canada.

[5] For more details on the 37th general election, see the *Report of the Chief Electoral Officer of Canada on the 37th General Election Held on November 27, 2000*.

[6] For more details on the 37th general election, see the *Report of the Chief Electoral Officer of Canada on the 37th General Election Held on November 27, 2000*.

[7] All Canadian provinces and territories allow for election day registration except for Quebec and Yukon Territory.

[8]Elections Canada's post-event surveys conducted after the November 2000 general election revealed support for on-line registration. When asked to think ahead three or four years, 70% of electors indicated that they would like to register to vote on-line, if technology allows. This support increases when security concerns are removed. In addition, other stakeholders such as aboriginal electors, special needs electors and the academic community, indicated strong support for on-line voter registration.

[9] The practice of requiring a signature upon registration varies across Canadian jurisdictions. In Quebec [E.A., s. 40.6], an elector may request that his or her name be added or removed from the register by providing the Chief Electoral Officer two identifying documents, as specified by the Chief Electoral Officer, in support of the request.

In Ontario [E.A., s. 15.1(1)-(2)], the identification required of an elector wishing to add or remove the elector's name from the register must be accompanied by identification as required by the Chief Electoral Officer.

The Alberta *Election Act* makes no reference to electors' signatures upon registration.

New Brunswick [E.A., s. 20.9] and British Columbia [E.A., s. 41(3)] require all electors to provide a written signature upon application.

[10] In Alberta [E.A., s. 11(2)], the Chief Electoral Officer may update the register using any information obtained by, or available, to him or her.

[11] According to the *2000 Canadian Election Study*, 83% of electors indicated having received their Voter Information Card correctly addressed to their name.

[12] For more details on the 37th general election, see the *Report of the Chief Electoral Officer of Canada on the 37th General Election Held on November 27, 2000*.

[13] Members of the Standing Committee on Procedure and House Affairs expressed concern about the voter information card during the Chief Electoral Officer's appearances on March 1 and 27, 2001.

Elections Canada's post-event evaluations of the 37th general election show that returning officers indicated that 5% of electors found the term "occupant" somewhat confusing. The issue of "or occupant" was also raised by several members of the Standing Committee on Procedure and House Affairs, during an appearance by the Chief Electoral Officer on March 1, 2001.

[14] For more details on the 37th general election, see the *Report of the Chief Electoral Officer of Canada on the 37th General Election Held on November 27, 2000*.

[15] In British Columbia, a deputy returning officer may require an elector to either produce satisfactory evidence of eligibility or a solemn declaration when there is doubt as to that electors eligibility [E.A., s. 111(3)]. In all other provinces and territories (except Quebec where all electors must prove their eligibility), an elector must, on request of a deputy returning officer, poll clerk, candidate or candidate's agent, complete the prescribed oath, affirmation, or declaration to prove their eligibility to vote in the election.

[16] The drawing of lots has historically been one method of solving such problems where the law is silent. Drawing lots is also used legislatively. For example, the Quebec *Election Act* specifically states that where two candidates have identical names, the returning officer must draw lots to determine the order of names on the ballot paper [E.A., s. 324]. In Ontario, such incidences are resolved at the discretion of the Chief Election Officer [E.A., s. 27(8)]. In British Columbia, the Chief Electoral Officer may modify the names or include additional information (such as address) to differentiate between candidates with the same name [E.A., s. 86(4)]. In other jurisdictions, candidates' names are often printed with their occupation or address, which allows for easy alphabetizing in the case of identical names.

[17] The act defines the validity of a ballot to be counted. Those failing to qualify, which include protest votes as well as those considered non-valid for any other reason, are put apart and classified in one single group known as the rejected ballots, when tabulating the election results.

[18] While these five jurisdictions offer electors the option of declining a ballot, only Manitoba requires the Chief Electoral Officer to include the number of declined ballots in the report to the Legislative Assembly. In this way, the expression of a voter's discontent is reflected in the final vote tally.

