CANADA

CANADA'S ELECTORAL SYSTEM

STRENGTHENING THE FOUNDATION

ANNEX TO THE REPORT OF THE
CHIEF ELECTORAL OFFICER OF CANADA
ON THE 35th GENERAL ELECTION

Published by the Chief Electoral Officer of Canada

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February 28, 1996

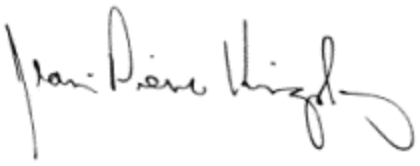
The Honourable Gilbert Parent
Speaker of the House of Commons
House of Commons
OTTAWA, Ontario
K1A 0M6

Dear Mr. Speaker:

I have the honour to submit the Annex to my last report on the 35th general election submitted on January 19, 1994.

This Annex, *Canada's Electoral System: Strengthening the Foundation*, is presented for tabling in the House of Commons, February 29, 1996, in accordance with paragraph 195(1)(*d*), and proposes amendments that in my opinion are desirable for better administration of the *Canada Elections Act*.

Yours truly,



Jean-Pierre Kingsley

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Introduction

On January 19, 1994, the Report of the Chief Electoral Officer, entitled *Towards the 35th General Election* (Chief Electoral Officer of Canada 1994b), was submitted to Parliament in accordance with subsection 195(1) of the *Canada Elections Act*. At that time, it was noted that an annex would be prepared in accordance with paragraph 195(1)(*d*) of the Act and would be submitted under separate cover. This annex, therefore, is comprised of amendments that in the opinion of the Chief Electoral Officer are desirable for the better administration of the *Canada Elections Act*. The proposals presented herein are intended to assist Parliament in its work as it relates to electoral matters. This document and the proposals it contains are intended to initiate dialogue on a number of issues that are important from the perspective of the Chief Electoral Officer. This document is not intended as draft legislation and, consequently, does not contain the level of detail contained in statutory amendments.

In recent years, the Office of the Chief Electoral Officer has played an increasingly important role in electoral reform, particularly as a source of expert advice and counselling. As the officer of Parliament responsible for the administration of the *Canada Elections Act*, the Chief Electoral Officer of Canada possesses a unique perspective on electoral reform, both in terms of the need for reform and the practicality of the reform proposals.

In a statutory report submitted to the Speaker of the House of Commons in 1991, the Chief Electoral Officer confirmed his responsibility for seeking those innovations necessary for the maintenance of Canada's place at the forefront of democratic development. This commitment was made with a full appreciation of the ongoing, evolutionary nature of the electoral reform process, with consideration of the role of the Chief Electoral Officer in seeking to improve the management of electoral events.

The Office of the Chief Electoral Officer sees its role as evolving from one of strictly electoral administration to one of managing the electoral process. "Electoral administration" refers to the statutory duties of the Chief Electoral Officer. According to a recent planning document, entitled *Serving Democracy: A Strategic Plan for Elections Canada* (Chief Electoral Officer of Canada 1994a, p. 2), these duties include the following: "to conduct all federal elections and referendums in Canada and elections in the Northwest Territories; to carry out voter education and information programs; and to provide support to the federal electoral boundaries commissions." "Management of the electoral system," on the other hand, extends to the development of a strategic plan to prepare for tomorrow's demands and challenges. These include responding to the implications of rapid technological change and to the public's insistence on better service, increased accountability, and greater efficiency.

Inherent in the mission of the Office of the Chief Electoral Officer, to "serve the needs of electors and legislators alike in an innovative, cost-effective and professional manner" (Chief Electoral Officer of Canada 1994a, p. 8), are the values that guide the activities of the Office, including its commitment to

- the integrity and openness of the electoral process;
- a fair and inclusive system, accessible to the entire Canadian electorate; and
- the participation of all Canadians in the electoral process (Chief Electoral Officer of Canada 1994a).

Elections in Canada, as in many other countries, "are the democratic means of giving a select group the legitimacy to exercise authority on behalf of the citizens" (White et al. 1994, p. 117). To have a fully accessible electoral system, it is necessary to facilitate the participation of electors, candidates, political parties, and local

associations. Consideration should also be given to the electoral participation of individuals and groups other than candidates and political parties.

As each Member of the House of Commons is elected to represent one electoral district, these districts are the basis of the Canadian electoral system. In this context, local associations usually select the party candidate for each election to the House of Commons and the electoral district's delegates to a party leadership contest.

In recent years, individuals and groups other than candidates and political parties have taken on an increased importance as electoral participants. Because of the nature of the 1988 general election and the focus on the free-trade agreement, the role of independent groups was more pronounced than in past elections (see Hiebert 1991, pp. 20–29; Tanguay and Kay 1991, p. 78). This has resulted in an increased level of attention being paid to the activities of these individuals and groups in the electoral process.

Throughout history, Canadian electoral laws have continuously evolved as various legislative provisions have been reviewed and amended to reflect societal changes. In the period since the Second World War, two major developments in the evolution of the *Canada Elections Act* have occurred. The first was related to the regulation of election financing, while the second concerned the voting process. These two occurrences in combination resulted in the existing legislation, and, therefore, they lead to the current report.

In 1970, Parliament instituted the practice of political parties' registering with the Chief Electoral Officer and provided the foundation for the regulation of election finances. In 1974, provisions for the regulation of election finances were introduced with the *Election Expenses Act*. This legislation was primarily based on the recommendations of the Committee on Election Expenses (1966), as well as those of the Special Committee on Election Expenses (1971).

The three principles underpinning the financing provisions of the *Canada Elections Act* are fairness, transparency and participation. According to Stanbury, the 1974 legislation was intended to foster a measure of equality among candidates and among registered parties, increase the public's confidence in the political process by ensuring that the sources of revenue and the amount of expenditures by parties and candidates were made public, and encourage the general public to participate more in the electoral process by contributing money and providing volunteer labour (Stanbury 1991, p. 7; see also Boyer 1983, p. 58).

The adoption of the *Canadian Charter of Rights and Freedoms* in 1982 was a major factor leading to further amendments to the *Canada Elections Act*. In 1982, the right to vote became "a universal right of citizens and any exclusion of groups or individuals from the electoral process must [now] be constitutionally justified" (Eagles 1994, p. 144). The need for electoral reform as a result of the Charter was widely recognized (Chief Electoral Officer of Canada 1983, 1984, 1989, 1991; Hnatyshyn 1986; Royal Commission on Electoral Reform and Party Financing 1991). Subsequently, major amendments in regard to the voting process were introduced in 1992 and 1993 by Bill C-78, *An Act to Amend Certain Acts with Respect to Persons with Disabilities* (1992), and Bill C-114, *An Act to Amend the Canada Elections Act* (1993). These amendments followed the recommendations of the Royal Commission on Electoral Reform and Party Financing (1991), as well as those of the Special Committee on Electoral Reform (1992).

The amendments to the *Canada Elections Act* made in 1992 provided level access at

polling stations, mobile polling stations, templates to assist blind and visually impaired electors, and transfer certificates for disabled electors to vote at an ordinary poll. The legislation also mandated the Chief Electoral Officer to implement public education and information programs to make the electoral process better known to the public. Some of these amendments were a recognition of administrative measures introduced during the 1980s.

Amendments to the Act in 1993 enfranchised judges, persons with disabilities, and prison inmates, who are now eligible to vote if they are serving sentences of less than two years. Amendments were also made that removed the distinction between rural and urban voters with respect to enumeration, revision and voting. Polling day registration was extended to urban polling divisions. The Act was also amended to reduce the electoral period from a minimum period of 50 days to a minimum period of 47 days, automate the lists of electors, and extend the application of the *Special Voting Rules* to Canadian citizens residing outside the country for less than five consecutive years who intend to return to Canada, inmates serving sentences of less than two years, and electors in Canada who are unable to vote at the advance poll or on polling day in their electoral district.

Other modifications made in 1993 concerned the nomination of candidates: the required number of signatures was increased from 25 to 100; the deposit was increased to $1,000 and made refundable in two parts; and the deadline for withdrawal was changed to three hours after the close of nominations. Candidates were also granted the right to enter any apartment building or multiple residence during reasonable hours for the purpose of conducting their campaign.

Bill C-114 permitted the inclusion of the parties' logos in the registry of political parties and established provisions for the automatic deregistration of a political party if it fails to nominate candidates in at least 50 electoral districts for an election. Bill C-114 also prohibited political contributions from foreign sources and restricted the dissemination of opinion poll results from midnight the Friday before polling day until the close of all polling stations.

Organization of the Report

The objective of this report is to provide parliamentarians with a review of the *Canada Elections Act*, highlighting those areas in which modernization is required. It is necessary to consider the modernization of this legislation for two reasons. First, the Act should reflect the technological, demographic, political and socio-economic changes occurring in Canadian society. Second, the provisions governing election financing were introduced more than 20 years ago, and certain elements of party and election financing continue to be unregulated by the Act.

This review takes the following three principles as a foundation: participation, fairness and transparency. As noted, these principles were the basis for the election financing provisions introduced during the 1970s. Similar principles were also adopted by the Inter-Parliamentary Union (IPU), which represents the parliaments of 129 countries, including Canada, when it adopted its *Declaration on Criteria for Free and Fair Elections* (IPU 1994).

This report is divided into five main parts. In Part I, a variety of issues related to providing *a more accessible and efficient electoral process* are considered. In particular, certain mechanisms that facilitate elector participation and several issues relating to the results of an election are discussed. Despite amendments made by Bill C-114 in 1993, the 35th general election demonstrated that modifications are required to remove certain technical barriers to the

exercise of the franchise and to make the voting process more accessible to electors. The proposals offered in this report are intended to enhance the efficiency of the process, on one hand, and promote the equal treatment of electors, on the other.

It should be recognized that the recommendations concerning the registration process may be temporary, as the whole process will have to be revisited if a register of electors is implemented. As will be discussed, a report on this issue is being prepared for the Standing Committee on Procedure and House Affairs.

In Part II, entitled "Enhancing Candidate and Political Party Participation," the nomination procedures, as well as the provisions relating to the registry of political parties, and the role and duties of the official agent are considered. The nomination and registration requirements are very important, as they result in legal recognition and, possibly, public financial support. The recommendations are intended to improve the existing structures, both to ensure efficiency and to facilitate participation in the electoral process.

In the two subsequent parts, a number of questions related to election financing are addressed. The recommendations in this area are concerned with strengthening the provisions established in 1974, rather than the creation of new structures. As noted by Stanbury, in reference to the financing provisions, "the basic design of the regulatory regime is sound" (Stanbury 1996b, p. 399).

In Part III, "Ensuring Transparency of Financial Operations," attention is paid to areas where disclosure is lacking, where it is necessary to clarify definitions, and where the reporting provisions for electoral participants could be improved. In Part IV, "Ensuring Fair Competition in Election Financing," consideration is given to the allocation of broadcasting time, the dissemination of the results of public opinion polls during an election campaign, the election spending of candidates and political parties, and to the provisions for public funding.

These proposals are intended to promote fairness in the electoral process and, in particular, to improve the existing financial provisions by extending their applicability to certain areas of activity that are currently beyond the scope of the legislation. Additionally, these proposals are expected to improve the openness of the system by requiring enhanced accountability and disclosure.

In Part V, "Managing the Electoral Process," consideration is given to the appointment and duties of certain election officers, to specific powers under the Act, and to other issues, such as the enforcement of the statute. These recommendations are intended to facilitate the administration of elections in light of the increasingly challenging task of managing the electoral process.

The conclusion of this report is a summary list of recommendations, organized by subject areas. It is intended that this listing will provide a quick reference for those interested in one or more particular issues.

There are a number of matters that are not addressed in the current document. First, although the development of a register of electors has been identified as the primary strategic objective of the Office of the Chief Electoral Officer, this objective will not be pursued directly in this report. Instead, a separate report detailing specific proposals for the development and implementation of a register of electors is being prepared for the Standing Committee on Procedure and House Affairs. The current report contains recommendations intended to enhance the flexibility of the Chief Electoral Officer in pursuing the development of a register of electors. At the end of this report is a list of recommendations that

are necessary under the current approach to elector registration (enumeration and revision) but that would have to be reviewed in relation to a register of electors. The issues in this listing will have to be addressed under either scenario, but the impact will be different depending on the approach adopted.

Second, the issues that, from the perspective of the Chief Electoral Officer, would facilitate the better administration of the *Referendum Act* are also excluded from the current report. The Chief Electoral Officer will provide any assistance that may be required by the Standing Committee on Procedure and House Affairs as it conducts its statutory review of the *Referendum Act*.

Third, the *Electoral Boundaries Readjustment Act* is not addressed in this document, as that statute was recently reviewed by the members of the Standing Committee on Procedure and House Affairs. The Office of the Chief Electoral Officer was actively involved in that process.

Fourth, a number of provisions of the *Canada Elections Act* that are currently under the consideration of the courts are also excluded from this report. These provisions include subsections 28(2) and 31(11) to 31(14), related to the provisions by which a political party can be deregistered—*Figueroa et al. v. Canada (Attorney General)*, Ontario Court, General Division—and paragraph 51(*e*), regarding the right of some inmates to vote—*Sauvé v. Chief Electoral Officer* and *McCorrister v. Canada (Attorney General)*, Federal Court of Appeal. These provisions also include subsection 213(1), concerning the period during which candidates may not advertise—*Somerville v. Canada (Attorney General)*, Alberta Court of Appeal—subsections 259.1(1) and 259.2(2), limiting the amount of election expenditures independent individuals and groups are permitted to incur—*Somerville v. Canada (Attorney General)*, Alberta Court of Appeal—and section 322.1, the ban on the publication of opinion polls during the last three days of the electoral period—*Thompson Newspapers v. Canada (Attorney General)*, Ontario Court of Appeal. Once final decisions are released on any of these cases, the Chief Electoral Officer may communicate his views to the Standing Committee on Procedure and House Affairs; he will also respond to any request from the Committee in this respect.

Fifth, as this report is comprised of general proposals, amendments of a technical nature, desirable because of the age of the current statute and its various revisions, are not specified here. It would be appropriate to address details of this nature at the draft-legislation stage.

Finally, this report does not contain a substantive discussion of the existing representational deficits in the House of Commons. The research of the Royal Commission on Electoral Reform and Party Financing documented the underrepresentation of Aboriginal peoples (Gibbins 1991), women (Brodie and Chandler 1991), and members of ethnocultural groups (Pelletier 1991). To improve the representation of these groups, the Royal Commission on Electoral Reform and Party Financing recommended the establishment of Aboriginal constituencies where it is justified by the Aboriginal elector population (recommendations 1.4.12–1.4.17 and 2.5.13) and the provision of monetary incentives for political parties to encourage the election of women to the House of Commons (recommendation 1.5.11). With regard to the issue of the representation of members of ethnocultural communities, the Commission expected its proposed reforms, taken in their entirety, to "eliminate many of the barriers confronting members of minority communities, and facilitate and promote their access to the democratic process" (Royal Commission on Electoral Reform and Party Financing 1991, vol. 1, p. 105).

As the under-representation of Aboriginal peoples, women, and members of ethnocultural groups has not yet been addressed in legislation, Parliament may wish to consider the proposals of the Royal Commission on Electoral Reform and Party Financing, as well as those forthcoming from the Royal Commission on Aboriginal Peoples.

The recommendations in this report draw on those found in the various reports and studies mentioned and are also based on the experience of managing the 35th Canadian general election of October 25, 1993, with all its attendant changes, as noted.

Taking advantage of the opportunity presented by that election, the Office of the Chief Electoral Officer conducted an evaluative research program. The research included a pre-election survey of the Canadian electorate, which was conducted by Environics Research Group Ltd., Toronto, and CROP Inc., Montréal. This survey addressed two general themes related to legislative and administrative changes: voter registration and voting procedures. A series of post-election focus groups were also carried out by these companies to evaluate the communications strategies for youth and the efforts to facilitate access for persons with disabilities.

A survey of returning officers was conducted to obtain information on the local administration of the electoral process. The Office of the Chief Electoral Officer also hosted post-event analysis sessions in Ottawa, during which a group of returning officers and assistant returning officers had an opportunity to provide more extensive feedback on their work at the local level. Furthermore, to assess the impact of Bill C-114 on matters related to elector registration, enumerators, revising agents and polling day revising officers were also surveyed.

The Office of the Chief Electoral Officer received numerous information requests from the public, as well as from candidates, Members of Parliament, and political parties. Feedback was also provided by other groups, such as Aboriginal communities, various ethnocultural communities, and Canadian electors living outside of Canada. Contacts of this kind provide a useful source of information about the need to modify different aspects of the legislation. As a result, the various comments and information requests received were considered during the preparation of this report.

Subsequent to the general election, the proposed bills and motions tabled by Members of Parliament during the 35th Parliament in relation to electoral matters have been considered during the preparation of this report. Whenever applicable, related bills and motions have been taken into account.

Finally, it is appropriate to express appreciation and thanks to Joseph Wearing (Trent University) for his significant contribution to the writing and preparation of an earlier draft of this report. Thanks are also due to the following individuals who provided insightful comments on a draft of the report: Peter Aucoin (Dalhousie University), Jerome H. Black (McGill University), Robert Boily (Université de Montréal), Patrick Boyer (The University of Toronto), R. Kenneth Carty (The University of British Columbia), John C. Courtney (University of Saskatchewan), Lynda Erickson (Simon Fraser University), Janet Hiebert (Queen's University), Jane Jenson (Université de Montréal), Richard G.C. Johnston (The University of British Columbia), Vincent Lemieux (Université Laval), Louis Massicotte (Université de Montréal), F. Leslie Seidle (Institute for Research on Public Policy), William T. Stanbury (The University of British Columbia), and A. Brian Tanguay (Wilfrid

Laurier University). Each of these individuals, through their comments and their respective contributions to the literature on elections and electoral reform, have assisted in the development of a greatly improved final product. The final contents remain the responsibility of the Chief Electoral Officer.

PART I

PROVIDING A MORE ACCESSIBLE
AND EFFICIENT ELECTORAL PROCESS

Canadians support the provision of a broad franchise and making it easy for citizens to exercise that franchise. Although more Canadians participate in late-20th-century elections than in the past, the relatively consistent post-war voter turnout levels indicate that the facilitation of elector participation continues to be a desirable goal. It is therefore important to provide appropriate measures to ensure that each elector is registered and that each elector can exercise his or her right to vote. It is also important to ensure that the election results are calculated promptly and fairly, that fair and accessible recount provisions exist, and that modern and efficient procedures for the voiding of an election are provided.

Chapter 1 Enumeration of Electors

Since the mid-19th century Canada has had a system of registering electors that makes elections more orderly by drawing up lists of those who have the right to vote. The present system of door-to-door enumeration at the beginning of the electoral period, followed by a revision period and polling day registration, is costly, time-consuming and cumbersome. Continuing innovations in information technology make the alternative of a register of electors increasingly attractive. Accordingly, the Chief Electoral Officer is actively examining various means of implementing a register of electors. One alternative that is being considered by the Office of the Chief Electoral Officer is the establishment of a register of electors prior to the next general election. However, as certain problems were identified by election officials during the last general election in relation to the present registration procedures, the recommendations found in this chapter, as well as those in chapters 2 and 3, are intended both to eliminate redundancies in the current process and to facilitate the implementation of a register of electors. A list of recommendations that would have to be reviewed in the event that a register were implemented is provided at the end of this report.

Residence Criteria for Electors at a Temporary Residence

One of the difficulties with the registration provisions relates to subsection 53(1), which entitles every qualified elector to have his or her name included in the list of electors for the polling division in which the person is ordinarily resident on the enumeration date. However, a person who resides in a temporary facility, such as a hostel, lodging, refuge or similar establishment, must have resided at that location for at least 10 days prior to the enumeration date (section 59).

This last requirement makes it impossible for certain electors to exercise their franchise for two reasons. First, an elector who is homeless and who sleeps at a hostel or refuge is unable, in many cases, to sleep in the same location for 10 consecutive days. As a result, this elector is not eligible for enumeration. Second, an elector who moves to a sanatorium or chronic care facility fewer than 10 days prior to the enumeration cannot be registered at that facility, even if the move is permanent.

Bearing in mind that the spirit of the *Canada Elections Act* is to enable Canadian citizens to exercise their right to vote, as guaranteed by the *Canadian Charter of Rights and Freedoms*, the requirement of 10 days residence can disfranchise some electors. Thus, it becomes necessary to remedy this situation.

1. It is recommended that the requirement of 10 days continuous residence in a temporary facility, such as a sanatorium, shelter or similar institution, be repealed.

Election Without an Enumeration—Re-Use of Lists of Electors

With the coming into force of Bill C-114, the Chief Electoral Officer is permitted to re-use the lists of electors compiled for a previous election or referendum if the polling day at the subsequent election is within one year of polling day at the preceding event (subsection 63(3)). This was applied for the first time at the 35th general election, when the Chief Electoral Officer re-used the official lists of electors from the 1992 referendum as preliminary lists in all provinces and territories except Quebec (as the 1992 referendum in Quebec was conducted under provincial law). Because the Chief Electoral Officer is required to be election ready at all times and the timing of an electoral event is not pre-determined, the ability to re-use lists beyond the one-year limit would provide more flexibility.

