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RESPONSE TO THE CHIEF ELECTORAL OFFICER`S RECOMMENDATIONS FOR LEGISLATIVE REFORMS FOLLOWING THE 40TH GENERAL ELECTION

Report of the Standing Committee on Procedure and House Affairs

Joe Preston, M.P.
Chair

FEBRUARY 2012

41st PARLIAMENT, 1st SESSION

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THE STANDING COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS

has the honour to present its

FIFTEENTH REPORT

Pursuant to its mandate under Standing Order 108(3)(*a*), the Committee has studied the Report of the Chief Electoral Officer of Canada entitled "Responding to Changing Needs – Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election" and has agreed to report the following:

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INTRODUCTION

Section 535 of the *Canada Elections Act* requires the Chief Electoral Officer, as soon as possible after a general election, to make a report to the Speaker of the House of Commons that sets out any amendments that, in his or her opinion, are desirable for the better administration of the Act. On June 9, 2010, the report on the 40th general election was tabled in the House. Entitled *Responding to Changing Needs*, the report addresses a number of broad issues and recommends a number of changes to the *Canada Elections Act*. The recommendations are grouped as follows: issues related to electoral process; issues relating to political financing; governance issues; and technical amendments.

The Committee considered the recommendations from the Chief Electoral Officer over the course of two Parliaments: the 40th, and the 41st Parliaments. The Committee conducted a total of 11 meetings during the 40th Parliament and 14 meetings during the 41st Parliament. It bears mentioning that the Committee strove to achieve consensus on each recommendation and, indeed, the Committee`s determination on virtually all the recommendations reflected consensus.

The Committee appreciates the assistance of Marc Mayrand, the Chief Electoral Officer of Canada (CEO), and officials at Elections Canada, who were instrumental in guiding the Committee in its deliberations on the complexities of the *Canada Elections Act*, and the recommendations to reform the Act for the better management of the electoral process in Canada. The Committee also appreciates the submissions made by representatives of the recognized parties in the House of Commons, three of which appeared before the Committee, while a fourth party made written submissions. These representatives provided important insights into the electoral system. While the Committee did not agree with all of the CEO`s recommendations, it nonetheless considers that overall, his recommendations are sound and, if implemented, will contribute greatly to the ongoing process of improving Canada`s electoral system.

ISSUES RELATING TO THE ELECTORAL PROCESS

I.1 – Authority to Conduct Pilot Projects

The Chief Electoral Officer seeks a broad-based authority to conduct pilot projects during elections and by-elections notwithstanding any impediments that might be imposed by the *Canada Elections Act*. In particular, the CEO would like the authority to conduct pilot projects, subject to this committee`s prior approval, to test possible amendments to the Act, while setting limits on this power.

Currently, section 18.1 of the Act only permits pilot projects related to voting systems including voting by alternative means. If an electronic voting process is proposed to be tested for an official vote, prior approval of both this committee and the Standing Senate Committee on Legal and Constitutional Affairs is required.

The CEO expresses the concern that it is difficult to make concrete and sound recommendations to this committee on amending the Act to improve the functioning of the electoral process and electoral administration in general if he is uncertain whether his proposals would be effective. The authority to conduct pilot projects during elections in situations where the Act may not expressly permit this would enable Elections Canada to test the effectiveness of a solution to address some deficiency in the process before presenting a recommendation to this committee. The CEO emphasizes that this authority would come with limits: all pilot projects would require the prior approval of this committee and would be time-limited.

The Committee accepts the need for this limited authority and agrees with this recommendation. The Committee adds the proviso that it will be required to give prior approval before any pilot projects are conducted.

I.2 – Appointment: Deputy Returning Officers, Poll Clerks and Registration Officers

This recommendation is intended to address the difficulty Elections Canada has had in obtaining the names of suitable persons to be appointed to the positions of **deputy returning officer (DRO), poll clerk and registration officer** from candidates. The CEO therefore recommends that the Act be amended so that it would be the electoral district associations or, failing that, political parties, and not candidates that would provide the list of names of suitable candidates for these positions. These names would have to be provided to returning officers no later than the 28th day before the election. Currently, candidates have until the 17th day before the election to submit names of suitable persons, after which returning officers are free to look to other sources to recruit these election officials.

In response to questions from the Committee, officials from Elections Canada confirmed:

- DROs and poll clerks working at ordinary polls are permitted to continue working for a candidate up until the day before polling day, subject to the situations described below.

- DROs and poll clerks who work at advance polls must remain neutral from the first day of advance polls to the night of polling day.

- Central poll supervisors and information officers who work at advance polls and on election day must remain neutral only on those two days. They can work for their candidates in between those events.

Finally, with respect to a request by the Committee to provide an alternative to the date proposed by the CEO under this recommendation as the final date for electoral district associations (EDAs) or parties to submit their list of names for these positions, the CEO indicated that the 24th day before polling day could be manageable for Elections Canada.

The Committee agrees with the recommendation with a modification that the names be provided by the 24th day before polling day.

I.3 – Additional Election Officers for Polling Sites

The Chief Electoral Officer proposes to amend the Act to authorize returning officers to hire additional election officers in situations where the Act does not grant this power. In the last general election, the CEO used his power of adaptation of the Act to enable returning officers to hire additional election officers including poll clerks, registration officers, information officers and central poll supervisors. These additional election officers were required mainly for advance polling stations. The authority to hire additional election officials has been necessitated in recent years by the increasing voter turnout at advance polling stations.

The CEO sets out two options to address this issue:

- amend the Act to integrate the adaptations made in past elections to facilitate the additional voter turnout in advance polls; or,

- create a new category of election officer by means of an amendment to section 22 of the Act.

Under the latter option, returning officers would assign tasks, in accordance with instructions from the CEO, similar to those performed by **central poll supervisors, registration officers and information officers** in polling sites with a larger number of polling stations. Currently, the Act only permits the hiring of certain election officials depending upon the size of the polling place. For example, central poll supervisors may only be appointed in polling places with more than four polling stations.

The CEO prefers option two since it gives him greater flexibility and it would be applicable to advance polls and polling day polls.

The Committee, however, raised a related issue in the course of its consideration of this recommendation: permitting candidates or electoral district associations to nominate those individuals who may be selected by returning officers to perform the functions of **central poll supervisors**, given the important role played by these officials.

In response, Elections Canada officials proposed the following:

- Amend the Act to enable these election officials to be selected in accordance with the process currently used for the selection of registration officers as set out in subsections 39(3) and (4) of the Act.

- The names of the nominees to perform the role of central poll supervisors be submitted to the returning officer no later than the 24th day before the election.

- Candidates or EDAs should submit their selections for inclusion on both the list for central poll supervisor and the list for deputy returning officer in the event that the returning officer considers the individual to be unsuitable for one of the positions.

The Committee agrees with the recommendation to amend the Act in accordance with Option Two as well as the recommendation to permit candidates and EDAs to submit the names of **central poll supervisors** in the same manner as is done with **deputy returning officers**.

I.4 – Amending Other Federal Laws to Facilitate the Recruitment of Election Staff

The CEO raised concerns about the effect of a number of federal statutes and federal income support programs which impede his ability to recruit sufficient numbers of election staff during elections. In particular, he noted the *Expenditure Restraint Act*, the *Old Age Security Act* and regulations under the *Employment Insurance Act* create disincentives to accepting employment with Elections Canada during elections. As the *Expenditure Restraint Act* is no longer in force, and since amendments to the other statutes are not achievable at this time given that further consultation with the departments that administer those statutes will be required, this recommendation is no longer relevant.

The Committee nonetheless recommends that the Treasury Board increase the wages of elections workers under the Tariff of Fees.