[19] For more details on the 37th general election, see the *Report of the Chief Electoral Officer of Canada on the 37th General Election Held on November 27, 2000*.

[20] With the coming into force of Bill C-78, *An Act to Amend Certain Acts with Respect to Persons with Disabilities* (1992), the *Canada Elections Act* was amended to provide level access at all advance polls, ordinary polling sites, and the offices of returning officers. Nearly all provinces have similar requirements.

Despite the fact that only 0.5% of the polling sites did not provide level access, Elections Canada's post-event evaluations of the 37th general election showed that 13% of the special needs association representatives surveyed reported that the polling stations were not physically accessible and accommodating to their members, while 57% reported that they were well adapted to their members' special needs.

[21] In New Brunswick, for example, electors may apply for a transfer certificate at any time up to the opening of polls on election day [E.A., s. 80(1), 80(5.1)].

[22] In *Strengthening the Foundation: Annex to the Report of the Chief Electoral Officer of Canada on the 35th General Election*, the Chief Electoral Officer recommended that provision be made to allow an elector to apply for a transfer certificate at any time until the close of polls on election day, should they be unable to vote without difficulty, at a polling station without level access.

[23] The Royal Commission on Electoral Reform and Party Financing recommended in 1992 that the Special Voting Rules be extended to all eligible voters (rec. 2.2.5). As a result, Bill C-114 was passed by Parliament in 1993, removing the restrictions on eligibility to vote by special ballot (Canadian Forces electors and other specific categories).

[24] In Saskatchewan, an elector who requests a ballot after another person has already voted in that voter's name must make a voter's declaration before receiving a ballot [E.A., s. 70]. In British Columbia, such an elector must either produce satisfactory identification to the deputy returning officer, or make a solemn declaration [E.A., s. 112]. In Ontario, an elector who attempts to vote after another elector has already voted in his or her name must execute the prescribed statutory declaration [E.A., s. 47(3)]. In most other jurisdictions, voters are required to take an oath before the deputy returning officer, not a solemn declaration.

[25] Section 3 of the *Canadian Charter of Rights and Freedoms* provides that "every citizen of Canada has the right to vote in an election of Members of the House of Commons or of a legislative assembly, and to be qualified for membership therein."

The nomination regime was initially implemented in 1874, when the requirements for a candidate's deposit and supporting signatures were introduced. Political parties were not recognized in electoral law until 1970. However, our modern electoral democracy has evolved to a point where most candidates in federal elections are nominated by registered political parties. The rules of nomination have changed over the years to reflect this trend, and must continue to do so.

[26] According to the Royal Commission, nomination requirements serve to demonstrate that a person's candidacy is "serious and related directly to the electoral process." RCERPF, Vol. 1, p. 87.

As a result of changes introduced with Bill C-2 in May 2000, returning officers must verify within 48 hours, that all names and signatures on the nomination papers are electors entitled to vote in that electoral district. During the 2000 general election, four candidates' nomination papers were rejected because they did not collect the required number of signatures from electors residing within the riding.

[27] Elections Canada's post-event evaluations of the 37th general election revealed that both candidates and political party representative were generally satisfied with the current rules for candidates' nomination. Candidates were more satisfied (88%) than political party representatives (45%). During the 12th Session of the Advisory Committee of Political Parties, a number of party representatives recommended that Elections Canada review and simplify the nomination process.

[28] All provinces and territories have signature requirements for candidates seeking nomination. The number of signatures required in provincial elections ranges from 4 signatures in Saskatchewan to 100 in both Quebec and Manitoba (although neither Manitoba nor Quebec require a deposit).

[29] Electronic delivery (such as fax) of nomination papers was enabled by Bill C-2 in May 2000. Previously, only candidates in remote ridings listed in the Act were permitted to fax nomination forms, as long as the original documents were received within 48 hours.