Moreover, subsection 63(3) currently refers to the re-use of the official lists of electors that are prepared on the third day before polling day and that, therefore, do not include the names of electors who register on polling day. Two changes would make this provision more effective. First, the reference to the official lists of electors should be replaced with a reference to the final lists of electors prepared after polling day. Second, the Chief Electoral Officer should be permitted to determine, through an analysis of data on residential mobility, whether it is more effective to re-use the final lists from a previous event or to proceed with a full enumeration, regardless of the length of time since the previous election.

2. It is recommended that subsection 63(3) be amended to refer to the final lists of electors and that the final lists of electors be defined as the list of electors that is prepared pursuant to section 71.32 and that contains the names of electors whose names are on the revised list, the names of electors who registered on polling day, and the names of electors who registered in accordance with the *Special Voting Rules*.

3. It is recommended that the Chief Electoral Officer be allowed to determine, through an analysis of data on residential mobility, whether it would be more effective to re-use the final lists from the most recent electoral event in a particular electoral district or proceed with a full enumeration, regardless of the length of time since the previous election.

Chapter 2 Revision and Polling Day Registration

Revision is the process by which additions, corrections and deletions are made to the preliminary lists of electors (sections 71.14 through 71.3). After an enumeration, the revision period begins on the 28th day before polling day and ends on the 5th day before polling day at 6:00 p.m. Formal sittings for revision are also held on three specific days, at which time any dispute over the eligibility of an elector to be on the lists may be decided. The returning officer appoints a revising officer for each revisal district within the electoral district to preside over the sittings for revision. However, the returning officer and the assistant returning officer both possess all the powers of a revising officer within the electoral district. The returning officer also appoints revising agents, who may act anywhere in the electoral district for which they are appointed. Revising officers are also appointed in urban polling divisions to receive applications for registration on polling day.

The revising agents assist in the revision of the preliminary lists of electors. They may visit the residence of an elector if the returning officer or the revising officer is informed or believes that an elector at that

residence was not enumerated. Revising agents may also conduct a second enumeration, when so directed by the returning officer. Both revising agents and revising officers may add or correct the name of an elector, on application of the elector. All applications for addition or correction received by revising agents must be presented to the returning officer for approval. Revising officers may delete the name of an elector. If revising agents receive a personal application for deletion, they must present it to the returning officer, who may deal with it or forward it to the revising officer. Finally, revising officers may deal with any objection made by electors.

In this chapter, consideration will be given to the human resources involved in the revision process, the accessibility of the system, and related procedures.

Revising Officers

Recent experience indicates that the position of revising officer has become redundant, with the exception of the revising officer appointed to act on polling day. Revising officers process requests for changes to the preliminary lists, including additions, corrections, deletions and objections. The returning officer and assistant returning officer, however, have all the powers of a revising officer within the electoral district (subsection 71.16(4)) and therefore are authorized to deal with requests for registration, deletion or correction. There is a consensus among returning officers, shared by the Office of the Chief Electoral Officer, that the position of revising officer has become redundant. An examination of the costs associated with the position and the work accomplished by revising officers during the 1993 general election suggests that the position could be abolished in the name of efficiency. During the last election, a total of some 20 objections were filed with the more than 3 000 revising officers across Canada, whom returning officers were obliged under the Act to appoint, at a cost of approximately $1.3 million.

4. It is recommended that the position of revising officer be abolished and that the responsibilities related to the sittings for revision, at which the objections of electors are heard, be transferred to the returning officer and (or) the assistant returning officer.

5. It is recommended that the position of revising officer on polling day be maintained and that this position be renamed “registration officer,” to reflect the nature of the work and avoid future confusion.

Revisal Offices with Level Access

The Act provides for the establishment of one or more revisal offices within each revisal district. Under the current provisions of the Act, the revisal offices are utilized both by the revising officers and the revising agents; should the position of revising officer be abolished, the offices would still be required. At present, however, the Act does not require that level access be provided at those offices (subsection 71.17(2)). With the coming into force of Bill C-78, *An Act to Amend Certain Acts with Respect to Persons with Disabilities* (1992), the *Canada Elections Act* was amended to provide level access at all advance polls, ordinary polling stations, and the offices of the returning officers. Since 1988 the Chief Electoral Officer’s policy on accessibility has required that all revisal offices also be established on premises with level access. The current practice should be legally recognized.

6. It is recommended that level access must be provided at the revisal offices (with exceptions authorized by the Chief Electoral Officer, as is currently the case for ordinary polling stations).

Modifications and Applications for Registration

Revising agents are allowed to act anywhere in the electoral district for which they were appointed. An elector who has just moved into a new electoral district and applies to be registered is not currently required to provide his or her previous address to have it deleted from the list in the former electoral district. This can lead to difficulties, particularly during an election being conducted without an enumeration (pursuant to subsection 63(3)), when more revisions are necessary, as this results in many names being duplicated.

For example, during the 1993 general election, the lists of electors from the 1992 referendum were used as preliminary lists in all provinces and territories except Quebec, where a door-to-door enumeration was conducted. As a result, the revision process in all provinces and territories other than Quebec had to be adapted where significant population mobility had occurred.

The provisions of the Act created difficulties because the name of an elector who was known to have moved during the period between the 1992 referendum and the 1993 general election could not be removed from the list unless the elector personally requested the deletion (subsection 71.26(2)). There is no mechanism in the present legislation to allow a returning officer to request the removal of the name of an elector from the list of electors in another electoral district. As a result, the election officers responsible for the revision do not have the authority to accept a deletion from an elector who previously resided in another electoral district. They may only accept revisions from electors who reside in their own electoral district. Consequently, the total number of names on the 1993 final list of electors was higher than it should have been, resulting in an artificially deflated elector participation rate for that event.

7. It is recommended that an elector who is applying to be added to a list, be required to include his or her previous address in the application form.

8. It is recommended that by filling out the application form, including the previous address, an elector is consenting to the deletion of his or her name from the list for the polling division where the former address is found.

Elector Awareness of Revisions

According to section 71.23 of the Act, each returning officer is responsible for giving public notice of the revision by publishing it in at least one newspaper of general circulation in the electoral district or by such other methods as the returning officer may consider advisable. This discretion could result in non-uniform publicity across Canada.

Consequently, the Chief Electoral Officer directs the returning officers to prepare a notice of the dates, times and locations for the revision and to distribute this list to the candidates in the electoral district. In addition, the Chief Electoral Officer advertises the dates for the revision on a national level and informs electors to contact the returning officer for further information. These practices ensure a relatively equitable and cost-effective dissemination of the information. Formal recognition of the current practice will ensure that the directives of the Chief Electoral Officer are followed.

9. It is recommended that the notification and publicity relating to the revision of the lists of electors be conducted in a manner prescribed by the Chief Electoral Officer.

Elector Identification During the Revision Period

Since the adoption of Bill C-114 in 1993 there have been complaints by electors about the inconsistencies in the legislation concerning when an individual must present identification in order to be registered as an elector and when this is unnecessary. During an enumeration, for example, an individual need not present identification in order to be included on the list of electors. When registering with the Mail-in Registration Card, identification is also not required. During the revision process, however, electors are required to identify themselves and to provide identification for electors who are not present (section 71.26). These requirements should be consistent throughout the registration process.

10. It is recommended that

(a) identification be required when an application is being made during the revision process by one elector on behalf of another elector who does not share a residence with the elector making the request. In this case, proper identification of the elector on whose behalf the request is being made would be required;

(b) when an election officer visits a residence during the revision process, any elector who resides there may request the registration of all other electors living there without identification being required, as is the case during an enumeration; and

(c) when an elector visits a returning officer's office or a revisal office, an elector who has shown identification may request his or her own registration, as well as that of any elector sharing the same residence, without the identification of the other elector being required.

Obtaining Information During the Revision Period

Currently, revising agents have to rely exclusively on personal contact with electors to obtain necessary information and identification (section 71.24). This can be difficult or impossible in large rural electoral districts because of the distances involved. In such circumstances, information about electors could be more efficiently obtained by other methods, such as the facsimile or electronic mail. (More flexibility is already provided for enumerators under subsection 67(1).)

11. It is recommended that the revising agents be allowed to obtain information and identification from an elector who is requesting his or her own registration, as well as registration of those electors who reside at the same address, by means other than personal contact (including data transmission technologies, such as the facsimile and electronic mail).

Statements of Changes

The Act requires that each returning officer prepare and send to each candidate a statement of changes made to the list of electors during the revision period on the 11th and 4th days before polling day, under subsections 71.3(1) and 71.3(2). These statements must indicate the name, address and gender of each elector added to or deleted from the list and all corrections made to the list of electors. This practice, which is labour intensive and costly, constitutes another redundancy found in the current legislation.

According to returning officers, candidates no longer use the statements of changes because they are now taking advantage of the automated electoral lists, which are provided to them on two occasions before polling day, as specified by the Act. These automated lists not only include all the

information from the preliminary lists but also indicate all changes and the nature of the changes (addition, correction, deletion) up to that point.

12. It is recommended that section 71.3, which requires the returning officer to produce and distribute the statements of changes, be repealed.

Polling Day Registration

Since 1993 polling day registration has been available in both urban (section 147.1) and rural areas (section 147). In rural areas, subsections 147(3) and (4) specify that the deputy returning officer is responsible for filling out the polling day registration certificates and recording the names of the electors. This requirement is now simply impractical. The poll clerk is in a better position to complete this work, as it is more compatible with the poll clerk's general responsibilities for keeping records related to the voting (section 125). Returning officers have pointed out that in practice the poll clerks are completing these tasks, and, consequently, a number of returning officers have recommended that this practice be recognized in law.

13. It is recommended that provision be made for either the deputy returning officer or the poll clerk to fill out the polling day registration certificates and record the names of the electors registered on polling day in rural areas.

Registration of Electors at the Advance Polls

Under the existing provisions, only an elector whose name appears on the list of electors prepared prior to the advance poll may vote at the advance poll (section 283). However, an elector may visit the office of the returning officer and vote by special ballot, regardless of whether that person was registered previously. The absence of polling day registration at the advance polls is inconsistent with the provision of registration on polling day during an election. Thus, it would be preferable to provide electors the opportunity to register at the advance polls. This would be best achieved by adopting the model currently used for polling day registration in rural areas, where the process is handled by the deputy returning officer or the poll clerk, rather than requiring another registration officer to attend the advance polls.

14. It is recommended that provision be made for the acceptance of requests for registration at the advance polls and that this process be administered by the deputy returning officer or poll clerk.

Chapter 3 List of Electors

The experience of the 1993 general election demonstrated that several improvements could be made regarding the lists of electors. In this chapter, consideration is given to the distribution of the lists of electors, the modifications of the final lists of electors, and the sharing of lists of electors.

Provision of Copies

The Act requires the distribution of one printed copy and one copy in machine-readable form, if available, of the preliminary lists to any candidate who requests them (subsection 71.12(2)). Returning officers are also required to provide each candidate with two copies of the revised lists, one copy in printed form and one copy in machine-readable form, if available (subsection 71.31(3)). Finally, the Act provides for each registered political party and each Member of Parliament to receive two copies of the final lists, one in printed form and one in machine-readable form, if available (subsection 71.32(2)). In each case, additional printed copies can be requested (a maximum of four copies under subsection 71.31(4); up to nine additional copies,

under subsection 71.12(2); and an undetermined number, under subsection 71.32(3)).

These procedures are designed to facilitate the verification of the accuracy of the lists by electoral participants. As political parties, candidates and Members of Parliament are more and more willing to request computer diskettes, the number of printed copies of the lists of electors produced and distributed at various times throughout the electoral period could be reduced. In light of this, and in recognition of the need to rationalize costs, the distribution of printed copies should be re-evaluated.

15. It is recommended that the additional number of printed copies of the lists of electors provided to candidates, political parties and Members of Parliament be reduced, in all cases, to up to two additional copies.

Modifications to the Final Lists of Electors

With the amendments of Bill C-114, the official lists of electors from an electoral event cannot be modified, even when they are being used as preliminary lists for a subsequent event (as permitted by subsection 63(3)). The statute does not even allow the incorporation of important administrative changes, such as a postal code change or the re-naming of a city or street. It is important that such administrative changes to the final lists of electors be authorized when the lists are being re-used, as this will result in better quality preliminary lists for the subsequent event.

16. It is recommended that the Chief Electoral Officer be authorized to make administrative modifications to the data base containing the final lists of electors from an electoral event when a change in address beyond the control of the elector occurs after that event.

Sharing of Lists of Electors

The current legislative provisions pertaining to the use of lists are very specific. The Act permits the Chief Electoral Officer to provide copies of lists to provincial and territorial chief electoral officers and city clerks, in addition to parties, candidates and Members of Parliament (subsection 94(4)). The Chief Electoral Officer may also require that adequate valuable consideration be provided in order that the provincial or municipal election officials may receive copies of the lists of electors (subsection 94(5)).

Since the last general election many school boards have also requested copies of the lists of electors in their area for the purpose of school board elections. In 1993, the decision to extend access to the provinces and municipalities resulted in savings for those jurisdictions. As school boards sometimes have limited financial resources and expertise, it may be advantageous to share the lists of electors with them.

17. It is recommended that the practice of sharing federal lists of electors with provinces, territories and municipalities be extended to school boards.

Chapter 4 Voting

The existence of the right to vote is not enough to ensure the participation of electors in the electoral process. Adequate administrative procedures must ensure the freedom to exercise this right (Butler 1981, p. 9). While Bill C-114 included many administrative improvements, certain possibilities remain. In this chapter, consideration is given to transfer certificates and the ballot paper.

Transfer Certificates

The transfer certificate is a method of enabling specified electors to exercise their right to vote at a polling station other than

the one for the polling division for which they are included on the list of electors. Three general provisions govern the availability of transfer certificates. First, the transfer certificate is available, on request, to any candidate, and in this case no time limit is specified (subsection 126(3)).

Second, an elector who by reason of any disability is unable to vote without difficulty at a polling station that is without level access is eligible for a transfer certificate. In this case, however, the elector is required to submit an application to the returning officer before 10:00 p.m. on the Friday immediately preceding polling day (subsection 126.1(1)).

Finally, a transfer certificate is available to an elector who will be working on polling day as a deputy returning officer or poll clerk in a polling division other than that in which he or she resides if that person was appointed after the last day of the advance polls (subsection 126(4)). In this case, the Act specifies only that the returning officer may issue a transfer certificate entitling these election officers to vote at another polling station.

The provisions pertaining to transfer certificates give rise to a number of practical problems, which should be corrected.

Transfer Certificates for Candidates

Subsection 126(3) of the Act entitles any candidate to receive a transfer certificate and to vote at any specified polling station instead of the polling station set out in the list of electors for which his or her name appears. During the 1993 general election, certain candidates attempted to utilize this provision, arguing to both the returning officer and the Chief Electoral Officer that they should have been eligible to obtain a transfer certificate to vote in the electoral district they were contesting even if they were not registered there as electors. This interpretation is not consistent with the other provisions of the Act. It is therefore necessary to clarify the Act, both to eliminate any ambiguity and to avoid needless confrontation.

Additionally, section 60 of the Act allows candidates who are Members of Parliament immediately preceding the dissolution to register as electors in several locations, including the electoral districts in which they are candidates even if they do not ordinarily reside there. This privilege for Members of Parliament has no rationale. To ensure the fairness of the electoral process and to be consistent with the current provisions regarding transfer certificates for candidates, it is necessary to repeal section 60. This will also ensure that all candidates are subject to the same rules as other electors regarding where they can register, namely in the electoral district of their ordinary residence.

18. It is recommended that section 60, which permits candidates who were Members at the dissolution of Parliament immediately preceding the election to register in electoral districts other than those in which they reside, be repealed.

19. It is recommended that transfer certificates continue to be available for candidates who wish to vote in a polling division other than the one in which they reside.

Transfer Certificates for Election Officers

According to subsection 126(4), the returning officer may issue a transfer certificate to a deputy returning officer or a poll clerk who has been appointed after the last day of the advance polls. The current legislative provisions limit the issuing of transfer certificates to these two election officers, thus excluding central poll supervisors, revising officers responsible for registering urban electors on polling day, persons responsible for maintaining order, information officers, and individuals

acting as interpreters on polling day.

In addition, subsection 126(4) gives the returning officer discretion to issue transfer certificates to election officers. The returning officer could use this discretion to refuse to issue a transfer certificate to an elector who was appointed at the last minute to act as an election officer, thereby disfranchising him or her. No elector should be prevented from voting because of being an election officer on polling day.

20. It is recommended that provision be made for a transfer certificate to be issued to any person appointed by the returning officer to work at a polling station.

21. It is recommended that returning officers be required to issue transfer certificates to anyone working on polling day who was appointed at any time after the advance polls and who will not be working at the polling station where he or she is registered.

Transfer Certificates for Disabled Electors

Subsection 126.1(1) states that an elector who by reason of any disability is unable to vote without difficulty at a polling station that is without level access may apply for a transfer certificate before 10:00 p.m. on Friday immediately preceding polling day. The experience of the 1993 general election demonstrated that it would be more practical to extend this deadline. A change of this nature would facilitate access to the electoral process.

22. It is recommended that provision be made for an elector who by reason of any disability is unable to vote without difficulty at a polling station that is without level access to apply for a transfer certificate at any time until close of polls on polling day.

Ballot Paper

The ballot paper is important, as it is the medium by which each elector exercises his or her democratic rights. Past experience has indicated that the rules regarding the ballot paper could be improved.

Form of the Ballot Paper

Subsection 102(1) states that the ballot paper must have a counterfoil and a stub, with a line of perforations between the ballot paper and the counterfoil and between the counterfoil and the stub. This ensures the secrecy of the ballot and protects the system from fraud. This subsection also states that the ballot paper should be in the form prescribed by *Schedule I*, Form 3 of the Act. The current form of the ballot paper creates some difficulties. As the length of names differs considerably in some cases, printers have had to stretch the letters of names to fill the space available. This may result in a visual imbalance and a perception of preference or partiality.

23. It is recommended that *Schedule I*, Form 3 be amended so that the candidate's name must be centred and that, if there is space left on either side, the space be filled with dots, as is currently the case for the political affiliation.

Logos of Registered Political Parties

In accordance with *Schedule I*, Form 3, the ballot paper does not contain the logos of the registered political parties. However, approximately one quarter of Canada's adult population is considered to be functionally illiterate; either they cannot read, or their reading comprehension is poor. It is reasonable to assume, therefore, that numerous electors may experience difficulty learning about the electoral process through written materials, and casting their vote. One possible means of helping illiterate electors to identify which candidates are associated with which party would be to include the logos of the

registered political parties on the ballot paper. The logos should be printed in black on the left side of the ballot, preceding the names of the candidates. Colour printing of the logos is not recommended because each ballot paper is printed locally, under the supervision of the returning officer. It would thus be difficult to ensure that each registered political party's logo is coloured correctly and consistently in each electoral district.

This provision should come into force only after the next general election. As the paper for the next general election has already been ordered and cut to size, it would be costly to modify the ballot paper prior to the next election.

24. It is recommended that provision be made for the logos of the registered political parties to be printed in black on the left side of the ballot paper preceding the candidates' names, and that this provision come into force following the next general election.

Chapter 5 Polling Day

With the passage of the *Dominion Elections Act*, in 1874, voting in Canada was confined to one day. Since 1929 polling day has been a Monday, except if the Monday is a holiday, in which case the polling day is the following day (*Canada Elections Act*, subsection 79(3)). In this chapter, consideration is given to the hours of polling, the people who may be present at polls, and to the candidates' representatives.

Hours of Polling

The *Canada Elections Act* provides that the polls be open from 9:00 a.m. until 8:00 p.m. local time, everywhere in Canada (subsection 105(5)), with a few exceptions permitted under section 324. But because Canada spans six time zones, the results are already known in eastern and central Canada while electors are still voting in western Canada. The Act attempts to prevent early returns from being published by radio, television broadcast, newspaper or any other means in a time zone where the polling stations are still open (subsection 328(1)). However, increasingly sophisticated and widely available technology and the interest of the electronic media in elections have made this provision more and more difficult to apply. Because of emerging technology, it is more than likely that this will be impossible during the next general election.

Even if the results are not broadcast until local polling stations close, electors in western Canada still encounter considerable frustration if they discover on joining the national networks that the outcome of the election has been decided. The problem is more one of perception than reality, since the weight of one person's vote is ultimately not affected by the time zone where it is cast. The perceptual problem, however, cannot be discounted. According to Whitehorn,

> Western Canadians in general feel distant from the federal government in Ottawa and often feel less able to influence events in Canadian federal politics. The uneven polling times accentuate this long held perception and do little to promote interregional harmony (Whitehorn 1990, p. 4).

The crux of the problem arises from the fact that over half the constituencies in the country are in the eastern time zone, which is three hours ahead of Pacific time. In principle, the problem could be solved by having the polling stations open and close at the same real time throughout the country, regardless of local time. This is the approach adopted in various smaller jurisdictions where only two time zones are involved, such as Ontario and, in the United States, Indiana, Nebraska, South Dakota and Tennessee (Coulson and Pelletier 1995). At the national level in

Canada, where six time zones are involved, this approach leads to other difficulties, including polls closing too early in some time zones and too late in others. Proposals based on modified staggered hours of opening and closing were made by both the Royal Commission on Electoral Reform and Party Financing and the Special Committee on Electoral Reform.

