Completing the Cycle of Electoral Reforms

Recommendations from the Chief Electoral Officer of Canada on the 38th General Election

CANADA

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CANADA

The Chief Electoral Officer • Le directeur général des élections

September 29, 2005

The Honourable Peter Milliken
Speaker of the House of Commons
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

Pursuant to section 535 of the *Canada Elections Act,* I have the honour to submit the report *Completing the Cycle of Electoral Reforms* for tabling in the House of Commons.

This report proposes amendments that in my opinion are desirable for the better administration of the *Canada Elections Act*.

Yours truly,

Jean-Pierre Kingsley

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Introduction

Introduction

This is the first of two reports following the 38th general election that will be made under section 535 of the *Canada Elections Act*. This first report focuses primarily on matters that are not related to the political financing reforms to the Act, which came into effect on January 1, 2004, with S.C. 2003, c. 19 (Bill C-24). The second report, to be submitted later, will deal primarily with matters related to those political financing reforms. The purpose of this unusual bifurcation of the reporting process is to allow sufficient time to complete analysis of a full fiscal cycle under the financial reforms of all regulated entities.

The electoral process is constantly under dynamic and evolutionary pressures to grow and adapt to the social circumstances of evolving Canadian democracy. Today, these pressures are particularly evident and come from many quarters: scrutiny of the basis of representative selection in the House of Commons, concerns about financial propriety, evolving democratic rights under the *Canadian Charter of Rights and Freedoms*, and speculation about possibilities offered by technical innovations.

The recommendations in this report aim to complete the natural evolution of a process that began in 1920 with the creation of the Office of the Chief Electoral Officer – an independent office with a national vision, taking on the functions of planning, preparation, supervision and reporting previously performed by the government in the delivery of elections. The completion of this evolutionary cycle is expressed particularly in the report's recommendations on the Office of the Chief Electoral Officer, the concept of candidature and the registration of electors.

Despite the evolution of the Chief Electoral Officer's role since 1920, elections at the electoral district level continue to be delivered through 308 separate and independent returning officers, whose powers and duties are geographically described and locally limited. The full integration of these 308 separate offices and the Office of the Chief Electoral Officer for the delivery of elections, and the enhancement of the powers of this integrated office, will provide a stronger, more efficient and flexible organization; together, the Chief Electoral Officer and returning officers will be better able to deliver modern elections and to respond to the substantive changes in the electoral process that may arise as a result of the ongoing evolution of Canadian democracy.

Since 1920, Canada has seen the evolution of many important aspects of the electoral process, particularly in the emergence of the concepts of registered political parties, registered electoral district associations and third parties. In each case, the legal status of these entities has evolved; this report recommends a similar evolution in the concept of candidature, which has changed little since its inception. The recommendations of this report will bring the legal status of candidature into line with the modern reality that being a candidate, in practical terms, is no longer solely a matter of the election and the immediate follow-up period.

The report's recommendations on the registration of electors will complete the evolution of the federal electoral registration process – from the use of provincial lists, to a federal, event-driven enumeration process, and then to the creation of a continuing electoral registry. These recommendations will facilitate the inclusion of electors in the National Register of Electors, enhance the operation of the Register as the basis of a national registration system, and maximize its use for the purposes of communication of electoral information to electors.

Thus, the recommendations of this report may be seen as the natural end to the cycle of electoral reform that began in 1920.

It may also be seen as the conclusion to a cycle of reform initiated through the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission). When the Lortie Commission issued its report in 1992, it had considered and made significant recommendations on many areas of federal electoral practice, including the right to be a candidate, the role and the financing of political parties and their electoral district associations, election expenses controls, public funding, disclosure, enforcement, voting by special ballot, a voters register and broadcasting. In the 13 years since the Lortie Commission issued its report, reform has been introduced in the bulk of these areas. While the cycle of reform might not have always reflected the Commission's specific recommendations, the guiding spirit of the Commission report has been evident throughout the evolution of the electoral process since that time.

This cycle of reform can now be seen as coming to an end: much of either the Commission's specific recommendations or the spirit of those recommendations has been implemented or encompassed by the reforms of the past 13 years. This evolution has created an electoral reality quite different from that which existed at the time of the Commission's first hearings.

The further evolution of a fully modern, effective, independent and objective structure for the conduct of elections will facilitate the development and implementation of reforms to that system. As well, the recommendations in this report complement the evolution of substantive aspects of the right to vote – particularly in the equalization of political parties' ability to communicate with the electorate through the free-time broadcasting system. Recommendations such as the removal of the limitation on the right to vote by Canadian citizens abroad can be seen as a natural extension of the rights enunciated by the courts in decisions such as *Sauvé v. Canada (Chief Electoral Officer)*.

Some of the recommendations in this report are also intended to enhance the confidence of Canadians in the process itself.

The recommendations in this report – notably those aimed at enhancing the review authority of the Office of the Chief Electoral Officer and extending the limitation period for the enforcement of the Act – are intended to enhance the transparency of the electoral process, which contributes to an informed vote, and to strengthen the enforcement and deterrence aspects of the Act.

One last point: while no recommendation is made at this time on the practice of bulk purchases of political party memberships – which take place, mainly, in the course of nomination contests – this issue remains a matter of concern given that it takes place in what constitutes the first step of the electoral process. This matter is not addressed in the *Canada Elections Act* except if the individual who makes these bulk purchases does so for an amount exceeding his or her own contribution limit or is not disclosed as the contributor. Still, I would like to reiterate my view that Canadians have a right to expect that each new member of a political party actually wanted to join the party, did so at least 30 days before the nomination contest, and has paid his or her own way to do so. My Office will monitor the practices of parties and the reaction of Canadians (negative up to now) and will address this matter more formally in a subsequent report, if required. The elimination of the practice of purchasing memberships for the recruitment of "instant" party members would be another way through which political participants may enhance the confidence of Canadians in the electoral process.

Jean-Pierre Kingsley

Chapter 1

Operational Issues

Chapter 1 – Operational Issues

1.1 An Advance Administrative Confirmation Process

The nomination confirmation process should be simplified and be possible to complete before the drop of a writ. This recommendation consists of four interrelated components:

1. The nomination process should be reformed into a purely administrative registration process that can confirm an eligible person as a candidate for a given electoral district, in advance of the issue of a writ for the next election. This confirmation should be carried out by Elections Canada, rather than through a local returning officer.

2. Confirmation of nomination should be a simple registration process that requires any eligible person seeking candidature to provide only the necessary contact and other administrative information. The individual seeking confirmation would be permitted to file the application himself or herself; there should be no requirement for electors' signatures in support of the nomination.

3. Individuals who wish to run as a candidate in the next election should be permitted to confirm their status as a candidate before the drop of the writ. Once confirmed, they would be required to file with the Chief Electoral Officer annual reports of contributions until the year of the election in which they are confirmed as candidates.

4. Confirmation as a candidate should be through the Office of the Chief Electoral Officer rather than through the individual returning officers. Where candidates wish, this would also permit the filing of applications by registered parties, including the filing of leaders' endorsements, and the paying of deposits for candidates, with the Chief Electoral Officer.

These individual recommendations are discussed below and should be viewed as components of a single reform.

1. Administrative nomination process

The current nomination process is unnecessarily complex and cumbersome. It also provides advantages to certain candidates over others, creates ambiguities for electors seeking to make contributions outside of an electoral event, and fails to capture surplus contributions made when a person decides not to have his or her candidature confirmed in an election. Furthermore, the process diverts the energy of both returning officers and candidates away from the essential delivery of an election.

2. Simplification of the confirmation process

The 2001 report, *Modernizing the Electoral Process*, recommended that the nomination process should be a purely administrative matter, involving only the indication by an eligible person that he or she wishes to be a candidate, the provision of the necessary information for administrative purposes, the party leader's endorsement where applicable, and the payment of the candidate's deposit. This would involve removing the current obligations to provide the signatures of 100 nominating electors; the requirement that nomination papers must be filed by a witness (not by the candidate), who is required to take a oath; and the requirement for the candidate to take an oath in consenting to run. This report repeats those recommendations.

Currently, the nomination paper of a potential candidate must have the names, addresses and signatures, recorded in the presence of a witness, of at least 100 electors residing in the electoral district in which the candidate wishes to run.[1]

The requirement that a nomination paper be accompanied by a specific number of signatures of supporting electors is an old one, and was present in the first permanent federal electoral law in 1874. As the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) stated in its 1992 report, the requirement exists so that prospective candidates can demonstrate that they have a degree of popular support for their candidature. Its justification was found in the perceived need to have elections contested only by candidates who show that they represent the political preferences of a significant number of voters.

The continuing propriety of this justification must be reconsidered in light of the decision of the Supreme Court of Canada in *Figueroa v. Canada (Attorney General),* [2003] 1 S.C.R. 12, which recognized that democracy was served by the ability of parties and candidates that do not necessarily reflect mainstream beliefs to participate in elections, and that the ability of those who hold less conventional beliefs to put those views before the electorate served the purpose of the informed vote and the democratic right of Canadians under section 3 of the Charter. As stated in the Supreme Court of Canada's decision:

> "[P]articipation in the electoral process has an intrinsic value independent of its impact upon the actual outcome of elections. To be certain, the electoral process is the means by which elected representatives are selected and governments formed, but it is also the primary means by which the average citizen participates in the open debate that animates the determination of social policy. The right to run for office provides each citizen with the opportunity to present certain ideas and opinions to the electorate as a viable policy option; the right to vote provides each citizen with the opportunity to express support for the ideas and opinions that a particular candidate endorses. In each instance, the democratic rights entrenched in s. 3 ensure that each citizen has an opportunity to express an opinion about the formation of social policy and the functioning of public institutions through participation in the electoral process."

Thus, the Supreme Court of Canada has stated that democracy and the democratic rights protected by section 3 of the Charter are served by the candidature of an eligible individual who does not enjoy broad electoral support.

[1] Only 50 such signatures are required for electoral districts listed in Schedule 3 of the Act; these are generally the more remote and sparsely populated districts.

The current requirement in the Act that a potential candidate be supported by 100 local electors has a practical effect on the conduct of elections as well. This requirement imposes a serious demand on the resources of the candidate in securing those signatures, and upon the electoral system in verifying them. In the 38th general election, returning officers rejected the candidacies of two prospective candidates (one in Halifax West, Nova Scotia, and one in Fleetwood–Port Kells, British Columbia) for lack of sufficient signatures from eligible electors. In the 37th general election, three potential candidates were rejected for this reason; a further unsuccessful nomination was referred to the Commissioner of Canada Elections.

The value of the current requirement is nominal at best. In the case of candidates who are nominated by parties, that nomination itself serves as an indication of some electoral support. Even for those candidates who are not part of a registered party, the modern reality is that the ability to secure 100 (or 50) signatures does not demonstrate any real electoral support. Past elections are rife with candidacies endorsed by the required nominating signatures, but which in fact enjoyed little serious support. More than anything else, the current requirement is more a measure of a prospective candidate's organizational abilities than of his or her electoral support.

In addition to the requirement's dubious benefits, it imposes a strain on the resources of the electoral system. Verifying the submitted signatures of potential candidates within the 48-hour period mandated by the Act has proven administratively difficult. At best, the time available allows only the verification that the address of a nominating elector falls within the relevant electoral district. It is not possible to verify the other *bona fides* of the signatures. Surely, the incompleteness of verification further reduces whatever benefit is gained from the requirement to have the signatures in the first place.

Finally, the purposes served by requiring nominating signatures for candidacies will be lessened if the recommendation of permitting pre-writ nomination confirmation is acted upon. The electors who nominate a person in a pre-writ nomination process might not still be resident in the district when the election is called. Also, the removal of the requirement for nominating signatures will facilitate the central confirmation of nominations by Elections Canada in advance of the drop of a writ.

3. Removal of the limitation of the securing of candidate status to election periods

As the *Canada Elections Act* is currently structured, a "candidate" is a person whose nomination as a candidate in an election has been confirmed by a returning officer under subsection 71(1) (definition in section 1 of the Act). That confirmation can take place only during an election. A person who wishes to be a candidate must, by the end of the 21st day preceding polling day, complete the necessary nomination papers – a process that includes obtaining the required signatures of nominating electors, having that nomination paper filed with the local returning officer, and securing the review and confirmation of the paper by the returning officer (section 69). A person who is unable to complete this process before the close of nominations, 21 days before polling day, cannot be a confirmed as a candidate.

This process gives rise to a number of negative issues: delay, exposure to retroactive liabilities, uncertainty as to the application of contribution rules, avoidance of surplus disposal requirements, diversion of candidates' and returning officers' resources from other election functions, inability to issue tax receipt contributions made prior to drop of the writ, and delay in the operation of transfer provisions for registered party entities to move their assets among themselves. These issues, each of which is discussed below, can be alleviated by the creation of an advance, administrative confirmation process.

Delay – Even during an election period, there may be a delay before a returning officer is able to confirm the nomination of a candidate. Section 67 of the Act directs that the nomination paper of a potential candidate cannot be filed with the returning officer until after the returning officer has issued the Notice of Election – an event that can take place up to four days after the drop of the writ (section 62). Nor is a returning officer in a practical position to confirm a candidate until the returning office has been set up and opened. In the 38th general election, most returning officers had opened offices and issued the required Notice of Election within 48 hours of the drop of the writ; however, even 48 hours amounts to two days of a 36-day election calendar. Once a nomination paper has been filed, the returning officer has a maximum of 48 hours to review the paper and confirm or reject the nomination (section 71).

Permitting the advance confirmation of nomination would reduce delays in formally achieving candidate status during an election, and allow candidates to devote their time and energy to campaigning as soon as the election is called.

Retroactive imposition of status – Technically, a person is not a candidate until he or she has been confirmed as such by a returning officer during the election period.

However, many individuals start to collect contributions to support their campaigns before the election period begins. This is a matter of practical necessity, particularly for individuals who have not yet been endorsed by a particular party or who intend to run without political affiliation.

The Act imposes a number of requirements on the collection, management and expenditure of such funds. For example, a candidate must appoint an official agent before accepting a contribution or incurring an electoral campaign expense (s. 83(1)). The candidate must also appoint an auditor when he or she appoints a financial agent (s. 83(2)). The official agent is required to open a campaign bank account into which all contributions must be deposited and from which all electoral campaign expenses must be paid (s. 437(1)). Only the official agent can accept contributions (s. 438(2)). The official agent must issue a receipt for each contribution on acceptance (s. 404.4). No person other than the candidate's official agent may pay expenses in relation to the candidate's campaign, other than for petty expenses and a candidate's personal expenses (s. 438(4)). In practical terms, if an official agent is to be able to comply with the reporting obligations under section 454 of the Act at the end of a campaign, that agent must maintain careful and complete records from the time the first contribution or electoral campaign expense is incurred.

Technically, none of these obligations applies to a person until his or her nomination as a candidate is confirmed. At that point, the obligations are imposed on the candidate and the official agent retroactively back to the time of the first contribution or expense. Individuals might not have been aware of those obligations at that time and may inadvertently find themselves later in a retroactive offence position. This information is publicly available on the Elections Canada Web site, but an individual might not think to check there; furthermore, Elections Canada is not aware of the identity of these individuals, unless they approach the organization, until their nomination is actually confirmed. So, Elections Canada cannot provide them with the information packages available to assist candidates until a time when the individual may already be in breach of the Act.