I.5 – Candidates' Representatives: Appointment, Administration of Oath and Movement While Ballots Are Counted

The CEO recommends that a candidate's representative, once sworn in by the central poll supervisor or by a DRO at the first polling station at the polling site visited by the representative, should be permitted to move freely from one polling station to another and conduct his or her work without having to be sworn in again. The CEO also recommends that the representative should be permitted to move between polling stations during the counting of the vote without being sworn in each time he or she moves. A passport system could be adopted, with the pass issued to a representative being valid for all polling stations. Currently, the Act requires candidates' representatives to be sworn in for each polling station.

The Committee agrees with this recommendation.

I.6 – Revision of Preliminary Lists of Electors: By-election Superseded by a General Election

Currently, the Act (subsection 97(2)) does not permit revisions to the preliminary list of electors approved for a by-election to be used for a general election where the by-election has been superseded by the general election. The CEO seeks an amendment to the Act to permit revisions to the preliminary lists of electors approved in a by-election to be automatically included in a general election.

The Committee agrees with this recommendation.

I.7 – Custody of Ballot Boxes Following the Advance Polls

In the interval between the conclusion of the voting hours at an advance polling station and the counting of the ballots on election day, the sealed ballot box is to remain in the custody of the deputy returning officer (subsection 175(5)). The Act does not permit a returning officer (RO) to retrieve a ballot box from a DRO in situations where it may be necessary to remove it from his or her custody due to security or other concerns.

The CEO has had to adapt subsection 175(5) of the Act to enable some returning officers to recover ballot boxes from some DROs in the past. He seeks an amendment to effectively make permanent the temporary procedure used in past elections by adapting the Act. This solution would result in DROs continuing to retain custody of ballot boxes between the time of the advance poll and the counting of the votes on polling day, while enabling a RO to recover ballot boxes from DROs when necessary.

A second option was presented by the CEO which would make ROs the custodians of all ballot boxes. The CEO prefers keeping ballot boxes with DROs while authorizing the RO to recover a ballot box if necessary, as this would minimize the risk of lost ballots by spreading ballot boxes around many DROs.

The Committee agrees with the CEO`s preferred recommendation to authorize a RO to retrieve ballot boxes from DROs when the circumstances require it.

I.8 – Protection of Electors' Personal Information

This recommendation is directed at protecting electors` personal information. The CEO notes that the Privacy Commissioner in her 2009 report, *Privacy Management Frameworks of Selected Federal Institutions*, reiterated a concern about the inclusion of an elector`s date of birth on the lists of electors used by election officials on polling days. The CEO makes two recommendations:

- to remove the requirement in section 107 of the Act that an elector`s date of birth be included on the revised list of electors and the official list of electors made available to returning officers;

- to amend the definition of election documents to include forms used to collect personal information of electors at polling stations so that they are exempt from disclosure.

With respect to the first recommendation, the Committee shares the concerns about protecting the privacy of voters. However, the Committee sees a value in including only the year of birth on the voters` lists. It agrees with this recommendation as modified to include only the year of birth.

With respect to the second recommendation, the Committee agrees with the recommendation.

I.9 – Partisan Signs Outside Polling Sites

Section 166 of the Act forbids the posting or displaying of partisan election material "in or on the exterior surface of a polling place." The CEO indicates that there have been different interpretations of how broadly this restriction is to be applied. Some interpret the restriction broadly to include the entire site on which a polling site is located. Others interpret this to mean the exterior walls of a polling site. The CEO recommends amending the Act to impose a 100-metre restricted zone around a polling site or the office of a returning officer, within which partisan material may not be posted or displayed.

After much discussion, the Committee felt that the 100-metre restriction was excessive and difficult to define. The Committee instead proposes amending section 166 so that it would prohibit the posting or displaying of partisan election materials "on the exterior surface of the unit or room leased for use as a polling place." In the French version of the provision, the term "aires" would be replaced by the word "surface."

I.10 – Registration of Electors by Internet

This recommendation would facilitate voter registration via the Internet. Currently, in order for a voter to register between elections, he or she is required to provide a signed certification that he or she is an eligible elector. In addition, the voter must provide satisfactory proof of identity and residence. These requirements create an impediment to online registration.

There are three parts to this recommendation:

- amend subsections 48(2) and 49(1) to remove the requirement of a signed certification that the person is eligible to vote under section 3 of the Act (Canadian citizen, 18 years of age) and to provide proof of identity and residence. In place of a signed certification, the CEO proposes that the provisions be amended to authorize the CEO to accept an appropriate form of authentication;

- amend subsection 2(3), which defines satisfactory proof of identity and residence, to remove the requirement of "documentary" proof. The CEO proposes that the Act be amended to give the CEO authority to establish "proof of identity and residence in the manner determined by the Chief Electoral Officer;" and

- amend paragraph 46(1)(*b*) of Act to clarify that the CEO may use voter information received from permissible sources under the Act, such as motor vehicle registration bureaus, to register a voter who is currently not registered but whose personal information has come into the CEO`s possession from the authorized source.

The Committee agrees with this recommendation.

I.11 – Vouching

The CEO recommends that one member of a family, all the members of which reside at the same address, should be permitted to vouch for all eligible voters in the family who lack the required identification when presenting at a polling station to vote. The CEO notes that this is permitted in provincial elections in British Columbia and Quebec. It was clarified that the recommendation does not provide a definition of "family" member. This would need to be defined. The recommendation is addressed mainly at families who may have recently moved to an electoral district and may lack the required identification for voting. Finding a voucher outside the family may pose a problem for these voters. This exception to the multiple vouching rule would also be useful to address the problems experienced by Aboriginal electors who are less likely to have the required pieces of identification.

Currently, the Act does not allow multiple vouching. A voter with the required identification may vouch for only one other voter. This restriction was introduced in 2007

with the coming into force of Bill C-31, *An Act to Amend the Canada Elections Act and the Public Service Employment Act*, 1st Session, 39th Parliament.

The Committee does not agree with this recommendation.

ISSUES RELATING TO POLITICAL FINANCING

II.1 – Documents Supporting the Parties' Financial Returns

The CEO renews a concern he expressed in his report following the 38th general election and presents a revised version of a recommendation he made in his previous report. It should be noted that this committee rejected the earlier version of a recommendation to authorize the CEO to obtain supporting documents from a political party in relation to an election expense return.

The CEO now seeks the authority to request from political parties any documentation or information that may be necessary to verify a party`s compliance with the requirements of the Act in respect of the election expense return. He makes clear that he is not requesting an amendment to the Act to require political parties to submit full documentation in support of their election expense return. Currently, only candidates are required to submit documentation to support their election expense return.

The CEO notes that he has an obligation to ensure that political parties are complying with the provisions of the Act relating to election expenses before he provides a certificate to the Receiver General to reimburse a party`s election expenses (50%). Approximately $29 million was paid to the five political parties that qualified for the reimbursement following the 40th general election. He points out, however, that parties are not required to submit documentary evidence in support of the election expenses return.

The CEO presents two options:

- authorize the CEO to request from political parties any documentation supporting the parties` election expense return; or
- increase the responsibility of a party`s external auditor to perform a compliance audit.

With respect to the first option, the CEO proposes that he be authorized to request that specific documentation be submitted by political parties to verify compliance with the legislation as it applies to election expenses returns under section 429 of the Act. The CEO makes clear that the authority he seeks would not extend to other reports or returns that parties are required to file. As well, such authorization would not grant the CEO access to a party`s offices. It may be noted that each province authorizes its chief electoral officer to obtain the documentation to enable him or her to verify electoral expenses reported on an election expense return.