The Royal Commission on Electoral Reform and Party Financing recommended that polling stations be open for 12 hours and that the local polling hours be

- 9:30 a.m. until 9:30 p.m. in Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec and Ontario;
- 8:30 a.m. until 8:30 p.m. in Manitoba and Saskatchewan;
- 8:00 a.m. until 8:00 p.m. in Alberta and the Northwest Territories; and
- 7:00 a.m. until 7:00 p.m. in British Columbia and Yukon Territory.

The Special Committee on Electoral Reform (1993) recommended that polling stations be open for ten hours and that the local polling hours be

- 11:00 a.m. until 9:00 p.m. in Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec and Ontario;
- 10:30 a.m. until 8:30 p.m. in Manitoba and the part of Saskatchewan that is in the same time zone as Manitoba;
- 9:30 a.m. until 7:30 p.m. in the part of Saskatchewan that is in the same time zone as Alberta, Alberta, and the Northwest Territories; and
- 9:30 a.m. until 7:30 p.m. in British Columbia and Yukon Territory.

While attempting to minimize the impact of the time-zone effect by reducing the amount of time between the closing of polling stations in the various regions both proposals still allow an hour and a half for counting to begin in eastern and central Canada before polling stations close in British Columbia. That is probably more than enough time for the networks to declare a winner just as British Columbians turn on their television sets.

Another option for bridging the time-zone differences is to combine modified staggered hours with special provisions for the counting of the ballots after the close of the polls, thereby minimizing the impact on the release of the results to the media. Keeping in mind that having the polls open late in the evening is a contentious issue (Royal Commission on Electoral Reform and Party Financing 1991, vol. 2, p. 84), the proposal of the Special Committee on Electoral Reform serves as a good starting point. Adopting these hours, entirely, would require that the counting of the ballots be delayed for one and one half hours in certain regions. It is possible, however, to adapt these hours slightly and thereby expedite the counting process. Using the assumption that the counting lasts approximately half an hour, the table on the next page summarizes the outcome of this strategy, in terms of when the results would be available.

Although the results from Newfoundland, Prince Edward Island, New Brunswick and Nova Scotia would be available prior to the close of the polls in the Pacific time zone, the results from the remaining provinces would not be available until approximately the same time as the hour for the closing of the polls in British Columbia. The result would be a considerable alleviation of the time-zone effect. The local results in Atlantic Canada would be available to the media before 11:00 p.m., and in the remainder of the country, the national results should be available by that hour.

Because of Canada's unique geography, spanning six time zones, this is not an easy issue to address. Each of the three proposals

presented has its difficulties. At the same time, if it is accepted that the concerns of electors in western Canada are legitimate, a compromise is required.

25. It is recommended that consideration be given to the adoption of the hours of polling proposed by either the Royal Commission on Electoral Reform and Party Financing, the Special Committee on Electoral Reform, or the Chief Electoral Officer.

Attendance at the Poll

Subsection 114(1) of the Act establishes who may be present at a polling station on voting day. Under the current provisions, only deputy returning officers, poll clerks, candidates and their agents or representatives are allowed to remain in the polling station for a period of time longer than that required for voting. This restriction is important in both protecting the secrecy of the vote and upholding the elector's sense of the integrity of the system.

However, other election officers also have a role to play at the polling station, including central poll supervisors, persons responsible for maintaining order, information officers, and polling day revising officers. In addition, the Chief Electoral Officer regularly plays host to election officials from the provinces, as well as foreign delegates who have come to familiarize themselves with the Canadian federal electoral system and who would like to visit polling stations. Unfortunately, because of the rules cited above, requests of this nature must be turned down.

26. It is recommended that all necessary election officers be allowed to be present at the polling station and that other observers and (or) the staff of the Chief Electoral Officer, with the prior approval of the Chief Electoral Officer, also be allowed to be present at polling stations.

Proposal for modified staggered voting hours combined with special provisions for the counting of the ballots

Province or region	Hours of polling	Counting starts (local)	Results available
Newfoundland	11:00 a.m. to 9:00 p.m.	10:00 p.m.	10:30 p.m. local, 6:00 p.m. Pacific
Nova Scotia, New Brunswick, Prince Edward Island	11:00 a.m. to 9:00 p.m.	10:00 p.m.	10:30 p.m. local, 6:30 p.m. Pacific
Quebec and Ontario	11:00 a.m. to 9:00 p.m.	10:00 p.m.	10:30 p.m. local, 7:30 p.m. Pacific
Manitoba and Saskatchewan	10:00 a.m. to 8:00 p.m.	9:00 p.m.	9:30 p.m. local, 7:30 p.m. Pacific
Alberta and Northwest Territories	10:00 a.m. to 8:00 p.m.	8:00 p.m.	8:30 p.m. local, 7:30 p.m. Pacific
British Columbia and Yukon Territory	9:30 a.m. to 7:30 p.m.	7:30 p.m.	8:00 p.m. local (Pacific)

Candidates' Representatives

Section 115 of the Act establishes the rules governing the appointment and the duties of candidates' representatives at the poll. Two issues must be addressed in this regard: the lack of a minimum age requirement and the number of representatives allowed at each polling station.

Minimum Age Requirement

At previous elections, candidates have been represented by persons as young as 12 years old, despite the fact that the position requires them to fully understand the rules and provisions governing elections, as they are expected to assess whether they are being complied with at the polling station.

The Act provides minimum age requirements for other positions of responsibility. Generally, election officers are required to be 18 years of age. As a result of Bill C-114, the Act now contains two exceptions. First, enumerators may act at age 16. Second, a returning officer who finds it impossible to appoint election officers who are 18 years old may, with the approval of the Chief Electoral Officer, appoint those who are 16 years of age to these positions. These two exceptions were provided because of the difficulties experienced by those responsible for recruiting election officials. Because the Act requires election officers to be a minimum of 16 years of age, it seems appropriate to apply the same benchmark to the representatives of candidates.

27. It is recommended that the representatives of candidates at the polling stations be required to be a minimum of 16 years of age.

Number of Representatives

According to subsection 115(2), a candidate or official agent may appoint as many agents as he or she deems necessary for a polling station, but only two agents may be present at the polling station at any time. Allowing each candidate to be represented by two agents at any one time is likely to cause problems if the number of candidates in many electoral districts continues to grow. During the 1993 general election, certain electoral districts were contested by as many as 13 candidates. Having to accommodate large numbers of representatives at each polling station could create problems of congestion and disruption of the smooth conduct of the voting. The practice in most provinces is to permit only one representative per candidate at each polling station.

28. It is recommended that only one representative for each candidate be allowed to be present at a polling station at any time.

Chapter 6 *Special Voting Rules*

The extension of the *Special Voting Rules* (*Schedule II* of the Act) to several new categories of electors in 1993 brought to light certain administrative difficulties in the general election of that year, the first election in which the new *Special Voting Rules* were applied. The principles governing these rules were introduced during the First World War, for use by Canadian soldiers both in Canada and overseas. The *Special Voting Rules* were extended to military spouses in 1955 and to public servants posted outside Canada as well as to their dependants in 1970. The *Special Voting Rules* were extended further in 1993, with the coming into force of Bill C-114.

Under the current provisions, the following persons may vote under the *Special Voting Rules*:

(a) a Canadian Forces elector;

(b) an elector in the public service of Canada or of a province who is posted outside Canada;

(c) a Canadian citizen who is employed by an international organization of which Canada is a member and to

which Canada contributes and who is posted outside Canada;

(d) a person who has been absent from Canada for less than five consecutive years and who intends to return to Canada as a resident;

(e) an elector who is incarcerated and who is qualified to vote; and

(f) any other elector in Canada who is away from home during voting opportunities or who cannot get to the advance or regular polling station for whatever reason.

This chapter will deal with a number of issues that arose during the 1993 general election.

Registering Canadian Forces Electors

The Chief Electoral Officer is required by *Schedule II* of the Act to transmit to the returning officer of each electoral district a list of the names, military numbers and postal addresses of Canadian Forces electors (*Schedule II*, subsection 57(2)). After the last general election, a member of the Canadian Forces lodged a complaint with the Office of the Privacy Commissioner and argued that the military number should not be part of the list of electors. The military number serves no purpose in relation to voting but can be used to obtain personal information.

29. It is recommended that the military number no longer be required on the Canadian Forces list of electors.

Assisting an Elector with a Disability

There is an apparently unintentional anomaly in the 1993 enactment of the *Special Voting Rules*, whereby only an elector with a disability who is also a member of the Canadian Forces can request the assistance of the deputy returning officer when voting by special ballot (*Schedule II*, section 70). There does not seem to be any particular reason for not allowing other categories of special-ballot electors, such as inmate electors voting in provincial correctional institutions or electors voting in the office of the returning officer, to seek the assistance of election officers.

30. It is recommended that any elector voting under the *Special Voting Rules* at a polling station or in the returning officer's office be allowed to request the assistance of election officers to cast his or her vote.

Submission of Ballot Papers

Pursuant to section 32 of the *Special Voting Rules*, an elector temporarily residing outside Canada has various options for submitting his or her ballot paper. It can be sent to the Chief Electoral Officer by mail or any other delivery method, or it can be submitted at an embassy, high commission, consulate, Canadian Forces base or any other location designated by the Chief Electoral Officer. However, this latter privilege does not extend to an elector who resides in Canada but is temporarily abroad.

31. It is recommended that all Canadian citizens who are temporarily abroad, regardless of where they reside, be allowed to submit their special ballots at an embassy, high commission, consulate, Canadian Forces base or any other location designated by the Chief Electoral Officer.

Casting of a Vote

An elector who chooses to vote under the *Special Voting Rules* at the office of the returning officer and who does so after the regular ballots have been printed is provided with a regular ballot. In this situation, the elector is required to vote immediately and to place the regular ballot in the inner envelope (*Schedule II*, section 39). If an elector inadvertently spoils the ballot paper, there is no provision for him or her to receive another. When the same thing

occurs in an ordinary voting situation, the *Canada Elections Act* provides for a replacement ballot to be given to the elector (section 133). Thus, it is necessary to make section 39 of *Schedule II* consistent with the rules governing the ordinary voting process.

32. It is recommended that provision be made under the *Special Voting Rules* for the replacement of a ballot paper cast in the office of the returning officer when the original ballot paper is inadvertently spoiled by the elector.

Deadline for Submission of Ballot Papers

Currently, under *Schedule II*, electors are required to submit their special ballots so that they are received not later than 4:00 p.m. on the third day before polling day (*Schedule II*, section 33). While it is necessary to maintain a deadline so that the results of the election are not delayed by the special-ballot process, the current provision is unnecessarily stringent. It would remain possible to meet the requirements of *Schedule II* if the deadline for the acceptance of special ballots was changed to the hour of the closing of the polls on polling day. This change would facilitate access to the electoral process by providing an increased opportunity for ballots to be received within the time permitted.

33. It is recommended that the deadline for the reception of the special ballots be changed to the hour of the closing of the polls on polling day during an election.

Rejection of Special Ballots

The current criteria for the rejection of special ballots, contained in sections 92 and 104 of *Schedule II*, are inconsistent. Pursuant to subsection 92(1), ballots received at the Office of the Chief Electoral Officer are rejected on the following grounds: if they do not appear to have been supplied for the election or if they have not been marked in accordance with the *Special Voting Rules*. Pursuant to section 104, however, different criteria for rejecting special ballots received at the returning officer's office are given: if they do not appear to have been supplied for the election; if they are not marked in favour of a candidate; if they are marked in favour of more than one candidate; or if they are marked in such a way as to identify the elector. Equality and fairness require that consistent criteria are applied.

34. It is recommended that the criteria established in section 104 of *Schedule II*, for the rejection of special ballots, be applied consistently throughout the *Special Voting Rules*.

Chapter 7 Results of Voting

The deputy returning officer is responsible for accepting the votes on polling day and for counting them immediately following the close of the poll. The results are unofficial, however, until sometime after polling day, when the returning officer has received all the ballot boxes and has added up the number of votes cast for each candidate. This chapter considers issues related to the official addition of the votes, the recount, and the voiding of an election.

Official Addition

A slight change in procedure could result in a considerable saving of time when the results are officially added up and one candidate is declared elected. However, the strict controls on this process need not be compromised. This important event occurs as soon as possible after polling day, when the ballot boxes have all been received and are opened by the returning officer in the presence of the candidates or their representatives. It should be noted that there is no recount of the ballots on that day. Rather, the official addition consists of reconciling the numbers entered on the official statement of the votes from each polling station and declaring the official winner.

In accordance with section 169, the returning officer is required to engage in the extremely time-consuming practice of opening every ballot box—as many as several hundred—to retrieve the official statement of the votes placed therein by the deputy returning officer at the close of the polls. This is actually unnecessary, as the returning officer already has a copy of the statement of the votes that, according to subsection 165(1), was transmitted along with, but outside, the ballot box.

35. It is recommended that the official addition be conducted using the statements of the votes that are transmitted to the returning officer along with, but outside, the ballot box. Only in those cases where this statement is unavailable or appears to have been altered or when a dispute involving a candidate or a candidate's representative occurs should the returning officer be required to open the ballot box to obtain another statement of the votes.

Recount

At present, there is a minor inconsistency regarding the level of reimbursement provided for candidates' costs actually and reasonably incurred when a recount occurs. Under subsection 171(5), a ceiling of $500 a day applies in the case of an automatic recount, which is required if there is an equality of votes or if the number of votes separating the two leading candidates is less than one one-thousandth of the votes cast (subsection 171(1)). On the other hand, there is no maximum financial limit on the reimbursement (section 184.1) when a candidate or any other person applies for a recount in the belief that mistakes in the addition of the votes were made by either a deputy returning officer or the returning officer (section 177).

36. It is recommended that the actual $500 cost reimbursement ceiling found in subsection 171(5) apply to every type of application for recount.

Voiding of an Election

The law under which the results of an election are disputed, the *Dominion Controverted Elections Act*, is cumbersome, costly and time-consuming. This Act operates with the *Canada Elections Act* through a confusing series of cross-references (Boyer 1987, vol. 2, pp. 1058–1059). Reform of the process for controverting an election, including its incorporation into the *Canada Elections Act*, is long overdue. The Chief Electoral Officer, in his 1984 statutory report to Parliament, referred to the *Dominion Controverted Elections Act* as "hopelessly outdated" (Chief Electoral Officer of Canada 1984, p. 28). This Act, which now comprises 112 sections, originated in the 19th century, when fraud was a great deal more prevalent than it is today. Then, it was not uncommon, following a general election, for the results in a number of constituencies to be challenged, but since 1949 there have been only 13 cases in which an election has been controverted, the most recent being that of York North (Ontario) following the 1988 general election, for administrative reasons.

Currently, any candidate or elector may file a petition to contest a constituency election, basing the complaint on almost any aspect of election law. The petition, accompanied by a deposit of $1,000, must be submitted within 28 days of the election result being published in the *Canada Gazette* or within 28 days of a candidate or agent being convicted of corrupt practice.

The case is heard by two judges of the superior court of the province, who may decide that the election is to be voided, that another candidate is to be proclaimed elected, or that the petition should be dismissed. The *Dominion Controverted Elections*

Act sets out various situations, some of which result in an election being declared void and some of which, notwithstanding the fact that a corrupt practice has taken place, result in the election not being declared void. The decision can be appealed to the Supreme Court of Canada within eight days of the lower court's decision.

In addition to being outdated, the *Dominion Controverted Elections Act*, with its requirement for hearings by superior courts of each province, impedes the development in a single judicial body of expertise in electoral matters. Consequently, contested election results should be adjudicated by a single judge of the Trial Division of the Federal Court of Canada, rather than two judges of the provincial superior court. Transferring this responsibility to the Federal Court would result in the development of this expertise and also lead to improved consistency over time. In addition, repealing the *Dominion Controverted Elections Act* and incorporating provisions for the contestation of an election into the *Canada Elections Act* would eliminate unnecessary complexity and complement the existing provisions in the *Canada Elections Act* that relate to the voiding of an election. A number of provinces and territories (Newfoundland, Quebec, Ontario, Alberta, British Columbia, and the Northwest Territories) have incorporated procedures of this type into their electoral legislation (Boucher and Pelletier 1991).

37. It is recommended that the *Dominion Controverted Elections Act* be repealed and that provisions replacing that statute be incorporated into the *Canada Elections Act*.

38. It is recommended that

(a) contested election results be adjudicated by the Trial Division of the Federal Court of Canada, rather than the various provincial superior courts;

(b) the only acceptable grounds for filing a petition be the candidate's ineligibility or the election result having been affected by irregularities or corrupt practices;

(c) the petition be submitted within 28 days of the results appearing in the *Canada Gazette*, within 28 days of the discovery of an irregularity that affects the result, or 28 days after a conviction of election fraud involving a candidate in that constituency;

(d) a deposit of $1,000 be required to file the complaint;

(e) the rules of the Trial Division of the Federal Court relating to civil actions be made to apply to an application to annul an election, with such modifications as the circumstances require;

(f) a Member of Parliament whose election is the object of an election petition be able to submit a defence within 15 days of the date on which he or she was notified;

(g) the adjudicating judge be empowered to dismiss any petition if it appears to be frivolous, unfounded, or to have been made in bad faith, to reject the complaint, to annul the election, or to declare another candidate elected;

(h) the adjudicating judge have the power to void an election if it is established that i) the fraud or irregularities were widespread enough to affect the election result or ii) the successful candidate or his or her agent is guilty of a corrupt electoral practice, even if that corrupt electoral practice did not affect the election result;

(i) where the court has declared the election void, the court should have the power to remove from office the person elected and either to determine that another person has been

elected and is allowed to take his or her seat or to provide for a new election being held;

(j) decisions be subject to appeal within 15 days to the Federal Court of Appeal; and

(k) an application for leave to appeal to the Supreme Court of Canada would have to be made within 15 days of the decision of the Federal Court of Appeal.

PART II

ENHANCING CANDIDATE AND
POLITICAL PARTY PARTICIPATION

The *Canadian Charter of Rights and Freedoms* recognizes every citizen's right to run in a federal or provincial election (section 3). Since 1874 every federal candidate has been required to submit a nomination paper to the returning officer of the electoral district in which he or she wishes to run. The provisions regarding the nomination process, which have been altered through the years, were established to ensure that prospective candidates were able to demonstrate some level of popular support.

While some other countries explicitly recognize political parties in their constitutions, this is not the case in Canada. Since 1970, however, Canadian political parties have had the opportunity to apply for registration with the Chief Electoral Officer. This is a means to establish the legal recognition of political parties and to make them legally responsible for their actions in raising and spending funds (Committee on Election Expenses 1966, pp. 37–40; see also Paltiel 1989, pp. 57–59). The main provisions related to election financing were introduced in 1974.

The nomination of candidates and the registration of political parties are important elements of the Canadian electoral process. These systems facilitate the participation of candidates and political parties in a fair electoral process and provide a foundation for the governance of candidate and election financing. Past experience and previous research indicate that the existing procedures can be improved.

Chapter 1 Participation of Candidates

In this chapter, three issues are considered: the eligibility of candidates to a leave of absence from their employment, the nomination process, and the authority of candidates to enter buildings during the campaign.

Eligibility to Be a Candidate

Section 87 of the *Canada Elections Act* requires every employer to grant an employee a leave of absence, with or without pay, to seek nomination as a candidate and to be a candidate for election. This section does not extend to those working outside of federal jurisdiction, because its application is currently restricted to employees included under Part III of the *Canada Labour Code*.

This provision can thus be viewed as discriminating against those who work outside of federal jurisdiction. The extension of this right to all employees would be in accordance with section 3 of the *Canadian Charter of Rights and Freedoms*. It is relevant to note that section 148 of the Act, which guarantees every employee four consecutive hours for the purpose of casting his or her vote, applies to all employers.

39. It is recommended that the right to a leave of absence without pay for the purpose of being a candidate at a federal election be extended to all employees, whether the individual is employed pursuant to the federal or a provincial or territorial law, and that the foregoing not exclude an employer from authorizing paid leave.

Deadline for Nomination

As the Act currently stands, a returning officer is not allowed to receive nominations after 2:00 p.m. on nomination day (subsection 85(2)) and could therefore refuse the nomination of a candidate who was already present but had not yet filed. A fairer provision would authorize the returning officer to accept the nomination paper of any prospective candidate who is present at the place fixed for nomination at 2:00 p.m. This practice would be consistent

with subsection 137(2) of the Act, which provides that an elector shall be allowed to vote if he or she is at the polling station or in line at the door of the polling station at the hour of the closing of the poll.

40. It is recommended that the returning officer be required to accept the nomination paper of any prospective candidate who is present at 2:00 p.m. at a place or places fixed for nomination.

Nominations in Remote Electoral Districts

In remote electoral districts, which are listed in *Schedule III* of the Act, the returning officer may authorize another person to receive the nomination documents at a designated place from any candidate who would otherwise not be able to reach the office of the returning officer. The Act also permits returning officers in these remote districts to authorize the filing of the nomination documents by other means (section 80.1).