Permitting advance confirmation of nomination would not only dispense with the complex application of retroactive status and obligations, it would also allow the identification of these individuals in advance and permit Elections Canada to provide them with the necessary information and tools at the start of their campaign preparation.

Application of contribution cap rules to persons who are not technically candidates – Section 405(3) of the *Canada Elections Act* provides that a contribution given to a person who presents himself or herself as seeking the endorsement of a registered party shall be treated for the purposes of the contribution rules as a contribution to a candidate of that party. Similarly, a contribution to a person who presents himself or herself as seeking to be a candidate not endorsed by any registered party shall be treated as a contribution to a candidate who is not of a registered party. In this way, contributions given between elections to individuals who are not at that time technically candidates are taken into account in the calculation of contribution caps. These rules also apply to contributions by individuals to nomination contestants, but there is no similar provision for contributions by corporations, trade unions or unincorporated associations. In those cases, a contribution given to a person between elections does not constitute a contribution until the person is confirmed as a candidate during the election. At this time, the contribution status operates retroactively along with the status of candidate. Permitting individuals to become candidates prior to the drop of a writ would alleviate the need for these legal fictions.

Disposal of surplus contributions – Under the current process, a person who collects contributions prior to an election with the intent of becoming a candidate is not subject to the surplus-disposal rules if that person does not actually become a candidate in that election. The disposal of those funds then depends on the private arrangements between the person and the contributors and they may be retained for the candidate's personal benefit. This is inconsistent with the situation of individuals who actually become candidates and who are ultimately required to dispose of their surpluses to a registered party, registered association or the Receiver General, depending on the case – but these candidates do not profit personally from collecting contributions toward a candidature.

If confirmation of candidacy were permitted in advance of the drop of a writ, candidates would from that time be subject to the obligation to make financial disclosure at the end of a campaign under section 451 and would, from the time of confirmation, be subject to the surplus obligations of the Act as they apply to contributions and other campaign revenue not expended on the campaign.

Furthermore, insofar as candidates could collect contributions for more than a year in advance of an election, an additional obligation could be imposed upon candidates to disclose contributions annually until such time as the campaign return is required under section 451, at the end of an election.

This proposal would address the existing inconsistency that allows individuals who collect contributions prior to an election with the intent of becoming candidates but who do not actually become candidates to dispose of their surplus otherwise than in accordance with the Act. It would also contribute to the informed vote by providing, in many cases, for a kind of disclosure in advance of an election.

Diversion of resources – The limitation of the confirmation of candidates to an election period can also force candidates to divert resources at the beginning of an election to the nomination confirmation process, including the collection of electors' signatures. For the 38th general election, the nomination paper was available on-line from Elections Canada before the drop of the writ and candidates were permitted to collect nominating signatures in advance of the election. In doing so, however, candidates took the risk that an elector who signed the nomination papers in advance of the drop of the writ might no longer be an elector in the district at the time the election was actually called. Such signatures could not count toward the numerical requirement.

Similarly, returning officers, who are at that time engaged in opening their offices, ensuring the delivery of voter information cards and securing polling stations, must divert their energies to the review and confirmation of the nomination papers.

Permitting confirmation of candidates in advance of an election would allow candidates to concentrate on the campaign itself, and allow returning officers to concentrate on election delivery, once the election period begins.

Income tax receipts – Income tax receipts cannot be issued for campaign contributions to a person who has not yet been confirmed as a candidate. This is because subsection 127(3) of the *Income Tax Act* permits tax receipts to be given by official agents of candidates only for contributions given to a "candidate" as that term is defined in the *Canada Elections Act*. As noted above, section 2 of the *Canada Elections Act* defines a candidate as a person whose nomination has been confirmed by a returning officer during an election.

This is not a significant problem for candidates who are endorsed by a registered party. Contributions given prior to an election but which are ultimately intended for the candidate can be given to the registered party or, where one exists, to the person's registered electoral district association, which can issue a tax receipt. Once the election is called, the registered party or registered association can transfer the funds to the candidate. However, candidates who are not of a registered party have neither a party nor a registered electoral district association through which advance contributions can be given.

Permitting the confirmation of a candidate in advance of the drop of a writ would make that person a "candidate" prior to the election and thus permit income tax receipts to be issued for contributions made to that person before the calling of an election, once his or her nomination has been confirmed. This would lessen the advantage that registered party candidates may have over candidates who are not of registered parties.

Transfer rules – Under the current system, neither a party nor a registered electoral district association can transfer assets to a party "candidate" prior to that person's actual confirmation as a candidate during an election. This situation would also be addressed by permitting advance confirmation and endorsement of candidature.

4. Confirmation by the Chief Electoral Officer

If the nomination confirmation process were transformed into a simple, administrative registration process, it could be done through the Office of the Chief Electoral Officer rather than through the individual offices of returning officers. In turn, this would permit registered parties to have central file lists of endorsed candidates (with the candidates' consent) or to collectively pay the candidate deposits for their endorsed candidates. Under the current system, each nomination process can be conducted only by the returning officer of the electoral district in which the candidate is to run. This means that a separate party endorsement must be filed for each candidate in each relevant district. Similarly, the nomination deposit for each candidate must be paid separately to his or her respective returning officer.

Implementation

If this recommendation were adopted, a person could be permitted to seek confirmation of his or her nomination in advance of an election call. The person would be required to identify the electoral district for which he or she is seeking confirmation. At the next election in that district, the individual would be required to run either as a candidate or to withdraw from the contest, file the necessary disclosure returns and dispose of any surplus contributions. In light of the new ability of a party to endorse a candidate in advance of an election, consideration should be given to permitting parties greater latitude to change their endorsements before the calling of an election.

Early confirmation of nominations would have no impact on the operation of the rules that apply to contribution caps and eligibility, which already account for pre-writ contributions.

1.2 Integration of the Office of the Chief Electoral Officer and Returning Officers

The *Canada Elections Act* should be amended to modify the appointment process for returning officers and to provide for the closer integration of the independent offices and the Office of the Chief Electoral Officer. Specifically, the Act should provide:

1. that returning officers be selected and appointed by the Chief Electoral Officer, following a merit-based process, and that they be appointed for a period of 10 years, an appointment that could terminate earlier in case of death, resignation, ceasing to reside in the electoral district or removal from office (reasons for removal from office would be unchanged, except that they would be applied under the authority of the Chief Electoral Officer, following due process)

2. that local election officers continue to be selected by the respective returning officers

3. that the Chief Electoral Officer have the authority to appoint replacement returning officers to perform all or part of the duties of returning officers when he or she determines that a returning officer is unable for any reason to perform those duties, until such time as the returning officer is able to perform those duties or a new returning officer is appointed

The legal responsibility for the delivery of elections should be imposed upon the Chief Electoral Officer, rather than independently on each of the geographically limited 308 returning officers. This responsibility should be executed by the Chief Electoral Officer in each electoral district, with the assistance of the returning officers, according to who is in the better position to perform those tasks in light of the particular circumstances.

In the minds of the public, returning officers and Elections Canada are one and the same. This common perception is not surprising. It reflects the close interaction of those entities in the delivery of elections.

Legally, however, the offices are independent and separate entities. Returning officers are not part of the Office of the Chief Electoral Officer but are Governor in Council appointees upon whom the Act directly imposes duties and vests authorities exercisable only within their particular electoral districts. In effect, they constitute 308 independent offices. Returning officers are, in the performance of their duties, subject to the directions of the Chief Electoral Officer under section 24 of the Act, but that direction does not make them part of, or employees of, Elections Canada. This arrangement has a number of significant consequences, as detailed below.

Personal liability of returning officers – Legal liability for returning officers' activities rests with each returning officer personally, and not with the Chief Electoral Officer. Activities giving rise to liability are numerous: they include the renting of space for returning offices and polling stations, the hiring of election officers and staff, injuries arising out of accidents at returning offices or polling stations, damages to premises, rents owing, or employment or human rights claims by or against election officers or elections staff hired by returning

officers. While the Treasury Board's *Policy on the Indemnification of and Legal Assistance for Crown Servants* applies to returning officers, there remains a great deal of confusion and uncertainty concerning the assistance they may expect from the government in general, and Elections Canada in particular, when they are sued for their actions or those of their employees.[2] Clarifying the direct legal responsibility of the Chief Electoral Officer for returning officers with respect to the execution of the various election-related activities would address returning officers' concerns about their personal liability as it applies to the performance of their election-related duties. It would also address the confusion experienced by complainants, who might otherwise identify the wrong respondent in their legal proceedings against returning officers.

Application of the machinery of government statutes to returning officers – The fact that the Office of the Chief Electoral Officer is subject to the basic machinery of government statutes such as the *Financial Administration Act* and the *Privacy Act* does not make those statutes applicable to returning officers or their operations. To be subject to these statutes, returning officers would have to be included in the relevant statutory designations – which they are not. Making returning officers and their staff in fact agents of the Chief Electoral Officer would result in the automatic application to these officers of statutes applicable to the Office of the Chief Electoral Officer.

Inability to act – The appointment of returning officers outside of the structure of the Office of the Chief Electoral Officer results in an absence of any practical remedial or replacement authority in the case of inability, accident or insubordination. While the grounds for the removal of returning officers are suitable to the status and protection of the office,[3] it is the Governor in Council, not the Chief Electoral Officer, who is the judge of the necessity for such removal. The Governor in Council is not obliged to act upon such recommendations and few have been accepted in recent years. The realities of the electoral process make it even less likely that the Governor in Council would take action in the midst of an election. Finally, removal from office is an inflexible and extreme remedial authority not suitable for every failing. The Act should be amended to vest the authority for the removal of returning officers with the Chief Electoral Officer, who would be permitted to do so for sufficient cause, according to due process.

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[2] Without comprehensively outlining Treasury Board's *Policy on the Indemnification of and Legal Assistance for Crown Servants,* the policy basically provides that it is government policy to indemnify Crown servants against personal civil liability, to make no claim against servants based upon such personal liability, and to authorize the provision of legal assistance to Crown servants in the circumstances specified in the policy.

[3] Subsection 24(7) sets out the four grounds for removal:

> 24(7) The Governor in Council may remove from office any returning officer who
>
> (*a*) is incapable, by reason of illness, physical or mental disability or otherwise, of satisfactorily performing his or her duties under this Act;
>
> (*b*) fails to discharge competently a duty of a returning officer under this Act or to comply with an instruction of the Chief Electoral Officer described in paragraph 16(*c*);
>
> (*c*) fails to complete the revision of the boundaries of the polling divisions in their electoral district as instructed by the Chief Electoral Officer under subsection 538(3); or
>
> (*d*) contravenes subsection (6) [knowingly engaging in political activity while in office], whether or not the contravention occurs in the exercise of his or her duties under this Act.

Appearance of bias – As has been indicated several times in the past, many candidates have reported that the appointment by the government (or by a previous government) of returning officers, who are the principal engine for the delivery of elections at the local level, gives rise to a reasonable apprehension of bias. Appointment by the independent and neutral Chief Electoral Officer would address this concern, as has been demonstrated in the provinces of Quebec and Manitoba.

Merit-based appointment – As has also been reported on several occasions, the appointment of returning officers is not based on merit. The role of returning officer is a demanding one that requires multiple skills, yet there is no systematic process for evaluating candidates for appointment as returning officers. Although the Chief Electoral Officer has provided guidance on selection criteria, the current process does not guarantee that returning officers will have the necessary skills or be suitable for the job. The appointment of returning officers should be based on merit.

As is currently the case, each appointee should be a resident of his or her electoral district; this ensures that the returning officer is knowledgeable about local issues and is present within the electoral district. This report also recommends that returning officers be appointed for a period of 10 years, thus giving them the opportunity of managing at least two elections. This appointment could terminate earlier in case of death, resignation, ceasing to reside in the electoral district or removal from office. Causes for removal would remain the same (subsection 24(7) of the Act). Finally, provisions of the Act for situations when an assistant returning officer may act for a returning officer should be clarified to ensure that there is full continuity of authority for the acting returning officer.

Rationalizing division of tasks – The provisions of the *Canada Elections Act* that require the performance of tasks expressly by returning officers impede the division of tasks among returning officers themselves and between returning officers and Elections Canada personnel. It would be preferable if tasks were to be performed on the basis of whoever may be in the best position to do so. For example, voter information cards could be prepared and issued, either by Elections Canada or locally by a returning officer, according to which may be best positioned in the circumstances of each case. Integration of the responsibility for the delivery of elections with the Chief Electoral Officer would provide a wider latitude to returning officers from different districts to assist each other in the execution of these duties as requested by the Chief Electoral Officer. This integration would also require formal authority for the Chief Electoral Officer to delegate some of his functions to returning officers.

The closer integration of these offices would answer the needs of the current electoral process; however, the aspect of this recommendation that deals with the reform of the appointment process has both historical and modern precedents. The appointment of returning officers rested with the Chief Electoral Officer from 1929 to 1934, after which it was returned to the Governor in Council for reasons wholly unrelated to the exercise of that duty by the Chief Electoral Officer. Furthermore, six provincial and territorial jurisdictions (British Columbia, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut and Quebec) now provide for the appointment of returning officers through a process based on merit. Nor is it estimated that returning the appointment power to the Chief Electoral

Officer would create significant infrastructure demands: likely only two additional positions would be needed, with any additional requirements being absorbable through existing resources.

1.3 Expansion of the Statutory Budgetary Authorization

Section 553 of the *Canada Elections Act* should be amended to provide for statutory authority to pay all of Elections Canada's expenses related to the administration and enforcement of the Act out of the unappropriated funds forming part of the Consolidated Revenue Fund.

As a corollary amendment, provision should be made to enhance the review function of the Auditor General as it applies to the operations of Elections Canada. The practice of the Chief Electoral Officer of reporting annually on the use of the statutory payment authority and of appearing before a House of Commons Committee to be examined thereon could also be statutorily codified.

Currently, the funding for the operation of the Office of the Chief Electoral Officer of Canada comes from two sources: pre-authorized statutory draws upon the Consolidated Revenue Fund and an annual appropriation vote.

The authority contained in the Act for draws upon the Consolidated Revenue Fund provides for the payment of all of the expenses relating to the operation of the Act, apart from the regular salaries of permanent staff.

The statutory authority to draw directly upon the Consolidated Revenue Fund serves two important purposes: permitting elections to be conducted effectively and efficiently, and maintaining the integrity of the electoral process. The various functions and duties related to the delivery of elections could not be performed in an effective, efficient, independent and impartial manner without a statutory draw. Because the timing of elections is not known in advance, annual appropriation votes are not suitable financing vehicles. It is also imperative for the conduct of an effective, fair and impartial electoral process that funding be insulated from executive control or political agendas.

Elections Canada's only expense outside of the statutory draw is the payment of the regular salaries of its permanent employees (overtime is provided for by a statutory draw). An annual appropriation is required for these salaries.

As the Chief Electoral Officer observed in his February 15, 2005, statement to the Standing Committee on Access, Privacy and Ethics, when the Office was first created in 1920, it consisted only of one chief clerk and two stenographers. The 1920 statute expressly directed that, apart from these three staff members, there were to be no permanent officers or employees paid to perform any duties in connection with elections. The delivery of elections was the principal responsibility of appointed returning officers and associated staff – all of whom were, and continue to be, paid under the statutory authority for payment contained in the Act.