[30] The $1 000 deposit was established in 1993, following the recommendation of the Royal Commission on Electoral Reform and Party Financing (rec. 1.3.15). The original deposit sum, established in 1874, was $50, which was raised to $200 in 1882 and remained at that amount until 1993. Similar systems exist in the provinces and

territories, where candidate deposits are generally $100 or $200. Manitoba and Quebec do not require a candidate to submit a deposit, but have the highest signature thresholds (100 signatures).

[31] Elections Canada's post-event evaluations of the 37th general election revealed that half (50%) of the political party representatives surveyed were dissatisfied with the current verification process for candidates' nomination papers. When asked why they thought so, 21% reported that the requirement of signatures was somewhat difficult to meet. Candidates themselves expressed less dissatisfaction, with only 12% of respondents indicating that they were dissatisfied or very dissatisfied.

As stated by several members of the Advisory Committee of Political Parties during the 12th Session, the nomination process should not disenfranchise candidates from their constitutional right to run as a candidate in a federal election (Section 3 of the *Canadian Charter of Rights and Freedoms*).

[32] Law Reform Commission of British Columbia, *Report on Affidavits: Alternatives to Oaths*, LRC 115, November 1990.

[33] At the 13th Session of the Advisory Committee of Political Parties, a member recommended that political parties be allowed to submit the endorsed candidates' deposit fees with the Receiver General of Canada. The recommendation received support from a number of other party representatives.

[34] At the 13th Session of the Advisory Committee of Political Parties, the majority of party representatives supported a recommendation allowing party leaders to file a list of endorsed candidates with the Chief Electoral Officer.

[35] Section 24.2 of the Manitoba *Elections Act* only recently came into force, on January 1, 2001. Prior to January 2001, the provisions respecting candidates' leave from employment, an employers' ability to contest such leave, and the mechanisms to resolve disputes, did not exist.

[36] See also the *Parliament of Canada Act*, R.S. 1985 c. P-1.

[37] While the terminology may differ, the concept of political party registration is also found at the provincial level. In fact, all provinces and territories except for the Northwest Territories and Nunavut (which do not have political parties) require political parties to apply to the Chief Electoral Officer to obtain an official status under the electoral legislation.

All provinces and the Yukon Territory require political parties to have nominated a certain number of candidates in order to remain a registered party or to acquire registered status. This number ranges from 2 in British Columbia to 51 in Ontario.

This principle was recognized by the Ontario Court of Appeal in *Figueroa* v. *Canada* (A.G.) (leave to appeal to the SCC has been granted).

[38] The federal government, in 1964, established the Barbeau Committee to study election expenses at the federal level. This followed the introduction, in 1963, of legislation in Quebec that provided spending limits and election expense reimbursements. The Pearson government did not take up the Barbeau report, tabled in 1966, but in 1970, Prime Minister Pierre Trudeau convened the Chappell Committee to review and expand the Barbeau report. Also in that year, the *Canada Elections Act* was amended to provide for the registration of political parties, a first step in the introduction of the election-financing regime in 1974.

[39] Bill C-9 received royal assent on June 14, 2001, and came into force on October 1, 2001, when the Chief Electoral Officer published a notice in the *Canada Gazette* to that effect. The main objective of the bill was to address the Ontario Court of Appeal ruling in *Figueroa* v. *Canada (Attorney General)* respecting the identification of political affiliation of candidates on election ballots, as well as to make several technical and translation amendments to the *Canada Elections Act*.

[40] Provincially, only British Columbia and Quebec regulate third parties (or election advertising sponsors and private intervenors, as they are called respectively). In British Columbia, election advertising sponsors are defined as

individuals and organizations other than candidates, political parties, or registered constituency associations. In Quebec, an elector or group that does not have legal personality may apply as a private intervenor.

[41] The most common practice across Canadian jurisdictions is to provide the preliminary list of electors to political parties and candidates. It is also common to provide candidates and political parties with a revised list after the revision process.

[42] Members of the Advisory Committee of Political Parties expressed support for the distribution of the lists of electors to eligible parties and registered parties that have not run a candidate in an electoral district in the last election. The current scheme has been termed both unfair and undemocratic by some Members of Parliament and by some members of the Advisory Committee of Political Parties.