It is noted that five provinces require political parties to submit documentation in support of their election expenses return. Moreover, chief electoral officers in all provinces are authorized to request financial information or documentary evidence from registered parties and to access their premises to inspect their books.

With respect to the second option, a party`s external auditors would be responsible for reviewing a party`s return for accuracy and transparency in accordance with generally accepted auditing standards, as well as for assessing compliance with the political financing rules of the Act. To implement this option, consultation would be required with the professional governing body for auditors and with individual auditors to determine whether this option is workable.

The CEO has indicated that he prefers the first option.

During the Committee`s deliberations, officials from Elections Canada confirmed that the CEO would not use the power to request full documentation for all expenses incurred by political parties during an election or to engage in full audits of the returns of political parties. He would take an approach similar to that of the Auditor General who may audit a particular type of expense. The CEO may, for example, choose a category of expense or a particular line item in a return of a political party, such as expenses related to television advertising, or travel, or he may identify a particular expense that may require further explanation and perhaps documentation. It was also clarified that the proposal would apply only to the five parties that receive a reimbursement of their election expenses.

The Committee was divided on this recommendation. There were differing points of view on the necessity of Elections Canada conducting what amounted to a further audit of a political party`s election expense return after the party has submitted audited financial statements. Some commented that an external audit of a party`s election expense return arranged by the party is not a so-called “compliance audit” to ensure expenses incurred by a party are in accordance with the Act, for example. The financial audit only seeks to confirm that reported expenses are supported by proper documentation, such as an invoice. A majority of the members were concerned about the additional compliance burdens that would be placed on political parties, as well as the possible additional costs to Elections Canada in conducting these audits. These members considered the current process to be adequate for ensuring compliance with the Act.

The majority of the Committee, including all Government members, were supportive of the CEO`s recommendation to “increase the responsibility of a party`s external auditor to perform a compliance audit.”

The Committee, by majority vote, rejected the recommendation to “authorize the CEO to request from political parties any documentation supporting the parties` election expense return.” It is noted, however, that the New Democratic Party and the Liberal Party members were very supportive of this recommendation.

II.2 – Reimbursement of Election Expenses When Limit Exceeded

The CEO notes that there are minimal consequences attached to a failure by a candidate to honour the limits imposed by the Act on election spending. He proposes that a candidate who exceeds his or her spending limit during an election should face a dollar for dollar reduction in the amount the candidate would otherwise receive by way of reimbursement of his election expenses.

The CEO notes that the measures aimed at ensuring compliance with spending limits are purely penal, and minimal, and thus are not an effective deterrent against over-spending. The maximum fine that may be imposed by a judge is $1000. There are no measures in the Act to address any unfair advantage that the overspending candidate or party may have derived from overspending.

The CEO thus proposes a model adopted in two provinces: Ontario and Manitoba. The election finance legislation in both provinces provide that a candidate`s subsidy (election expense reimbursement) will be reduced by the amount by which the candidate exceeded his or her spending limit in an election.

In response to a request from the Committee, Elections Canada provided statistics on the extent of the problem of overspending by candidates. In the 40th general election, there were two cases of overspending: one candidate overspent by 5% or $4189; another overspent by 9% or $7930. In the 39th general election, seven candidates exceeded their spending limit, by percentages and amounts ranging between 1% and 6% or $862 and $4461. In the 38th general election one candidate exceeded his spending limit by a significant amount: 40% or $31,000.

The Committee agrees with the recommendation. The Committee was also unanimous in its view that the CEO recommendation should go further than a dollar-for-dollar reduction. It recommends a scale of monetary penalties depending upon the amount or percentage by which the candidate exceeds the spending limit.

The Committee recommends the following scale for determining by how much an overspending candidate`s electoral expense reimbursement would be reduced:

- Up to 5% excess spending: dollar for dollar reduction
- 5% to 10% excess spending: $2 reduction for each $1 over-spent
- 10% to 12.5% excess spending: $3 reduction for each $1 over-spent
- Over 12.5% excess spending: $4 reduction for each $1 over-spent

In addition, the Committee recommends that the fines imposed for exceeding the spending limit should be doubled from $1000 to $2000 (for strict liability), and where there is intent to exceed the spending limit, the fine should be increased from $2000 to $4000 (on summary conviction) and from $5000 to $10000 (on indictment).

II.3 – Failure of Deregistered Electoral District Associations to File Outstanding Financial Returns

The Act requires EDAs to file annual financial transactions returns. Failure to do so may result in the EDA being deregistered. A final financial transactions return must be filed by a deregistered EDA with six months of deregistration. The CEO seeks the authority to refuse to re-register an electoral district association (EDA) of a political party where the EDA has been deregistered and has failed to file any outstanding returns including its final financial return. The proposed ban on re-registration would last for four years. However, if the EDA filed the outstanding returns during the four year ban, the CEO would move to re-register the EDA.

The financial reporting requirement is critical to ensure transparency in the process of political financing since EDAs are entitled to transfer funds to the party and to provide goods and services to the party, to candidates and to other EDAs. Failing to file a final return in some cases raises questions about the proper disposition of funds. The situation creates the potential for abuse.

Elections Canada notes that there are approximately 1200 registered EDAs. Since 2004, 134 EDAs have been deregistered. Of those 134 EDAs, 32 have applied to re-register. Of the 32 EDAs that sought to re-register, 17 were re-registered with the filing of their final financial transactions return.

The Committee expressed general support for the recommendation. Some members, however, were concerned that a four year ban in all cases may unfairly punish a political party by impeding its ability to re-register EDAs.

A 2-year ban (instead of a 4-year ban) was suggested by Elections Canada, and agreed to by the Committee.

II.4 – Disposal of a Candidate's Surplus Electoral Funds

The *Canada Elections Act* requires that candidates dispose of surplus electoral funds to the political party which endorsed the candidate or to the EDA of the party. The Act, however, is silent with respect to the disposal of surplus property purchased during an electoral campaign. Such property typically includes computers and furniture. Many candidates transfer the property to the EDA. Some do not.

The purpose of this recommendation is to prevent individuals associated with a candidate`s campaign from profiting by keeping excess property or funds derived from excess property, particularly where a public subsidy is paid to a candidate`s campaign through the reimbursement of electoral expenses.

In the course of the Committee`s study of this recommendation, a number of Committee members raised the question of the apparent unfairness of paragraph 473(2)(*b*), the effect of which is that an independent candidate must dispose of surplus electoral funds to the Receiver General of Canada. There is no mechanism in the Act to permit those independent candidates who wish to contest a future election to

keep surplus funds for use in a subsequent election. Elections Canada was asked to return to the Committee with a proposal to address this issue.

Reporting back to the Committee, Elections Canada stated that it would be comfortable with provisions similar to the ones in place in British Columbia and in Newfoundland and Labrador where independent candidates can have access to their surpluses from previous elections if they run again in a general or by-election. The Committee agreed to this provided that it is expressly stated that the return of funds happens, at the latest, at the next general election. In addition, it was clarified that the independent candidate may access the surplus funds in a subsequent election only if he or she runs as an independent candidate, not as a party-endorsed candidate.

The Committee agrees with the recommendation including the related proposal for dealing with the surplus funds of independent candidates.

II.5 – Offences for Filing a Campaign Return with False or Misleading Statements or Filing an Incomplete Campaign Return

The Act prohibits candidates and nomination contestants and their respective official agents or financial agents, as the case may be, from filling an incomplete campaign return or a campaign return with false or misleading statements. The offences related to these prohibitions are not symmetric in the sense that no offence is provided for candidates and nomination contestants, but only for their official agents and financial agents.