Thus, the Office of the Chief Electoral Officer was created with no statutory provision for the payment of the permanent staff,[4] precisely because those officers were not involved in the effective delivery of elections or related functions – unlike today. The effective and impartial delivery of elections was ensured through the provision of a statutory draw.

As the Chief Electoral Officer also indicated in his February 15, 2005, statement, the legislative duties of his Office have evolved significantly over the past century: today's elections are no longer simple, stand-alone affairs, existing wholly within the parameters of an election period. The modern election could not be effectively or efficiently performed without professionals, experts and permanent staff and the use of automated technologies. Activities such as the maintenance of the National Register of Electors, the registry of political parties and of electoral district associations, the disclosure rules and political financing functions are not only significant, they are essential aspects of the electoral process and are not restricted in their operation or effect to the 36-day election period. Should the Act be amended as recommended in section 1.1 of this document to implement an advanced, centralized and administrative confirmation process, the ratio of electoral activities outside election periods will increase even more.

At the same time as electoral duties have become a more important, ongoing function of the organization – rather than being directed purely toward electoral events – human resources management in the federal government has diminished the ability to hire staff on a longer term basis other than indeterminate status. The historical reason for not including the salaries of the indeterminate employees of the Office of the Chief Electoral Officer in the statutory authorization has long ceased to exist. And, while electoral duties have necessarily come to dominate the functions of permanent staff, the historic source of funding for that staff has not been corrected to reflect this significant shift in responsibility.

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[4] Under the *Dominion Elections Act* of 1920 (S.C. 1920, c. 46), the statutory duties of the Chief Electoral Officer consisted of the following:

General Duties:

Throughout every election properly direct all returning officers and, in case of incompetency or neglect of duty on the party of any of them, recommend his removal and the appointment of another in his stead; exercise general direction and supervision over the administrative conduct of elections with a view to ensuring the fairness and impartiality of all election officers and compliance with the provisions of this Act; report to the House of Commons after any election; subject to the performance of the foregoing duties, act as counsel for the Crown or the Attorney General in such causes, prepare such opinions, and make such enquiries as the Governor in Council may from time to time direct.

Specific Duties:

1. addressed writs and received return

2. provided ballot boxes or instructions necessary to ensure uniform size

3. provided paper for ballots

4. stored election papers after election

5. participated as mediator in disputes between Auditor General and election officers for payments of election-expense accounts

6. assisted in the preparation of the tariff of fees for the payment of election officers

The operation of the current appropriation process for the funding of officers of Parliament has recently been questioned by the Standing Committee on Access to Information, Privacy and Ethics[5] – particularly in the context of those officers who perform an ombudsman or review role related to government action:

> There is no doubt that the current budget determination process for the funding of Officers of Parliament raises serious concerns. The Committee feels that the status quo is unacceptable. At the very least, it raises the perception that the critical functions of these Officers could be impeded by budgetary restrictions imposed by the very body whose actions they are charged with scrutinizing.[6]

In response to those concerns, the Committee recommended that a parliamentary body should replace Treasury Board in its role of determining the budget required for all officers of Parliament including, with respect to its appropriation vote, the Office of the Chief Electoral Officer. The comments made by the Committee indicate that Parliament's original concerns about the delivery of elections are as valid today as they were some 85 years ago, when Parliament elected to ensure that the delivery of elections was not subject to improper influence, or the perception of influence, from any source – including Parliament.

It is important to note that funding the electoral process through the statutory draw does not dispense with the right, and authority, of Parliament to be kept advised of those electoral expenses and to intervene where appropriate.

The extensive detail of the Act itself materially directs the extent and direction of operations in the delivery of an election. Furthermore, significant review and report mechanisms for these operations already exist.

Thus, the Office of the Chief Electoral Officer is subject to audit by the Auditor General of Canada. Parliament is also kept closely apprised of projected expenditures to be funded under the statutory draw. Projected expenses are forwarded for the attention of Parliament in the Main or Supplementary Estimates, through the Minister designated under the *Financial Administration Act*, then to Treasury Board, before being consolidated and presented to Parliament – even though no appropriation is actually needed for those expenditures. This process provides significant opportunity for challenge and accountability. The Chief Electoral Officer also appears regularly before the House of Commons Committee on Procedure and House Affairs, as well as before other responsible Parliamentary committees, to account for and explain these estimates. Finally, as part of this accountability process, Part III of the Estimates, the *Report on Plans and Priorities*, provides Parliament with a written account of the Chief Electoral Officer's plans, on which he is closely scrutinized. The companion document, the *Departmental Performance Report*, provides an assessment of the performance and results achieved by the Office as measured against the plans and budget previously reported to Parliament.

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[5] See the report entitled *A new process for funding officers of Parliament* tabled by the Committee on May 5, 2005, and more particularly, its first recommendation.

[6] *Idem*, p. 21.

In the event that the financial authorities for the delivery of elections are updated and brought back in line with the original vision of Parliament, the existing review and report mechanisms should be updated likewise. The number and type of audits the Auditor General makes of Elections Canada accounts and activities should be increased and funded from the statutory draw. Similarly, the Chief Electoral Officer's practice of reporting annually on the use of the statutory payment authority and of appearing before a House of Commons Committee to be examined thereon should be statutorily codified.

1.4 Extension of the Adaptation Power

The period during which the Chief Electoral Officer is authorized to adapt the *Canada Elections Act* under section 17 for emergencies or unusual or unforeseen circumstances should be extended from the current period of the election to 90 days past the return of the writ.

Section 17 currently provides the authority to the Chief Electoral Officer to adapt the provisions of the Act (with a few noted exceptions) during an election period if an emergency, an unusual or unforeseen circumstance or an error makes it necessary. The highly prescriptive nature of the Act, coupled with the singularity of each electoral event, which cannot easily be delayed or reviewed, makes such an authority invaluable. This power is used, under a variety of circumstances, in every election. In the 38th general election, a number of adaptations were made, including the following:

- to provide for the use of photocopied ballot forms in ridings where the supply of pre-printed ballots was insufficient on polling day and could not be replenished in time
- to address the issue of a central polling place being established in error outside of an electoral district
- to extend to inmates in federal correctional institutions the voting process currently applicable to inmates in provincial institutions
- to extend the period for voting by special ballot for certain military personnel who were in removed or inaccessible locations
- to provide for the issuance of transfer certificates to electors who were erroneously advised to vote at the wrong polling station

The adaptation power in section 17, however, is limited to the election period only: the period beginning with the issue of the writ and ending on polling day or on the day a writ is withdrawn.

The difficulty with this limitation is that the election process does not end with polling day. The validation of the vote, for example, a vital part of the election, takes place after polling day. Emergencies, unusual or unforeseen events, or errors in these events can have equally serious consequences for an election. And, in the same way that it is not possible for Parliament to deal with these situations during an election, it is not feasible for Parliament to take practical action to deal with election-related concerns that arise immediately after an election.

Furthermore, circumstances arising during an election may call for corrective adaptation to a date outside of the election period. For example, registered parties and electoral district associations may find that the deadline for the filing of their fiscal returns under the Act falls in the midst of an election period. In this case, an adaptation of the Act would be effective only to permit a delay in that filing deadline up to polling day – which is not an effective response.

For this reason, this report recommends that section 17 of the Act be amended to extend the temporal limitation on adaptations of the Act to a date beyond polling day.

Insofar as the Chief Electoral Officer is required to report on all adaptations made in a general election in his report made to Parliament under subsection 534(1) within 90 days of the date of the return of the writs, it is recommended that this be the extended period for which the Chief Electoral Officer be authorized to adapt the Act. This will set a specific end date for the exercise of the power; the resulting period will cover all of the stages of the election conducted by election officials, and will ensure that information about adaptations are provided to Parliament in a timely fashion in the statutory report to Parliament on the election.

1.5 Appointment of the Chief Electoral Officer

Consideration should be given to the Senate having a role in the appointment of the Chief Electoral Officer.

Since the creation of the Office in 1920, the Chief Electoral Officer has been appointed by resolution of the House of Commons.[7] The Senate has been accorded no role in that appointment process. Once appointed, the Chief Electoral Officer serves until age 65. Early termination of office is possible only by death, resignation, or removal for cause by the Governor General on address of the Senate and House of Commons.

The tenure and term of the Chief Electoral Officer are intended to support the independence of the Office from political influence, as is the appointment by resolution of the House of Commons – rather than by the Governor in Council.

[7] Section 13 of the *Canada Elections Act*.

Appointment by resolution of the House also serves to reflect the particular interest of the House in the officer who will administer the process through which members of the House are elected. This is not primarily a personal interest, however. It reflects the public interest by ensuring the objective and expert delivery of elections for the creation of the lower House of the legislative branch of the state.

Members of the Senate have suggested that this interest is not unique to the House of Commons. It is also shared by the Senate. This interest is similar to the constitutionally mandated interest of the Senate in legislation respecting electoral matters, and its interest in the various reports made by the Chief Electoral Officer to the Speaker of the House under the statutes he administers. The Chief Electoral Officer is often requested to appear before the Senate to respond to questions.

For that reason, it has been suggested by members of the Senate that, to the extent that the Senate is seen as having a role in the termination of the term of the Chief Electoral Officer, it has a role in the appointment of that officer. These arguments have merit, and consideration should therefore be given to the idea of the Senate having a role in the appointment. This would also reflect the representative nature of that house of Parliament and its interest in a key element of the formation of Parliament.

1.6 The Office of Assistant Chief Electoral Officer

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

The 2001 report of the Chief Electoral Officer, *Modernizing the Electoral Process*, recommended the repeal of the statutory office of Assistant Chief Electoral Officer on the grounds that the office served no statutory function, was subject to concerns about its independence from the executive, operated as a serious impairment of the democratic rights of any holder of that office, and was an anachronistic holdover from an early version of the Office of the Chief Electoral Officer. That recommendation is repeated here.

The statutory office of Assistant Chief Electoral Officer was created in 1920 at the same time as the Office of the Chief Electoral Officer. At that time, the entire staff of the Office consisted of only the Assistant Chief Electoral Officer (who held the rank of Chief Clerk) and two stenographers. Both the Assistant and the two stenographers were to be appointed by the Governor in Council, according to the practice of the day.

In 1948, concerns by the Chief Electoral Officer that two stenographers were insufficient for his needs led to amendments to the staffing provisions of the Act, to provide that the Office would consist of the Assistant Chief Electoral Officer "and such other officers, clerks, and employees" as the Governor in Council might appoint. The focus on the staff of the office, other than the Assistant Chief Electoral Officer, continued in 1951, when the staffing provisions of the Act were amended again to provide for the appointment of the "other officers, clerks, and employees" as may be required; they were to be appointed "according to law" – at that time, through the Civil Service Commission. This was a purely functional amendment for efficiency, based on a request from the Chief Electoral Officer in recognition of his *de facto* use of the Commission to find staff.[8] The appointment of the Assistant Chief Electoral Officer was not discussed at that time and the issue has not been reviewed since.

The Act does not provide for the Assistant Chief Electoral Officer to serve as the deputy of the Chief Electoral Officer. Nor does that officer stand in for the Chief Electoral Officer in the event that the Chief Electoral Officer is unable to perform his or her duties. In the case of death or incapacity of the Chief Electoral Officer, the House of Commons must appoint a successor (section 14 of the Act provides for the appointment of a substitute Chief Electoral Officer through the judiciary if Parliament is not sitting at the time of the Chief Electoral Officer's death or incapacity).

[8] The issue of staffing and appointment had come up earlier in 1947, when the Chief Electoral Officer was requesting an expansion in the number of his staff. The focus of that discussion was not on the Assistant Chief Electoral Officer, but on other staff. In 1947, the suggestion was made for an increase in staff, who would also be appointed through the Civil Service Commission. The Chief Electoral Officer at that time, Mr. Jules Castonguay, expressed a preference for the appointment authority to remain unchanged insofar as the Chief Electoral Officer felt that the provision had been in force for 27 years at that time and that it had worked satisfactorily during that period (see the *Minutes of Proceedings of the Special Committee on Dominion Elections 1938* for June 5, 1947). Approximately three years later, a different Chief Electoral Officer believed that it would be more efficient for the Civil Service Commission to handle the appointments of staff. In the *Minutes of Proceedings* of the Standing Committee on Dominion Elections Act 1938 for June 15, 1950, the following exchange took place between Mr. Nelson Castonguay, the Chief Electoral Officer (appearing as a witness), and the Committee:

> "The Witness: I have something to mention there.
>
> I would like to suggest to the committee that they agree to bring my staff under the Civil Service Commission. The present procedure for the appointment of a permanent employee is that I make a recommendation to the Secretary of State, the Secretary of State forwards the recommendation to the Governor in Council, the Governor in Council refers it to the Treasury Board, the Treasury Board refers it to the Treasury Board, the Treasury Board refers it to the Civil Service Commission and the Civil Service Commission consults me to see if the position is required, and secondly, if the employee is qualified. The procedure I am following now, when there is a vacancy on the staff, is to seek the assistance of the Civil Service Commission in filling the vacancy. This is merely a suggestion that would be acceptable not only from the point of view of the permanent staff but also from the point of view of the temporary staff. In the last election we had a new responsibility inasmuch as we had the taxation of election accounts. I have a small permanent staff. During the election we hire up to about sixty temporary employees, and these employees are dismissed after the general election. For efficiency of the office, and if the committee is agreeable, I would be more comfortable if the staff of the Chief Electoral Office came under the Civil Service Commission."

The Assistant Chief Electoral Officer served in the role of a senior officer of Elections Canada – one of several – and performed such duties as assigned by the Chief Electoral Officer. Since its creation in 1920, the Office of the Chief Electoral Officer has expanded in mandate and in operational demands far beyond its original concept as a simple three-person office. The Chief Electoral Officer now presides over a complex, modern organization with continuing national obligations and international involvement, and extensive demands for expertise in many fields, such as finance, law, geography, computer technology and public administration. Many of Elections Canada's senior officers perform roles that are equally important to the operation of Elections Canada as those performed in the past by Assistant Chief Electoral Officers, and there appears to be no pressing reason why the officers under the Chief Electoral Officer should be divided into two classes: the Assistant Chief Electoral Officer and all others. The evolution of the mandate and structure of the Office of the Chief Electoral Officer of Canada has not been reflected by a similar evolution in the statutory concept of the Assistant Chief Electoral Officer that would integrate that office into modern reality. The office has been vacant since 2001.

Insofar as the Assistant Chief Electoral Officer serves no particular statutory mandate, there is no statutory purpose served by the requirement that the Assistant Chief Electoral Officer be appointed by the Governor in Council. Yet, while serving no apparent statutory purpose, that appointment process undermines the perceived impartiality of Elections Canada's operations. The influence of the governing party in this appointment is inconsistent with the independence and impartiality required of Elections Canada. As noted above, the appointment authority of the Governor in Council appears to be historical in origin rather than purposive.