During the 1993 general election, a number of candidates from electoral districts not included in *Schedule III* requested permission to submit their nomination papers at a location more convenient than the office of the returning officer. However, it would be more practical to permit candidates in all electoral districts to submit their nomination papers using data transmission technologies, such as the facsimile or electronic mail, provided that the $1,000 nomination deposit is received by the returning officer prior to the deadline for nomination and that all original documents are submitted to the returning officer within 10 days of the nomination day (as is currently required under section 80.1).

41. It is recommended that the reference to *Schedule III* in section 80.1 be repealed and that provisions be made allowing candidates in all electoral districts to submit their nomination papers using data transmission technologies (such as the facsimile and electronic mail), provided that the $1,000 nomination deposit is received by the returning officer prior to the deadline for nomination and that all original documents are submitted to the returning officer within 10 days of the nomination day.

42. It is recommended that appropriate provisions be established to address the failure of a candidate to submit the nomination paper within the specified time frame.

Authority to Enter Buildings During Campaign

With the passage of Bill C-114 in 1993 a candidate and his or her representative may enter any apartment building or other multiple residence during reasonable hours and for the purpose of conducting the campaign (section 82.1). The experience of the 1993 general election suggested that the wording of this provision should be strengthened to state explicitly that there are no exceptions to the right of a candidate or representative to enter any apartment building or multiple residence during reasonable hours and for the purpose of conducting the campaign. To avoid any ambiguity, the hours considered reasonable for the purposes of this section must be defined. The hours between 9:00 a.m. and 9:00 p.m. appear to be reasonable in this context. Finally, if these provisions are to be effective, it will be necessary to create an offence for failure to comply with them.

43. It is recommended that the Act explicitly state that there is no exception to the right of a candidate or representative to enter any apartment building or multiple residence where electors reside, between the hours of 9:00 a.m. and 9:00 p.m., for the purpose of conducting the campaign.

44. It is recommended that an offence be created for non-compliance with the provision related to the authority of candidates to enter a building.

Chapter 2 The Official Agent

The candidate's official agent, the individual responsible for monitoring and reporting on election spending, plays an important role in the Canadian system for the governance of election financing. The fairness of the electoral process cannot be guaranteed without the cooperation of the candidate's agent in managing and reporting on the campaign accounts of the candidate (Carty 1991b, p. 79).

Change of a Candidate's Agent or Auditor

The current provisions of the Act provide for a candidate to appoint a new official agent only in the event of the agent's death or legal incapacity (subsection 215(4)). This provision creates a situation in which candidates are often uncertain whether they can dismiss an official agent who is not performing his or her duties satisfactorily. On the other hand, subsection 226(2) provides that a candidate must forthwith appoint another auditor when an auditor ceases for any reason to hold office. It would make these provisions consistent and clarify the situation if candidates were empowered to dismiss an official agent at any time they believed it to be necessary.

45. It is recommended that a candidate be allowed to dismiss his or her official agent at any time and that a written notice of dismissal be required, with copies provided to the returning officer and the Chief Electoral Officer.

46. It is recommended that the new official agent be required to accept his or her appointment in writing and to provide a copy of the letter of acceptance to the returning officer and the Chief Electoral Officer.

Delegation of the Agent's Authority

According to paragraph 217(1)(*b*) of the Act, a contribution to a campaign must be paid to the official agent and not otherwise. However, permitting the official agent to give someone else written authorization to collect money on behalf of a candidate would improve flexibility and accountability at the local level.

47. It is recommended that the official agent be allowed, with the approval of the candidate, to provide written authorization for other individuals to accept donations on behalf of that candidate.

Campaign Account

The wording of the Act creates some confusion regarding the campaign account that is to be opened in the name of the official agent. The expression "maintain under his own name," used in subsection 216(1) in relation to the campaign account, has been misinterpreted by official agents in the past. In some cases, this has resulted in a failure on the part of some official agents to open a separate account. Instead, they have used accounts that already existed, with the result that other financial transactions were inadvertently mixed up with the campaign finances. This confusion could be avoided by requiring each agent to open a new bank account for the sole purpose of each campaign.

48. It is recommended that the official agent of each candidate be required to open one new account for the sole purpose of each campaign and that the account be closed after any surplus funds have been appropriately dealt with.

49. It is recommended that the campaign account be opened in the name of the official agent, using the title "official agent for (name of candidate)."

Chapter 3 Participation of Political Parties

As noted, political parties in Canada may apply to be registered with the Chief Electoral Officer (section 24). The Act contains several conditions for registration, including a requirement that the signatures of 100 electors who are members of the party accompany a party's application and that the registration not take effect until the party has nominated candidates in at least 50 electoral districts during a general election. Experience has demonstrated that the existing provisions have been effective at both allowing a good proportion of new parties to enter the system and excluding from the system parties that have declined (Seidle 1994, pp. 22–23).

The Act also contains provisions for the deletion of political parties from the registry. Following the amendments to the Act in 1993, a registered party must be deleted if it fails to nominate candidates in 50 electoral districts during an election. In this chapter, consideration is given to the merging of registered political parties and to the conditions for the deletion of political parties from the registry.

Merging of Registered Political Parties

In the interest of transparency, the Act now inadvertently places an unreasonable requirement on political parties that might wish to merge because it does not contain any provision allowing registered political parties to merge. Currently, the parties would first have to apply to the Chief Electoral Officer to be deleted from the registry (section 30), and only then could the new party apply for registration. However, when a political party applies for deregistration, the chief agent must first liquidate the assets of the party, submit to the Chief Electoral Officer any fiscal-period return or any return on election expenses that has not been filed (subsection 31(10)), pay the debts of the party, and remit any remaining balance to the Chief Electoral Officer, who will transmit the balance to the Receiver General (subsection 31(11)). Thus, the parties engaged in a merger would lose all their assets.

The concept of merging has been recognized in other jurisdictions. Under the Quebec *Election Act*, for example, parties wanting to merge are required to submit a joint application and other relevant information to the Chief Electoral Officer, who may, in certain cases related to the financial provisions of the legislation, refuse the merger (Quebec, *Election Act*, sections 53 to 58).

50. It is recommended that provisions for the merging of political parties that wish to merge be established, providing for the assets of the parties being kept by the party created as a result of the merger.

Deletion from the Registry

A political party may be deregistered at the discretion of the Chief Electoral Officer for a number of reasons involving noncompliance with the *Canada Elections Act* (subsection 28(1)), but must be deleted for failing to nominate candidates in at least 50 electoral districts during a general election (subsection 28(2)).

As the law now stands, a party that is winding down its affairs has considerable latitude regarding the time it has to liquidate its assets, pay off its debts, and remit the balance, if any, to the Chief Electoral Officer, under subsections 31(11) and 31(14). Within six months after a party has been notified of its deletion from the registry and a notice has been published in the *Canada Gazette*, the party's chief agent

must transmit to the Chief Electoral Officer a return of income and expenditures for the portion of the party's fiscal period that immediately preceded the deletion (subsection 31(10)). The chief agent has another three months to remit the balance of its assets and liabilities or to provide to the Chief Electoral Officer a statement that there is no remaining balance.

The goal of promoting transparency in the operation of political parties means that, when a party ceases to operate, the liquidation of its assets should also occur within the public view.

Party Status After Notification of Deletion

The party's status is unclear during the period of up to nine months between the date on which the notice of its deletion from the registry is published in the *Canada Gazette* (subsection 31(9)) and the date on which the deletion becomes effective, according to subsection 31(15). To avoid confusion, it would be suitable for the notice published in the *Canada Gazette* to be referred to as the Chief Electoral Officer's notice of intent to delete a political party from the registry. It would also be practical for the deletion to take effect on the date that the Chief Electoral Officer receives the balance or the statement that no balance remains.

51. It is recommended that the notice published in the *Canada Gazette,* according to subsection 31(9), be referred to as the Chief Electoral Officer's notice of intent to delete a political party from the registry and that the deletion take effect on the date the Chief Electoral Officer receives the balance or the statement that no balance remains, as provided by subsection 31(15).

Disposal of Party Assets

The date on which the fair market value of a party's assets must be calculated is not specified in the Act. Rather than allowing a delay of up to nine months between the date on which the notice of the Chief Electoral Officer's intent to delete the party is published in the *Canada Gazette* and the effective date of the deletion, a party should be required to submit an audited statement of the fair market value of its assets at the same time as it submits its final fiscal-period return. The value of the assets should be in accordance with their market value on the date that the Chief Electoral Officer's notice of intent to delete the party is published in the *Canada Gazette.*

52. It is recommended that a registered political party be required to submit an audited statement of the fair market value of its assets as of the date on which the notice of intent to delete was published in the *Canada Gazette* and that the statement be submitted at the time the party submits its final fiscal-period return.

PART III

ENSURING TRANSPARENCY
OF FINANCIAL OPERATIONS

The full and accurate reporting of all financial transactions is central to the principle of transparency embodied in the *Canada Elections Act*. Transparency is essential both to discourage the exercise of undue influence on elected officials and to achieve public confidence in the integrity of the political finance system. Openness, moreover, requires that adequate information be disclosed, that the information be arranged meaningfully and put into context, and that it be accessible to the public and the media (Young 1991, p. 36).

Full disclosure, then, is essential to the enforcement of the laws governing political financing. Without full disclosure of candidates' and parties' financial transactions, compliance with the legislation cannot be effectively enforced. As noted by the Accounting Profession Working Group, which was established by the Royal Commission on Electoral Reform and Party Financing, public disclosure should be at the heart of any reform of election finances (Accounting Profession Working Group 1991, p. 3).

There is a need to look at various areas where disclosure is incomplete, where disclosure is unclear, and where administrative improvements could be made to achieve the general goal of transparency in the financial operations of political entities participating in the electoral process. It is important to build on the existing provisions by providing improved transparency in relation to all aspects of election financing.

Chapter 1 Where Disclosure is Lacking

The work of the Royal Commission on Electoral Reform and Party Financing and, subsequently, that of the Special Committee on Electoral Reform highlight a number of areas where disclosure from electoral participants is lacking. The Act currently does little more than acknowledge the existence of local associations and contains no provisions respecting trust funds or leadership contests. Additionally, Members of Parliament currently are not required to report contributions they receive during the inter-election period.

It has also become evident that significant funds flow from one part of the election-financing system to another, without clear reports being made (Stanbury 1991, pp. 326–329, 374, 435–436). Significant among them are transfers between parties and candidates and the surplus campaign funds candidates have after an election.

Political Parties' Local Associations

Across the broad spectrum of party financial reporting, there is a notable gap in the information available to the public about the financial operations of local associations. This is despite the fact that they sometimes finance a candidate's pre-writ activities, raise money between elections from unreceipted sources, and receive substantial amounts of money (a good proportion of which is publicly subsidized) in the form of transfers of their candidates' election surpluses, under paragraph 232(*h*) of the *Canada Elections Act*. Often, even officials in the national party know nothing about their local associations' finances (Stanbury 1991, p. 374). The absence of disclosure requirements for local associations make them, according to Stanbury, "the 'black hole' of party and candidate financing in Canada" (Stanbury 1991, p. 419). Other jurisdictions in Canada (Nova Scotia, New Brunswick, Quebec, Ontario, Alberta and British Columbia) require political parties' local associations to register and to disclose their financial activities.

At the present time, local associations are barely recognized by the *Canada Elections Act*. Subsection 33(3) mentions that an association has the option of notifying the registered party of the name of its agent, while subsections 45(1) and 229(1) provide that when a local association contributes funds in excess of $100 to a registered

political party or a candidate, the recipient must disclose the names of contributors who donated an amount in excess of $100 to the local association. Finally, paragraph 232(*h*) provides the possibility for the official agent of a candidate who is affiliated with a registered political party to transfer surplus funds from a campaign to a local association of the party in the electoral district of the candidate. Otherwise, local associations are not regulated.

The registration of local associations has been recommended by many, including the Royal Commission on Electoral Reform and Party Financing and the Special Committee on Electoral Reform. However, if the objective of registration is to achieve financial transparency without interfering with the internal organization of political parties, another option is available.

At present, subsection 33(3) of the Act allows a local association to select a person to be electoral district agent for the purposes of that registered party, and the local association may so notify the registered party who may forthwith notify the Chief Electoral Officer. On being notified, the Chief Electoral Officer includes the name of the local association's agent in the registry of agents of political parties.

This provision could be modified so that a registered agent is required whenever financial transactions take place at the local association level. Moreover, the role and duties of these agents could be expanded on and formalized in the Act. While this would represent a minimalist approach to registration, it would result in financial transparency where local associations are concerned.

Under the proposed system, the name of an agent for every local association that conducts financial transactions would have to be submitted through the chief agent of the party to the Chief Electoral Officer for inclusion in the registry of political party agents. The registered agent would then be responsible for all financial operations of the local association and would be entitled to accept contributions and to issue tax receipts. The agents would also be required to submit an audited annual fiscal return on all financial transactions to the chief agent of the political party, as well as to the Chief Electoral Officer. Finally, only the chief agent of a registered party or a registered agent at the local level would be authorized to receive a campaign surplus from the official agent of a candidate.

This scenario would also require the establishment of provisions for the deregistration of electoral district agents. For example, an electoral district agent could be deregistered at the time of the national party's deregistration, either at the request of the national party or when the electoral district disappears as a result of a readjustment.

53. It is recommended that

(a) subsection 33(3) be modified to require that an agent be appointed whenever financial transactions occur at the local level and that the name of the agent be transmitted through the chief agent of the party to the Chief Electoral Officer for inclusion in the registry of political party agents;

(b) this registered electoral district agent be responsible for all financial operations of the local association;

(c) the agent be entitled to accept contributions and to issue tax receipts;

(d) the agent be required to submit an audited annual fiscal return to both the chief agent of the political party and the Chief Electoral Officer; and

(e) in addition to the chief agent of a registered party, only a registered agent at the local level be authorized to receive a campaign surplus from the official agent of a candidate.

(The registered electoral district agent would not be entitled to incur election expenses, although he or she would be permitted to contribute funds to the official agent of a candidate.)

54. It is recommended that provisions be established for the deregistration of electoral district agents at the time of the national party's deregistration, at the request of the national party or when the electoral district disappears as a result of an electoral boundary readjustment.

Trust Funds

At the present time, various trust funds exist for the purposes of supporting candidates or parties. These funds run counter to the principle of transparency in election financing. Stanbury recommended that new political trust funds be prohibited and that existing funds not be permitted to increase in size through new contributions (Stanbury 1991, p. 434). Trust funds, however, can have a positive impact, for example, by providing funding to improve the political representation of women. Consequently, rather than eliminating trust funds, it may be preferable to ensure that they are open to public scrutiny. Thus, to improve transparency, it may be better to require that a registered agent be appointed for these trust funds.

55. It is recommended that provision be made for the appointment of a registered agent for any trust fund associated with a political party and that this agent be granted the same rights and duties as the registered electoral district agent, including the obligation to submit an audited annual fiscal return to the Chief Electoral Officer and to the registered party.

Political Party Leadership Contests

The absence of any legislation governing the financial activities of party leadership candidates is a significant omission since, as Stanbury points out, "they [leadership contests] can involve the raising and spending of millions of dollars and are often financed in part by contributions for which a tax receipt is issued" (Stanbury 1991, p. 368). Additionally, contributions to leadership candidates are often routed through the party's official agent, allowing the donor to receive a tax credit (Stanbury 1991, pp. 370–371, 1996b p. 392), while the party's annual report does not specify which leadership candidate received which contributions. This lack of transparency can lead to suspicions about the fairness and integrity of the parties' leadership selection processes and about the role of money in these contests (Courtney 1995, pp. 71–77).

Ontario law requires party leadership candidates to disclose their revenues and expenditures within six months of the date of the leadership vote and to list the names of contributors who donated more than $100 (Ontario, *Election Finances Act*, subsection 43(4) and paragraph 35(1)(*c*)). It also sets a ceiling of $750 per contributor for leadership contests. (Ontario *Election Finances Act*, section 15; Ontario Commission on Election Finances 1988, pp. 88–89). Moreover, contributions to leadership candidates are not tax deductible under Ontario law, and constituency associations and affiliated political organizations are not permitted to contribute to leadership candidates (Ontario, *Election Finances Act*, subsection 30(2); also Ontario Commission on Election Finances 1988, p. 89).

In a recent study on leadership selection in Canada, John Courtney argued that "the time is propitious for state involvement in setting the terms for financing future [leadership] contests" (Courtney 1995, p. 77). Courtney acknowledged that political parties have long been considered "independent, private and voluntary organizations," but made a strong case for the establishment of spending limits for party

leadership contestants (Courtney 1995, pp. 71–75). If, as Courtney argued, the leadership selection process is part of the public domain, then at a minimum, there is no reason why the financing of party leadership contestants should escape public scrutiny.

56. It is recommended that provisions be established requiring the designation of a registered agent for each contestant for the leadership of a registered party, that the registered agent be responsible for all financial transactions relating to the leadership contest, and that the registered agent also be required to file an audited return of all transactions and a report on volunteer labour with both the Chief Electoral Officer and the chief agent of the party, within four months of the selection of the new leader.

57. It is recommended that the registered agent of a leadership contestant be required to return to the registered political party all surplus funds raised for the purpose of the leadership campaign.

Contributions to Members of Parliament

The Royal Commission on Electoral Reform and Party Financing reported that there are occasions when contributions are made directly to Members of Parliament, between elections, by members of the public (Royal Commission on Electoral Reform and Party Financing 1991, vol. 1, p. 431). To enhance transparency and facilitate the right of the public to scrutinize such transactions, Members of Parliament should be required to disclose contributions of this nature. A similar requirement for the disclosure of contributions to candidates nominated by political parties prior to the issue of the writs is recommended in this report (Part IV, chapter 3).

58. It is recommended that Members of Parliament be required to disclose any contribution received between elections, in a manner and format that conforms to the requirements for disclosure applied to registered political entities.

Transfers Between Party and Candidates

Stanbury pointed out that the reports of transfers made between the national offices of parties and their respective candidates were impossible to reconcile. In attempting to account for these transfers in the election years between 1979 and 1988, Stanbury reports that for both the Liberal Party and the Progressive Conservative Party, a discrepancy of more than $1 million is evident on at least one occasion (Stanbury 1991, pp. 326–329, table 12.4a). The reporting of such transfers to the Chief Electoral Officer should be considered a way to ensure the transparency of election financing.

59. It is recommended that all transfers made between registered political parties and candidates be clearly reported to the Chief Electoral Officer in both the respective party and the candidate returns.

Campaign Surplus

The surplus that a candidate may have after an election is another area where flows of money are not clearly reported. This is at least partly due to the legislation not taking into account the recent practice of candidates' assigning a portion or all of their reimbursement of election expenses to their political parties and to the fact that in some instances parties are returning a portion of the funds to the candidates. The total amount of money involved is considerable; the combined surplus of all candidates after reimbursement was more than $9 million in 1988 (Stanbury 1991, p. 356) and totalled $13.5 million in 1993 (Stanbury 1996b, p. 376).

Under the current provisions, the official agent of each candidate is required to dispose of surplus campaign funds by transferring the funds to the local association of the candidate's party in the electoral district, to the registered agent of the political party, or, in the case of independent or non-affiliated candidates, to the Receiver General. The surplus must be disposed of either within one month of receipt of the election expenses reimbursement or within two months of the date on which the candidate's election expenses return was filed, whichever is later (section 232). This process creates administrative difficulties and can result in surplus funds not being disposed of for extended periods of time following an election. A preferable arrangement would be for the Office of the Chief Electoral Officer to issue a notice of assessment to the candidates' official agents, on completion of the audit of the candidates' election expenses returns. Candidates would be required to dispose of their surpluses within 60 days after receiving notice of assessment and to notify the Chief Electoral Officer in the prescribed form. In addition, it is necessary to ensure that once the surplus funds have been transferred to a party, they are not then forwarded to unelected candidates, who are beyond public scrutiny.

60. It is recommended that all transfers of funds involving registered political parties or local associations be reported to the Chief Electoral Officer for publication.

61. It is recommended that section 232 be reviewed to specify the method by which the surplus must be calculated, taking into account the transfers between candidates and political parties.

62. It is recommended that provision be established for the Office of the Chief Electoral Officer to issue a notice of assessment to the candidates' official agents, on completion of the audit of the candidates' election expenses returns. Candidates would be required to dispose of the surplus within 60 days after receiving notice of assessment, to notify the Chief Electoral Officer in the prescribed form, and to provide evidence of the disposal.

63. It is recommended that political parties and registered electoral district agents be prohibited from transferring funds to unelected candidates after polling day, except for the payment of unpaid claims as declared in a candidate's election expenses return.

Surplus Funds of Independent and Non-affiliated Candidates

Another discrepancy concerning the surplus funds of candidates relates to independent candidates or those with no political affiliation. According to section 232 of the *Canada Elections Act*, these candidates are required to remit all surplus funds to the Receiver General. The same section, however, allows candidates who are affiliated with a registered party to transfer their surplus funds to a local association or to the chief agent of the party. Consequently, it has been argued that this provision discriminates against independent candidates and those with no affiliation if they contest subsequent elections. It is possible to remedy this situation by providing these candidates with an opportunity to recover the surplus funds from one election if they are officially nominated for the subsequent election.