The Committee agrees with this recommendation.

II.6 – Election Advertising Expenses of a Registered Party's Electoral District Associations and of Third Parties

This recommendation is aimed at ensuring that third parties and electoral district associations (EDAs) of registered political parties cannot circumvent their spending limit in respect of electoral expenses by incurring expenses just prior to the drop of the writs. The issue is more relevant with fixed-date elections now prescribed in the Act. The CEO proposes amending sections 350 and 403.04 to remove the reference to the time period during which the spending limits apply. A proposed amendment would apply the election advertising spending limits in the Act to expenses incurred before the drop of the writs where the advertising is transmitted during the election period. Similarly, EDAs would be prohibited from transmitting election advertising even if the advertising expense was incurred before the issue of the writs.

The Committee agrees with this recommendation.

II.7 – Candidates' Debates

The Chief Electoral Officer recommends that the Act define under what circumstances expenses incurred to organize a candidates' debate constitute a non-monetary contribution. Similarly, the Act should specify when expenses incurred to

organize a party leaders` debate constitute a non-monetary contribution made to participating political parties and when this should constitute an election expense of those parties.

Elections Canada's policy on candidates' debates is that they are not non-monetary contributions if: the debate is open to the public; all candidates are invited; if some candidates are excluded, there must be a reasonable explanation for the exclusion; and the debate must be conducted in a politically impartial fashion. Elections Canada notes while this approach is generally consistent with the intent of the Act, it continues to receive complaints from small political parties that have been excluded from candidates' debates claiming that the organizers of such debates are making illegal contributions as not all candidates are invited.

The Committee does not agree with this recommendation.

II.8 – Treatment of Candidates' Outstanding Claims (Including Loans)

Elections Canada has proposed significant changes to the manner in which unpaid claims are regulated for the purpose of streamlining and simplifying the regime for unpaid claims including loans: the new regime would provide for an 18-month period within which debts would have to be paid, accompanied by stepped-up reporting requirements, and offences for non-payment of claims after 18 months.

Elections Canada attempted without success to address situations where significant sums of money are loaned to a candidate but never repaid. It indicated that it may not be possible given the current legislative regime, particularly as it relates to contributions.

It was noted in the course of the discussion that the Government has introduced Bill C-21, *An Act to amend the Canada Elections Act (accountability with respect to political loans)*. This bill proposes to introduce significant changes to the way loans for political campaigns are regulated, including: limiting the amounts that an individual may loan ($1100 minus any amounts contributed); corporate loans may only be made by financial institutions and at market rates; and more stringent repayment terms.

Given that the bill is expected to be referred to this committee in the near future, the Committee determined that it would discuss the CEO`s recommendation in the context of its study of Bill C-21.

II.9 – Extensions of Time for Filing Financial Returns

Several recommendations are proposed by the Chief Electoral Officer affecting the regime for political entities seeking an extension of time to file a financial return. The grounds set out in the Act for granting an extension are too narrow and the current regime is not effective for promoting timely disclosure. Moreover, political entities are required to seek court approval for an extension too early in the process and too often.

The CEO proposes the following:

1) Replace the current provisions for granting extensions with a provision authorizing all extensions unless the CEO or a judge determines there has been gross negligence in failing to file the return.

2) Extension of the period in which an application for an extension may be made to the CEO to two weeks following the due date.

3) An application should be made to a judge only where the application is not made to the CEO within the prescribed time; on the expiry of the extension granted by the CEO; and on the refusal by the CEO to grant an extension.

4) Candidates who fail to file an electoral campaign return by the statutory due date should forfeit one-half of their nomination deposit.

The Committee agrees with parts 1 to 3 of the recommendation. It does not agree with the recommendation for the forfeiture of one-half of a candidate`s nomination deposit for failing to comply with the statutory due date.

The Committee does not agree with the recommendation to impose fines for failing to file in a timely manner.

II.10 – Removing the Requirement for Audit Reports on Updated Returns

The Act requires that an updated auditors' report be filed when an updated return is filed by a candidate. The CEO proposes to remove this requirement. The CEO considers this an unnecessary burden on candidates.

The Committee agrees with this recommendation.

II.11 – Contributions to Leadership Contestants

Currently, the contribution limit on an individual contribution to a leadership contestant applies to the contest. Other contribution limits apply on an annual basis where the contribution is made to a political party, an electoral district association or to a candidate. In addition, section 405(5) of the *Canada Elections Act* deems that a contribution made within 18 months following a leadership contest is a contribution toward that contest. This creates uncertainty whether a contribution could be used by a leadership contestant in a subsequent contest held shortly following the first contest. The CEO also notes that the Act creates uncertainty whether a leadership contestant who has debts from a previous leadership contest is barred from accepting contributions to a subsequent leadership contest for 18 months after the conclusion of the first contest.

In addition, there is uncertainty as to whether a leadership contestant who carries a debt 18 months after a contest can continue to accept contributions to pay off that debt.

The CEO recommends the following:

1) Moving from a “per contest” contribution limit to an annual contribution limit for leadership contests.

2) Remove the presumption that a contribution made within 18 months following a leadership contest is a contribution toward that event.

There was considerable discussion over how best to address the uncertainty in the provisions of the Act to which this recommendation is addressed. The Committee noted that Recommendation II.8 attempts to address some of the shortcomings in the regime for loans that would impact the financing of leadership contests. The Committee was also cognizant of the fact that the Government introduced Bill C-21, *An Act to amend the Canada Elections Act (accountability with respect to political loans)*, which could have an impact on the way leadership contests are financed.

The Committee determined that a discussion of the financing of leadership contests, whether through contributions or loans could be usefully tied to its study of Bill C-21 when the bill is eventually referred to the Committee.

II.12 – Adjustments to Leadership Contestants’ Reporting Requirements

Party leadership contestants are required to file six campaign returns starting with a return when the contestant registers to contest the leadership of a political party. The contestant must then file four weekly returns and a final return to be filed within six months following the end of a leadership race. The rationale for these requirements, particularly the requirement to file weekly returns, is to provide the public with timely information about the financing of leadership campaigns before a leader is selected.

There are several parts to this recommendation:

1) Modify the leadership contestant’s return accompanying the application for registration to require the reporting of loans.

2) Eliminate the requirement to report contributions twice (in the return filed on registration, and in the first weekly report) by specifying that the return accompanying the application for registration reports only contributions received up to the beginning of the leadership contest.

3) Weekly returns should be required only from campaigns that accepted loans and contributions in excess of $10,000 from the start of the campaign up to the time of the return.

4) Reduce from four to two the number of weekly returns.

The Committee agrees with this recommendation.

II.13 – Bank Account and Audit of a Candidate's Campaign Return

There are two parts to this recommendation:

1) Eliminate the requirement to open a separate bank account if a candidate conducts no financial transactions after the filing of a deposit.

2) Eliminate the requirement of an auditor's report to accompany a campaign return if the candidate is ineligible for reimbursement of election expenses or did not receive contributions or incur election expenses of more than $10,000.

The intention of this recommendation is to treat candidates the same as nomination contestants in respect of these two requirements. Elections Canada notes that had these requirements been eliminated for the 39th and 40th general elections, it would have reduced by approximately 700 and 600, respectively, the audits for those years.

The Committee agrees with this recommendation.

II.14 – Pre-Confirmation Transfers to Candidates

Currently, parties and electoral district associations are not permitted to transfer goods, services or funds to candidates until the candidacy has been confirmed by a returning officer. To permit pre-confirmation transfers, the CEO proposes amending sections 82 and 365 to deem a person to be a candidate from the moment he or she accepts a transfer. Currently, these provisions are triggered upon a person accepting a contribution or incurring an election expense.