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

Section 4 of the Act provides that the Assistant Chief Electoral Officer is not entitled to vote in an election. Insofar as the Assistant Chief Electoral Officer holds no specific mandate and performs no operational role, other than what may be assigned from time to time by the Chief Electoral Officer, there appears to be no substantive reason why the Assistant Chief Electoral Officer should not have the right to vote. All other officers under the Chief Electoral Officer have that right. Any of those officers may at any time be assigned the same duties or responsibilities that could be assigned to the Assistant Chief Electoral Officer. In fact, the roles performed in the past by Assistant Chief Electoral Officers are now performed by a number of different directorates within Elections Canada. The loss of the right to vote is an important intrusion upon the constitutional democratic rights of the holder of the office of Assistant Chief Electoral Officer.

For these reasons, the Act should be amended to remove the statutory office of Assistant Chief Electoral Officer.

1.7 Appointment of Revising Agents

Section 33 of the *Canada Elections Act* should be amended to remove the requirement that returning officers solicit names from registered parties in the hiring of revising agents.

Revising agents assist returning and assistant returning officers in the registration of electors during the revision period of an election. The 2001 report *Modernizing the Electoral Process* detailed the burden on the electoral process resulting from the prohibition on returning officers from hiring persons to act as revising agents until they have first solicited names of persons from the registered parties whose candidates finished first and second in the previous election in that electoral district. The returning officer hires outside of the recommendations of the two parties only if the two parties fail to provide sufficient names within three days after receiving a request from the returning officer. As noted in the 2001 report, this has a number of consequences.

First, the time frame for consultation with the two registered parties creates a delay in the selection and training of revising agents.

Second, as a result of the political nature of the source of the pool of revising agents, the Act requires that revising agents work in pairs; this serves as an internal check on partisan bias. However, this imposes further burdens on the process by doubling the number needed to staff the positions of revising agent – a doubling not only in the number of people required, but also in salaries, expenses and training.

Third, there appears to be little justification today in requiring Canadians seeking to participate in the electoral process as revising agents to apply through the medium of the two registered parties which came first and second in the last election in the district.

For these reasons, the recommendation made earlier in *Modernizing the Electoral Process* is repeated here. Section 33 of the Act should be amended to remove the requirement for returning officers to solicit names from registered parties in the hiring of revising agents.

If this recommendation is adopted, the current requirement that revising agents work in pairs should be removed.

1.8 The Right of Elections Canada Staff to Strike

Employees of the Chief Electoral Officer should not have the right to strike.

In the 2001 report, *Modernizing the Electoral Process*, the recommendation was made that the *Public Service Staff Relations Act* be amended to remove the right to strike from employees of Elections Canada. This recommendation was based on the fact that any labour interruption in the operations of Elections Canada made it impossible either for the Chief Electoral Officer to be election ready or to perform his or her functions under the *Canada Elections Act* during an election. It was argued in that recommendation that neither the

authority of Parliament to legislate an end to strikes, nor the ability of the Governor in Council to defer strike action during a general election, nor the designation of positions as positions necessary to preserve the safety or security of the public adequately addressed the need of the Chief Electoral Officer to be election ready or to deliver an election. These arguments are repeated here, followed by an assessment of the implications of the new applicable rules under the *Public Service Labour Relations Act*:

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

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

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

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

Such action would not prejudice the right of employees to benefit from the success of any strike action carried out by their unions. And, while this action would prohibit them from physically joining any such strike, it would not prohibit them from supporting their co-unionists through other means, such as financial support. The basic effect of this prohibition would be to preclude the transformation of the democratic process into a bargaining tool. As noted in the 1996 report of the Chief Electoral Officer entitled *Canada's Electoral System: Strengthening the Foundation*, other jurisdictions, including British Columbia, Manitoba, Ontario and Quebec, prohibit employees of their election agencies from striking.

As a result of the enactment of the *Public Service Modernization Act,* the *Public Service Labour Relations Act* now governs labour relations for federal public servants. Under that Act, the above-described options respecting strikes continue in their existing or similar form. Parliament continues to have the authority to legislatively end strike action. The Governor in Council continues to have the authority to defer strike action during a general election (s. 197), and persons in positions identified in essential-services agreements remain unable to strike. The last option is similar to the former option of designated positions. However, as these options operate in a way similar to the earlier options under the *Public Service Staff Relations Act,* they continue not to address the concerns raised in the 2001 report about the employees of Elections Canada.

The *Public Service Labour Relations Act* also provides in Division 9 (sections 135 and following) a process for the resolution of disputes through arbitration. Persons in bargaining units for which the process for resolution of a dispute is arbitration are prohibited from participating in a strike under paragraph 196(*e*) of the new *Public Service Labour Relations Act*.

To bring Elections Canada under Division 9 of the *Public Service Labour Relations Act* would require removing the employees of Elections Canada from their existing bargaining units and creating separate bargaining units for them. This is unlikely to be practicable.

For this reason, the earlier recommendation contained in *Modernizing the Electoral Process* is repeated here.

1.9 Hiring and Payment of Temporary Elections Canada Staff Hired Directly for Preparation and Conduct of Elections

Section 20 of the *Canada Elections Act* deals with the authority of the Chief Electoral Officer to hire additional employees and workers. It should be divided into two subsections: one subsection would deal with the additional individuals that the Chief Electoral Officer considers necessary for the direct preparation for, conduct of and reporting on an election; the second subsection would deal with other additional individuals needed for the exercise of the Chief Electoral Officer's powers, duties and functions under the Act.

The workers required specifically for the direct preparation for, conduct of and reporting on an election would be employed by the Chief Electoral Officer on a casual or temporary basis outside the scope of the *Public Service Employment Act*, which restricts the length of time for which such workers may be hired to between 90 and 125 days. The proposed approach is the same as that applicable to election officers under the *Canada Elections Act*.

The Chief Electoral Officer would retain the current authority to hire, on a casual or temporary basis, other additional persons considered necessary for the exercise of his or her powers, duties and functions under the *Canada Elections Act*, but the hiring of these individuals would remain subject to the applicable provisions of the *Public Service Employment Act.*

Section 542 should be amended to allow for the payment, under the existing *Federal Elections Fees Tariff*, of fees to workers hired by the Chief Electoral Officer for the direct preparation for and conduct of an election.

During elections, the Chief Electoral Officer needs to increase the complement of employees significantly to ensure the smooth running of the election, provide assistance to the public and to candidates, and properly support returning officers and their election personnel in 308 electoral districts.[9] Various people with diverse qualifications are required in the few months leading to the time at which the Chief Electoral Officer "expects" the writ to be issued, during the election period itself, and for some months after the election, to assist the permanent staff in delivering and reporting on the electoral event.

Among the people hired to provide support to the organization itself, and technical assistance to returning officers, are provincial government employees, past federal returning officers, past assistant returning officers, past or current provincial returning officers and other senior provincial election officers. These individuals bring with them an invaluable pool of electoral knowledge; hence the requirement for flexibility to attract them and pay them, while retaining them for a relatively short period of time. Elections Canada must also hire other individuals during the election to support the organization in tasks that require less-specialized knowledge.

In 2004, as in previous elections, casual workers were hired under the terms of the *Public Service Employment Act.*[10] This approach creates a significant strain on the organization, which must nearly double its personnel to run the election, with no advance notice of the date of the election call. The strain relates to the intake of new employees, but also extends to the need to train these new and temporary employees, to put them on pay rapidly, then to stop paying them and process termination of their contracts, all in a period during which the organization is already operating at full capacity and maximum intensity. The most significant problem, however, relates to the length of time for which these individuals may be hired.

Subsection 21.2(2) of the current *Public Service Employment Act* provides that casual employees may not work for any particular organization for more than 125 days in any 12-month period.

The rules governing the period over which casual workers may work for any particular organization will be changed with the coming into force of the new *Public Service Employment Act*[11] in December 2005, at which point this 125-day period will be reduced to 90 days per calendar year.[12] Elections Canada would need to be able to retain these individuals for up to 175 days of work per election. The reduction of the number of days for which casual workers may be hired pursuant to the new *Public Service Employment Act* will make it more difficult for the Chief Electoral Officer to deliver elections efficiently and to meet all his or her legal obligations related to the conduct of elections.

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[9] In his report on the administration of the 38th general election, the Chief Electoral Officer indicated that in Ottawa, the number of Elections Canada employees had nearly doubled to approximately 600, almost overnight (p. 35).

[10] R.S.C., c. P-33.

[11] Enacted as s. 12 of the *Public Service Modernization Act*, S.C. 2004, c. 22.

[12] Section 50 of the new statute.

The time limitations for the hiring of casual workers in both the new and current statutes create particular difficulties for Elections Canada in the casual hiring of the many individuals who are knowledgeable about elections, who made up about 50 of the approximately 300 casual workers hired for the 2004 election.[13]

For example, a decision may be made to call in the casual workers at a time when an election appears a near certainty in a matter of days; the situation may change, and no election is called. While the casual workers' employment would be terminated as soon as possible once it becomes clear that the election would not occur, the time spent by them working for the organization while gearing up to what turned out to be a false alarm reduces the time during which they can work, if the writs are eventually issued during the same calendar year. Similarly, if a number of by-elections are called during a year, the number of days spent working for Elections Canada by each worker for each by-election has an effect on the length of time for which a knowledgeable individual may be able to assist the organization if a general election is subsequently called.

These problems could be resolved by authorizing the Chief Electoral Officer to hire the workers required for the direct preparation for and the conduct of an election on a temporary basis. A limit on the duration of any such hirings could be imposed, and the Chief Electoral Officer would be expected to demonstrate, at the end of the year, that such employees were hired to work directly on the preparation of an election and/or its conduct.

The payment of salaries to these workers should also be addressed. The Public Works and Government Services Canada Regional Pay System, used for the payment of the salaries of public servants, does not lend itself easily to this sudden influx of a high number of new workers who rightly expect to be paid in a period relatively concurrent with the term of their employment.

This report proposes that the Act be amended to allow for the payment of fees to these workers under the *Federal Elections Fees Tariff* already established under the authority of section 542 of the Act for the payment of fees to election officers. The tariff of fees could also provide for the payment of relocation expenses, such as lodging, meals, incidentals and travel expenses, to these individuals, in accordance with Treasury Board guidelines.

It is worth noting that this proposed arrangement is the one already applicable for election officers, as this term is defined in section 22 of the *Canada Elections Act*.

[13] Whenever it seeks the assistance of these experts, Elections Canada must also seek from the Treasury Board an exemption from the application of its Travel Directive to pay for the transportation and lodging costs of these individuals. As casual workers, the cost of their move to Ottawa and living expenses while working in the city are not authorized by the policy.

1.10 Greater Flexibility in the Establishment of Advance Polling Stations

It should be possible to establish an advance poll for a single polling division rather than requiring that the advance poll must be for two or more divisions.

Currently, an advance polling district must cover two or more polling divisions (s. 168). This can make accessing these advance polling stations difficult for electors when the polling divisions in question are already geographically substantial or remote. In those cases, it would be preferable if an advance poll could be created for that one polling division rather than requiring that it be combined with another. The greater number of electors relying on advance polls to vote provides a further justification for more discretion on this matter.[14]

1.11 Transfer Certificates and Accessibility

Section 159 of the *Canada Elections Act* should be amended to remove any time limit for application for a transfer certificate in the event that a polling station lacks level access.

The 2001 report *Modernizing the Electoral Process* recommended that the deadline by which an elector with a physical disability might apply for a transfer certificate to vote at a polling station with level access be eliminated. That recommendation is repeated here.

Every effort is made to ensure that all polling stations provide level access. However, the limited time frames of an election and problems of space availability sometime result in less than optimal locations for polling stations. Nevertheless, in the 2004 general election, only 45 (0.2 percent) of the 18,807 polling stations lacked level access. This compares with 0.5 percent that lacked level access in the 2000 general election.[15]

Section 159 of the Act provides that an elector with a physical disability who cannot vote without difficulty in his or her assigned polling station may vote at another polling station where level access is provided. In order to do so, the elector must request a transfer certificate from the returning officer before 10:00 p.m. of the Friday immediately before polling day.

This deadline undermines the purpose of section 159 because many electors are not aware, until they arrive on polling day, that the polling station to which they have been assigned does not have level access.

[14] Advance poll voting rose from 750,000 voters in 2000 to 1,250,000 in 2004.

[15] Pursuant to s. 121(2), a returning officer may, with the approval of the Chief Electoral Officer, locate a polling station in premises without level access, if suitable premises with level access cannot be found.

The purpose of the deadline is to allow sufficient time for a copy of the certificate to be sent to the deputy returning officer for the polling station originally assigned to the voter. However, this copy does not have to be received in order for the elector to vote in the new polling division, provided he or she presents the original of the required transfer certificate in that division.

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

Furthermore, the imposition of the time limit is inconsistent with the practice in the Act for other forms of transfer certificates. For example, transfer certificates are available under section 158 of the Act to candidates and to persons who have been appointed after the last day of advance polls to serve as election officers for polling stations other than their own. The Act imposes no time limit for those certificates.

1.12 Provision of Transfer Certificates

The *Canada Elections Act* should permit the issuance of a transfer certificate to any elector who presents himself or herself at the wrong polling station as a result of a change in the assignment of polling stations or advance polls that took place after the issuance of the original voter information card to the elector.

The assignment of electors to specific polling stations or advance polling stations sometimes has to be changed after voter information cards have been sent out to those electors. A correcting information card is sent out to electors in these circumstances. Where this takes place there is a concern that an elector might not receive the new card in time, or might not remember or note the change in polling stations, and may still turn up at the original polling station. In those circumstances, the Act does not permit the elector to vote at that polling station.

In the 38th general election, the location of advance polling stations had to be changed in six electoral districts (Halifax, Fredericton, Fundy, Timmins–James Bay, Whitby–Oshawa and Nunavut) after the electors had been sent voter information cards. Although these electors were sent amending voter information cards, an adaptation was also prepared to deal with the situation if for some reason any of these electors showed up to vote at the advance polling station they had been originally advised to go to. The adaptation permitted the electors to vote at that advance polling station by transfer certificate.

1.13 Establishment of Mobile Polling Stations

Subsection 538(5) of the Act should be expanded to allow for the creation of mobile polling stations for any institution that serves as the ordinary residence of its residents who, for reason of age, health or other circumstances giving rise to their residence in the institution, may have difficulties in getting to the regular polls.

Currently, subsection 538(5) of the Act permits returning officers, with the approval of the Chief Electoral Officer, to create mobile polling stations. However, that section only provides that mobile polling stations can be created for two or more institutions where senior citizens or persons with a physical disability reside. There are other institutions in which individuals may reside who may also have difficulties in getting to the regular polling stations – for example, homeless shelters or homes for victims of domestic violence. Expanding the authority to create mobile polling stations for any institution that serves as the ordinary residence of individuals – who for reason of age, health or any other circumstance giving rise to their residence in the institution, may have difficulties in getting to the regular polling stations – will increase access to the polls for the electorate.

1.14 Access to Multiple-residence Buildings, Gated Communities and Other Premises

The electoral access rights provided in section 81 of the *Canada Elections Act* should be expanded.

First, candidates' rights of access to multiple-residence buildings should be expanded beyond single buildings containing multiple residences, to include any collection of residences where access to any particular dwelling is controlled by someone other than the residents of this dwelling. This would encompass the new development of gated communities.