64. It is recommended that provision be made for the surplus funds of an independent candidate or a candidate with no political affiliation to be returned to him or her by the Chief Electoral Officer, on behalf of

the Receiver General, if that candidate is officially nominated for the subsequent election.

Chapter 2 Clarifying Definitions

There are two main concepts in the *Canada Elections Act* related to the governance of election financing that must be defined: election expenses and contributions. Appropriate definitions are required to enhance transparency. In this section, these concepts and a number of related concepts are considered.

Election Expenses

The *Canada Elections Act* (subsection 2(1)) currently defines election expenses as those incurred for the purpose of directly promoting or opposing, during an election, a particular registered party or the election of a particular candidate. In practice, a number of important campaign-related expenditures, including public opinion polling, are not considered election expenses (Stanbury 1991, pp. 393–394, 421, 1996b, pp. 389–392). The Accounting Profession Working Group commented that these exclusions have created administrative confusion about whether various other items should be reported as election expenses (Accounting Profession Working Group 1991, p. 4). As a result, the Working Group proposed a more comprehensive definition that would include all expenses incurred by political parties and candidates for goods or services for use in whole or in part during a campaign (Accounting Profession Working Group 1991, draft legislation).

The various exclusions from the current definition of election expenses impede the goal of transparency because they are "invisible to the public" (Stanbury 1991, p. 345). They also lead to questions of fairness, as, for example, at the 1988 general election, 74 candidates spent more than $15,000 each on items excluded from the election expenses (Stanbury 1991, p. 344).

To resolve the ambiguity surrounding what constitutes an election expense, clarification is needed.

65. (1) It is recommended that election expenses be defined as the value of any goods or services used during an election period by or on behalf of a candidate or registered political party to promote or oppose the election of a candidate or a registered political party, and, without limiting the generality of the foregoing, as including the following types of expenditures:

(a) polling and research conducted during the election period;

(b) training of party officials and volunteers for the campaign;

(c) costs of production of campaign commercials or ads;

(d) personal expenses, except the expenses related to the disability of a candidate or those incurred during an election for child care or for the care of other dependent persons;

(e) any expense incurred after the issue of the writs, by an individual who officially becomes a candidate after the date for the issue of the writs; and

(f) for a registered political party, any election expenses incurred by the leader of a registered political party, other than those election expenses directly related to that individual as a candidate in an electoral district;

(2) However, the following types of expenditures should not be considered election expenses and therefore not be subject to the election expenses limits, nor to reimbursement:

(a) the cost of a candidate's deposit;

(b) expenses incurred in holding a fund-raising function, except for the cost of advertising;

(c) the cost of obtaining any professional services needed to comply with the Act;

(d) any interest on a loan to a candidate or registered party for election expenses;

(e) volunteer labour;

(f) payments to candidates' representatives at the polls;

(g) expenses incurred exclusively for the ongoing administration of the registered party or a local association represented by a registered electoral district agent;

(h) post-election parties held and thank-you advertisements published after the close of the polls.

Candidates' Personal Expenses

While candidates' personal expenses have not been subject to a spending limit since Bill C-169 modified the *Canada Elections Act* in 1983, they are included with election expenses for the purpose of calculating the reimbursement. The personal expenses of a candidate are currently defined in the Act as any reasonable amount in respect of such travel, living and other related expenses, including expenses incurred by a disabled candidate relating to the candidate's disability, as the Chief Electoral Officer may designate (subsection 2(1)).

To avoid the perception that a candidate incurring higher than average personal expenses might have an advantage over other candidates, Stanbury proposed including the personal expenses of candidates with their election expenses and increasing the election expenses limits to take these additional costs into account (Stanbury 1991, pp. 397–398). In this case, it becomes necessary to consider exceptions for certain categories of personal expense, such as the expenses related to the disability of a candidate or those incurred during an election for child care or for the care of other dependent persons (Accounting Profession Working Group 1991, draft legislation). These particular categories were also identified by the Special Committee on Electoral Reform as personal expenses for which a 75% reimbursement would have been made available (Special Committee on Electoral Reform 1993, Annex C, clause 8).

66. It is recommended that candidates' personal expenses be included as election expenses. Although the expenses related to the disability of a candidate or those incurred during an election for child care or for the care of other dependent persons are not considered election expenses, they could be included for the purposes of the reimbursement.

The Statement of Personal Expenses

Candidates often fail to submit a statement of personal expenses to the official agent, as required by subsection 224(2). It is not always clear whether the candidate has not incurred any personal expenses, and thus it is assumed that a statement was not required to be submitted, or the statement was overlooked. Candidates are also reimbursed for their personal expenses out of the public purse, despite the fact that they are not required to submit supporting vouchers or receipts for these expenses. It would be practical, therefore, to require a statement of personal expenses in every instance, including a "nil return," when no personal expenses were incurred, and to require that the supporting documents, such as vouchers and receipts, must accompany each candidate's statement of personal expenses.

67. It is recommended that all candidates be required to submit a statement of personal expenses to their official agents and that those who incurred none be required to submit a "nil return" in a form prescribed by the Chief Electoral Officer.

68. It is recommended that candidates be required to submit supporting vouchers for personal expenses.

Fund-Raising Expenses

The expenses incurred during the conduct of a fund-raising function are not currently considered election expenses. To ensure that this provision is clearly understood, a definition of *fund-raising function* is needed. In addition, it is necessary to consider whether the costs of advertising such an event should be considered an election expense. The Accounting Profession Working Group took the approach that a fund-raising function is an event or activity held for the principal purpose of raising funds for a registered political party, electoral district association, or candidate, for which tickets are sold, but not including any routine business, administrative or social meeting or any method of soliciting funds other than by means of a ticketed event (Accounting Profession Working Group 1991, draft legislation). This general approach should be adopted.

69. It is recommended that a fund-raising function be defined as: an event or activity held for the principal purpose of raising funds for a registered political party and (or) a candidate by whom or on whose behalf the function is held, not including any routine administrative or social meeting or any method of soliciting funds other than by means of a ticketed event.

70. It is recommended that the costs associated with the conduct of a fund-raising function, except for the cost of advertising, be excluded from election expenses.

Market Value of Goods and Services

The definition of commercial value currently provided by the Act is needlessly complicated in that it unnecessarily distinguishes between donors who normally supply such goods or services and those who do not (subsection 2(1)). To obtain an accurate accounting of the election expenses of a registered political party or candidate, a clear and concise definition of commercial value is required. The Accounting Profession Working Group suggested that commercial value be defined as the lowest amount charged for an equivalent amount of the same goods or services in the market area at the relevant time.

71. It is recommended that commercial value in respect of contributed goods or services used during an election be defined as the lowest amount charged for an equivalent amount of the same goods or services in the market area at the relevant time, excluding volunteer labour.

Volunteer Labour

Volunteer labour has traditionally been excluded from the calculation of election expenses in order to facilitate citizen participation in electoral campaigns. The absence of disclosure and the resulting lack of transparency, however, has led to questions about undue influence and brings into question the integrity of the electoral system (Stanbury 1996a, pp. 89–90). According to Stanbury's calculations, the value of some volunteer efforts is far beyond that which could be contributed anonymously in cash (Stanbury 1994, pp. 13–14). Transparency, thus, requires that provisions be established for the disclosure of volunteer labour beyond a certain threshold.

Subsection 2(1) currently defines volunteer labour as any service provided free of charge by a person outside of that person's working hours, but does not include a service provided by a person who is self-employed if the service is one that is normally sold or otherwise charged for by that person. This definition is unnecessarily complicated and, as a result, is difficult to apply. Matters could

also be simplified by providing a straightforward definition of volunteer labour.

72. It is recommended that volunteer labour be defined as work provided at no cost, for which the individual providing the work does not receive pay from any source for the hours volunteered.

73. It is recommended that candidates and registered political parties be required to submit, along with their election expenses reports, a report including the name, profession or occupation, and number of hours of volunteer work of any individual who volunteers for more than 40 hours during an electoral period.

Contributions

Currently, the term *contribution* is only defined in the Act for the purposes of subsection 229(3), in reference to contributions made by the political parties' local associations. To ensure a full and accurate disclosure from candidates and political parties, however, it seems appropriate to provide a definition of contribution.

74. It is recommended that a contribution be defined as any money provided that is not repayable and the commercial value of goods or services provided by way of a donation, advance, deposit or discount or otherwise of any tangible personal property or of services of any description, whether industrial, trade, professional, or other, excluding volunteer labour.

Unpaid Claims and Contributions

Under the current provisions governing the financing of election campaigns, goods or services obtained during a campaign sometimes remain unpaid for a significant length of time following an election, and in a number of cases the claims are never paid. This is problematic because goods or services provided at no cost are actually contributions and, consequently, should be treated as such in terms of reporting and disclosure.

75. It is recommended that a campaign debt, reported in the election expenses return as an unpaid claim, that remains outstanding six months after the date on which the return was due be considered a contribution, unless the creditor has taken legal action or has made other arrangements for payment.

76. It is recommended that candidates be permitted, on application to the Chief Electoral Officer in the prescribed form, to pay unpaid election claims previously reported in the election expenses return within the six-month period, rather than having to obtain a court order, as is currently required.

Chapter 3 Reports of Candidates and Political Parties

Accurate reporting is a prerequisite for the transparency of election financing. In this chapter, consideration is given to the political parties' reports, the candidates' reports, and the verification and auditing of these reports.

The Content of the Parties' Reports

Under the current requirements of the Act, the parties' financial reports are not sufficiently detailed to permit a complete assessment of their financial activities. The annual expenditure statements required from national parties contain just 10 line items, including "miscellaneous expenses," which sometimes comprise as much as a third of total operating expenses. Contributions are only reported by name and amount; not even the contributor's electoral district or province is provided (Wearing 1991, p. 325). As a result, the claims of critics

can be neither verified nor refuted, and the public's means for scrutinizing the financial activities of political parties is less than adequate. Complete information of this type is also necessary for the Office of the Chief Electoral Officer to assess the extent to which political parties have complied with the Act. The Royal Commission on Electoral Reform and Party Financing as well as the Special Committee on Electoral Reform (1993), recognized the necessity for political parties to produce more detailed reports.

77. It is recommended that political parties be required to provide more detailed financial statements, such as a balance sheet, income statement, and a statement of change in financial position, and that generally accepted accounting principles be utilized.

78. It is recommended that all donors be identified by name, address and a unique identifier, such as their date of birth, and that the categories of donors be broadened by adding the following classes: registered political parties, registered electoral district agents, political organizations other than registered political parties, and others.

The Content of Candidates' Reports

The current financial returns submitted by the official agents of candidates have often been criticized for not including sufficient information. Contributions are only reported by name and amount; an address or other information necessary to verify or refute the claims of critics is not provided. The establishment of a more comprehensive financial reporting procedure for candidates would provide accountability and ensure transparency. It may also be practical to provide a short-form report for candidates who do not spend beyond a certain threshold, as this would reduce administrative time and expense.

79. It is recommended that candidates be required to disclose donors according to the following categories:—registered political parties, registered electoral district agents, political organizations other than registered political parties, and others—and that donors be identified by name, address and a unique identifier, such as their date of birth.

80. It is recommended that the Chief Electoral Officer be allowed to develop a short-form report to be used by a candidate whose expenses are less than 10% of the limit.

Deadline to Submit the Election Period Report

The deadlines for candidates and parties to submit their election period returns are different but for no apparent reason. Candidates must transmit their returns within four months after polling day, whereas registered political parties have up to six months after polling day to submit the election period return and up to six months (following the end of the fiscal year) to submit the fiscal period return. It would facilitate the process of verifying candidate and party election expenses returns if all reports were available within a four-month time frame.

81. It is recommended that political parties and candidates be required to submit their respective returns within four months of polling day and that all annual fiscal period returns be required within four months of the end of the relevant fiscal period.

Late Filing and Amendment of Returns

Under the current provisions of the Act, if an election expenses return is late or contains an error, the candidate or official agent may apply to a judge, who can issue an order authorizing the late filing of the

return or authorizing an amendment to the return. The same procedure must be followed by an official agent who wishes to pay a bill received more than three months after polling day as a result of the death of a creditor. Similar provisions, however, are not available to the chief agent of a political party in relation to either the annual return or the election expenses return. In addition to being costly, these requirements are unnecessarily complex. It should also be recognized that this is an administrative difficulty, and, as such, the involvement of the court is unnecessary.

82. It is recommended that the Chief Electoral Officer be allowed to extend the deadline for the submission of any annual return or election expenses returns and to permit corrections to these returns under the same conditions as those currently considered acceptable.

By-election Reports

Currently the financial information provided by the parties about their activities in by-elections is insufficient for assessing whether the parties have complied with the relevant provisions of the Act. That is because the parties are now required to make such a report only within the context of the party's annual return. Requiring parties to submit a detailed financial return after each by-election, similar to the requirements for a general election, would improve the quality of reporting.

83. It is recommended that each party be required to submit a separate election expenses return for by-elections, within four months after polling day.

The Verification Process and the Audit

The Act currently requires the official agents to submit the candidates' financial returns, audit statements and supporting vouchers to the returning officers. Although these documents are available to the public for inspection, the returning officers receive very few requests. In the past, this process has led to delays in the audit process at the Office of the Chief Electoral Officer and subsequently to delays in the payment of reimbursements to candidates. This situation could be improved by providing for the financial returns to be directly submitted to the Chief Electoral Officer.

Potential shortcomings with the external audit process have also been identified, possibly increasing the risk that candidates' returns contain material errors. In particular, the absence of any obligation to consider the completeness of recorded transactions must be addressed. Overcoming these shortcomings would substantially improve the reliability of information contained in the candidates' returns.

Finally, because of the general acceptance of technology, it is possible to provide that the returns may be submitted electronically.

84. It is recommended that the auditing and verification procedures be simplified by requiring candidates to submit their financial returns and supporting vouchers, cancelled cheques, drafts, and bank statements directly to the Office of the Chief Electoral Officer.

85. It is recommended that a new audit certificate be established and that the auditor be required to complete and sign a checklist, including a number of questions concerning the accounting records maintained by the official agent.

86. It is recommended that all the financial returns required under the Act be allowed to be submitted electronically in a format prescribed

by the Chief Electoral Officer and that a signed declaration be required to be submitted along with the electronic submission.

Indexing the Financial Limits

Certain provisions of the *Canada Elections Act* have not been altered in response to inflation since they were introduced in 1974. It would therefore be appropriate to adjust these amounts accordingly. The threshold for the disclosure of the name of a contributor to a registered party or candidate is currently $100. This is inconsistent with the *Referendum Act*, which fixes the amount at $250. In addition, the threshold for the presentation of receipts and vouchers should also be increased, as should the amount of the subsidy provided to auditors under the *Canada Elections Act*.

87. It is recommended that the threshold amount for the disclosure of the name of a contributor to a reporting entity be raised to $250.

88. It is recommended that the limit for the presentation of vouchers be raised from the current $25 to $50.

89. It is recommended that the amount of auditors' fees subsidized by the Crown be reviewed in consideration of the new audit requirements proposed in this report.

PART IV

ENSURING FAIR COMPETITION
IN ELECTION FINANCING

Democratic elections have never been quiet affairs. An election campaign is the greatest contest that a democratic society can provide, and it is the right of citizens to participate and to do so enthusiastically. To promote fairness among electoral participants, however, a balance must be achieved between, on the one hand, the freedom of expression, including freedom of the press, and, on the other, the right of electors to reflect on adequate and accurate information.

As pointed out by the Committee on Election Expenses (1966), fairness requires that access for paid partisan messages in the media be restricted in order to limit the cost of election campaigns. General restrictions on spending during election campaigns are legitimate and necessary in order to ensure equality of opportunity among candidates and among registered political parties. The provision of partial reimbursements to candidates and parties and of income tax credits for political contributions help both to encourage participation in the electoral process and to promote fairness during election campaigns.

In this part, consideration is given to the allocation of broadcasting time, the dissemination of the results of public opinion polls, candidates' election spending, and the provisions for public funding of electoral participants.

Chapter 1 Broadcasting Time

In an effort to promote equality and fairness, broadcasting time is allocated among political parties, and election advertising is only permitted during a certain time frame. These provisions were designed partly to keep advertising costs from rising astronomically while promoting the principle of fairness in the electoral process. As noted, the advertising blackout related to candidates is currently being considered by the courts—*Somerville v. Canada (Attorney General)*, Alberta Court of Appeal—and, as a result, is not addressed in this report.

The Alberta Court of Appeal in the case of *Reform Party of Canada et al. v. Canada (Attorney General)* has ruled that, while the provisions requiring an allocation of broadcasting time (for the purposes of election advertising by the political parties) are constitutionally valid, those that preclude any party from purchasing additional broadcasting time (within its election expenses limit) are not (paragraph 319(*c*) and section 320). As the time limit for an appeal to the Supreme Court of Canada has expired, the decision of the Alberta Court of Appeal is final. As a result, it is necessary to repeal those sections of the *Canada Elections Act* that have been ruled unconstitutional by the Court.

90. It is recommended that paragraph 319(*c*) and section 320 of the Act, which preclude a political party from purchasing broadcasting time beyond that allocated, be repealed.

Chapter 2 Public Opinion Polls

The number of polls published during election campaigns increased steadily throughout the 1970s and 1980s, peaked at 22 in 1988 and then declined again to 13 in 1993 (Frizzell and Westell 1994, p. 100). The increase in the number of polls published over the last two decades reflects the fact that elections are competitive, exciting events.

The issue of whether the publication of public opinion polls during election campaigns should be regulated has been debated for some time (Boyer 1983, pp. 583–587). The proponents of regulation have offered two principal mechanisms: a ban on the publication of public opinion polls for some or all of the election campaign period and (or) a mandatory methodological disclosure requirement. Because of Bill C-114, the *Canada Elections Act* was amended to provide a ban on the publication of opinion polls from midnight the Friday before polling day until the close

of all polling stations (section 322.1). This provision is currently being challenged by Thompson Newspapers before the Ontario Court of Appeal. The second mechanism has not yet been put into law at the federal level.

To ensure that each elector is able to exercise his or her right to vote on the basis of accurate information, the elector should be in a position to appreciate the reliability of opinion polls. A party or candidate should also be able to judge the accuracy of a poll during an election campaign, as both have the right to challenge a poll's findings on methodological grounds or on grounds of the way it is reported in the media. It would appear that the newspaper industry accepts that the methodology used in developing a poll should be published along with the poll results (Strauss 1995). This opinion is widely shared. A 1986 government white paper suggested a provision of this type (Hnatyshyn 1986, pp. 25–27), as did the Royal Commission on Electoral Reform and Party Financing (recommendations 1.7.15 and 1.7.16) and the Special Committee on Electoral Reform (1993).

Even without legislation, the public opinion research industry has taken commendable steps toward self-regulation. Member firms of the Canadian Association of Marketing Research Organizations, for example, are subject to periodic methodological audits (Lachapelle 1991, p. 73; Saykaly 1994, p. 140). The more than 1 200 members of the Professional Marketing Research Society (PMRS) of Canada are subject to a mandatory code of conduct, which includes a requirement that "[f]or each survey, a practitioner must provide the client (either in a report or in supporting documentation if a formal report is not being prepared) information sufficient to replicate the study" (PMRS 1994, p. 10). The report required by the PMRS is extensive enough to allow the media to release adequate methodological details. The assessment of media treatment of public opinion polls during the 1993 campaign was that the results of these polls "were remarkably consistent and they were reported better" (Frizzell and Westell 1994, p. 99).

The Special Committee on Electoral Reform (1993), following the recommendations of the Royal Commission on Electoral Reform and Party Financing, recommended the publication of methodological criteria when an opinion poll is first released in the media. Both the committee and the Royal Commission also recommended that a full report containing the results and technical information of a published poll be made available to any person, on request. Provisions of this nature were recently adopted at the provincial level in British Columbia (section 235 of the British Columbia *Election Act*). It should be noted, however, that a distinction is made between the criteria that must be included when an opinion poll is first released in the media and those that must be included in a methodological report provided to an individual.

It is unnecessary for all the technical information about a poll to be provided when the results are first published or broadcast. If the sponsor of a poll is required to provide a detailed methodological report on request, the information that must be published could be kept to a minimum. However, the technical information published must provide enough information for an elector to evaluate the accuracy and reliability of the results. From this perspective, it is important that the name(s) of the sponsor(s) of the poll, the name of the opinion research firm, the dates when the survey was conducted, the wording of the question utilized concerning voters' intentions, the margin of error for the survey, and the sample size(s) are reported. Further details could be available on request.

It must be pointed out that there is a tendency for the media to allocate undecided respondents and those who refuse to state an opinion in the reported results on the

basis of an estimation of how these respondents may vote on polling day, without reporting the actual responses and (or) how the undecided and other respondents were allocated. Media reports based on estimates of this nature may mislead electors and influence their voting decisions. This could be avoided by stipulating that when the media are reporting the results of an opinion survey regarding an electoral event, they must give equal treatment to the frequencies for each response category prior to the allocation of undecided and other respondents (e.g., A% for party A, B% for party B, C% for others, D% undecided, E% no answer, and F% don't know) and any projection based on the data. In addition, an explanation of how the undecided were allocated would have to be provided. Requirements of this nature would help to reduce the possibility of electors being misled by reports based on estimations of the voting behaviour of undecided respondents or those who refuse to answer or don't know.