The Committee agrees with this recommendation.

II.15 – Election Superseded by a General Election – Effects on Political Financing and Reimbursement of Candidates' Expenses

The current provisions of the Act concerning the reimbursement of expenses of candidates' and the disposition of campaign assets in the event of a superseded election (a by-election being superseded by a general election) result in unfair treatment of those candidates. Among the unfair results: no reimbursement of expenses if the by-election is cancelled before the close of nominations for the by-election; reimbursement of election expenses, where the candidate is eligible for reimbursement, at a lower rate than for a general election; and the inability of a candidate in the cancelled by-election to transfer the assets from the cancelled campaign to the new campaign for the general election. The CEO recommends a number of amendments to the Act to remedy this situation:

1) Confirmed candidates for a superseded election should be reimbursed for eligible and personal expenses regardless of whether the by-election was cancelled before or after the closing day for nominations.

2) The election expenses of candidates for a cancelled by-election should be reimbursed at the same rate as expenses for a completed election.

3) A candidate for a cancelled by-election should be permitted to transfer campaign assets for the purpose of a subsequent election.

4) Only expenses paid for by the candidate should be reimbursed.

The Committee agrees with this recommendation in full.

II.16 – Adjustment for Inflation (Payments to Auditors)

The CEO proposes making the amounts to be reimbursed to candidates and electoral district associations for the payment of auditors' fees subject to an inflation adjustment.

The Committee agrees with this recommendation and further recommends extending the proposal to the payment of auditors' fees for nomination contestants who incur expenses or receive contributions exceeding $10,000.

GOVERNANCE

III.1 – Contracting Authority of the Chief Electoral Officer

This recommendation generally seeks to formalize in legislation certain powers the CEO exercises in respect of entering into contracts.

There are several parts to this recommendation:

1) Confirm the contracting authority of the CEO by means of a legislative provision.

2) Explicit recognition in the Act of the CEO's authority to enter into agreements and joint procurement contracts with other electoral agencies in Canada.

3) Granting the CEO the authority to enter into lease agreements for all premises used by election officials for purposes of an election including prior to the start of an election. This authority should also be subject to delegation by the CEO to returning officers.

The Committee agrees with this recommendation.

III.2 – International Assistance and Co-operation

The CEO seeks legislative confirmation to provide assistance to electoral agencies in other countries at the request of the Government of Canada. He also seeks legislative confirmation to enter into agreements with foreign electoral agencies and international organizations to share information and develop best practices. This

recommendation is intended to provide a better legal framework for activities that Elections Canada currently undertakes.

The Committee agrees with this recommendation.

III.3 – Electronic Signatures and Transactions – General Clause

The CEO would like the legislative means to authorize a system of electronic signatures for documents that are electronic transactions by political entities or their agents and voters. Currently, the CEO estimates that there are about 50 circumstances or transactions in which a physical signature is required.

Elections Canada provided a list of provisions in the Act where an electronic signature would be appropriate. These provisions include: section 67(4) which requires the witness to the consent of a candidate to be nominated for an election to file various documents with Elections Canada (eg., the party leader`s endorsement); section 92.2(3) which requires a candidate to file a statement disclosing certain gifts and advantages received during the period of his or her candidacy that exceed $500; and, various other documents that are required by political entities to be filed with Elections Canada in the context of political financing.

In response to concerns expressed by Committee members relating to authentication of signatures and the means of authentication, Elections Canada indicated that it would be comfortable with a recommendation that the purposes for which an electronic signature would be used and the method of authentication would be set out in a report tabled in Parliament in a manner similar to the process set out in section 535.2 of the Act. Under this provision, the CEO must table a report to the Speaker of the House of Commons whenever he prescribes the qualifications for returning officers or establishes a process for their appointment or removal, or modifies those qualifications or that process in a significant manner.

The Committee agrees with this recommendation.

III.4 – Right to Vote of Prisoners Serving a Sentence of Two Years or More

As a result of the Supreme Court of Canada's decision in *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519 ("*Sauvé*"), all prison inmates who are otherwise eligible to vote in a federal election may vote regardless of the length of their sentences. The Court struck down the provisions of the Act which denied the right to vote to inmates serving sentences of two years or more. The Government, however, has not tabled legislation to put in place a voting process to facilitate voting for these inmates, most of whom are held in federal institutions. The Act currently only authorizes a process in provincial institutions. The Chief Electoral Officer has had to rely on his power of adaptation in section 17 of the Act in each election held since the judgment in *Sauvé* to enable these inmates to vote. He seeks an amendment to the Act explicitly authorizing him to establish a process for voting in federal institutions.

It was noted that an amendment would also result in prisoners gaining the right to vote in referenda, through the CEO's power to adapt the Act for purposes of the *Referendum Act*. However, the Supreme Court of Canada has not recognized the right to vote in a referendum as constitutionally protected. The voting rights in section 3 of the Charter only apply to voting in an election.

A majority of the Committee did not agree with this recommendation.

The Committee further considers that it would be opportune to engage in a broader discussion, at some future date, of the CEO's powers of adaptation in sections 17 and 179 of the Act. The Committee may also wish to review the *Referendum Act*.

III.5 – Presence of the Media at Polling Stations

Currently the Act does not explicitly grant media access to polling stations. The Act also requires that voters not be impeded when exercising their right to vote and they be free to cast a secret ballot. Still, the CEO granted, on a trial basis, media access to party leaders and candidates opposing them in their ridings at a polling station when casting their ballots. The CEO notes that the media would like increased access to polling stations and have threatened a constitutional challenge to their restricted access. The CEO recommends:

1) That he be permitted to authorize media representatives to be present and to film or photograph party leaders and candidates running against them as they cast their ballots.

2) That this authority may be delegated to returning officers or their staff.

The Committee agrees with the first part of this recommendation.

III.6 – Right to Strike of Elections Canada Staff

The CEO has recommended in previous reports to Parliament that the right to strike of Elections Canada employees be denied. The rationale for this recommendation is that a strike could disrupt an election, particularly in the critical planning stages prior to an election. Amendments would be required to either the *Canada Elections Act* or the *Public Service Labour Relations Act* (PSLRA). The CEO notes that substantial preparations are necessary in anticipation of an election including procuring materials, training staff, assigning tasks, updating computer systems including databases for maps of electoral districts and polling sites, as well as voters' lists.

Currently, the PSLRA, section 197(1) enables the Governor in Council to order that a strike be deferred if it would occur during an election period. The provision, however, does not apply to a period between elections when preparations are underway for the next election. It was noted that no provincial election employees are entitled to strike.

The Committee invited the unions representing Elections Canada employees potentially affected by this recommendation to make written submissions in response to the recommendations.

Following an adequate period of time to allow the relevant unions to make written submissions, none of the unions made submissions.

By a majority vote, the Committee agreed with this recommendation.

III.7 – Field Liaison Officers

Field liaison officers are employed to act as intermediaries between Elections Canada headquarters and the field. They provide important support to returning officers as well as feedback to headquarters on the functioning of elections on the ground. They are employed on consulting contracts, typically for four year renewable terms. The concern is that providing services over a long period of time could create an employer-employee relationship, which could violate the *Public Service Employment Act*. The CEO proposes amending section 22 of the *Canada Elections Act* to include field liaison officers in the definition of "election officer" and to provide for their remuneration and reimbursement of expenses through the *Federal Elections Fees Tariff* as is done for other election officers. It was clarified that this amendment would not create additional costs for Elections Canada.

The Committee agrees with this recommendation.