[43] In Canada, all jurisdictions provide for tax credits for political contributions. In addition, all provinces except Alberta, British Columbia and the three territories provide for a partial reimbursement of candidates' election expenses. Quebec, Ontario, Manitoba and Saskatchewan also provide for a partial reimbursement of political parties' election expenses.

[44] The *Canada Elections Act* does not provide for reimbursement of third parties election advertising.

[45] At the 14th Session of the Advisory Committee of Political Parties, held on October 4, 2001, a majority of representatives were in favour of reducing the threshold for the reimbursement of candidates' election expenses to 5%.

According to Elections Canada's post-event evaluations of the 37th general election, 65% of candidates and 39% of political party representatives favoured the idea of a unique reimbursement formula for both candidates and political parties. It has been noted by 53% of the academic community surveyed through Elections Canada's post-event evaluations of the 37th general election that current reimbursement formulas favour bigger and richer parties and their candidates. However, 45% of all respondents thought that the current formulas are fair.

Moreover, 23% of the academic community surveyed suggested lowering the threshold for candidate reimbursement.

[46] For more details on the 37th general election, see the *Report of the Chief Electoral Officer of Canada on the 37th General Election Held on November 27, 2000*.

[47] While 15% of valid votes received is a standard threshold for candidate reimbursement in most Canadian jurisdictions, Manitoba requires both candidates and political parties to receive at least 10% of valid votes to be eligible for a partial reimbursement.

[48] This section of the *Income Tax Act* has been in force since 1974, and was most recently amended in May 2000 by Bill C-2.

Six jurisdictions use the same tax credit scheme (for donations of more than $550, the credit is $300 + 33.33% of the amount over $550 or $500, whichever is less).

It should be noted that third parties are not authorized to issue income tax receipts for contributions.

[49] The requirement for an auditor's report for election financing returns was first introduced in 1974.

[50] Political party representatives also expressed the desire for changes in this area during the 14th Session of the Advisory Committee of Political Parties.

[51] As section 85.1 was introduced with Bill C-2 in May 2000, this recommendation serves to address the unexpected anomaly created by the inclusion of that section.

[52] During the 13th Session of the Advisory Committee of Political Parties, several party representatives recommended that auditors' fees be reviewed due to difficulties in hiring auditors willing to work for the present fee.

[53] Members of the 14th Session of the Advisory Committee of Political Parties expressed unanimous support for such a recommendation.

[54] Canada, *Royal Commission on Electoral Reform and Party Financing: Final Report* (1991) vol. 1, p. 375 and p. 381.

[55] At the 13th Session of the Advisory Committee of Political Parties, some members expressed concerns with the current apportionment of broadcasting time, indicating that a more equitable broadcasting system should be established to better serve the electorate by providing electors information about all the choices available to them.

Elections Canada's post-event evaluation of the 37th general election, in surveying academics in the political field, showed that 71% of the respondents stated that the current apportionment scheme was still favouring the major parties. Among the political party representatives surveyed, 55% said that the allocation of *free* broadcasting time was not fair and 45% said that the allocation of *paid* broadcasting time was not fair.

[56] The Broadcasting Arbitrator noted, in both 1997 and 1993, that the term "network" is no longer a sufficient ground for distinguishing between obligations of stations and station groups. (*Report of the Chief Electoral Officer of Canada*, 1993 and 1997).

[57] No provinces or territories have regulations respecting the provision of broadcasting time during an election (although Quebec and New Brunswick allow broadcasters to provide voluntary time), and only four provinces regulate the rates charged for broadcasting. For instance, Newfoundland regulates the rates charged for broadcasting by requiring that broadcasters and publishers offer political parties and candidates the lowest rate offered to another party within the election broadcasting period, as well as outside the election broadcasting period [E.A., s. 226.2(2)].

The Royal Commission on Electoral Reform and Party Financing recommended that broadcasters be required to provide time to registered parties at half the rate they offered it to other advertisers in the same period (rec. 1.6.18).