91. It is recommended that the media be required to give equal treatment to the frequencies obtained from a sample survey prior to the allocation of undecided and other respondents and to any projection based on the data.

92. It is recommended that, when first released by the media, an opinion survey regarding an electoral event be reported with an explanation of the methodology used, including the name(s) of the sponsor(s) of the poll, the name of the opinion research firm, the size of the sample(s) for the survey, the wording of the question utilized concerning voters' intentions, the margin of error, and the dates when the survey was conducted.

93. It is recommended that the sponsor of an opinion poll published during an electoral event be required to provide to any person, on request and at a reasonable cost, a detailed report of the results and methodology.

Chapter 3 Restrictions on Spending

As noted, restrictions on the spending of electoral participants were introduced in the 1970s, both to promote fairness between electoral participants and to control the ever-increasing cost of election campaigns.

Increased Expense Limits If a Candidate Dies

According to subsection 91(1), the election is postponed if a candidate who is endorsed by a registered political party dies during the period beginning on the fifth day before the close of nominations and ending at the close of polls on polling day. Also, in the event of the death of a candidate after the close of nominations and before the close of the polls, subsection 210(3) provides for the election expenses limit for the remaining candidates in that electoral district to be increased to one and one half times the original amount, to compensate for the extended campaign period.

This is problematic because the electoral period is only extended in the event of the death of a registered party's candidate, whereas the expense limits are increased as a result of the death of any candidate. This means that the increased election expenses limit could apply in cases where the election period was not extended.

94. It is recommended that the spending limit for candidates at an election be increased only in the case where an election is postponed following the death of a candidate sponsored by a registered party.

Nomination Expenses

Nomination contests in electoral districts are unregulated by the *Canada Elections Act*, except for a limit on how much can be spent on the notices for nomination meetings. This cannot be more than 1% of a candidate's election expense limit in that electoral district during the previous general election (section 214). There is, however, a particular concern that, since spending to seek the nomination is excluded from the election expense limits, a candidate might be tempted to spend lavishly to win the nomination and reap the benefits from the spill-over effect that these expenditures would probably have on the election campaign itself.

The Royal Commission on Electoral Reform and Party Financing recommended, in addition to other things, that all nomination contestants should be required to submit a report on their contributions and expenditures (recommendation 1.6.10). However, as only the winner of a nomination contest becomes a candidate in the election and thus becomes subject to the reporting provision of the Act, it seems logical to require the submission of a financial report only from nominated candidates. This report could be submitted along with the candidate's return respecting election expenses.

Candidates who are nominated before the issue of the writs may also receive contributions that go unreported. Improved transparency could be achieved by requiring candidates who are nominated prior to the issue of the writs to submit a report on the contributions they receive and on expenditures incurred prior to their official nomination.

95. It is recommended that each candidate for an election be required to submit a report on nomination contributions and expenses and a report of contributions received between the date of nomination by a party and the date of the official nomination for an election, along with the election expenses return.

Chapter 4 Public Funding

Various monetary incentives, both direct and indirect, are given to parties and candidates to promote electoral participation. These provisions of the *Canada Elections Act* should be revisited for a variety of reasons.

Reconsidering the Level of Reimbursement

The present reimbursement levels, which are 22.5% for parties and 50% for candidates, have resulted in an imbalance between the financial resources of parties and candidates. The surpluses declared by candidates are large and increase with each election, whereas the parties, which have to conduct increasingly expensive national campaigns, are looking to their candidates for help. To address this imbalance, Stanbury suggested that the reimbursement of political parties and candidates should be made the same, at 33%. For parties, this would be an increase, whereas for candidates this represents a decrease (Stanbury 1991, p. 419). According to Stanbury, this shift is required because all the major parties are evidently "experiencing 'fiscal stress' in varying degrees for several reasons" (Stanbury 1991, p. 417).

Rather than continuing to reimburse parties on the basis of their ability to spend money, a more equitable system would base the reimbursement on the number of votes each party receives. The total amount of reimbursement for future general elections should not exceed the indexed value of the total of reimbursements to political parties and candidates during the 1993 general election (approximately $22,894,443). On the basis of this total, a reasonable reimbursement would be approximately $1.00 per vote. Eligibility for the reimbursement would be based on vote-based thresholds:

for parties, either 2% of the national vote or 5% of the vote in those electoral districts where candidates it endorsed were nominated; for candidates, 15% of the valid votes in the electoral district.

The question remains one of whether the registered political parties should be reimbursed for their by-election expenses, since parties are currently reimbursed only for expenses incurred during a general election. If so, this reimbursement should be made in accordance with the formula in effect for a general election.

It would also be practical to make the reimbursement contingent on the submission of all election expenses and annual fiscal period returns required under the Act.

96. It is recommended that a reimbursement of not more than 50% of the applicable spending limit be available to each party that receives either 2% of the national vote or 5% of the vote in those electoral districts where candidates it endorsed were nominated, as well as to each candidate who receives 15% of the valid votes in the electoral district.

97. It is recommended that the reimbursement of election expenses for both parties and candidates be an amount per vote that in total would not exceed the total amount of reimbursements paid to parties and candidates at the 1993 general election.

98. It is recommended that a registered political party be eligible for a reimbursement of by-election expenses if its candidate(s) obtain 5% of the valid votes cast in each electoral district where a by-election is held.

99. It is recommended that the reimbursement to registered political parties be made on the basis of paid election expenses and be conditional on the filing of all required election expenses and fiscal period returns in accordance with the Act.

Reimbursement of the Candidate's Deposit

Paragraph 81(1)(*j*) of the *Canada Elections Act* requires that each candidate make a deposit of $1,000 and subsection 84(3) sets out the conditions for its reimbursement to the candidate. Fifty percent is returned if the candidate submits the required election expenses return and unused official income tax receipts within the prescribed time limit, and 50% is returned if the candidate is elected or obtains at least 15% of the votes cast in the electoral district; this section does not refer to the valid votes cast. Prior to 1993, the candidate's deposit was reimbursed in full if the candidate was elected or received 15% of the valid votes cast in the electoral district.

By specifying that a candidate must obtain at least 15% of the total votes cast, rather than the valid votes, Bill C-114 created an inconsistency in the Act. According to subsection 241(1), candidates are eligible for a partial reimbursement of election expenses if they were elected or received at least 15% of the valid votes cast. The distinction between the valid vote and the total vote is important because 15% of the valid vote constitutes a lower threshold.

100. It is recommended that paragraph 84(3)(*b*) be amended to allow the reimbursement of the first half of the deposit to candidates who were elected and to those who obtained at least 15% of the valid votes cast in the electoral district.

Withdrawal of a Candidate

According to paragraph 88(2)(*b*) of the Act, the deposit of a candidate who withdraws prior to 5:00 p.m. on nomination day, as allowed under subsection 88(1), is forfeited.

Because a candidate who withdraws must still submit an election expenses return and the unused official receipts (paragraph 84(3)(*a*)), it would be more appropriate for the candidate to forfeit only that half of the deposit reimbursement that is contingent on a candidate obtaining 15% of the valid votes cast.

101. It is recommended that any candidate, including any candidate who withdraws, be reimbursed half of his or her deposit, on production of the election expenses return and the unused official receipts.

Reimbursement of Election Expenses When the Writ is Withdrawn

The Act contains a provision that stipulates that no reimbursement of election expenses shall be made to candidates if the enumeration of electors has not been completed in the electoral district when the writ is withdrawn (paragraph 247(2)(*a*)). As a consequence of the enactment in 1993 of a provision entitling the Chief Electoral Officer to re-use the list of electors, making an enumeration unnecessary, there is a necessity to review this provision.

102. It is recommended that provisions be made for the reimbursement of election expenses when a writ is withdrawn after nomination day, if no enumeration would have been conducted as a result of the re-use of the lists, as permitted by subsection 63(3).

Issuance of Receipts for Contributions

The *Income Tax Act* allows registered political parties to issue official tax receipts only for contributions received after their registration according to the *Canada Elections Act* takes effect, which is the day after they have sponsored candidates in at least 50 electoral districts. Similarly, candidates can only issue official receipts for contributions received after their nomination papers have been accepted by the returning officer. Thus, the current legal framework restricts the ability of both candidates and parties to raise sufficient campaign funds in the first few weeks of a campaign.

103. It is recommended that provision be made for the retroactive issuance of receipts for contributions to a registered party, local association, or candidate during the election period prior to the official registration or nomination, as the case may be.

Reimbursement of Contributions

As noted, the *Income Tax Act* currently provides for a donor to receive a $75 tax credit for a contribution of $100 to a political party or candidate. A practice has been reported by which a party receiving a $100 contribution returns $25 to the donor. The result of this practice is that the donor actually spends nothing and the political party receives $75 of public money. This practice should be prohibited.

104. It is recommended that no registered party or candidate be permitted to return to the donor, either directly or indirectly, any portion of a contribution that was made in conformity with the law.

PART V

MANAGING THE ELECTORAL PROCESS

> *A cornerstone of public confidence in any democratic system of representative government is an electoral process that is administered efficiently and an electoral law that is enforced impartially. Securing public trust requires that the election officers responsible for administration and enforcement be independent of the government of the day and not subject to partisan influence.*
>
> (Royal Commission on Electoral Reform and Party Financing 1991, vol. 1, p. 483).

The Chief Electoral Officer, who is appointed through a resolution of the House of Commons, is responsible for exercising general direction and supervision of the preparation, administration and reporting aspects of Canadian federal elections and referendums. As the legislation governing the democratic rights of Canadians has evolved the duties of the Chief Electoral Officer have become increasingly diverse.

The Chief Electoral Officer relies on the efforts of numerous election officers. The Commissioner of Canada Elections, one such official, is responsible for ensuring that the provisions of the *Canada Elections Act* are complied with and enforced. The Commissioner also develops procedures to ensure that alleged infractions under the Act are brought to his or her attention. In each electoral district, a returning officer, appointed by the Governor in Council, is responsible for the conduct of the election. The *Canada Elections Act* also provides for the temporary employment of a veritable army of election officers to assist in the conduct of a general election. As noted in the introduction to this report, the Chief Electoral Officer has recognized the necessity of developing a modern, streamlined and efficient electoral process. In this part, certain election officials, various powers under the Act, and the Office of the Chief Electoral Officer are considered.

Chapter 1 Election Officers

To conduct an election within the short time frame provided by the *Canada Elections Act*, the involvement of up to 250 000 people is usually required. During the 1993 general election, however, enumerators were required only in the province of Quebec, as a result of the re-use in all other provinces and territories of the lists of electors from the 1992 referendum. As a consequence, the number of people employed for the 1993 general election (185 075) was lower than that for previous elections.

In this chapter several issues will be addressed, including the method by which the returning officers are appointed; the appointment of enumerators, deputy returning officers, and poll clerks; and the definition and the legal status of election officers.

Appointment of Returning Officers

The process by which the returning officer and the assistant returning officer are appointed is an anachronism. Since 1920 the Chief Electoral Officer has been appointed by a resolution of the House of Commons. The returning officers, on the other hand, continue to be appointed by the Governor in Council and can be removed for cause only by the same authority. Assistant returning officers are then appointed by the returning officers. Both the returning officer and the assistant returning officer are required to take an oath to faithfully perform the duties of the office without partiality, fear, favour or affection.

In recent practice, the Chief Electoral Officer has played an informal and indirect role in the appointment of returning officers, by providing advice on the criteria by which those under consideration for the appointments should be judged. The Chief Electoral Officer has no further involvement in this process.

Subsection 14(3) of the Act enumerates the causes for which a returning officer may be removed. They include the following: if the returning officer is not a resident of the electoral district; if he or she is incapable of performing the duties of the position or has failed to comply with any instruction of the Chief Electoral Officer; if he or she has failed to discharge competently any of the duties; if he or she is guilty of politically partisan conduct; or if he or she has failed to complete the revision of the boundaries of the polling divisions, pursuant to subsection 20(1).

The current system of appointment creates several difficulties. First, appointees are often not given enough advance information about the nature of the work expected of them. This has resulted in a large number of resignations. Among the appointments made since the 1993 general election, for example, at the time of printing, 9 out of the 33 returning officers (27%) appointed have resigned before the initial training session. Second, in the event of non-performance or unsatisfactory performance by a returning officer during an election, the Chief Electoral Officer does not have the authority to remove a returning officer and to appoint a replacement. It is not practical for the Governor in Council to exercise this authority during an electoral event. Third, as returning officers are not appointed by the Chief Electoral Officer, they could question his or her authority to issue instructions binding on them, despite the Chief Electoral Officer's authority under the Act. Fourth, according to the theory of the apparent agent (Waddams 1993, pp. 167–168), a returning officer or his or her assistant could bind the Office of the Chief Electoral Officer to the terms and conditions of contracts that may have been signed before the issue of the writs and without the consent of the Chief Electoral Officer.

Thus, it may be desirable to give the Chief Electoral Officer a more formal role in the appointment of returning officers. This change would provide for more effective management of elections and would help to enhance the impartiality of the electoral process for the benefit of all participants.

In this context, two different options may be considered. The first option is the establishment of a process by which persons being considered for appointment by the Governor in Council would be subject to a test of competence. The testing would be administered by the Chief Electoral Officer and would ensure that prospective appointees are capable of performing the responsibilities of a returning officer. This approach, however, does not address some of the difficulties mentioned, such as the removal of a returning officer from office or the difficulties with contracting.

The appointment of returning officers by the Chief Electoral Officer is another alternative. This would serve to remedy the various difficulties stemming from the current arrangements. Under this scenario, appointments would be made following a competitive selection process, based on an impartial consideration of the merits of the prospective returning officers. This is the practice used in other jurisdictions, such as Quebec and the Northwest Territories.

105. It is recommended that provision be made for the returning officers to be appointed by the Chief Electoral Officer, who would base the selection on a formal competition open to all interested Canadians, and that the legal status of returning officers be reviewed.

Enumerators, Deputy Returning Officers and Poll Clerks

The method by which many of the local election officers are selected provides a system of checks and balances within the

electoral system. These checks and balances are designed to ensure that the system is, and appears to be, fair. The Act provides for the enumerators, revising agents and revising officers in each electoral district to be appointed by the returning officer from lists supplied by the registered political parties whose candidates finished first and second in the previous election in that electoral district. The returning officer is required to ensure that each pair of enumerators or revising agents represents those two political parties.

In addition, deputy returning officers are appointed from lists supplied by the candidate of the registered party whose candidate finished first in the last election in the electoral district. Similarly, poll clerks are appointed from lists supplied by the candidate of the registered party whose candidate finished second in that electoral district in the previous election. Returning officers may refuse to appoint certain of the individuals whose names appear on the parties' lists. Subsection 64(8) (enumerators) and section 97.3 (deputy returning officers and poll clerks) provide that, following a refusal, the parties have 24 hours to recommend a replacement name.

The current procedures could be improved because of the short duration of the electoral period and the time required for the returning officer to train those appointed as enumerators, deputy returning officers and poll clerks. Consideration should be given to the fact that nominating these officials is not as easy as it once was. According to Carty's survey, "[j]ust half (49%) of all local associations involved in naming enumerators in 1988 reported that they were able to 'provide enough names easily', while 18% reported the opposite experience, indicating that they were 'not able to find enough'" (1991a, p. 141). The remaining respondents reported barely managing to find enough names. According to the reports of returning officers, submitted after the 1993 general election, things may have deteriorated even further in this regard. On this basis it appears reasonable to provide political parties only the one opportunity to provide names for these appointments.

106. It is recommended that the parties be provided one opportunity to submit names of people for appointment of each category of election officers that the party is eligible to nominate.

Definition of Election Officer

The Act currently defines an election officer as a person having any duty to perform pursuant to the Act for which duty that person may be sworn. In practice, candidates' representatives are required to take an oath before being permitted to be present at the polling stations. Even though the candidates' agents are not election officers, they do appear to meet the criteria established by the current definition in subsection 2(1).

107. It is recommended that candidates' agents be added to the list of persons who are excluded from the definition of election officers.

Legal Status of Election Workers

For the purposes of the *Government Employees Compensation Act*, the personnel of the Office of the Chief Electoral Officer are employees of the Public Service of Canada. However, election officers employed at the local level during the election period, such as enumerators and deputy returning officers, are not. This follows from a legal interpretation provided by Labour Canada (Dec. 17, 1993) that held that enumerators were not covered by the *Government Employees Compensation Act*. As a consequence, an election officer who is injured while performing his or her duties would not be eligible for appropriate compensation and might possibly attempt to hold the Office of the Chief Electoral Officer liable for damages.

108. It is recommended that the appropriate coverage of the *Government Employees Compensation Act* be extended to all election officers.

Chapter 2 Powers Under the *Canada Elections Act*

The management of the Canadian electoral process is governed by a number of statutes and requires that various powers be granted to different officials. The method by which the tariff of fees and expenses for election officers is amended is unnecessarily complicated and could also be simplified. This and related issues will be addressed in this chapter.

Tariff of Fees

Section 198 of the *Canada Elections Act* requires that the tariff of fees and expenses for election officers be fixed by the Governor in Council on the basis of the recommendation of the Chief Electoral Officer. In practice, the Chief Electoral Officer conducts periodic reviews of the tariff in light of changes to the consumer price index, minimum wage rates, and the rates paid in other electoral jurisdictions. Travel and living expenses follow the Treasury Board directives.

The Standing Joint Committee for the Scrutiny of Regulations has expressed the view that the *Canada Elections Act* be amended to grant the Governor in Council the authority to designate persons who might determine the amount of fees, costs, allowances and expenses. Rather than create a situation in which the Governor in Council must delegate the authority to amend the tariff each time it requires updating, it is possible to authorize the Chief Electoral Officer to amend the tariff.

109. It is recommended that the Chief Electoral Officer be authorized to determine the amount of fees, costs, allowances and expenses of election officers.

Payment of Claims

Section 201 of the Act requires that all claims relating to the conduct of an election shall be paid by separate cheques issued from the office of the Receiver General at Ottawa and sent directly to each person entitled to payment. Two difficulties exist in this regard. First, it is not clear whether "separate cheques" means that one individual who has performed more than one function must be paid separately for each function (which leads to inefficiencies). Second, the current section does not take into account existing or future methods of payment (direct deposit for example). This section should be generalized to remedy both of these shortcomings.

110. It is recommended that the Chief Electoral Officer be made responsible for ensuring the payment of all claims relating to the conduct of an election (or under the authority of the Act) in a manner acceptable to the Receiver General.

Exercising the Power of a Justice of the Peace

Section 151 of the Act grants the powers appertaining to a justice of the peace to every returning officer during an election and grants these powers to every deputy returning officer and central poll supervisor during the hours that the polls are open. The granting of this power to election officers is an anachronism and serves no useful purpose. While this power may have been necessary when the section was written, it is the practice today for election officers to call the local enforcement officers in the event of a disturbance.

111. It is recommended that section 151 of the *Canada Elections Act* be repealed.

Chapter 3 Office of the Chief Electoral Officer

This chapter will be comprised of a discussion of the Office of the Chief Electoral Officer and the employees of that Office. Additionally, the responsibility of the Chief Electoral Officer to report to Parliament on the activities of his or her Office will be discussed.

Appointment of the Assistant Chief Electoral Officer

The staff of the Chief Electoral Officer includes an officer known as the Assistant Chief Electoral Officer, who is appointed by the Governor in Council (subsection 11(1)). The Assistant Chief Electoral Officer has all the statutory powers of the Chief Electoral Officer when he or she is absent. The Act currently states that the Assistant shall be deemed to be a person employed in the public service, and the current Assistant Chief Electoral Officer was selected through the Public Service Commission of Canada. Thus, it would be preferable for the Assistant Chief Electoral Officer to be selected through the Public Service of Canada, as is the case with all other staff of the Chief Electoral Officer, rather than being appointed by the Governor in Council.

112. It is recommended that the Governor in Council no longer appoint the Assistant Chief Electoral Officer and that the Assistant be selected through the Public Service, as is the case with all other members of the staff of the Chief Electoral Officer.

Authority of the Chief Electoral Officer to Innovate

Currently, there is no provision in the Act to allow the Chief Electoral Officer to conduct pilot projects with new electoral procedures during an election. The *Election Act* of Quebec, for example, makes a provision of this nature, whereby the province's Chief Electoral Officer has the power to test new voting procedures during a by-election. The evolution in technology and the efforts of the Office of the Chief Electoral Officer to modernize the Canadian electoral process should be taken into account. For example, the utilization of telephone voting technology by electors in isolated areas could be tested during a by-election if this type of provision were implemented.

113. It is recommended that provision be made for the Chief Electoral Officer to test new electoral procedures after consultation with the Committee of the House of Commons responsible for electoral matters.

Right to Strike

The employees of the Office of the Chief Electoral Officer perform an essential role in two respects. First, under the authority of the Chief Electoral Officer, they are responsible for the implementation of the *Canada Elections Act* or the *Referendum Act* during an electoral event and for providing assistance to the commissions established under the *Electoral Boundaries Readjustment Act*. Second, these employees are responsible for maintaining a continual state of event readiness, as the timing of an election or referendum is not predetermined.