III.8 – Temporary Suspension of a Returning Officer

The Act does not appear to clearly provide for the temporary suspension of a returning officer for partisanship or incompetence even where the returning officer's conduct threatens the integrity of an election. The Act sets out a process for dealing with the removal of a returning officer and provides certain procedural fairness safeguards. The CEO seeks an amendment to the Act to enable him to suspend a returning officer temporarily during an election period (including the period of preparation prior to an election, if appropriate in the circumstances) and ending 120 days following the end of the election period. The suspension could be lifted during this period if the CEO considers there are no grounds to initiate the process for removal found in the Act. If there are possible grounds for a removal, the suspension would continue during the process in place for determining whether a returning officer should be removed.

The Committee agrees with this recommendation.

TECHNICAL OR MINOR AMENDMENTS

IV.1 – Use of Nicknames by Candidates

The principal issue that is addressed by this recommendation is to achieve a concordance between the French and English versions of the provisions of the Act that

govern the use of nicknames on ballots. Currently, there is a discrepancy between the French and English versions of paragraph 66(2)(*b*) and subsection 66(3).

The English version of paragraph 66(2)(*b*) permits a candidate to replace "one or more given names" with a nickname. The nickname may also be accompanied by the initial "or initials" of the given names. The effect of the French wording of the provision is that where a nickname is used on the ballot it replaces "one or all" of the given names of the candidate. This means that where a candidate wishes to use a nickname, if he or she has more than one given name, all the given names are replaced.

The English version of subsection 66(3) requires a candidate who proposes to use a nickname to provide evidence of "common public knowledge and acceptance" of the nickname if a returning officer requests such evidence. The French version only requires evidence of "common public knowledge." Apart from the lack of concordance, the CEO notes the difficulty in providing evidence of "acceptance" of a nickname.

The Chief Electoral Officer recommends that the English version of both provisions should be amended to correspond with the French version.

The Committee agrees with the recommendation with a modification:

- The Committee prefers that the French version of paragraph 66(2)(*b*) be amended so that it accords with the English version; and

- The Committee agrees with the recommendation that subsection 66(3) should be amended so that the English version accords with the French version.

IV.2 – Cancellation of a Nomination – French Version of Section 73

Nomination papers may be filed in person at the office of a returning officer (section 71) or electronically (section 73). If filed in person, the returning officer must either accept or refuse to accept a nomination within 48 hours of receiving it. If filed electronically, the original documents must be filed within 48 hours after the close of nominations. Failure to file the original documents will result in the returning officer "cancelling" the nomination unless the individual can satisfy the returning officer that all reasonable efforts were made to file the originals within the time required.

The French version of section 73 fails to make the distinction between a refusal to accept a nomination and a cancellation of a nomination. The CEO therefore recommends that the word "rejetée" in section 73 be replaced with the word "annullée" to reflect the distinction and to accord with the English version.

The Committee agrees with this recommendation.

IV.3 – Information Provided on the Application for Registration to Vote by Special Ballot

Subsection 233(3) of the Act requires electors who submit an application for registration and special ballot to indicate whether their name is already on a list of electors and for which electoral district. The CEO recommends removing this requirement. With the establishment of several national databases, information provided by electors under this provision is no longer useful and in some cases creates confusion.

The Committee agrees with this recommendation.

IV.4 – Registration Certificate – Outgoing Member of Parliament

An elector is entitled to have his or her name listed on the elector's list in the polling division in which he or she ordinarily resides (section 6). Candidates who are outgoing MPs, as well as family members residing with the candidate, have a number of other options for inclusion on a list of electors: the polling division for a place of temporary residence of the candidate in the electoral district in which the candidate is running; the office of the returning officer for that electoral district; or the place in the area surrounding Ottawa where the former MP resided when carrying out his duties as a parliamentarian (section 10).

The French version of subsection 161(4) (issuance of a registration certificate for polling day registration) contains restrictive wording that could prevent outgoing MPs who are candidates in an election from registering to vote. The CEO recommends amending the French version of subsection 161(4) of the Act by deleting the words "au bureau de scrutin établi dans la section de vote où il réside habituellement" so that it accords with the English version.

The Committee agrees with this recommendation.

IV.5 – Returning Officers Prohibited from Participating in Activities of Electoral District Associations

Returning officers are prohibited from engaging in certain partisan activities while in office: making campaign contributions; becoming a member of or working for a political party or a registered association (subsection 24(6)). The Act, however, does not list unregistered associations as one of the entities which a returning officer is prohibited from joining.

The CEO proposes to replace the term "registered association" in subsection 24(6) with the term "electoral district association" (EDA).

The Committee agrees with this recommendation.

IV.6 – Updating the Rules Respecting the Tariff of Fees

The *Federal Elections Fees Tariff* (the Tariff) regulates the payment of election officers and other election workers. The Tariff is made under the authority of sections 542 and 545 of the Act. The CEO has noted that not all expenses that arise in the course of an election can be foreseen. To deal with unforeseen expenses, the provisions enable the amounts in the Tariff to be adjusted in two situations.

- Additional payments may be authorized when the Tariff amounts are insufficient to cover fees and expenses for the services to be provided or where the Tariff does not cover essential services or goods that are required in the course of an election. The power to make these additional payments rests with the Governor in Council with no authority in the Act to delegate that power.

- The Governor in Council may make regulations permitting the CEO to increase payments in some circumstances but only with respect to *services* already covered by the Tariff, but not *goods*.

The Treasury Board`s *Travel Directive* (the Directive) prescribes the travel expenses that may be reimbursed to public servants. The Directive is incorporated by reference in the Tariff to enable election officials to receive the same level of reimbursement for their travel expenses as public servants. The Directive is amended from time to time by the Treasury Board.

The Standing Joint Committee on the Scrutiny of Regulations has expressed the concern that these provisions result in an improper delegation of the powers of the Governor in Council to the Chief Electoral Officer, in the first case, and the Treasury Board, in the second situation.

The CEO proposes repealing section 545 of the Act and amending subsection 542 of the Act to authorize the Chief Electoral Officer to set the amount that may be paid for goods and services not covered by the *Federal Elections Fees Tariff*, and that are required for an election, and amending section 542 to directly incorporate the Treasury Board's *Travel Directive*, and subsequent amendments, in the Act. The CEO also seeks an amendment to enable him to authorize payment of "any additional sums he deems to be fair and reasonable" where he determines that the fees and allowances provided for in the tariff, as set out in subsection 542(1), would constitute insufficient remuneration for services to be rendered during an election.

The Committee agrees with this recommendation.

IV.7 – Payment of Claims

The CEO proposes amending section 543 of the Act to reflect the practice of electronic payment of most claims, particularly the wages of election workers. Election workers or suppliers who wish to be paid by cheque could continue to receive one from the Receiver General.

The Committee agrees with this recommendation.

IV.8 – Use of the Preliminary Lists of Electors by a Registered or Eligible Party

The CEO recommends amendments to sections 93, 110 and 111 of the Act to regulate the uses that may be made of electronic lists of electors in the same manner as other non-electronic lists that are made available to parties that receive these lists from Elections Canada.

Bill C-31 amended the *Canada Elections Act* to authorize the CEO to provide registered and eligible parties with electronic copies of the preliminary lists of electors for each electoral district. This resulted in the enactment of subsection 93(1.1).

Subsection 110(1) restricts the purposes for which the lists may be used by registered parties, those purposes being to solicit contributions and to recruit party members. However, the provision does not apply to electronic lists because it makes no reference to the newly enacted subsection 93(1.1). In addition, the restrictions on the use of the lists only apply to *registered* parties, not *eligible* parties.

