HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

41st Parliament, Second Session

The Standing Committee on Procedure and House Affairs has the honour to present its

NINETEENTH REPORT

Your Committee, which has received an Order of Reference from the House of Commons on October 17, 2013, is pleased to report as follows:

Order of Reference

On October 17, 2013, the House of Commons ordered "[t]hat the matter of the question of privilege related to the dispute between Elections Canada and the member for Selkirk—Interlake be referred to the Standing Committee on Procedure and House Affairs" (the "Committee").

Background

On May 23 and 24, 2013, the Speaker of the House of Commons received letters from the Chief Electoral Officer informing him of the failure of the member for Selkirk–Interlake and the member for Saint Boniface to provide corrections to electoral campaign returns as requested by the Chief Electoral Officer pursuant to subsection 457(2) of the *Canada Elections Act* (the "Act").[1] This subsection reads as follows:

> 457.(2) The Chief Electoral Officer may in writing request the candidate or his or her official agent to correct, within a specified period, a document referred to in subsection 451(1) or 455(1).

The letters referred to subsection 463(2) of the Act, which provides that an elected candidate cannot sit or vote in the House if he or she has failed to make corrections requested by the Chief Electoral Officer pursuant to subsection 457(2). This subsection reads as follows:

[1] *Canada Elections Act*, S.C. 2000, c. 9.

> 463.(2) An elected candidate who fails to provide a document as required by section 451 or 455 or fails to make a correction as requested under subsection 457(2) or authorized by 458(1) shall not continue to sit or vote as a member until they are provided or made, as the case may be.

Subsection 459(1) of the Act states that a "candidate or his or her official agent may apply to a judge […] for an order […] relieving the candidate or official agent from complying with a request referred to in subsection 457(2)." The letters of May 23 and 24, 2013 informed the Speaker that to the knowledge of the Chief Electoral Officer, no applications to court had been made to seek relief of his requests to make corrections to electoral returns. However, on June 4, 2013, the Chief Electoral Officer officially informed the Speaker that applications had been filed to the court with respect to the request to correct electoral returns pursuant to subsection 459(1) of the Act.

On June 5, 2013, the member for Avalon raised on a question of privilege arguing that the member for Selkirk—Interlake and the member for Saint Boniface should "be suspended immediately" and that they should not sit or vote in the House until the returns are rectified. The Leader of the Government in the House,[2] the member for Toronto—Danforth, the member for Winnipeg North,[3] the member for Beauséjour,[4] the member for Selkirk—Interlake[5] and the member for Saint Boniface[6] also made representations on the question of privilege.

On June 7, 2013, the Speaker made a statement in the House indicating the he had no statutory or Standing Order authority to table correspondence received from the Chief Electoral Officer.

On June 18, 2013, the Speaker ruled that the matter raised a *prima facie* question of privilege. The Speaker referred to the exclusive authority of the House of Commons to determine if one of its members should continue to sit and vote. He also referred to the two different arguments interveners had made in this case: calling for the suspension of the members immediately despite pending legal proceedings or awaiting the final decisions from the courts on the matter before seizing the House of the matter. He indicated that the Act gives no guidance to the Speaker as to how to proceed with respect to subsections 457(2), 459(1) and 463(2) while such guidance was provided in other circumstances. He stated:

> I believe it would be helpful to the whole House, and to me as Speaker, if the Standing Committee on Procedure and House Affairs were to examine the issue with a view to incorporating in our Standing Orders provisions on how the Chair and the House ought to deal with such matters in the future. The committee might begin by looking at the lack of a clearly defined process for communications on these matters between the Chief Electoral Officer and the Speaker and between the Speaker and the House.[7]

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2 House of Commons, *Debates*, June 5, 7 and 11, 2013.
3 House of Commons, *Debates*, June 5 and 7, 2013.
4 House of Commons, *Debates*, June 18, 2013.
5 House of Commons, *Debates*, June 7, 2013.
6 House of Commons, *Debates*, June 7, 2013.
7 House of Commons, *Debates*, June 18, 2013.