The consequences of a strike among the employees of the Chief Electoral Officer during an electoral event are difficult to predict, partly because there are no provisions for delaying an event. Conceivably, management at the Office of the Chief Electoral Officer would have to take over everything that had to do with running the event. The least one can say is that the situation would be extremely difficult. Moreover, if a strike was in progress at the dissolution of Parliament, it would be extremely difficult to convince employees to cross a picket line and return to work.

As the Office of the Chief Electoral Officer must be in a constant state of event readiness and be able to implement any change to the *Canada Elections Act*, it is necessary to revoke the right to strike of its employees not only during an electoral period but also for the period between elections. Through the course of the last three years, for example, the Office of the Chief Electoral Officer has been required to prepare for the implementation of the referendum legislation, Bill C-78 and Bill C-114. In addition, the Office of the Chief Electoral Officer provided technical assistance to the electoral boundaries commissions, and the new Representation Order was published in the *Canada Gazette* of January 12, 1996. The Chief Electoral Officer also administered the 1992 referendum, the 1993 general election and, in 1995, three federal by-elections and a general election in the Northwest Territories.

Federal public servants are covered by the *Public Service Staff Relations Act*. According to that statute, there are two ways by which the right of public servants to strike can be suspended. First, subsection 102.1(1) states that the Governor in Council may, under special circumstances, limit the right to strike between Parliaments.

Second, subsection 78(1) of the *Public Service Staff Relations Act* provides for the conclusion of an agreement between the parties or for the Public Service Staff Relations Board to determine "designated employees," for whom the right to strike is prohibited pursuant to subsection 102(1) of the said Act. The designated employees are those whose duties consist in whole or in part of duties the performance of which at any particular time or after any specified period of time is or will be necessary in the interest of the safety or security of the public (subsection 78(1)). The process of negotiating to identify these designated employees is difficult and must be repeated each time the pertinent collective agreement is renewed or whenever a strike is impending. In other jurisdictions, including Quebec, Ontario, Manitoba, and British Columbia, the law prohibits the employees of the election agency from striking (Royal Commission on Electoral Reform and Party Financing, 1991, vol. 1, p. 505).

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

Budgetary Authority of the Office

Subsection 11(1) of the *Canada Elections Act* provides for the payment of the permanent staff of the Chief Electoral Officer, and subsection 11(3) provides for the payment of additional temporary or casual employees. In practice, this means that the Office of the Chief Electoral Officer is financed through a lapsing vote, which is voted on annually for the salaries of a core group of full-time employees. The Statutory Authority, which is non-lapsing, covers all expenditures for the preparation and conduct of elections and referendums, as well as the costs related to our responsibilities under the *Electoral Boundaries Readjustment Act* and the *Elections Act* of the Northwest Territories, including the cost of additional staff required.

According to subsection 11(1) of the *Canada Elections Act*, the staff of the Chief Electoral Officer shall consist of an officer known as the Assistant Chief Electoral Officer and such other officers, clerks and employees as may be required, who shall be appointed in the manner authorized by law. At the time this subsection was written, the Treasury Board Secretariat was responsible for the allocation and control of person–years, and it is believed that the main justification for the establishment of the lapsing authority for the administration of the Office of the Chief Electoral Officer was to permit the tracking and control of the full-time person–years.

Since the introduction of the operating budgets in 1993 the Treasury Board Secretariat no longer has this responsibility, as full-time equivalents are reported but the control is by overall expenditure budget.

For the most part, there is no clear distinction whether staff are performing administrative work or event-readiness and delivery work. The mandate of the Office requires it always be ready for an electoral event, and all staff participate in event-readiness and delivery-related activities.

Because of the changes to the House rules in February 1994, the role of Parliament in the budgetary process was significantly enhanced. Through the operations of standing committees, Parliament reviews the departmental Outlooks and provides its views on future spending priorities. In addition, these committees continue their traditional role of reviewing and reporting on spending proposals in the Estimates for the current fiscal year.

A more effective arrangement would be for all the staff and all the activities of the Office to be included under the Statutory Authority. Recent discussions with the Treasury Board Secretariat have resulted in an agreement supporting the position that all activities of the Office of the Chief Electoral Officer are related to electoral event readiness and delivery and therefore should be funded under the Statutory Authority. It is also the opinion of Treasury Board Secretariat that there is currently no legal basis to establish a separate appropriation. Under the proposed scenario, the level of full-time equivalents, their salaries and other operating funds would be established by the Chief Electoral Officer for activities included under the Statutory Authorities vested in the Office of the Chief Electoral Officer, in accordance with the relevant statutes. An amount would be submitted annually for review by the standing committee prior to the amount's inclusion in the Main Estimates.

115. It is recommended that all activities and staff of the Office of the Chief Electoral Officer be funded under one authority, the Statutory Authority.

Reports of the Chief Electoral Officer

According to the *Canada Elections Act*, the Chief Electoral Officer must submit a statutory report to the Speaker of the House of Commons. The Chief Electoral Officer is also required to publish a report containing the official poll-by-poll election results. Additionally, the Chief Electoral Officer must publish the candidates' returns respecting election expenses. As the election expenses returns of the candidates and the fiscal period and election expenses returns of the registered political parties are considered public records under the Act, the Chief Electoral Officer publishes a report of them after each electoral event. The reporting provisions of the Act are intended to keep Parliamentarians and interested members of the electorate informed. The publication of the different reports is considered in this section.

Statutory Report Following a General Election

According to section 195, the Chief Electoral Officer must submit a report to the Speaker of the House of Commons, containing the following items: the activities of the Office of the Chief Electoral Officer in the period since it last reported; an account of any action taken by the Chief Electoral Officer pursuant to subsections 9(1) or 9(3) or sections 255 to 257 of the Act or under subsection 3(2) of *Schedule II*; and any amendment that in the opinion of the Chief Electoral Officer is desirable for the better administration of the Act.

Under amendments to the Act passed in 1993, as part of Bill C-114, a 60-day time limit after the return of the writ for the

Chief Electoral Officer to report to Parliament (subsection 195(1)) replaced a previous provision that required the Chief Electoral Officer to report within 10 days of the commencement of every new session of Parliament. The old provision had led to the report being tabled anywhere from two to five months after a general election, depending on how soon the government decided to call the new Parliament into session. Thus, while the new requirement for a report to be tabled within 60 days of the return of the writs provides a more regular basis for reporting, it does not allow sufficient time for election evaluations to be conducted with election officers and for those findings to be included in the report on the election. This deadline also fails to allow sufficient time for substantive recommendations to be made. In this latter case, greater flexibility is required.

116. It is recommended that the period within which the Chief Electoral Officer is required to publish a report following an election be increased from 60 to 90 days after the return of the writs, with the exception of the amendments that, in the opinion of the Chief Electoral Officer, are desirable for the better administration of the Act, which would be published as soon as possible after an electoral event.

Reports Following a By-election

The reporting provisions related to a by-election require the Chief Electoral Officer to submit a statutory report following a by-election to the Speaker of the House of Commons within 60 days after the return of the writ. These provisions also require that the poll-by-poll results from by-elections be published at the end of each year (paragraph 193(*b*)). This provision, which was not changed by Bill C-114, can result in unnecessary delays in the release of the poll-by-poll results. This was the case following the three by-elections held in February 1995, when the legislation did not permit the Chief Electoral Officer to include the poll-by-poll results with the administrative report, even though they were available in time to do so. It may be possible in future cases to combine the poll-by-poll results of one or more by-elections with the administrative report for the by-election(s) in question, within the same time frame. If it is not possible to do so, greater flexibility would be required to publish the poll-by-poll results.

117. It is recommended that the Chief Electoral Officer be granted the discretion to publish the administrative report and the poll-by-poll results from a by-election together or separately. In either case, the administrative report (which may include the poll-by-poll results) would be published within 90 days of the return of the writs for the by-election. When it is not possible to include the poll-by-poll results within the 90-day deadline, a separate report would be published as soon as possible thereafter.

Statutory Report Between General Elections

As mentioned, the Chief Electoral Officer may report to the Speaker of the House of Commons only after a general election or a by-election. It is theoretically possible that no by-election will be called between two general elections. Therefore, a period of four years or more could pass between the two reports. The Office of the Chief Electoral Officer should have the opportunity to submit a report to Parliament when the Chief Electoral Officer deems it necessary.

118. It is recommended that the Chief Electoral Officer be allowed to submit a report to Parliament on the activities of the Office when he or she deems it necessary.

Financial Reports

Following each general election, the Chief Electoral Officer publishes a report containing the contributions and expenses of registered political parties and candidates, as well as the fiscal period returns submitted by the registered political parties. It would appear practical to recognize this long-standing practice in the statute and to provide a reasonable deadline for the publication of this document. In relation to the deadline for the publication of this report, it should be noted that, currently, candidates' returns are submitted up to four months after polling day during an election, that political parties submit their returns within six months of polling day, and that an audit of these returns is conducted by the Office of the Chief Electoral Officer.

119. It is recommended that provision be made for the publication of the report on the contributions and expenses of registered political parties and candidates and that the deadline for publication be within 12 months of the return of the writs for an election.

Publication of Candidates' Returns

The Chief Electoral Officer is currently required to publish at the same time in at least one newspaper published or circulated in every electoral district in which an election is held all the returns or supplementary returns respecting election expenses of candidates that relate to the election in that electoral district (subsection 235(2)). This requirement is inefficient and expensive and, therefore, should be reconsidered.

120. It is recommended that provision be made for the Chief Electoral Officer to determine the method(s) to be used for distributing or publicizing the content of the returns referred to in section 235.

Chapter 4 Enforcement: the Commissioner of Canada Elections

At the present time, the *Canada Elections Act* can only be enforced by the Commissioner of Canada Elections, employing the criminal justice process through the courts.

The position of Commissioner of Election Expenses (the former title of the Commissioner of Canada Elections) was established in 1974 by the *Election Expenses Act*. This was in response to the recommendations of the Committee on Election Expenses, which had pointed to the necessity of establishing an independent structure for dealing with offences against its proposed election expenses provisions (Committee on Election Expenses 1966, p. 61).

Initially, the Commissioner was responsible only for the application of the election expenses provisions of the *Canada Elections Act*. In 1977, these duties were extended to make the Commissioner responsible for receiving complaints from the public, for conducting investigations, and for deciding whether to institute legal proceedings respecting any alleged infraction of the Act, including one by an election officer, when requested to do so by the Chief Electoral Officer. Also in 1977, the title of this office was changed to Commissioner of Canada Elections.

While the criminal justice process may be necessary for violations that can influence the outcome of an election or undermine the integrity of the electoral process, it is inappropriate for dealing with offences of an administrative or regulatory nature. A study of the penalties given for offences against the Act in the period since 1979 demonstrates that the courts appear reluctant to treat all infringements of the Act as criminal offences. Accordingly, respondents are either fined or conditionally discharged.

An alternative procedure for dealing with administrative offences and encouraging compliance is suggested by the enforcement options provided in Bill C-61, the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (which received Royal Assent on December 5, 1995). Besides allowing for fines to be imposed, the Bill also authorizes the Minister, if requested to do so, to conclude compliance agreements with persons who commit violations. Under such an arrangement, fines can be reduced or cancelled for those who agree to take appropriate steps to ensure future compliance. A similar process, involving the Commissioner acting under the general supervision of the Chief Electoral Officer, could be incorporated into the *Canada Elections Act*.

As described in the report submitted by the Office of the Chief Electoral Officer to the Special Committee on Electoral Reform (1992) certain alternatives to criminal procedures are available for ensuring compliance with the Act. The following is an adaptation of the report submitted to the Special Committee on Electoral Reform.

Two specific procedures that could be employed as alternatives to criminal procedures are compliance agreements and compliance orders. Both would be non-criminal, non-judicial alternatives to specified contraventions of the *Canada Elections Act*. Repeated contravention or offences that might have an immediate effect on the results of an election and that involved dishonesty would continue to be handled exclusively through the criminal justice system.

Responsibility for the administration of the proposed compliance procedures would rest with the Commissioner of Canada Elections, who would apply them according to the following criteria: the nature and gravity of the contravention; the record, if any, of contravention; the confidence of the public in the electoral process and the desirability of achieving compliance through measures that are remedial rather than punitive; the cost of enforcement; fairness to the person in contravention; and any other public interest that the Commissioner considers relevant.

A compliance agreement would be based on a voluntary agreement to put into place procedures or other actions that would be taken to ensure compliance with the relevant provisions of the Act. Accountability for compliance agreements could be achieved very simply by requiring that they be open to the public. The major inducement for entering into a compliance agreement would be to avoid prosecution. However, an individual who did not wish to enter into an agreement would be free to have his or her day in court.

Compliance orders, on the other hand, would be unilateral and would allow for a problem to be dealt with quickly and effectively as warranted by circumstances and within the bounds of fairness. Depending on the exigencies of a particular situation, orders could be issued on an interim basis, subject to later confirmation.

The power of the Commissioner to issue compliance orders would be similar to that existing in other regulatory statutes, where those responsible for administering or enforcing the law or regulation have the authority to order a person to do what the law or regulation requires or to forbid a person doing what is contrary to it. Carrying out the terms of a compliance order would preclude prosecution. Like compliance agreements, compliance orders would be a matter for the public record. Further accountability would be to the Federal Court by way of an appeal on the merits, which would include questions of fact and law. The Federal Court would have the power to stay the effect of a compliance order pending an appeal.

These compliance procedures afford a flexible means of fairly achieving the objectives of the *Canada Elections Act* in a manner consistent with other administrative or regulatory schemes while reserving the full weight of the criminal process for those offences that might more immediately affect the outcome of an election.

To review the enforcement mechanisms provided, it is also necessary to re-evaluate the practicality of the *Corrupt Practices Inquiries Act* and the *Disfranchising Act*, both of which seem to have fallen entirely into disuse. These two statutes are anachronistic and should be repealed. The *Corrupt Practices Inquiries Act* was adopted in 1876 and, as implied by the title, provides for the establishment of a commission of inquiry to investigate the existence of corrupt or illegal practices. The *Disfranchising Act*, which was adopted in 1894, provides for the presentation to the court of a petition alleging bribery in an election. This statute also provides for the disfranchisement of electors who have taken bribes.

Because of today's more modern legal system and the Charter, the *Disfranchising Act* could simply be repealed. In any event, there are adequate means in the *Canada Elections Act*, as well as in other statutes, such as the *Inquiries Act*, to deal with illegal election practices.

Because of the responsibilities of the Commissioner of Canada Elections for receiving complaints from the public, conducting investigations, and deciding whether to institute legal proceedings respecting any alleged infraction of the *Canada Elections Act*, these two statutes are no longer necessary.

121. It is recommended that the Commissioner of Canada Elections be empowered to enter into compliance agreements and to issue compliance orders.

122. It is recommended that the *Corrupt Practices Inquiries Act* and the *Disfranchising Act* be repealed.

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List of Recommendations

(Recommendations refer to the Canada Elections Act *unless another statute is specified.)*

A. Registration Process

1. It is recommended that the requirement of 10 days continuous residence in a temporary facility, such as a sanatorium, shelter or similar institution, be repealed.

2. It is recommended that subsection 63(3) be amended to refer to the final lists of electors, and that the final lists of electors be defined as the list of electors that is prepared pursuant to section 71.32 and that contains the names of electors whose names are on the revised list, the names of electors who registered on polling day, and the names of electors who registered in accordance with the *Special Voting Rules*.

3. It is recommended that the Chief Electoral Officer be allowed to determine, through an analysis of data on residential mobility, whether it would be more effective to re-use the final lists from the most recent electoral event in a particular electoral district or proceed with a full enumeration, regardless of the length of time since the previous election.

4. It is recommended that the position of revising officer be abolished and that the responsibilities related to the sittings for revision, at which the objections of electors are heard, be transferred to the returning officer and (or) the assistant returning officer.

5. It is recommended that the position of revising officer on polling day be maintained and that this position be renamed "registration officer," to reflect the nature of the work and avoid future confusion.

6. It is recommended that level access must be provided at the revisal offices (with exceptions authorized by the Chief Electoral Officer as is currently the case for ordinary polling stations).

7. It is recommended that an elector who is applying to be added to a list, be required to include his or her previous address in the application form.

8. It is recommended that by filling out the application form, including the previous address, an elector is consenting to the deletion of his or her name from the list for the polling division where the former address is found.

9. It is recommended that the notification and publicity relating to the revision of the lists of electors be conducted in a manner prescribed by the Chief Electoral Officer.

10. It is recommended that:

(a) identification be required when an application is being made during the revision process by one elector on behalf of another elector who does not share a residence with the elector making the request. In this case, proper identification of the elector on whose behalf the request is being made would be required;

(b) when an election officer visits a residence during the revision process, any elector who resides there may request the registration of all other electors living there without identification being required, as is the case during an enumeration; and

(c) when an elector visits a returning officer's office or a revisal office, an elector who has shown identification may request his or her own registration as well as that of any elector sharing the same residence without the identification of the other elector being required.

11. It is recommended that the revising agents be allowed to obtain information and identification from an elector who is requesting his or her own registration, as well as registration of those electors who reside at the same address, by means other than personal contact (including data transmission technologies, such as the facsimile and electronic mail).

12. It is recommended that section 71.3, which requires the returning officer to produce and distribute the statements of changes, be repealed.

13. It is recommended that provision be made for either the deputy returning officer or the poll clerk to fill out the polling day registration certificates and record the names of the electors registered on polling day in rural areas.

14. It is recommended that provision be made for the acceptance of requests for registration at the advance polls and that this process be administered by the deputy returning officer or poll clerk.

B. Lists of Electors

15. It is recommended that the additional number of printed copies of the lists of electors provided to candidates, political parties, and Members of Parliament be reduced, in all cases, to up to two additional copies.

16. It is recommended that the Chief Electoral Officer be authorized to make administrative modifications to the data base containing the final lists of electors from an electoral event when a change in address beyond the control of the elector occurs after that event.

17. It is recommended that the practice of sharing federal lists of electors with provinces, territories and municipalities be extended to school boards.

C. Voting Process

18. It is recommended that section 60, which permits candidates who were Members at the dissolution of Parliament immediately preceding the election to register in electoral districts other than those in which they reside, be repealed.

19. It is recommended that transfer certificates continue to be available for candidates who wish to vote in a polling division other than the one in which they reside.

20. It is recommended that provision be made for a transfer certificate to be issued to any person appointed by the returning officer to work at a polling station.

21. It is recommended that returning officers be required to issue transfer certificates to anyone working on polling day who was appointed at any time after the advance polls and who will not be working at the polling station where he or she is registered.

22. It is recommended that provision be made for an elector who by reason of any disability is unable to vote without difficulty at a polling station that is without level access to apply for a transfer certificate at any time until close of polls on polling day.

23. It is recommended that *Schedule I*, Form 3 be amended so that the candidate's name must be centred and that, if there is space left on either side, the space be filled with dots, as is currently the case for the political affiliation.

24. It is recommended that provision be made for the logos of the registered political parties to be printed in black on the left side of the ballot paper preceding the candidates' names, and that this provision come into force following the next general election.

25. It is recommended that consideration be given to the adoption of the hours of polling proposed by either the Royal Commission on Electoral Reform and Party Financing, the Special Committee on Electoral Reform, or the Chief Electoral Officer.

26. It is recommended that all necessary election officers be allowed to be present at the polling station; and that other observers and (or) the staff of the Chief Electoral Officer, with the prior approval of the Chief Electoral Officer, also be allowed to be present at polling stations.

27. It is recommended that the representatives of candidates at the polling stations be required to be a minimum of 16 years of age.

28. It is recommended that only one representative for each candidate be allowed to be present at a polling station at any time.

D. *Special Voting Rules*

29. It is recommended that the military number no longer be required on the Canadian Forces list of electors.

30. It is recommended that any elector voting under the *Special Voting Rules* at a polling station or in the returning officer's office be allowed to request the assistance of election officers to cast his or her vote.

31. It is recommended that all Canadian citizens who are temporarily abroad, regardless of where they reside, be allowed to submit their special ballots through an embassy, high commission, consulate, Canadian Forces base or any other location designated by the Chief Electoral Officer.

32. It is recommended that provision be made under the *Special Voting Rules* for the replacement of a ballot paper cast in the office of the returning officer when the original ballot paper is inadvertently spoiled by the elector.

33. It is recommended that the deadline for the reception of the special ballots be changed to the hour of the closing of the polls on polling day during an election.

34. It is recommended that the criteria established in section 104 of *Schedule II*, for the rejection of special ballots, be applied consistently throughout the *Special Voting Rules*.

E. Results of Voting

35. It is recommended that the official addition be conducted using the statements of the votes that are transmitted to the returning officer along with, but outside, the ballot box. Only in those cases where this statement is unavailable or appears to have been altered or when a dispute involving a candidate or a candidate's representative occurs should the returning officer be required to open the ballot box to obtain another statement of the votes.

36. It is recommended that the actual $500 cost reimbursement ceiling found in subsection 171(5) apply to every type of application for recount.