The CEO therefore proposes that a reference to subsection 93(1.1) be added to subsection 110(1) of the Act so that electronic copies of the revised lists of electors be subject to the same restrictions as non-electronic lists. He also proposes that a new subsection (1.1) be added to section 110 of the Act so that the restrictions on the use of electronic copies of revised lists of electors also apply to *eligible* parties. A related amendment is also required in sub-paragraph 111(*f*)(i) to subject *eligible* parties to the prohibitions on the use of personal information contained in the lists of electors received by parties.

The Committee agrees with this recommendation.

IV.9 – Registry of Parties

The CEO asks that the reference in section 374 of the Act to subsection 390(3) be removed as that subsection was repealed in 2003.

The Committee agrees with this recommendation.

IV.10 – Judicial Recount – Notice to the Returning Officer

The CEO recommends that when an elector wishes to apply for a judicial recount of the results of an election, pursuant to section 301 of the Act, he or she be required to give written notice of the application to the returning officer before submitting the application to a court. A notice will enable the returning officer to be in court and provide information to the judge conducting the recount on logistics and personnel needed to conduct the recount.

The CEO notes in his report that giving a returning officer written notice whenever an elector wishes to apply to a judge for a recount, would constitute a minor imposition, but would greatly facilitate the work of a returning officer while assisting the judge considering the recount application, and candidates.

It was emphasized that the right to apply to a judge for a recount under section 301 of the Act is distinct from the automatic recount required when the difference between the number of votes cast for the candidate with the most votes and any other candidate is less than 1/1000th of the total votes cast (section 300). In the latter case, the returning officer must ask a judge for a recount within four days after the results of the vote have been validated.

The Committee agrees with this recommendation.

IV.11 – Removal from the National Register of Electors by an Authorized Representative

A person may request that his or her name be deleted from the National Register of Electors under paragraph 52(1)(*c*). Elections Canada will also consider an application to delete an elector's name made by a guardian or curator (under the *Civil Code of Quebec*) of an elector who is under court-ordered protective supervision.

The CEO proposes an amendment to the Act to clarify his authority to remove the name of an elector who is subject to a court-ordered guardianship or curatorship from the National Register of Electors, where requested by an authorized representative of the elector.

The Committee agrees with this recommendation.

IV.12 – Commercial Value Deemed to Be Nil

Subsection 2(2) of the *Canada Elections Act* deals with situations whereby a non-monetary contribution (in the form of goods and services) to a political campaign that is considered to be of little value is deemed to be of no value. The commercial value of these contributions is deemed to be nil where the amount charged for it is less than $200 and it is provided by a person who is not in the business of providing the good or service.

The CEO has expressed concerns in his report about the consistency of this provision. The intent of the provision is to relieve political entities of the burden of reporting the numerous in-kind contributions provided to these entities in circumstances that would not warrant reporting. Examples of these non-monetary contributions include volunteers who canvass in rural ridings using their own car. This, providing the use of a car for purposes connected to a political campaign, would constitute a non-monetary contribution were it not for subsection 2(2) of the Act.

The CEO is concerned, however, that the provision as currently worded is not in keeping with the intention of Parliament as it could allow circumvention of the campaign

finance rules in the Act, particularly with respect to contribution limits and disclosure. It could permit, in the example cited by the CEO in his report, someone who is not in the business of selling furniture to provide a candidate with all the furniture required for an election campaign. The contribution could be deemed nil if the contributor charged less than $200 notwithstanding the true commercial value of the furniture.

A second concern is that the provision refers to a “person” providing the good or service. A person could include both a natural person and a corporation. This could, thus, permit a corporation and a political entity to circumvent the ban on contributions introduced in 2007. It should be noted that subsection 2(2) of the Act predates the legislative reforms that banned corporate and union contributions.

Thirdly, the provision suggests that it applies on a transaction-by-transaction basis, thus permitting cumulative non-monetary contributions that could exceed not only the $200 limit in the provision, but the maximum amount that individuals are permitted to contribute to the various political entities.

The CEO recommends:

- Restricting the application of the provision to Canadian citizens and permanent residents;

- Replacing the words “the amount charged” in paragraph 2(2)(*b*) with the term “commercial value.”

The CEO has, however, withdrawn his proposal that the provision should apply on a cumulative basis in respect of an individual. In the course of the Committee`s deliberations, several committee members, while acknowledging that the proposals seek to ensure that the contribution limits, as well as the restrictions on unions and corporations making contributions, are not circumvented, expressed concern that using a cumulative basis to calculate non-monetary contributions could inadvertently affect many volunteers who provide numerous small contributions in kind (driving, supplying food).
These individuals could potentially be in violation of the Act and could thus be discouraged from volunteering.

The Committee agrees with the revised recommendations.

IV.13 – Connection of Third Parties to Canada

Currently, there is an inconsistency in the Act with respect to third parties. While section 358 of the Act prohibits third parties from using contributions from non-Canadians (citizens or permanent residents) and from corporations or associations that do not carry on business in Canada, the third party itself need not have a connection to Canada in order to register as a third party. In addition, non-resident Canadian citizens and permanent residents are prohibited from inducing electors to vote, to refrain from voting or to vote for or against a particular candidate (section 331).

The CEO notes that third-party election advertising may reasonably constitute such an inducement. In order to ensure consistency with the third-party financing regime in the Act, the CEO proposes the following registration requirements:

- An individual applying to register as a third party should attest that he or she is a Canadian citizen, permanent resident or resides in Canada;

- An official authorized to sign on behalf of a corporation or an association applying to register as a third party should attest that the corporation or association carries on business in Canada; and

- The person responsible for an association or other group should attest that he or she is a Canadian citizen, a permanent resident or resides in Canada.

The Committee agrees with this recommendation recognizing the importance of prohibiting foreign sources of funding in election advertising.

IV.14 – Amendment to Section 435.27 – Late Payments

Subsection 435.24(1) prescribes the period of repayment of certain claims in relation to leadership campaign expenses as 18 months. Paragraph 435.27(*a*) of the Act erroneously states that the repayment period is four months. To correct this inconsistency, the "four-month" reference should be deleted from the paragraph.

The Committee agrees with this recommendation.

IV.15 – Repeal of Paragraph 501(3)(*j*) – Additional Penalties

Subsection 501(2) speaks to offences by registered parties and their officers. These offences are specified in subsection 501(3). Paragraph 501(3)(*j*), however, refers to offences by the candidate`s official agent. This paragraph should be repealed to correct the inconsistency.

The Committee agrees with this recommendation.

RECOMMENDATION CONTAINED IN THE LETTER OF SEPTEMBER 22, 2010 TO THE COMMITTEE

Definitions of Leadership and Nomination Campaign Expenses

Various amendments are being sought to make the definition of leadership and nomination campaign expenses consistent with the definition for candidate campaign expenses. Amendments are proposed affecting section 2(1), which defines leadership and nomination campaign expenses, and section 478.14, which prescribes spending limits for a nomination contest.

The deficiency in subsection 2(1), identified by the Chief Electoral Officer, is that it makes no reference to non-monetary contributions. The provision also defines campaign expenses as expenses incurred during the contest. With respect to the latter, there is a concern that contestants may incur expenses to contest a leadership or nomination contest before or after the conclusion of a contest and these expenses would not be subject to spending limits, in the case of a nomination contest. The CEO provides the example of a contestant purchasing goods or services before the start of the contest, but using the goods or services during the contest. The example is also provided of a nomination contestant with unpaid claims at the end of the contest incurring expenses to raise funds to pay off campaign debts. Under the current legislative wording, these expenses would not be subject to the spending limit for nomination contests as they were incurred after the conclusion of the contest.