Second, section 81 should be extended to include election officials for electoral purposes during an election.

Third, any person who has control over premises to which the public is generally invited and who has permitted a registered or eligible party or a candidate to conduct election advertising in or on those premises in that year or in that election period, should provide, on request, a similar opportunity to all other registered or eligible parties and all other candidates for election in that electoral district in that same year or election period.

As a corollary, it should be made clear that permitting a registered or eligible party or candidate to conduct election advertising at less than commercial value in or on premises to which the public is generally invited does not constitute a contribution.

Section 81 of the Act provides a limited right of entry to multiple-residence buildings during an election for candidates and their representatives:

> 81. (1) No person who is in control of an apartment building, condominium building or other multiple residence building may prevent a candidate or his or her representative, between 9:00 a.m. and 9:00 p.m. from
>
> (*a*) in the case of an apartment building or condominium building, canvassing at the doors to the apartment or units, as the case may be; or
>
> (*b*) campaigning in a common area in the multiple residence.
>
> (2) Subsection (1) does not apply in respect of a person who is in control of a multiple residence building whose residents' physical or emotional well-being may be harmed as a result of permitting canvassing or campaigning referred to in that subsection.

Although section 81 provides candidates and their representatives with a right to enter a building containing multiple residences, it is not clear whether the section also guarantees candidates access to private residences located in separate buildings to which access to any single residence is controlled by someone other than the residents of that premises, or through a collective of persons of which the residents of a particular premises are only part – for example, a gated community. Like a multiple-residence building, however, access to a gated community may be controlled and denied through a common entry point – albeit to an area rather than to a single building.

The statutory predecessor to section 81 first appeared in the Act in 1993 and provided access to candidates and their representatives to any apartment building or other multiple residence for the purpose of conducting the campaign. That provision was amended, following the 1996 report *Canada's Electoral System – Strengthening the Foundation,* to include an express reference to condominiums. The evolution of modern forms of residency now requires that the provision be expanded to cover gated communities and other similar arrangements where an external individual or collective organization may deny access by candidates or their representatives to electors at their homes.

Furthermore, section 81 applies only to candidates and their representatives. The Act does not provide any automatic right of entry for elections officials involved in the revision of the list of electors through targeted revision. As it was explained in the earlier *Report of the Chief Electoral Officer of Canada on the 38th General Election Held on June 28, 2004*, returning officers carried out revision exercises to their lists of electors in the second week of that election period. During these exercises, revising officers visited targeted high-mobility addresses and identified areas with low registration rates. Revising agents then visited the targeted areas and registered electors in person, to update the list information. In the case of multiple-residence buildings, revising agents were dependent on the willingness of the person or entity in charge of the building to grant them access.

Under the earlier system of enumeration, enumerators had the statutory right to enter any apartment building or other multiple residence during reasonable hours for the purposes of conducting an enumeration (*Canada Elections Act,* R.S.C. 1985, c. E-1, s. 70, as amended by S.C. 1993, c. 19, s. 31). There is no similar authority available today for revising agents conducting a targeted revision – although this is an essential aspect of the maintenance of the National Register of Electors. In the 38th general election, there were reported incidents of

landlords refusing revising agents access to multiple-residence buildings. Such refusals reduce the efficacy of targeted revision. For this reason, the rights granted to candidates and their representatives by section 81 should be extended to elections officials in the pursuit of election-related duties during an election period.

Finally, many premises to which the public is generally invited (e.g. shopping malls) constitute private property. The owner of that property has the right to permit or prohibit a candidate or a political party from campaigning on the premises during an election period. This is a right of property that should not be lightly tampered with. Campaigning may not be compatible with the particular premises in question.

However, once the person or persons who have control over the premises decide to permit one or more registered or eligible parties or candidates to electioneer on this type of property, it may be unfair to deny a similar right to other registered or eligible parties and candidates in the same electoral district – especially when the premises in question provide a significant focus for the gathering of large segments of the community.

To the extent that such premises may be the property of corporations, changes introduced by S.C. 2004, c. 19 (Bill C-24) would prohibit the provision of any free campaigning to a registered party (as such, this would amount to a prohibited non-monetary contribution to a registered party). Those amendments would equally prohibit the provision of campaigning opportunities only to select registered parties or candidates to the extent that such provision were to be part of a scheme to avoid the application of the contribution rules.

However, premises to which the public is generally invited, particularly in the case of large shopping malls, can be an important, and convenient, forum at which the electorate may gain electoral information. The Act should encourage the equal grant of campaigning opportunities to registered or eligible parties and candidates in such premises where such campaigning is complementary to the purposes of the premises.

For this reason, section 81 should also provide that any person, who has control over premises to which the public is generally invited and who has permitted a registered or eligible party or a candidate to conduct election advertising in or on those premises in that year or election period, shall provide a similar opportunity on request to all other registered or eligible parties and all other candidates for election in that electoral district in the same year or election period.

As a corollary, it should be made clear that permitting a registered or eligible party or candidate to conduct election advertising at less than commercial value in or on premises to which the public is generally invited does not constitute a contribution.

1.15 Right to Vote of Inmates Serving Sentences of Two Years or More

Sections 246 and 247 of the *Canada Elections Act*, which set out the process for voting in provincial correctional institutions, should be amended to provide a similar process for voting in federal institutions. This would ensure the existence of a process through which prisoners serving a sentence of two years or more might exercise their right to vote, pending a legislative response to the striking down of paragraph 4(*c*) by the Supreme Court of Canada in 2002.

Sections 246 and 247 of the Act set out the process whereby persons incarcerated in provincial correctional institutions can exercise their right to vote, by means of a special ballot. The Act provides no similar process for persons incarcerated in a federal penitentiary, because the current wording of those provisions reflects the prohibition in paragraph 4(*c*) of the Act that directs that every person who is imprisoned in a correctional institution and serving a sentence of two years or more is ineligible to vote. Prisoners serving sentences of two years or more are generally incarcerated in federal institutions.[16] However, paragraph 4(*c*) was struck down by the Supreme Court of Canada in 2002 in its decision in *Sauvé v. Canada (Chief Electoral Officer)*.[17] As a result, all persons who are otherwise eligible to vote in a federal election are entitled to vote, regardless of the length of their sentence of incarceration.

In every by-election and general election since the decision of the Supreme Court of Canada in *Sauvé,* the Chief Electoral Officer has used his authority under section 17 of the Act to adapt sections 246 and 247 to provide a process for voting by individuals incarcerated in federal penitentiaries. This process has mirrored the existing processes for provincial correctional institutions. The adaptations were minor, and usually involved only the inclusion of references to federal ministers wherever the section in question referred to a provincial minister. The adapted provisions read as follows:

> 246. The federal and provincial ministers responsible for corrections shall each designate a person as a coordinating officer to work, during and between elections with the Chief Electoral Officer to carry out the purposes and provisions of this Division.
>
> 247. (1) Without delay after the issue of the writs, the Chief Electoral Officer shall inform the federal and provincial minister responsible for corrections of their issue and of the location of administrative centres.
>
> 247. (2) On being informed of the issue of the writs, each federal and provincial minister responsible for corrections shall
>
> (*a*) inform the coordinating officer of the issue of the writs;
>
> (*b*) designate one or more persons to act as liaison officers in connection with the taking of the votes of electors; and
>
> (*c*) inform the Chief Electoral Officer and the coordinating officer for each relevant jurisdiction of the name and address of each liaison officer.

[16] See section 743.1 of the *Criminal Code.*

[17] [2002] 3 S.C.R. 519.

The maximum period for which an adaptation under section 17 of the Act may be in effect is the duration of the election period in which it was made. Therefore, the adaptation must be re-made for every election. The need for these adaptations will continue until Parliament provides a legislative response to the Supreme Court's ruling in *Sauvé*. Technically, adaptations may be made under section 17 only with respect to emergencies, unusual or unforeseen circumstances or errors. It is likely that the lack of any process for a segment of the population to exercise its right to vote might be considered to fall within one of these grounds; however, as the adaptations are identical for each election, a legislative amendment of the provisions in question along the same lines would remove the need for the Chief Electoral Officer to exercise the extraordinary adaptation power and remove any question as to the availability or need for the adaptation. In the event that Parliament legislatively responds to the *Sauvé* decision other than by repealing paragraph 4(*c*), the proposed amendments to sections 246 and 247 might either not require adjustment or be adjusted as part of the same exercise.

1.16 Voting by Electors Absent from the Country for More Than Five Consecutive Years

The limitation contained in paragraph 11(*d*) of the *Canada Elections Act* that prohibits voting by persons who have been absent from Canada for five consecutive years or more, and who intend to return to Canada as residents, should be removed.

The Special Voting Rules for electors temporarily resident outside Canada found in Division 3 of Part 11 of the Act (more particularly sections 222, 223 and 226) should consequently be reviewed to allow these persons to apply for registration or to remain listed in the register of electors absent from Canada, which is maintained by the Chief Electoral Officer.

Currently, the Act provides that persons who have been absent from Canada for less than five consecutive years and who intend to return to Canada as a resident may vote in accordance with the Special Voting Rules set out in Part 11 of the Act. The absence of a mechanism to allow those who have been absent from Canada for five consecutive years or more to vote effectively deprives this latter group of individuals of their right to vote, a right protected by the *Canadian Charter of Rights and Freedoms.*

In light of the Supreme Court of Canada's decision in *Sauvé*,[18] it is questionable whether a Court would find that denying the right to vote to individuals who have been absent from Canada for a long time but who intend to return as residents is a reasonable limit on the right that can be demonstrably justified in a free and democratic society. It is indeed difficult to explain what pressing objective is served by distinguishing between those who have been absent from the country for five years as opposed to six, ten or twenty years. While it may be true in some cases that after a number of years of absence from Canada one's awareness of Canadian current affairs may diminish, the correlation between absence from the country and the level of knowledge of public affairs occurring in the country may not be sufficiently clear

[18] Cf. recommendation 1.15 above.

to constitute a reasonable ground to deprive someone of their right to vote. It should also be noted that awareness of current public affairs is not required from Canadian citizens living in Canada for them to have the right to vote. Finally, there is no significant operational impediment in extending the application of the Special Voting Rules currently available to Canadians living outside the country to those Canadians who have been absent from the country for more than five consecutive years.

This report therefore recommends that the above-mentioned prohibition from voting be removed.

The Special Voting Rules found in Part 11 of the Act should consequently be adjusted to allow individuals who have been absent for five years or more and who intend to resume residence in Canada to apply for registration or to remain listed in the register of electors absent from Canada, which is maintained by the Chief Electoral Officer.

1.17 Review of the Special Voting Rules

Parliament should review the entire process for electors who do not fall under the specialized circumstances, detailed in Division 4 of the Special Voting Rules (ss. 231–243.1), to vote by special ballot. This should be a far-ranging review that considers whether the right, the process and the protections set out in those rules are appropriate to current needs and technological capabilities, with a view to ensuring that electors are best able to exercise their democratic rights.

The preceding two recommendations set out specific reforms to particular aspects of the Special Voting Rules. However, the time has come to reconsider the Special Voting Rules in their entirety –as they apply to voting by electors who do not fall under the specialized circumstances for voting by special ballot.

Special Voting Rules were first introduced during the First World War for Armed Forces electors. Since then, they have been developed and expanded, to the current form of universal access for all electors, which was achieved in 1993.

The Special Voting Rules provide an additional means for electors who can vote neither in an advance poll nor at their polling station on election day. There are four different procedures specified for voting by special ballot, according to the circumstances:

- electors temporarily residing outside of Canada
- Armed Forces electors
- incarcerated electors
- electors residing in Canada

The first three procedures are specific and the last is general; all, however, involve the transmission to a returning officer or to Elections Canada of a ballot cast outside of a polling station. An elector to whom the three specific circumstances do not apply can vote by special ballot under Division 4 of the Special Voting Rules (ss. 231–243.1), providing that the elector:

- registers to vote by special ballot before 6:00 p.m. on the sixth day before polling day
- in the case of an election, obtains the names of the candidates in his or her electoral district (in an election, the elector writes the name of the chosen candidate on the special ballot, and not the political party; in a referendum, each referendum question is printed on a separate ballot and the elector checks off "yes" or "no")
- if he or she is absent from the electoral district of ordinary residence, ensures that the completed ballot arrives at Elections Canada before 6:00 p.m., Ottawa time, on polling day
- in the case that he or she is voting in his or her own electoral district, ensure that the returning officer for that district receives the completed ballot before the close of polling stations in that electoral district on polling day[19]

Once an elector is registered to vote by special ballot in an electoral event, he or she cannot vote in any other way.[20]

These general Special Voting Rules were established in their current form in 1993.[21] They reflect the technology and circumstances of that time. Since then, the relevant technology and circumstances have evolved to such an extent that the rules should be reviewed and updated.

In illustration of the value of such revision one need only consider the situation of electors unexpectedly admitted to hospitals in the last days of an election, after the close of the advance polls. Such electors may have intended to cast their ballots on election day, thereby receiving the benefit of the full election period to consider their vote. Consequently, they may not have taken advantage of the advance polls to vote or registered to vote by special ballot. While Elections Canada has developed a process to assist hospitalized electors to register and vote by special ballot, electors admitted to hospital after the sixth day before polling day cannot legally take advantage of this process.

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[19] Summarized in the June 2004 Elections Canada backgrounder, "Voting By Special Ballot," available on the Elections Canada Web site at www.elections.ca > Publications > On-line publications.

[20] As set out in "Voting By Special Ballot":

> "Elections Canada draws up the lists of electors registered to vote by special ballot (other than Canadian Forces electors and electors residing temporarily outside the country), in each polling division in each electoral district, and sends them to the returning officers before the advance polls and again before polling day. These lists include the surname, given name, civic address and mailing address of electors who have applied to vote by special ballot. To prevent these electors from voting twice, the returning officers indicate on the list of electors that they have been given a special ballot."

[21] The basic form of the rules was created in S.C. 1993, c. 19. Adjustments were made by S.C. 1996, c. 35 and S.C. 2000, c. 9.

It is not possible for the Chief Electoral Officer during an election to adapt legislative requirements to accommodate these electors, because the adaptation power under section 17 of the *Canada Elections Act* can be used only for emergencies, or for unusual or unforeseen circumstances – that is, circumstances that Parliament was not likely to have been able to foresee and deal with in the Act. The hospitalization of electors in the closing days of an election is a regular occurrence, and therefore neither unusual nor unforeseen by Parliament.

Nor can mobile polls be established for hospitals, because mobile polls may be established only for institutions in which seniors or persons with a physical disability reside. Temporarily hospitalized electors are generally not considered to have changed their official residence during the period of hospitalization.

In the past two elections in particular, there have been complaints by hospital administrators and a number of electors admitted to hospitals in the few days before an election that these electors were deprived of their right to vote. In many of these cases, hospitalization was unforeseen – so, these electors would not have presented themselves at advance polls. Furthermore, electors hospitalized after the sixth day before polling day could not avail themselves of the Special Voting Rules.

Developments in modern technology may render the current time restriction on registration unnecessary: registration could be carried out up to and including election day. A revision in the Act to accommodate such technological improvements would help to address the situation facing electors who are hospitalized during the election. Adjustments would also likely have to be made to the details of the registration process.