37. It is recommended that the *Dominion Controverted Elections Act* be repealed and that provisions replacing that statute be incorporated into the *Canada Elections Act*.

38. It is recommended that:

(a) contested election results be adjudicated by the Trial Division of the Federal Court of Canada, rather than the various provincial superior courts;

(b) the only acceptable grounds for filing a petition be the candidate's ineligibility or the election result having been affected by irregularities or corrupt practices;

(c) the petition be submitted within 28 days of the results appearing in the *Canada Gazette*, within 28 days of the discovery of an irregularity that affects the result, or 28 days after a conviction of election fraud involving a candidate in that constituency;

(d) a deposit of $1,000 be required to file the complaint;

(e) the rules of the Trial Division of the Federal Court relating to civil actions be made to apply to an application to annul an election, with such modifications as the circumstances require;

(f) a Member of Parliament whose election is the object of an election petition be able to submit a defence within 15 days of the date on which he or she was notified;

(g) the adjudicating judge be empowered to dismiss any petition if it appears to be frivolous, unfounded, or to have been made in bad faith, to reject the complaint, to annul the election, or to declare another candidate elected;

(h) the adjudicating judge have the power to void an election if it is established that i) the fraud or irregularities were widespread enough to affect the election result or ii) the successful candidate or his or her agent is guilty of a corrupt electoral practice, even if that corrupt electoral practice did not affect the election result;

(i) where the court has declared the election void, the court should have the power to remove from office the person elected and either to determine that another person has been elected and is allowed to take his or her seat or to provide for a new election being held;

(j) decisions be subject to appeal within 15 days to the Federal Court of Appeal; and

(k) an application for leave to appeal to the Supreme Court of Canada would have to be made within 15 days of the decision of the Federal Court of Appeal.

F. Participation of Candidates

39. It is recommended that the right to a leave of absence without pay for the purpose of being a candidate at a federal election be extended to all employees, whether the individual is employed pursuant to the federal or a provincial or territorial law, and that the foregoing not exclude an employer from authorizing paid leave.

40. It is recommended that the returning officer be required to accept the nomination paper of any prospective candidate who is present at 2:00 p.m. at a place or places fixed for nomination.

41. It is recommended that the reference to *Schedule III* in section 80.1 be repealed and that provisions be made allowing candidates in all electoral districts to submit their nomination papers using data transmission technologies (such as the facsimile and electronic mail), provided that the $1,000 nomination deposit is received by the returning officer prior to the

deadline for nomination and that all original documents are submitted to the returning officer within 10 days of the nomination day.

42. It is recommended that appropriate provisions be established to address the failure of a candidate to submit the nomination paper within the specified time frame.

43. It is recommended that the Act explicitly state that there is no exception to the right of a candidate or representative to enter any apartment building or multiple residence, where electors reside, between the hours of 9:00 a.m. and 9:00 p.m., for the purpose of conducting the campaign.

44. It is recommended that an offence be created for non-compliance with the provision related to the authority of candidates to enter a building.

G. Official Agents

45. It is recommended that a candidate be allowed to dismiss his or her official agent at any time and that a written notice of dismissal be required, with copies provided to the returning officer and the Chief Electoral Officer.

46. It is recommended that the new official agent be required to accept his or her appointment in writing and to provide a copy of the letter of acceptance to the returning officer and the Chief Electoral Officer.

47. It is recommended that the official agent be allowed, with the approval of the candidate, to provide written authorization for other individuals to accept donations on behalf of that candidate.

48. It is recommended that the official agent of each candidate be required to open one new account for the sole purpose of each campaign and that the account be closed after any surplus funds have been appropriately dealt with.

49. It is recommended that the campaign account be opened in the name of the official agent, using the title “official agent for (name of candidate)”.

H. Participation of Political Parties

50. It is recommended that provisions for the merging of political parties that wish to merge be established, providing for the assets of the parties being kept by the party created as a result of the merger.

51. It is recommended that the notice published in the *Canada Gazette* according to subsection 31(9), be referred to as the Chief Electoral Officer’s notice of intent to delete a political party from the registry and that the deletion take effect on the date the Chief Electoral Officer receives the balance or the statement that no balance remains, as provided by subsection 31(15).

52. It is recommended that a registered political party be required to submit an audited statement of the fair market value of its assets as of the date on which the notice of intent to delete was published in the *Canada Gazette* and that the statement be submitted at the time the party submits its final fiscal-period return.

I. Where Disclosure is Lacking

53. It is recommended that

(a) subsection 33(3) be modified to require that an agent be appointed whenever financial transactions occur at the local level and that the name of the agent be transmitted through the chief agent of the party to the Chief Electoral Officer for inclusion in the registry of political party agents;

(b) this registered electoral district agent be responsible for all financial operations of the local association;

(c) the agent be entitled to accept contributions and to issue tax receipts;

(d) the agent be required to submit an audited annual fiscal return to both the chief agent of the political party and the Chief Electoral Officer; and

(e) in addition to the chief agent of a registered party, only a registered agent at the local level be authorized to receive a campaign surplus from the official agent of a candidate. (The registered electoral district agent would not be entitled to incur election expenses, although he or she would be permitted to contribute funds to the official agent of a candidate.)

54. It is recommended that provisions be established for the deregistration of electoral district agents at the time of the national party's deregistration, at the request of the national party or when the electoral district disappears as a result of an electoral boundary readjustment.

55. It is recommended that provision be made for the appointment of a registered agent for any trust fund associated with a political party and that this agent be granted the same rights and duties as the registered electoral district agent, including the obligation to submit an audited annual fiscal return to the Chief Electoral Officer and to the registered party.

56. It is recommended that provisions be established requiring the designation of a registered agent for each contestant for the leadership of a registered party, that the registered agent be responsible for all financial transactions relating to the leadership contest, and that the registered agent also be required to file an audited return of all transactions and a report on volunteer labour with both the Chief Electoral Officer and the chief agent of the party, within four months of the selection of the new leader.

57. It is recommended that the registered agent of a leadership contestant be required to return to the registered political party all surplus funds raised for the purpose of the leadership campaign.

58. It is recommended that Members of Parliament be required to disclose any contribution received between elections, in a manner and format that conforms to the requirements for disclosure applied to registered political entities.

59. It is recommended that all transfers made between registered political parties and candidates be clearly reported to the Chief Electoral Officer, in both the respective party and candidate returns.

60. It is recommended that all transfers of funds involving registered political parties or local associations be reported to the Chief Electoral Officer for publication.

61. It is recommended that section 232 be reviewed to specify the method by which the surplus must be calculated, taking into account the transfers between candidates and political parties.

62. It is recommended that provision be established for the Office of the Chief Electoral Officer to issue a notice of assessment to the candidates' official agents, on completion of the audit of the candidates' election expenses returns. Candidates would be required to dispose of the surplus within 60 days after receiving notice of assessment, to notify the Chief Electoral Officer in the prescribed form, and to provide evidence of the disposal.

63. It is recommended that political parties and registered electoral district agents be prohibited from transferring funds to unelected candidates after polling day, except for the payment of unpaid claims as declared in a candidate's election expenses return.

64. It is recommended that provision be made for the surplus funds of an independent candidate or a candidate with no political affiliation to be returned to him or her by the Chief Electoral Officer, on behalf of the Receiver General, if that candidate is officially nominated for the subsequent election.

J. Defining Election Financing

65. (1) It is recommended that election expenses be defined as the value of any goods or services used during an election period by or on behalf of a candidate or registered political party to promote or oppose the election of a candidate or a registered political party, and, without limiting the generality of the foregoing, as including the following types of expenditures:

(a) polling and research conducted during the election period;

(b) training of party officials and volunteers for the campaign;

(c) costs of production of campaign commercials or ads;

(d) personal expenses, except the expenses related to the disability of a candidate or those incurred during an election for child care or for the care of other dependent persons;

(e) any expense incurred after the issue of the writs, by an individual who officially becomes a candidate after the date for the issue of the writs; and

(f) for a registered political party, any election expenses incurred by the leader of a registered political party, other than those election expenses directly related to that individual as a candidate in an electoral district;

(2) However, the following types of expenditures should not be considered election expenses and therefore not be subject to the election expenses limits, nor to reimbursement:

(a) the cost of a candidate's deposit;

(b) expenses incurred in holding a fund-raising function, except for the cost of advertising;

(c) the cost of obtaining any professional services needed to comply with the Act;

(d) any interest on a loan to a candidate or registered party for election expenses;

(e) volunteer labour;

(f) payments to candidates' representatives at the polls;

(g) expenses incurred exclusively for the ongoing administration of the registered party or a local association represented by a registered electoral district agent;

(h) post-election parties held and thank-you advertisements published after the close of the polls.

66. It is recommended that candidates' personal expenses be included as election expenses. Although the expenses related to the disability of a candidate or those incurred during an election for child care or for the care of other dependent persons are not considered to be election expenses, they could be included for the purposes of the reimbursement.

67. It is recommended that all candidates be required to submit a statement of personal expenses to their official agents and that those who incurred none be required to submit a "nil return" in a form prescribed by the Chief Electoral Officer.

68. It is recommended that candidates be required to submit supporting vouchers for personal expenses.

69. It is recommended that a fund-raising function be defined as: an event or activity held for the principal purpose of raising funds for a registered political party, and (or) a candidate by whom or on whose behalf the function is held, not including any routine administrative or social meeting or any method of soliciting funds other than by means of a ticketed event.

70. It is recommended that the costs associated with the conduct of a fund-raising function, except for the cost of advertising, be excluded from election expenses.

71. It is recommended that commercial value in respect of contributed goods or services used during an election be defined as the lowest amount charged for an equivalent amount of the same goods or services in the market area at the relevant time, excluding volunteer labour.

72. It is recommended that volunteer labour be defined as work provided at no cost, for which the individual providing the work does not receive pay from any source for the hours volunteered.

73. It is recommended that candidates and registered political parties be required to submit, along with their election expenses reports, a report including the name, profession or occupation, and number of hours of volunteer work of any individual who volunteers for more than 40 hours during an electoral period.

74. It is recommended that a contribution be defined as any money provided that is not repayable and the commercial value of goods or services provided by way of a donation, advance, deposit or discount or otherwise of any tangible personal property or of services of any description, whether industrial, trade, professional, or other, excluding volunteer labour.

75. It is recommended that a campaign debt, reported in the election expenses return as an unpaid claim, which remains outstanding six months after the date on which the return was due be considered a contribution, unless the creditor has taken legal action or has made other arrangements for payment.

76. It is recommended that candidates be permitted, on application to the Chief Electoral Officer in the prescribed form, to pay unpaid election claims which were previously reported in the election expenses return within the six-month period, rather than having to obtain a court order, as is currently required.

K. Reporting Procedures

77. It is recommended that political parties be required to provide more detailed financial statements, such as a balance sheet, income statement, and a statement of change in financial position, and that generally accepted accounting principles be utilized.

78. It is recommended that all donors be identified by name, address, and a unique identifier, such as their date of birth, and that the categories of donors be broadened by adding the following classes: registered political parties, registered electoral district agents, political organizations other than registered political parties, and others.

79. It is recommended that candidates be required to disclose donors according to the following categories:—registered political parties, registered electoral district agents, political organizations other than registered political parties, and others—and that donors be identified by name, address, and a unique identifier such as their date of birth.

80. It is recommended that the Chief Electoral Officer be allowed to develop a short-form report to be used by a candidate whose expenses are below 10% of the limit.

81. It is recommended that political parties and candidates be required to submit their respective returns within four months of polling day and that all annual fiscal period returns be required within four months of the end of the relevant fiscal period.

82. It is recommended that the Chief Electoral Officer be allowed to extend the deadline for the submission of any annual return or election expenses returns and to permit corrections to these returns under the same conditions as those currently considered acceptable.

83. It is recommended that each party be required to submit a separate election expenses return for by-elections, within four months after polling day.

84. It is recommended that the auditing and verification procedures be simplified by requiring candidates to submit their financial returns and supporting vouchers, cancelled cheques, drafts, and bank statements directly to the Office of the Chief Electoral Officer.

85. It is recommended that a new audit certificate be established, and that the auditor be required to complete and sign a checklist, including a number of questions concerning the accounting records maintained by the official agent.

86. It is recommended that all the financial returns required under the Act be allowed to be submitted electronically in a format prescribed by the Chief Electoral Officer and that a signed declaration be required to be submitted along with the electronic submission.

87. It is recommended that the threshold amount for the disclosure of the name of a contributor to a reporting entity be raised to $250.

88. It is recommended that the limit for the presentation of vouchers be raised from the current $25 to $50.

89. It is recommended that the amount of auditors' fees subsidized by the Crown be reviewed in consideration of the new audit requirements proposed in this report.

L. Broadcasting and Opinion Polls

90. It is recommended that paragraph 319(*c*) and section 320 of the Act, which preclude a political party from purchasing broadcasting time beyond that allocated, be repealed.

91. It is recommended that the media be required to give equal treatment to the frequencies obtained from a sample survey prior to the allocation of undecided and other respondents and to any projection based upon the data.

92. It is recommended that, when first released by the media, an opinion survey regarding an electoral event be reported along with an explanation of the methodology used, including the name(s) of the sponsor(s) of the poll, the name of the opinion research firm, the size of the sample(s) for the survey, the wording of the question utilized concerning voters' intentions, the margin of error, and the dates when the survey was conducted.

93. It is recommended that the sponsor of an opinion poll published during an electoral event be required to provide to any person, on request and at a reasonable cost, a detailed report of the results and methodology.

M. Candidates' Election Spending

94. It is recommended that the spending limit for candidates at an election be increased only in the case where an election is postponed following the death of a candidate sponsored by a registered party.

95. It is recommended that each candidate for an election be required to submit a report on nomination contributions and expenses and a report of contributions received between the date of nomination by a party and the date of the official nomination for an election, along with the election expenses return.

N. Reimbursements

96. It is recommended that a reimbursement of not more than 50% of the applicable spending limit be available to each party which receives either 2% of the national vote or 5% of the vote in those electoral districts where candidates it endorsed were nominated, as well as to each candidate who receives 15% of the valid votes in the electoral district.

97. It is recommended that the reimbursement of election expenses for both parties and candidates be an amount per vote that in total would not exceed the total amount of reimbursements paid to parties and candidates at the 1993 general election.

98. It is recommended that a registered political party be eligible for a reimbursement of by-election expenses if its candidate(s) obtain 5% of the valid votes cast in each electoral district where a by-election is held.

99. It is recommended that the reimbursement to registered political parties be made on the basis of paid election expenses and be conditional on the filing of all required election expenses and fiscal period returns in accordance with the Act.

100. It is recommended that paragraph 84(3)(*b*) be amended to allow the reimbursement of the first half of the deposit to candidates who were elected and to those who obtained at least 15% percent of the valid votes cast in the electoral district.

101. It is recommended that any candidate, including any candidate who withdraws, be reimbursed half of his or her deposit, on production of the election expenses return and the unused official receipts.

102. It is recommended that provisions be made for the reimbursement of election expenses when a writ is withdrawn after nomination day, if no enumeration would have been conducted as a result of the re-use of the lists, as permitted by subsection 63(3).

103. It is recommended that provision be made for the retroactive issuance of receipts for contributions to a registered party, local association, or candidate during the election period prior to the official registration or nomination, as the case may be.

104. It is recommended that no registered party or candidate be permitted to return to the donor, either directly or indirectly, any portion of a contribution that was made in conformity with the law.

O. Election Officers

105. It is recommended that provision be made for the returning officers to be appointed by the Chief Electoral Officer, who would base the selection on a formal competition open to all interested Canadians, and that the legal status of returning officers be reviewed.

106. It is recommended that the parties be provided one opportunity to submit names of people for appointment of each category of election officers that the party is eligible to nominate.

107. It is recommended that candidates' agents be added to the list of persons who are excluded from the definition of election officers.

108. It is recommended that the appropriate coverage of the *Government Employees Compensation Act* be extended to all election officers.

P. Powers Under the Act

109. It is recommended that the Chief Electoral Officer be authorized to determine the amount of fees, costs, allowances and expenses of election officers.

110. It is recommended that the Chief Electoral Officer be made responsible for ensuring the payment of all claims relating to the conduct of an election (or under the authority of the Act) in a manner acceptable to the Receiver General.

111. It is recommended that section 151 of the *Canada Elections Act* be repealed.

Q. Office of the Chief Electoral Officer and Enforcement

112. It is recommended that the Governor in Council no longer appoint the Assistant Chief Electoral Officer and that the Assistant be selected through the Public Service, as is the case with all other members of the staff of the Chief Electoral Officer.

113. It is recommended that provision be made for the Chief Electoral Officer to test new electoral procedures, after consultation with the Committee of the House of Commons responsible for electoral matters.

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

115. It is recommended that all activities and staff of the Office of the Chief Electoral Officer be funded under one authority, the Statutory Authority.

116. It is recommended that the period within which the Chief Electoral Officer is required to publish a report following an election be increased from 60 to 90 days after the return of the writs, with the exception of the amendments that, in the opinion of the Chief Electoral Officer, are desirable for the better administration of the Act, which would be published as soon as possible after an electoral event.

117. It is recommended that the Chief Electoral Officer be granted the discretion to publish the administrative report and the poll-by-poll results from a by-election together or separately. In either case, the administrative report (which may include the poll-by-poll results) would be published within 90 days of the return of the writs for the by-election. When it is not possible to include the poll-by-poll results within the 90-day deadline, a separate report would be published as soon as possible thereafter.

118. It is recommended that the Chief Electoral Officer be allowed to submit a report to Parliament on the activities of the Office if he or she deems it necessary.

119. It is recommended that provision be made for the publication of the report on the contributions and expenses of registered political parties and candidates and that the deadline for publication be within 12 months of the return of the writs for an election.

120. It is recommended that provision be made for the Chief Electoral Officer to determine the method(s) to be used for distributing or publicizing the content of the returns referred to in section 235.

121. It is recommended that the Commissioner of Canada Elections be empowered to enter into compliance agreements and to issue compliance orders.

122. It is recommended that the *Corrupt Practices Inquiries Act* and the *Disfranchising Act* be repealed.

List of Recommendations to be Reviewed in Relation to a Register of Electors

(Numerical references are to the recommendation numbers in the body of the Report.)

2. It is recommended that subsection 63(3) be amended to refer to the final lists of electors and that the final lists of electors be defined as the list of electors that is prepared pursuant to section 71.32 and that contains the names of electors whose names are on the revised list, the names of electors who registered on polling day, and the names of electors who registered in accordance with the *Special Voting Rules*.

3. It is recommended that the Chief Electoral Officer be allowed to determine, through an analysis of data on residential mobility, whether it would be more effective to re-use the final lists from the most recent electoral event in a particular electoral district or proceed with a full enumeration, regardless of the length of time since the previous election.

4. It is recommended that the position of revising officer be abolished and that the responsibilities related to the sittings for revision, at which the objections of electors are heard, be transferred to the returning officer and (or) the assistant returning officer.

5. It is recommended that the position of revising officer on polling day be maintained and that this position be renamed "registration officer," to reflect the nature of the work and avoid future confusion.

6. It is recommended that level access must be provided at the revisal offices (with exceptions authorized by the Chief Electoral Officer, as is currently the case for ordinary polling stations).

7. It is recommended that an elector who is applying to be added to a list, be required to include his or her previous address in the application form.

8. It is recommended that by filling out the application form, including the previous address, an elector is consenting to the deletion of his or her name from the list for the polling division where the former address is found.

9. It is recommended that the notification and publicity relating to the revision of the lists of electors be conducted in a manner prescribed by the Chief Electoral Officer.

10. It is recommended that

(a) identification be required when an application is being made during the revision process by one elector on behalf of another elector who does not share a residence with the elector making the request. In this case, proper identification of the elector on whose behalf the request is being made would be required;

(b) when an election officer visits a residence during the revision process, any elector who resides there may request the registration of all other electors living there without identification being required, as is the case during an enumeration; and

(c) when an elector visits a returning officer's office or a revisal office, an elector who has shown identification may request his or her own registration as well as that of any elector sharing the same residence, without the identification of the other elector being required.

11. It is recommended that the revising agents be allowed to obtain information and identification from an elector who is requesting his or her own registration, as well as registration of those electors who reside at the same address, by means other than personal contact (including data transmission technologies, such as the facsimile and electronic mail).

12. It is recommended that section 71.3, which requires the returning officer to produce and distribute the statements of changes, be repealed.

13. It is recommended that provision be made for either the deputy returning officer or the poll clerk to fill out the polling day registration certificates and record the names of the electors registered on polling day in rural areas.

14. It is recommended that provision be made for the acceptance of requests for registration at the advance polls and that this process be administered by the deputy returning officer or poll clerk.

16. It is recommended that the Chief Electoral Officer be authorized to make administrative modifications to the data base containing the final lists of electors from an electoral event when a change in address beyond the control of the elector occurs after that event.

17. It is recommended that the practice of sharing federal lists of electors with provinces, territories and municipalities be extended to school boards.

102. It is recommended that provisions be made for the reimbursement of election expenses when a writ is withdrawn after nomination day, if no enumeration would have been conducted as a result of the re-use of the lists, as permitted by subsection 63(3).