The Speaker decided to make available correspondence he had received and would receive from the Chief Electoral Officer on the matter. He finally informed the House that he had received correspondence from the Chief Electoral Officer informing him that the member for Saint Boniface had since provided a corrected return.

Later that day, the House of Commons adjourned for the summer.

On September 16, 2013, Parliament was prorogued.

The question of privilege was raised anew, with respect to the member from Selkirk—Interlake, in the new parliamentary session by the member for Toronto–Danforth on October 17, 2013. The Speaker, in referring to his ruling of June 18, 2013, found that there was a *prima facie* question of privilege, and upon the appropriate motion being adopted, the matter was again referred to the Committee.

On February 5, 2014, the Speaker advised the House that he had received a letter from the Chief Electoral Officer informing him that the member for Selkirk—Interlake has provided a corrected return as required by the *Canada Elections Act*.

Discussion

On June 19, 2014, Bill C-23, An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts *(Fair Elections Act)*, was given Royal Assent.

Bill C-23 amended the *Canada Elections Act* to, among other things, supplement the process for dealing with electoral campaign expenses for candidates, and electoral campaign returns.

The requirement that a candidate's official agent submit an electoral campaign return for a candidate in the prescribed form to the Chief Electoral Officer within the four-month period following election day was not amended by the provisions contained in Bill C-23.

Bill C-23 broadened the process and set new timelines in the *Canada Elections Act* for a candidate's unpaid amounts of claims. Under new clauses 477.59(11) and 477.59(12) added by the bill, updated versions of the statement of unpaid claims, in the form prescribed by the bill, must be provided by a candidate's official agent to the Chief Electoral Officer between the 18th and 19th month following election day, and as required, between the 36th and 37th months following election day.

Bill C-23 amended the Act to provide that corrections or revisions to a candidate's electoral campaign return, statement of unpaid claims, or report on irregular claims and payments can be requested by the Chief Electoral Officer. A candidate or their official agent may also apply to the Chief Electoral Officer for the authorization to make such a correction or revision. Any corrections or revisions must be performed according to time periods now specified in the Act. Additionally, a candidate or their official agent may apply to the Chief Electoral Officer to seek an extension of a time period. The Chief Electoral Officer may not inform the Speaker of the House of any such

incident until the expiration of the specified time period, or, if applicable, the expiration of the authorized extension to this time period.

A candidate may also apply to a judge for an order authorizing an extension of a time period or for an order relieving the official agent from a request for a correction or revision by the Chief Electoral Officer. A time period for making such an application has been added to the Act; the Chief Electoral Officer may not inform the Speaker of any such incident until the expiration of this time period.

Following the exhaustion of the process for corrections and revisions as set out in the Act as amended by Bill C-23, the Chief Electoral Officer may inform the Speaker that a requested document was not provided, or a correction or revision was not made, and that, according to the Act, the elected candidate is not entitled to continue to sit or vote as a member of the House.

The Committee is satisfied that the amendments made by Bill C-23 to the Act in respect of electoral campaign expenses for candidates, and electoral campaign returns, provide a greater opportunity for a resolution to occur between Elections Canada and an elected candidate concerning a disputed electoral campaign expense or campaign return.

The Committee therefore respectfully recommends that a letter received by the Speaker of the House related to subsections 477.72(2) and (4) in Bill C-23 shall be communicated to all members of the House of Commons within seven calendar days when the House is not sitting, and laid upon the Table of the House at the earliest opportunity when the House is sitting.

The Committee will further undertake to study, as part of its order of reference of October 21, 2013 (study of the Standing Orders and procedures of the House and its committees), the possible need of an amendment or amendments to the Standing Orders in respect of the process for communications on such matters between the Chief Electoral Officer and the Speaker and between the Speaker and the House.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos.12, 14, 47 and 49*)* is tabled.

Respectfully submitted,

JOE PRESTON
Chair