[58] The Royal Commission on Electoral Reform and Party Financing recommended that the free and paid time allocations should not be linked to one another. Instead, the Royal Commission recommended that network operators and specialty broadcasters be required, separately from paid-time provisions, to provide ten 30-minute free time broadcasts in prime time to be allocated to registered parties based on their percentage of the popular vote in the previous election, the number of candidates each party has nominated, and whether or not the party is represented in the House of Commons (recs. 1.6.22, 1.6.23, and 1.6.24).

[59] The Royal Commission on Electoral Reform and Party Financing recommended, in 1992, that each broadcaster be required to make 360 minutes in prime time available for purchase by registered parties during a specified advertising period (11 days after the issue of the writs until midnight on the second day before election day), up to a maximum of 100 minutes purchased by a registered party from any broadcaster (rec. 1.6.16).

[60] This recommendation builds on a recommendation presented in 1996, which proposed that a "nil return" be submitted by all candidates who did not incur any personal expenses.

[61] These provisions were first introduced into the *Canada Elections Act* in 1998 by Bill C-411.

[62] The issue of filing deadlines was raised at several sessions of the Advisory Committee of Political Parties, especially with respect to the experience of the November 2000 federal general election. Following the election, there was a high number of applications for extensions. For the 37th general election, over 100 extensions had been granted, despite reminders of the filing deadlines from Elections Canada to all official agents on several occasions.

[63] New Brunswick, Quebec, Ontario, Manitoba, Alberta, the Northwest Territories and Nunavut limit the amount of allowable contributions annually. Alberta allows up to $15 000 per year to a political party, plus up to $30 000 during an election campaign. Two provinces limit annual contributions to $3 000: to each political party, independent member or independent candidate, in the case of Quebec, and to each political party, candidate or constituency association, in the case of Manitoba. The limit applies regardless of whether there is an election or not.

[64] The ability of the Commissioner of Canada Elections to enter into compliance agreements and injunctions was introduced with Bill C-2 in May, 2001. Prior to that, although the Commissioner could seek an injunction, it was not specified in the *Canada Elections Act*. Also, the Commissioner had to prove "irreparable harm" in order to obtain an injunction, which was difficult in the midst of an election campaign. There were no provisions for compliance agreements prior to Bill C-2. In *Strengthening the Foundation*, 1996, the Chief Electoral Officer recommended that the Commissioner be empowered to enter into compliance agreements and to issue compliance orders (rec. 121).

The Royal Commission on Electoral Reform and Party Financing recommended that an Electoral Commission be constituted as an administrative tribunal to adjudicate infractions under the Act, and that it be empowered to issue mandatory injunctions and cease and desist orders where required (rec. 1.7.29).

[65] During appearances before the Standing Committee on Procedure and House Affairs on March 1, 2001, members indicated to the Chief Electoral Officer their desire to see the Commissioner of Canada Elections resolve breaches of the *Canada Elections Act* in a more timely and efficient manner.

[66] The provision allowing the appointment of returning officers by the Chief Electoral Officer in Manitoba only came into effect in January 2001, after significant amendments were made to the Manitoba *Elections Act*. However, the Chief Electoral Officer of Manitoba recommended such a change as early as 1995, in his report to the Legislative Assembly following the April 1995 provincial general election.

In both British Columbia and Yukon, assistant returning officers are appointed by the Chief Electoral Officer.

[67] Generally, provincial and territorial electoral legislation allows the Chief Electoral Officer to hire such staff as may be required. In eight jurisdictions, these staff include a Deputy or Assistant Chief Electoral Officer hired at the discretion of the Chief Electoral Officer.

[68] Only Quebec and Ontario require the returning officer to solicit the names for deputy returning officers and poll clerks from candidates of registered political parties. In all other cases (except for Prince Edward Island, which requires deputy returning officers to come from party lists), deputy returning officer and poll clerks are appointed at the discretion of the returning officer or (in the case of poll clerks) the deputy returning officer.