Hospitals are merely one example of an area for reform; other aspects of the existing Special Voting Rules also require re-examination – for example, the prohibition on electors who have registered for a special ballot from voting in any other way. In past elections, this prohibition resulted in hardships and confusion – notably in instances where electors applied for a special ballot but did not receive their special ballot kits before the advance polls (thereby leading them to vote in the advance polls to ensure that they would not lose their vote through some administrative error) and in instances where electors who registered for a special ballot did not receive the special ballot kits by polling day. In the 38th general election, the Chief Electoral Officer adapted the Act to permit an elector in this latter circumstance to vote in the returning office on polling day.

The importance of the universal right to vote, the diverse circumstances that may lead electors to forfeit that right, and the changing technology and circumstances that may address these problems together warrant a far-reaching review of the Special Voting Rules as they apply to electors who do not fall under specialized circumstances.

1.18 Extension of the Limitation Period for the Prosecution of Offences

Section 514 of the Act should be amended to extend the period in which a prosecution under the *Canada Elections Act* may be instituted from 7 years to 10 years after the day on which the offence was committed.

Section 514 of the Act provides that a prosecution for an offence under the Act must be instituted within 18 months of the Commissioner of Canada Elections becoming aware of the facts giving rise to the prosecution; however, in no case may a prosecution be instituted more than seven years after the day on which the offence was committed.

Prior to the amendments brought to the Act by Bill C-24, *An Act to amend the Canada Elections Act and the Income Tax Act (political financing)*,[22] section 514 provided that no prosecution could take place more than 18 months after the day on which the offence was committed. To allow for more effective enforcement of the new political financing rules, Parliament extended this period to seven years.

A seven-year period was chosen because this was calculated as the maximum time between the time at which a contribution may be made and that at which it would be reported in accordance with the Act. Such a period is necessary to ensure compliance with the new political contribution limits. For example, a good or service given to a candidate for an election five years later may be deemed, 18 months after polling day, to be a contribution under section 450. This amounts to a period of 6.5 years – which was rounded up to 7 years for the purposes of section 514.

Since Bill C-24 became law,[23] allegations made at the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the Gomery Commission) made it apparent that a limitation period of seven years may not be sufficient to ensure effective enforcement of the Act. Specifically, the Commission heard of matters that would have taken place before or during the 1997 general election. The present limitation period is not sufficient to allow the Commissioner of Canada Elections to investigate allegations of the nature made before the commission of inquiry.

A limitation period is a recognition of the fact that investigations after a given period of time may be inherently unfair because memories fade and records may be destroyed or lost. It is necessary to balance these considerations with the need for effective enforcement of the Act.

[22] S.C. 2003, c. 19, s. 63.

[23] The Act came into force on January 1, 2004.

It should be noted that the *Criminal Code* provides that no proceeding shall be instituted for a summary offence after a period of six months after the time when the subject matter of the proceedings arose, but provides no limitation period for indictable offences.[24]

Taking into account recent disclosures made before the Gomery Commission, and balancing the goals of effective enforcement of the Act with the need to ensure fairness in any prosecutions brought under the Act, this report recommends that the period in section 514 during which a prosecution may be instituted be extended from 7 years to 10 years after the offence was committed. The period in which the Commissioner must commence a prosecution after becoming aware of the facts of the case should remain at 18 months.

1.19 Removing the Sunset Provision in Bill C-3

Section 26 of S.C. 2004, c. 24 (Bill C-3), the provision that automatically repeals, on May 15, 2006, the amendments to the *Canada Elections Act* made by Bill C-3, should be repealed.

Bill C-3, which became *An Act to amend the Canada Elections Act and the Income Tax Act* when it received royal assent on May 14, 2004,[25] was adopted in response to the November 2003 decision of the Supreme Court of Canada in *Figueroa v. Canada (Attorney General)*.[26] In that decision, the Court found that restricting certain rights – to issue tax receipts, to receive unspent election funds from candidates and to list party affiliation on ballots – to parties that ran at least 50 candidates in a general election, and thereby achieved the status of registered parties, infringed on section 3 of the *Canadian Charter of Rights and Freedoms*.

In Bill C-3, the *Canada Elections Act* was amended to replace the 50-candidate threshold with a single-candidate requirement for a party to be registered. At the same time, further registration requirements were added, along with other measures to ensure that parties seeking to register have a genuine interest in electoral competition. The following are the main changes made to the Act as a result of the adoption of Bill C-3:

- A definition of "political party" was added to the *Canada Elections Act*, indicating that one of the fundamental purposes of the organization must be to participate in public affairs by endorsing one or more of its members as candidates, and to support their election.
- New information requirements were added to political parties' applications for registration; these requirements include a declaration by the party leader confirming that the party meets the new definition of a political party. Parties are now required to have at least three officers, in addition to the leader, who must expressly provide their signed

[24] See *Criminal Code,* s. 786(2) relating to summary conviction offences. There is one exception to the absence of a limitation period for indictable offences: see s. 48(1), providing that the limitation period for instituting a proceeding with respect to the using of force or violence for the purpose of overthrowing the government of Canada or a province is three years after the offence is alleged to have been committed.

[25] S.C. 2004, c. 24.

[26] [2003] 1 S.C.R. 912; 2003 SCC 37.

consent to act as officers. The minimum number of party members supporting the application was raised from 100 to 250 members; these members are required to make an individual declaration that they are members of the party and support its application for registration.[27]

- Every three years, starting in June 2007, registered parties and parties eligible to be registered must provide a new list of 250 members and new signed declarations.
- In addition to new penalties attached to making false statements in the application for registration, a party that makes false declarations could be refused registration or be deregistered. Increased powers were also given to the Commissioner of Canada Elections to seek judicial deregistration of the party if he or she is not satisfied that the party meets the new definition of a political party. Finally, individuals, including party officers, convicted of offences related to or leading to financial abuses could be held civilly liable, and could be ordered to make restitution to the public purse.

Amendments made to the Act by Bill C-3 will cease to have effect on May 15, 2006, two years after it came into force[28] or, if Parliament is not then in session, 90 days after the beginning of the next session.[29] The Minister at the time of the adoption of Bill C-3[30] made the suggestion that a broader examination of the *Canada Elections Act* be conducted by the Standing Committee on Procedure and House Affairs over the year following the adoption of Bill C-3, but the Committee has not yet had the time or opportunity to conduct this review.

If legislative action is not taken by the end of the two-year period, a highly problematic legal void will be created: while the Act will continue to refer to registered parties and the rights and obligations of these parties, there will no longer be any legislative basis for registration of political parties on which the Chief Electoral Officer can rely. This is because the provision setting out the conditions[31] for registration will have been repealed automatically by the sunset provision contained in Bill C-3. It should be noted that section 370 as it existed before Bill C-3 came into force cannot be "resurrected" without Parliament's intervention.

[27] There are currently 12 registered parties (see www.elections.ca for details). Since May 15, 2004, nine parties have applied for registration. Of these, two parties have now become eligible for registration and four others have been refused. The remaining three applications are still being verified (data as of September 9, 2005).

[28] Readiness Notice published on May 15, 2004, by the Chief Electoral Officer pursuant to section 27 of S.C. 2004, c. 24.

[29] Section 26 of S.C. 2004, c. 24.

[30] The Honourable Jacques Saada, then Minister of State and Leader of the Government in the House of Commons, indicated to the House, in his speech of February 2004, that he had written to the Standing Committee on Procedure and House Affairs to encourage the Committee to conduct a broader examination of the *Canada Elections Act* in light of the *Figueroa* decision and to ask that it make recommendations to the government in the form of a draft bill within a year's time.

[31] Section 370 of the Act as amended by Bill C-3: for a party to become eligible for registration, it must have at least one candidate whose nomination has been confirmed for an election, and its application must have been made at least 60 days before the issue of the writs for that election.

There will no longer be a deregistration process either: this provision[32] was also amended by Bill C-3. Many other provisions in which consequential amendments were made to support the new system of party registration will also be repealed as a result of the automatic application of the sunset provision.

Therefore, this report recommends that the provision that automatically repeals the amendments made by Bill C-3 on May 15, 2006, be repealed. By doing so, Parliament would give itself more time to deal with the consequences of the *Figueroa* decision without being forced, yet another time, to adopt legislation at the same speed required of it in 2004.

[32] Section 385.

Chapter 2

Registration of Electors

Chapter 2 – Registration of Electors

Introduction

Following the passage of Bill C-63 in December 1996, the National Register of Electors was established in April 1997, fundamentally changing the means by which Canadians register to vote in federal elections. The traditional practice of compiling new voter lists through door-to-door enumeration at the start of each election was replaced with permanent voter lists, which are updated between elections using administrative data sources and, during elections, by electors themselves.

Since that time, much has been accomplished:

- The Register has been successfully used in three national elections, most recently in 2004.
- Register data-quality targets and projected savings have been consistently exceeded.
- Each year, some 84 percent of the individuals who file income tax returns consent to the transfer of their names, addresses and dates of birth, to update their information in the Register – a clear indication of how successful the program is with the Canadian electorate.
- Register information has been shared with a number of provinces, territories and municipalities, with consequent cost savings to the public and increased inter-jurisdictional co-operation.
- Lists of electors have been provided annually to members of Parliament and political parties, as prescribed by the statute.

It is time to build on the experience gained by all stakeholders in order to continue to improve voter registration. Elections Canada has recently launched a strategic review of voter registration, involving consultations with all stakeholders, to focus on what works well, what should be improved, and how stakeholders can work together with Elections Canada to better serve Canadian electors. While this longer term initiative will most likely result in proposals for legislative change, a number of recommendations for improvement have already been identified and are presented here as amendment to the voter registration process, a process that has not been modified in any substantial way since the establishment of the Register.

The first group of recommendations (2.1 to 2.9) focuses on making it easier for electors to register to vote between elections and to revise their information during elections. These recommendations include an extension of electors' ability to request changes by telephone, and facilitate the addition of new electors, especially youth, to the Register by expanding the use of data from the Canada Revenue Agency.

The second group of recommendations (2.10 to 2.16) is aimed at allowing members of Parliament, candidates and political parties to make better use of the information contained in the Register, always with the understanding that electors are better served when all stakeholders have the most accurate and up-to-date voter lists. These recommendations include more frequent provision of lists and changes to permit the parties to better manage voter data.

The third group of recommendations (2.17 to 2.21) is aimed at improving the registration process by recognizing and building on the key role that returning officers play in voter registration, especially between elections, and by further strengthening cooperation with provincial and territorial electoral agencies.

The final recommendation (2.22) includes measures to strengthen the integrity of the process by expanding the ability to verify elector eligibility at the polls.

2.1 Registration Through Income Tax Returns

There should be express statutory authority for electors to communicate with Elections Canada, through their income tax returns, for the purposes of registering with the National Register of Electors or of updating their information in the Register.

Under section 49 of the *Canada Elections Act*, to register with the National Register of Electors outside of an election period, electors must communicate that wish to the Chief Electoral Officer and satisfy him or her that they are Canadian citizens of at least 18 years of age. To this end, the capacity of electors to register with the National Register of Electors through their income tax returns has been a central principle of the Register from its inception, a concept that was discussed at length by the Parliamentary Committee set up to consider this proposal.

The federal income tax return is a critical medium for electors to register with the National Register of Electors. The document, which is used in all provinces and territories, provides the information required for registration in the National Register of Electors in a standardized format. As an information tool, it is even more up to date than provincial records of driving permits or provincial lists of electors, because nearly all electors file yearly income tax returns, but do not necessarily update their drivers' licences or vote in provincial elections as regularly. The information contained in income tax returns is updated regularly and allows for easier tracking of electors who move between provinces.

Following the enactment of amendments to the *Canada Elections Act* (Bill C-63),[33] and as a result of agreements between federal revenue authorities and Elections Canada, electors have been able, since 1997, to use the T1 General Income Tax and Benefit Return to communicate their names, addresses and dates of birth to Elections Canada for the purposes of updating their information in the National Register of Electors. Electors confirm their desire to communicate this information by checking a consent box on the form.[34] Approximately 84 percent of individuals who file income tax returns consent to communicate this information to Elections Canada.

As of the 2001 returns, citizenship status is included in this information, to permit the addition of new electors (especially youth) to the Register, but only by implication. From the 2001 to 2003 tax years, individuals were advised in the consent box on the T1 General Form and in the tax guide that this mechanism was for "citizens only." Thus, completion of the consent box implied that the respondent was a Canadian citizen. The T1 consent box was revised for the 2004 income tax year, with the addition of the following phrase on the T1 General form: "As a Canadian citizen, I authorize the Canada Revenue Agency to provide my name, address, and date of birth to Elections Canada for the National Register of Electors." An individual who checks this revised request box is also implicitly advising the Canada Revenue Agency that he or she is a Canadian citizen. The subsequent provision of that information to Elections Canada also implicitly carries with it the assertion that the individual in question is a Canadian citizen.

As discussed below, experience has demonstrated that forms of implicit assertions of citizenship, as currently relied on and however they may be modified, do not provide sufficient certainty for the direct addition to the National Register of Electors of consenting electors who file tax returns (referred to in this text as "taxpayers"). This is also the view of the Advisory Committee of Political Parties, which has stated that electors should not be added to the Register solely on the basis of these implicit assertions, without further confirmation.

The risk in relying on such implicit statements was shown by review exercises developed to verify the citizenship of consenting taxpayers after the 2001 modification of the T1 General form. As a result of those verification exercises, 173,000 individuals expressly confirmed that they were in fact non-citizens, despite the fact that they had originally checked the income tax box reserved for citizens.

[33] *An Act to amend the Canada Elections Act, the Parliament of Canada Act and the Referendum Act,* S.C. 1996, c. 35.

[34] Subsection 46(1) of the *Canada Elections Act* provides that "The Register of Electors shall be updated from (*a*) information … (ii) that is held by a federal department or body and that electors have expressly authorized to be given to the Chief Electoral Officer …"

Subsection 46(1) is supplemented by subsection 241(5) of the *Income Tax Act*, which provides that an official may provide taxpayer information to any other person with the consent of the taxpayer.

Statistical analysis by Elections Canada indicates that 7 to 9 percent of young taxpayers (and about 54 percent of older taxpayers) who consent to be added to the Register through these implicit assertions of citizenship are in fact non-citizens.

A confirmation strategy was implemented in 2003-2004 to determine the citizenship of unconfirmed consenting taxpayers. The citizenship of more than 800,000 consenting electors was ascertained by matching their records against electoral data from provincial and territorial lists of electors and permanent registers of electors, and data from a 2003 Elections Ontario door-to-door registration exercise. Furthermore, the exercise confirmed the electoral status of some 305,000 young Canadians through "family matching" – matching them to older electors at the same address and with the same family name. Finally, a mail-out seeking confirmation of citizenship was sent to some 2.2 million potential electors in the fall of 2003, with an additional mail-out to 307,000 unregistered young Canadians in February 2004. Of these two groups, only 13 and 16 percent, respectively, confirmed that they were Canadian citizens. More than 81,000 (3.2 percent) responded that they were not Canadian citizens. Overall, these initiatives have proven to be laborious and costly (more than $3 million), while failing to meet the expectations of Canadian electors, who believe they have done what is necessary to be added to the Register by checking the consent boxes on their income tax returns.