There are four proposals within this recommendation:

1) A leadership or nomination campaign expense is an expense reasonably incurred as an incidence of the contest regardless of when it was incurred.

2) Non-monetary contributions are to be expressly included in the definition of campaign expense.

3) If the cost was incurred or non-monetary contribution was received to directly promote or oppose the selection of the contestant it would come within the definition of campaign expense.

4) Costs incurred or non-monetary contributions received by nomination contestants, to the extent that they are used to directly promote or oppose the selection of a contestant during the contest, should be subject to the nomination contestant spending limit.

Elections Canada responded to a number of questions from the Committee about how it currently treats expenses incurred prior to or following a nomination or leadership contest, but the product of the expense is used during the contest. It confirmed the recommendation would bring the legislation into conformity with the practice. It also clarified a number of points relating to contribution limits and spending limits (in the case of nomination contests).

The Committee agrees with this recommendation.

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Elections Canada	2011/10/06	3
François Bernier, Deputy Chief Electoral Officer, Political Financing		
Marc Mayrand, Chief Electoral Officer		
Stéphane Perrault, Senior General Counsel and Senior Director, Legal Services		
Elections Canada	2011/10/20	4
François Bernier, Deputy Chief Electoral Officer, Political Financing		
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		
Elections Canada	2011/10/25	5
François Bernier, Deputy Chief Electoral Officer, Political Financing		
Marc Chénier, Senior Counsel and Director, Electoral Affairs Directorate, Legal Services		
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		
Elections Canada	2011/10/27	6
François Bernier, Deputy Chief Electoral Officer, Political Financing		
Marc Chénier, Senior Counsel and Director, Electoral Affairs Directorate, Legal Services		
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		
Elections Canada	2011/11/01	7
François Bernier, Deputy Chief Electoral Officer, Political Financing		
Marc Chénier, Senior Counsel and Director, Electoral Affairs Directorate, Legal Services		
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		
Elections Canada	2011/11/03	8
François Bernier, Deputy Chief Electoral Officer, Political Financing		

Elections Canada	2011/11/03	8
Marc Chénier, Senior Counsel and Director, Electoral Affairs Directorate, Legal Services		
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		
Elections Canada	2011/12/01	14
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		
Elections Canada	2011/12/06	15
Marc Chénier, Senior Counsel and Director, Electoral Affairs Directorate, Legal Services		
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		
Elections Canada	2011/12/13	16
Marc Chénier, Senior Counsel and Director, Electoral Affairs Directorate, Legal Services		
Michèle René de Cotret, General Counsel, Electoral Affairs Directorate, Legal Services		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings Nos. 2-8 and 14-20) is tabled.

Respectfully submitted,

Joe Preston, M.P.

Chair

Dissenting Opinion from the New Democratic Party of Canada

Notwithstanding our opposition to the majority decision on the three following recommendations, the New Democratic Party would like to express its support for the rest of the recommendations in the report and thank the witnesses who appeared before this committee who provided clarification and assistance throughout the process. This study was a thorough review of the *Chief Electoral Officer's Recommendations for Legislative Reforms Following the 40th General Election* and was conducted by members from four political parties over the course of two parliaments. We would be remiss if we did not commend the committee for its many hours of hard work and deliberation guided by the best interest of the public and the integrity of the electoral process.

With regard to recommendation II.1 *Documents Supporting the Parties' Financial Returns,* the Chief Electoral Officer (CEO) provided the committee with two possible solutions that would strengthen the Canada Elections Act by increasing the oversight and accountability of the financial returns submitted by the political parties. It's important to note that public subsidies are provided to parties based on their election returns. Therefore, in order to maintain the highest level of accountability and transparency it is critical for the CEO to have the necessary means to fully verify returns. The majority of the committee supported the second recommendation, which would expand the responsibilities of parties' external auditors to include performing financial and compliance audits. Although the CEO has stated this solution would increase accountability, the increased costs would have a detrimental impact on smaller political parties and, at present, it is unclear whether or not external auditing firms have the expertise and understanding of the Canada Elections Act to conduct compliance audits.

The NDP concurs with the CEO's preferred solution and believe the most effective, least costly, and simplest means to address this issue is solution 1, to authorize the Chief Electoral Officer to request any necessary documentary evidence supporting the parties' election expense returns. It would allow for the CEO to request only the documentation he/she deems necessary to verify that a party is in compliance with the Act with respect to electoral expenses. The solution would ensure that the CEO has the information required to meet his/her legislative obligations under the Act.

NDP Recommendation: With regard to *Documents Supporting the Parties' Financial Returns,* that the Chief Electoral Officer be allowed to request only the documentation he/she deems necessary to verify that a party is in compliance with the Canada Election Act with respect to electoral expenses.

Concerning recommendation III.4 *Right to Vote of Prisoners Serving a Sentence of Two Years or More,* the Chief Electoral Officer has stated that the voting process for electors who are serving their sentence in a federal institution should be the same as for electors incarcerated in provincial facilities. The NDP is in full agreement with this position, as was the majority of this committee as documented in its report *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*[1], tabled in

[1] *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*, June 2006, p. 10

the House in 2006. The right to vote is a protected democratic right under s. 3 of the Canadian Charter of Rights and Freedoms, and was further upheld in the 2002 Supreme Court of Canada decision in the case of *Sauvé v. Canada (Chief Electoral Officer)*[2]. As the Court mentioned, "the right to vote is fundamental to our democracy and the rule of law and cannot be lightly set aside."

Since *Sauvé v. Canada,* the Chief Electoral Officer has been using his authority under section 17 of the Act (Power to adapt) to allow federal prisoners to vote in every general election and by-election. While the Act sets out the process by which electors in provincial prisons can exercise their right to vote, no process has been established since the Supreme Court decision to allow federal detainees to exercise their constitutional right. The NDP supports this recommendation to reflect the *Sauvé v. Canada* decision and to establish the necessary process to address this inconsistency. Although this recommendation does not address the right of prisoners to vote in a referendum, this should not be reason enough to continue to deprive prisoners of their democratic rights guaranteed under the Charter.

NDP recommendation: With regard to the *Right to Vote of Prisoners Serving a Sentence of Two Years or More,* that the committee accept the Chief Electoral Officer`s recommendation to allow federal detainees to exercise their constitutional right to vote in a manner consistent with provisions for electors in provincial penitentiaries.

Finally, the New Democratic Party cannot agree with the majority of the committee's support for recommendation III.6 *Right to Strike of Elections Canada Staff*, which would withdraw the right to strike for unionized Elections Canada workers. The right to strike is an essential part of the collective bargaining process and the removal of this right should not be undertaken without cause.

While it is understood that a strike by Elections Canada employees during an election period would be detrimental to the democratic process, the Governor in Council currently has the ability to make an order deferring a strike during the period beginning on the day on which the order is made and ending on the twenty-first day following the date fixed for the return of writs[3]. The NDP believes that this power is sufficient to ensure that a by-election, general election, or referendum can be undertaken without overly impinging on the ability of unionized workers to exercise their right to strike, a position reinforced by the decision rendered in 2009 by a Public Service Labour Relations Board adjudicator[4].

NDP Recommendation: With regard to the *Right to Strike of Elections Canada Staff,* that the status quo be maintained.

In conclusion, the New Democratic Party would again like to thank the members of this committee, both current and past, who worked diligently on producing this report. The co-operation and respect for differing opinions shown by these members should serve as an example of how a parliamentary committee can work effectively in the best interest of all Canadians.

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[2] [2002] 3 S.C.R. 519

[3] Public Service Labour Relations Act, Subsection 197 (1)

[4] *Treasury Board v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 120