[69] This recommendation builds on and extends a previous recommendation made in the 1996 Annex, *Strengthening the Foundation*, in which it is recommended that political parties be provided only one opportunity to provide names of potential deputy returning officers and poll clerks to returning officers (rec. 106).

[70] A provision respecting the leave of absence for candidates already exists in the Act (sec. 80), requiring all employers under Part III of the Canada Labour Code to grant leave, with or without pay, to employees who wish to seek elected office. Similarly, the Act requires all employers to provide three consecutive hours on election day to all voters for the purpose of casting their ballots [sec. 132(1)].

[71] Part 2.1 (sections 24.2 to 24.4) of the Manitoba *Elections Act* came into force in January 2001.

[72] For more details on the 37th general election, see the Report of the Chief Electoral Officer of Canada on the 37th General Election Held on November 27, 2000.

[73] The issue of tariff of fees was raised by the Standing Committee on Procedure and House Affairs (on May 17, 2001), as well as by the Advisory Committee of Political Parties (February 9, 2001). In both instances, it was suggested that Elections Canada undertake to review and revise the tariff of fees.

[74] The *2000 Canadian Election Study* highlighted the fact that 94% of electors think that the public has the right to know from whom and from where political parties and candidates get their campaign funds.

[75] The provision requiring financial returns for trust funds established by registered political parties for electoral purposes was first introduced in Bill C-2, in May 2000.

[76] According to the Elections Canada post-event evaluation of the 37th general election, most of the candidates, political party representatives and academics surveyed agreed that local associations' expenditures and contributions should be reported.

[77] William Stanbury called the unregulated finances of local associations a "black hole" in the Canadian election financing regime (*Money in Politics: Financing Federal Parties and Candidates in Canada*, RCERPF Research Studies 1992, volume 1, p. 375).

Across Canada, six jurisdictions (Nova Scotia, New Brunswick, Quebec, Ontario, Alberta and British Columbia) require local associations to register with the Chief Electoral Officer for the jurisdiction. Five of these provinces also require an annual financial return from local associations (all but Quebec). In Manitoba, all local associations must submit a financial return annually, although local associations are not required to register.

The Royal Commission on Electoral Reform and Party Financing recommended a more stringent system that would have required all constituency associations of political parties to register with the Chief Electoral Officer, and to present the Chief Electoral Officer with a copy of the association's constitution as a requirement of registration (RCERPF, volume 1, recommendations 1.5.5 and 1.5.6).

At the 14th Session of the Advisory Committee of Political Parties, a majority of representatives expressed support for disclosure of the financial activities of political parties' local associations.

[78] As noted earlier, most academics surveyed following the 37th federal general election indicated support for disclosure of candidates' nomination expenses. In addition, 78% of candidates surveyed indicated that they agreed or strongly agreed that disclosure requirements should be extended to nomination campaigns.

[79] Such a recommendation was made by the Royal Commission on Electoral Reform and Party Financing in 1992, (rec. 1.7.2 (b)).

Currently, at the provincial and territorial level in Canada, no jurisdiction requires the disclosure of candidates' finances for nomination campaigns.

During the 14th Session of the Advisory Committee of Political Parties, the idea of disclosing the financial transactions of candidate's nomination campaigns was positively endorsed by a majority of representatives.

[80] According to the Elections Canada post-event evaluation of the 37th general election, most of the candidates, political party representatives and academics surveyed agreed that expenditures and contributions to leadership contestants should be regulated.

Currently, only Ontario and British Columbia regulate the financing of leadership contestants. In Ontario, leadership contestants must register with the Chief Electoral Officer, and must submit a report on their leadership campaign finances. In British Columbia, only a financial report is required.

At the 14th Session of the Advisory Committee of Political Parties, representatives from political parties indicated strong support for disclosure of party leadership campaign finances.

[81] Specifically, it was recommended in *Strengthening the Foundation* that a registered agent be appointed for each leadership contestant, who would be responsible for all financial transactions and for submitting a financial report to the Chief Electoral Officer and the chief agent of the registered political party (rec. 56).