Administrative efforts by Elections Canada to secure the further amendment of the T1 General form consent box to include an express statement of citizenship have been unsuccessful. Revenue authorities have raised legal concerns that there is insufficient legislative authority to include requests for the collection of citizenship data on the T1 General form and its subsequent transmission to Elections Canada. The Canada Revenue Agency has advised Elections Canada that income tax forms and the information collected thereby must be relevant to the application of the *Income Tax Act* and that citizenship does not affect the imposition of tax liability in Canada. For this reason, the Canada Revenue Agency has advised Elections Canada that, without express legislative reform, it is not prepared to adjust the electoral consent box on the T1 General form to include an express statement of citizenship.

Thus, to the extent that legislative reform is indeed necessary to permit electors to make express statements of citizenship, this report recommends that the *Canada Elections Act* and/or the *Income Tax Act* be amended to provide that electors may communicate with Elections Canada through their income tax returns in order to register with the National Register of Electors or to update their information on the Register. The Commissioner of the Canada Revenue Agency has indicated his support for this approach.

2.2 Income Tax Returns as a Source of Information About Deceased Electors

There should be express statutory language to permit the provision to Elections Canada of the names, addresses and dates of birth reported on income tax returns of deceased tax filers, where the deceased elector had consented to the sharing of such information on his or her last filed return.

As noted earlier in this report, income tax returns are a major source of elector information for the National Register of Electors.

Electors who are deceased must be removed from the Register of Electors. Elections Canada usually learns that a person is deceased through information received from a provincial vital statistics bureau. It can be difficult, however, to consistently match this information with information about an elector in the Register, which may contain a different address or a different version of the elector's name. There may also be a time lag between the death of an elector and the transmission of that information to the provincial registrar of vital statistics and ultimately to Elections Canada.

Because of these difficulties, deceased electors might not be removed from the Register in a timely manner. The timeliness in updating the Register with respect to deceased electors could be improved if Elections Canada were able to receive from the Canada Revenue Agency a list of all individuals identified as deceased in their income tax return, if these individuals had consented to provide information to Elections Canada through their income tax return in the previous year.

2.3 Removal of the Need for Signed Certification

Subsections 48(2) and 49(1) of the *Canada Elections Act* should be amended to replace the existing requirements for an elector's signed certification that he or she is an elector with a general requirement that the Chief Electoral Officer should not add a person to the National Register of Elections unless he or she is satisfied that the person is qualified to be an elector.

As noted in recommendation 2.1, to register with the National Register of Electors outside of an election period, electors must communicate that wish to the Chief Electoral Officer and satisfy him or her that they are Canadian citizens of at least 18 years of age. In addition to providing or confirming the necessary identification, an elector must provide the Chief Electoral Officer with a signed certification that he or she is qualified as an elector. This requirement for a signed certification imposes a degree of rigidity that does not admit for other equally reliable forms of evidence.

As a corollary amendment to this proposal, the requirement for a signed certification should be removed, permitting electors to communicate with Elections Canada through their income tax returns. This recommendation was also made in the 2001 report *Modernizing the Electoral Process,* and it is repeated here.

Because certification serves as a form of written personal assurance from the elector as to his or her eligibility, it contributes to the reliability of the resulting record. Eligibility, however, can be determined on the basis of other evidence. For example, information about an elector who has been previously verified by another federal department (such as Citizenship and Immigration Canada in the case of individuals who have recently acquired citizenship) may come to the Register. In that case, the personally signed certification adds little to the existing degree of reliability of the information.

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

Moreover, the Act does not uniformly require personally signed certification as a prerequisite to registration. For example, an elector who registers to vote with the returning office during an election, and whose name is consequently included later in the National Register of Electors, is not required by the Act to provide signed certification. An elector who registers another elector on the list on the list of electors under paragraph 101(1)(*b*) is also not required by the Act to produce a certificate of eligibility personally signed by the elector being registered.

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

In each of those cases, the responsible official is required to be satisfied that the person in question is eligible, but that assurance may be based on any sufficiently reliable evidence (the Chief Electoral Officer has issued instructions to returning officers to seek signed certification in those cases, either from the elector or the person requesting the inclusion or change on behalf of the elector).

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

It is worth noting that, while the Act imposes a rigid requirement for the written certification, there is no express offence provision for false certifications (as there is in subsection 549(3) for the taking of a false oath). The offence is the giving of false information under section 480 of the Act, which would be equally applicable regardless of the form in which the false information was given. If a person voted without being eligible, the offence would be for voting, not for providing a false certificate. Thus, the enforcement provisions of the Act suggest that the substance of the information provided, rather than the specific form in which it comes, is the central point of the provision.

2.4 Proof of Identity When Registered at Residence

Paragraphs 101(1)(*a*) and (*b*) of the *Canada Elections Act* should be amended to provide, where a request to add an elector's name to the preliminary list of electors is made by that elector, or by another elector who lives at the same residence, that where evidence of proof of identity is not available, identity may be established by the elector providing a written affirmation in the prescribed form.

Recommendation 1.1.6 in the 2001 report *Modernizing the Electoral Process* dealt with the registration of electors at their residences during an election. That recommendation is repeated here with a slight modification.

The Act currently requires that, before an elector can be added to the preliminary list of electors during an election, satisfactory proof of identity must be provided (s. 101).

As noted in the 2001 report, the requirement for proof of identity is logical (and not onerous) when an application to be added to the preliminary list is made by an elector who has visited the office of a returning officer expressly for this purpose, or who has expressly prepared and forwarded such an application to a returning officer.

As part of the targeted revision process during an election, revising agents may visit the residences of electors to provide an opportunity for the registration of electors who live there. In such circumstances, the need for proof of identity may be less, though the burden of providing it may be more onerous.

The need for documentary evidence is less in these circumstances because the finding of the elector at his or her home by revising agents, while not determinative of the issue, affords a degree of certainty sufficient to establish identity. However, an individual who is found by revising agents at his or her home does not usually have the documentation to prove the identities of all of the other electors residing there.

Thus, in the absence of any circumstances that might give rise to a reasonable suspicion, proof of identity should not be an absolute requirement for an elector to be added to the preliminary list of electors when an elector, who has been found at his or her home by revising agents, requests either that he or she or another elector who resides at that residence be added to the list. Rather, where such proof of identity is not available, the elector should be able to establish the identity of either himself or herself or of another elector who lives at the same residence through a written affirmation.

Proof of identity was not required under the earlier enumeration system: so long as the enumerators were satisfied as to the propriety for doing so, they were authorized to register electors without requiring the "at-home" elector to provide proof of identity for electors who were not home.

The current prohibitions in paragraph 111(*d*) (applying for registration of person who is not qualified as elector or entitled to vote) and 111(*e*) (applying to include name or animal or thing) and subsection 549(3) (false oath or affirmation) are sufficiently broad to cover this revised provision.

2.5 Inter-district Changes of Address

Subsection 101(6) of the *Canada Elections Act* should be extended to all changes of address by registered electors – both inter- and intra-district changes.

Paragraph 1.1.5 of the 2001 report *Modernizing the Electoral Process* recommended that subsection 101(6) of the Act be amended to extend the ability of returning officers to record inter-district changes of address in the same manner as they do intra-district changes of address. This recommendation is repeated here.

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

Currently, subsection 101(6) of the Act provides that an elector who changes his or her address within the same electoral district may contact the returning officer by phone or by any other means and, on providing satisfactory proof of identity and residence, apply to have the relevant corrections made to the list of electors for that district. Such changes can also be requested by one elector on behalf of all electors living at the same residential address. Since the 37th general election, any elector making a request under subsection 101(6) will see his or her name added to the list of electors for the polling division where he or she now resides, while his or her record is crossed off the list of the polling division where he or she previously resided. This is done in one step, using a computer database introduced in returning offices in 2000.

However, this can be done only when the elector changes address within the same electoral district. A change of address to a different electoral district cannot be recorded as easily. A previously registered elector who finds himself or herself in a different electoral district as a result of a change of address must apply to the returning officer of his or her new district to be added to the list of electors for that district. To do this, the elector must complete and sign the prescribed registration form under section 101 (or one of the alternative registration processes under that section), which is a more demanding and onerous administrative process.

This process has its roots in an era when one returning officer was not practically able to verify the registration of an elector on a list of electors for another district. However, technological advances now make it possible for returning officers to do this, so that such a transaction is no longer substantially different from a change of address within the same district. Therefore, there is no longer any reason to distinguish between the recording of inter- and intra-district changes of addresses of registered electors.

2.6 Authority to Determine When to Send Out Voter Information Cards

The timing of the issuance of the voter information card under section 95 of the *Canada Elections Act* should be amended to provide that the Chief Electoral Officer should fix the date by which voter information cards must be issued in each electoral district. The Act would further provide that the Chief Electoral Officer must specify the earliest date possible after all of the information that must be set out on the card is known in a given electoral district; in any event, this must be no later than a date sufficient to provide reasonable notice of the advance polls. On that date, the card would be sent to the electors on the list.

Recommendation 1.1.5 of the 2001 report *Modernizing the Electoral Process* recommended that the Act provide more flexibility as to the information currently delivered through the voter information card (VIC). This recommendation provides an alternative solution to the issues noted in the 2001 report.

The Act requires that each returning officer, as soon as possible after the issue of the writ, but not later than the 24th day before election day, send a notice of confirmation of registration (the VIC) to each elector whose name appears on the preliminary list of electors. This notice, and the requirement for its early delivery, serves to assure electors as soon as possible that they are registered to vote. It also allows electors who do not receive a notice within that period to know that they are not registered, and provides sufficient time for those electors to do so before election day.[35]

[35] Electors who register during the election period are sent a VIC not later than the fifth day before polling day.

In addition to confirmation of an elector's registered status, the Act also requires that the notice provide the voting information the elector will need to know in order to vote. This includes the address of the elector's advance and election day polling stations and the dates and hours for voting.

The VIC currently serves these two purposes simultaneously.

While the existing time frame ensures that electors have sufficient notice to take advantage of the revision period for updating or correcting their information on the preliminary lists, or to register if they have not already done so, it prevents the introduction of new, more efficient and streamlined processes of printing and disseminating the VICs.

Furthermore, requiring these notices to go out early in the election period sometimes results in cards being delivered with unconfirmed polling station information or locations that had to be changed later on (resulting in the need for additional, potentially confusing, notices to be sent to the relevant electors).

So, greater flexibility is required, to avoid situations where a returning officer is required to issue a card before being able to gather all of the required information.

2.7 Addition of Year of Birth on Lists of Electors Used on Polling Days

Subsection 107(2) should be amended to add that the revised and official lists of electors, used at the advanced and regular polls, must indicate the year of birth of each elector. This additional information would not be included on copies of these lists provided to candidates.

Voter information cards (VICs) sent to some addresses – often apartment buildings in areas with a large turnover of residents – are sometimes discarded near the mailboxes of the building. Some electors who are not interested in voting may also discard their VICs. This situation may raise concerns that the discarded VICs will be used by others, fraudulently, to vote under the name of the card's addressee.

A further concern has been expressed that these VICs could be used to identify electors who are unlikely to vote; individuals could then be dispatched to vote, purporting to be the electors whose names were on the discarded cards.

So far, there has been no evidence of such fraudulent activity. Furthermore, the election officers administering the vote at the polls, and the candidates' representatives, are authorized by the Act to challenge a person intending to vote if there is any doubt about the person's identity or right to vote, and to ask the person to show a satisfactory proof of identity and residence.[36] The VIC alone does not provide this.

[36] Section 144 of the Act.

To complement legislative and administrative measures already in place, this report proposes that electors' year of birth (which is not given on the VIC) be added to the lists of electors used at the advance and regular polls. Such a measure would reduce the ability of individuals to use a discarded VIC as a means to vote under another name – especially if this addition is well publicized. It would also reduce the risk of personification of individuals whose names appeared on discarded VICs by providing a further tool to election officers when deciding whether to challenge the elector before them.

This report also proposes that this additional information be added only to the revised and official lists of voters distributed to election officers for advance polling and polling day (and recovered by the returning officer after the vote), and not to members of Parliament, candidates or parties.

2.8 Retention of Statutorily Authorized Personal Identifiers for Later Use

Section 46 of the *Canada Elections Act* should be amended to permit the Chief Electoral Officer to retain and employ, for purposes of updating the National Register of Electors, information that is provided from any source authorized under the Act but which is not incorporated into the Register under section 44.

Section 46 of the Act authorizes the Chief Electoral Officer to update the National Register of Electors from a number of sources, including information that the elector has expressly authorized a federal department or body to give to the Chief Electoral Officer and information that is held under a provincial statute listed in Schedule 2 of the Act. Among the various provincial statutes listed in Schedule 2 are those that deal with motor vehicle administration, vital statistics and elections. Information that comes to Elections Canada through these sources may contain personal information that can be useful in identifying an individual, but which is not itself incorporated into the Register. For example, information provided under a provincial motor vehicle administration may include a person's driver's licence number. As the driver's licence number is not incorporated into the Register, this corollary information cannot be retained and used later by Elections Canada for updating purposes.[37]

Electors subsequently updating their electoral data with the Register may find it useful to provide this type of additional identifier information to assist in ensuring the accuracy of the updating process – particularly where the elector has moved from an earlier address. The ability to refer to such additional identifier information would also likely be of value to electors in any on-line registration and updating process that Elections Canada may develop in the future, as was done in British Columbia leading up to its recent election.

[37] The information that is incorporated into the Register is set out in subsection 44(2) of the *Canada Elections Act* and consists of an elector's name, sex, date of birth, civic address, mailing address and any other information that the Act authorizes the elector to give the Chief Electoral Officer to implement agreements entered into between the Chief Electoral Officer and other provincial electoral authorities under section 55.

Amending section 46 to permit Elections Canada to retain and employ corollary information provided to it from a source authorized under the statute would therefore increase the accuracy and ease of updating Register data, both by electors and by Elections Canada.

Elections Canada would not be authorized to disclose this corollary information except to the elector (when requested by the elector under section 54 of the Act) or to the original source of the data.

2.9 Release of Information from the National Register of Electors in the Interests of Public Safety, Health or Security

The Chief Electoral Officer should be authorized to release personal information from the National Register of Electors where, in his opinion, this is necessary in the interests of public safety, health or security.

Any such release should be required to be reported in the next report made by the Chief Electoral Officer under section 534 of the *Canada Elections Act* to the Speaker of the House of Commons, except to the extent necessary to protect public security.

Paragraph 56(*e*) of the Act prohibits any person from knowingly using personal information that is recorded in the National Register of Electors for a purpose other than:

> (i) to enable registered parties, members or candidates to communicate with electors in accordance with section 110,
>
> (ii) a federal election or referendum, or
>
> (iii) an election or referendum held under provincial law, if the information is subject to, and transmitted in accordance with, an agreement made under section 55.

This prohibition applies to the Chief Electoral Officer as it does to all other persons. One of the effects of this prohibition is that, unless that release is at the direction of the elector to whom the information relates, or it can be justified under one of the delineated grounds of paragraph 56(*e*), personal information cannot be released from the Register, even when such information may be needed in the interests of public safety, health or security. The section prohibits, for example, the release of personal information from the Register to enable public authorities to identify residents in an area threatened by a natural calamity.

Personal information contained in the Register is also protected by the *Privacy Act.* However, the *Privacy Act* permits the disclosure of personal information protected by it without the consent of the person to whom the information relates where (among other cases), in the opinion of the head of the institution holding the information, the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or where disclosure would clearly benefit the individual to whom the information relates.[38] When personal information is released under this provision of the *Privacy Act*, the head of the

[38] *Privacy Act,* R.S.C. 1985, c. P-21, s. 8(2)(*m*).

institution is required to notify the Privacy Commissioner prior to the disclosure if this is reasonably practicable or, in any other case, at the time of the disclosure. If the Commissioner considers it appropriate, the Commissioner may then notify the person to whom the information relates.[39]

The prohibition in section 56 of the *Canada Elections Act*, however, operates independently and is supplementary to the *Privacy Act.* Thus, the provision of the *Privacy Act* permitting disclosure in the public interest or in the interest of the relevant individual cannot be invoked to overcome the prohibition in section 56. Thus, the *Privacy Act* cannot be invoked by the Chief Electoral Officer to release personal information in the Register on the grounds that the release is necessary to protect public safety, health or security.

For this reason, the Chief Electoral Officer should be permitted to release personal information in the National Register of Electors where, in his opinion, this is necessary in the interests of public safety, health or security.

Any such release of information should be disclosed in the next report that the Chief Electoral Officer makes to the Speaker of the House of Commons under section 534 of the *Canada Elections Act,* except to the extent necessary to protect public security.

2.10 Use of Personal Information by Political Parties and Members of Parliament

Parties and members of Parliament, who are provided with lists of electors under section 45 or 109 of the *Canada Elections Act*, should be permitted to share the personal information recorded therein with other members of Parliament and registered electoral district associations of the same party.

A party, a member of Parliament or a registered electoral district association that receives personal information under the above authority should be able to use it for any electoral purpose, including the solicitation of contributions. However, it should prohibit that the information be used for any commercial purpose.

Section 110 and paragraph 111(*f*) of the Act impose artificial constraints on the electoral uses to which political parties and members of Parliament can put personal information from the lists of electors distributed to them annually under section 45 and, following an election, under section 109.

Under paragraph 111(*f*), personal information from those sources cannot be knowingly used by any person for a purpose other than:

> (i) to enable registered parties, members or candidates to communicate with electors in accordance with section 110, or
>
> (ii) a federal election or referendum.

[39] *Privacy Act,* R.S.C. 1985, c. P-21, s. 8(5).

Section 110, which describes the permitted use of that information by registered parties, members of Parliament and candidates, is artificially restrictive in its attempt to structure the communication uses that may be made of that information by parties and members of Parliament:

> 110. (1) A registered party that, under section 45 or 109, receives a copy of lists of electors or final lists of electors, respectively, may use the lists for communicating with electors, including using them for soliciting contributions and recruiting party members.
>
> (2) A member who, under section 45 or 109, receives a copy of lists of electors or final lists of electors, respectively, may use the lists for
>
> (*a*) communicating with his or her electors; and
>
> (*b*) in the case of a member of a registered party, soliciting contributions for the use of the registered party and recruiting party members.
>
> (3) A candidate who receives a copy of preliminary lists of electors under section 94, or a copy of revised lists of electors or official lists of electors under subsection 107(3), may use the lists for communicating with his or her electors during an election period, including using them for soliciting contributions and campaigning.

Outside of soliciting party memberships and contributions, a member may use the personal information on the list for his or her own electoral district only to communicate with his or her own electors, for the member's own benefit. The member may not use the lists of electors provided to other members of the House of Commons or to a registered party, to send a communication beyond his or her electoral district. Arguably, the member cannot share the information on his or her list with his or her registered electoral district association unless the association acts as the agent of the member and uses the information only for the benefit of the member (rather than that of the association). Nor can the member use the information on his or her list to benefit his or her party (except for the solicitation of contributions or memberships to the party) or his or her electoral district association.

Similarly, a party cannot share personal information from its lists with its members of Parliament or with its registered electoral district associations, except where a member of Parliament or association is acting as the agent of the party and for the benefit of the party.

It may also be argued that if an elector contacts a registered party or member of Parliament outside of an election period in order to verify whether he or she is registered, the party or member of Parliament cannot use the available list for that purpose – because this use of the list is for the purposes of the elector, not the party or the member. Instead, they must refer the elector to Elections Canada. While there are obvious practical advantages in referring this question to Elections Canada, so as to ensure access to the most current information, it should not be a criminal offence for a party or a member to attempt to assist an elector in this way outside of an election period.

These restrictions do not reflect the actual interrelationships between a political party, its members of Parliament and its registered electoral district associations. While these are separate entities, they are at the same time interdependent bodies that, by virtue of their common membership in a single political party, are intended to co-operate.

Once an election or referendum is called, subsection 111(*f*) permits the use of the personal information on a list of electors for any purpose related to the election or referendum.

Rather than attempting to impose the current, artificially restrictive list of permitted uses on parties and members, it would be preferable instead to adopt a broader approach, similar to permitted uses during an election, as provided for in subparagraph 56(*e*)(ii) (respecting information in the National Register of Electors) and paragraph 111(*f*).

2.11 Stable, Unique Identifier for Electors

The *Canada Elections Act* should be amended to permit Elections Canada to assign each individual in the National Register of Electors a randomly generated, unique and stable identifier. This identifier would be included in the generation of any lists of electors under the Act and would be shared with political parties, candidates and members of Parliament, along with other Register information.

As a corollary provision, the Act should be further amended to prohibit the use of the electoral identifier number by any person other than for the purposes of updating the Register or a federal or provincial electoral list.

Section 46 of the Act does not provide for the assignment of a constant and unique electoral identifier to registered electors.[40] Although a number of identifiers (date of birth, mailing and civic addresses, gender, etc.) are already provided for under the Act, updating of Register information is sometimes complicated by the reporting of elector information in a form different from that of the registered version of that data, or the failure to include more specific identifiers, such as date of birth.

The variations that can result from different combinations of first and second names and initials are a common example; an elector who registers under one combination of names might not necessarily use the same combination when updating that information.

The difficulty of varying formats is particularly evident when parties attempt to update their internal lists. The volume of data and the resources of the organization doing the integration already present challenges, which are compounded by the lack of authority for Elections Canada to provide date-of-birth information in the lists it distributes under sections 45 and 109.

[40] Registered electors are currently assigned a registration number. This number is not personal to that elector, but is assigned according to the elector's numerical appearance on a particular list. The assigned number will not remain the same if an elector changes districts and is registered for his or her new district.

As a result, parties must often resort to expending considerable resources on the process. Even so, many errors are made, and the accuracy of these internal lists decreases over time. A major cause of these errors is the fact that many electors may share the same name, and a change may be attributed to the wrong elector. This can raise concerns, not only for the parties and candidates in their ability to communicate with electors, but also for the electors they contact, who may be concerned or confused about the accuracy of their information on the Register or on a list of electors.

Many political parties have indicated that the integration of lists of electors into their own internal party lists would be made easier if electors were assigned a stable identifying number for the purposes of the lists of electors only. This would ensure that where there is a change, parties could clearly identify the individual to whom the change relates.

The stable identifier would be randomly generated and assigned, and would be for the purposes of the lists of electors only. Giving electors the option of including the unique identifier at any time that they update information would decrease electors' uncertainty about the accuracy of their information in the Register or on the lists.

2.12 Distribution of Lists of Electors to Registered and Eligible Parties

Sections 45 and 109 of the *Canada Elections Act* should be amended to provide for the distribution of lists of electors to all registered and eligible parties, whether or not they have run a candidate in the previous election in the district for which they are requesting a copy of the list.

Recommendation 2.2.2 in the 2001 report *Modernizing the Electoral Process* recommended that sections 45 and 109 of the Act be amended to give eligible parties the same rights of access to lists of electors as registered parties have. The report also recommended that the right to lists of electors should be expanded to all registered and eligible parties on request, whether or not the party had run a candidate in that district in the previous election. That recommendation is repeated here.

As noted in the 2001 report, aside from being necessary for managing the actual voting process, the list of electors is an important planning and campaigning tool. For these reasons, the Act provides limited rights of access to these lists to parties and to candidates.

During an election, candidates receive copies of the preliminary, revised and official lists of electors for their districts (sections 94 and 107). At the end of an election, each elected member of Parliament receives a copy of the final list of electors for his or her district, and every registered party is entitled to receive a copy of the final list, on request, for every district in which they ran a candidate (section 109). Thereafter, each member of Parliament receives an annual list of electors for his or her district, and every registered party is entitled to receive, on request, a copy of a list for each district in which they ran a candidate in the previous election (section 45).

The distribution of lists to parties under these provisions is inequitable, both in their failure to provide lists to eligible parties and in their general restriction against making available to registered parties lists for the districts in which the party did not run a candidate in the previous election. This restriction also makes it difficult for parties to expand into new electoral districts or districts in which they have not run a candidate in the previous election, which translates into an advantage for parties that already have a presence in those electoral districts.

The ruling of the Supreme Court of Canada in *Figueroa v. Canada*[41] raises concerns about the provision of lists of electors to some political parties and not to others. Making the lists of electors available to all registered and eligible parties reflects the spirit of that decision.

2.13 Distribution of Additional Lists of Electors to Candidates on Day 19

Following the close of nominations, returning officers should be directed to provide updated lists of electors, in electronic format, to all candidates by the 19th day preceding polling day.

During an election period, candidates receive "preliminary lists of electors" as soon as possible after the issue of a writ (section 94), "revised lists" on the 11th day before polling day, and "official lists" on the 3rd day before polling day (section 107). Candidates rely on these lists for communicating with electors. However, the preliminary lists may not contain many of the most recent changes to the National Register of Electors (as discussed in recommendation 2.14 below). Candidates therefore do not get access to the most up-to-date information until the publication of the revised lists of electors on the 11th day before polling day.

Provision of an additional list of electors on the day that all confirmations of nominations must be completed – approximately midway between the issuing of the preliminary and revised lists – would provide candidates with more accurate information earlier in their campaigns. This list would include the various revisions made to the lists by returning officers over this period, along with any last-minute updates to the Register downloaded electronically to the returning officer after the production of the preliminary lists of electors. Provision of this list in electronic format would ensure that making this supplementary list available would not constitute an undue burden on returning officers.

[41] *Figueroa v. Canada (Attorney General)* [2003] 1 S.C.R. 912.

2.14 Distribution of Preliminary Lists of Electors to Parties at the Issue of Writ

The *Canada Elections Act* should be amended to authorize the Chief Electoral Officer to provide any registered or eligible party, on request, at the same time or after the provision of the preliminary list of electors to returning officers, with an electronic copy of the preliminary list of electors for any electoral district in which a writ has been dropped.

There is currently no provision in the Act authorizing the transmission of a copy of the preliminary list of electors to registered or eligible parties at the drop of a writ in an electoral district. Candidates in a district may secure the preliminary list through a request to the returning officer of the district, under section 94.

Parties going into an election in a district must therefore either work from the copy of the list of electors that they may have been provided earlier under the annual provisions of lists under section 45 of the Act, or secure a copy of the preliminary list from the party-endorsed candidate in that district.

It is to the benefit of the electorate and the public that registered parties in an election work from the most up-to-date lists. This reduces the chances of errors in communication or concerns about electors' registered status. However, in the period of time between the annual distribution of lists under section 45 and the dropping of a writ in an electoral district, significant changes may have since been made to the relevant list.

Where the boundaries of an electoral district have been newly created or adjusted as a result of the electoral-boundary adjustment process, parties may also find themselves going into an election in an electoral district for which they have no list of electors. The earlier list of electors provided to parties under section 45 will not reflect such newly created or adjusted boundaries, as was the case in the 38th general election. At that time, the Chief Electoral Officer used his authority under section 17 of the Act to adapt section 93 of the Act to provide electronic copies of the preliminary lists of electors to registered parties on request.[42]

As noted, a party can secure a copy of endorsed candidates' list of electors, provided to the candidate on the confirmation of his or her nomination by the returning officer. However, requiring a party to secure and coordinate such lists imposes an additional administrative burden during the election period, which can be as short as 36 days.

[42] The adaptation added the following subsection 93(4) to the Act for the period of the election:

> 93(4) The Chief Electoral Officer, on request, shall send to each registered party, as soon as possible after the provision of the lists of electors under subsection (1) a copy in electronic form of the preliminary list of electors referred to in subsection (1) for every electoral district established by the 2003 representation order which consists of all or part of an electoral district established by the 1996 representation order for which the party had endorsed a candidate in the last general election or subsequent by-election.

The preliminary list of electors is currently provided to returning officers by the Chief Electoral Officer as soon as possible after the issue of a writ. There would be little additional burden on the Chief Electoral Officer to also provide electronic copies of the lists to registered parties on request, as was done during the 38th general election, pursuant to the adaptation of the Act made at that time.

2.15 Change in the Date for the Annual Distribution of Lists of Electors

Section 45 of the *Canada Elections Act* should be amended to provide that the annual lists of electors must be provided to parties and members of Parliament by November 15 each year.

Elections Canada estimates that, in the months of July and August, 10 percent of Canadians change their addresses. This makes these months the busiest season for updates to the National Register of Electors.

Section 45 provides that lists of electors for a district are to be sent every year by October 15 to members of Parliament and, on request, to registered parties that ran candidates in the associated districts in the previous election.

Because information relating to moves from July and August is captured in update data that Elections Canada receives from various sources in late September or early October, Elections Canada is not able to integrate the data in time for the October 15 distribution. As a result, those lists are significantly out of date even when they are issued. Moving the date of production of the annual lists back by one month would result in a significant improvement to the quality of the lists provided to members of Parliament and parties.

2.16 Exception Period for Production of Annual Lists of Electors

The three-month exception period following an election, during which the October 15 lists need not be produced, should be extended to six months.

Subsection 45(3) of the *Canada Elections Act* states that the annual lists of electors that must normally be distributed to parties by October 15 need not be produced if that date falls within an election period or in the three months after polling day.

This three-month exception accounts for the fact that parties already receive final lists of electors “without delay” after a general election. These final lists include all of the updates brought about by revision during the election period, and registrations and corrections made to the lists on polling day; there is therefore no need for another comprehensive list so soon afterwards.

Furthermore, the lists of electors produced under section 45 may in fact be less up to date than the final lists of electors that preceded them. This is because the two sets of lists have different sources. The final lists are produced from changes to the preliminary lists of electors that have occurred during the election period. These changes are made in the various returning offices across the country and are compiled into the final lists. The annual lists of electors are produced directly from the National Register of Electors. However, some time is needed to upload the millions of changes made during the election from the returning offices to the Register.[43]

Experience from the 2004 general election, which had a polling day four and a half months before October 15, showed that more time is required as an exception period in subsection 45(3) to meet all the technical requirements to ensure that the annual lists are more up to date than the final lists produced after the election.

2.17 Use of Returning Officers Outside of Elections for Updating Initiatives

The *Canada Elections Act* should be amended to provide that returning officers may perform tasks relating to the National Register of Electors between election periods, as requested by the Chief Electoral Officer.

Returning officers' duties are carefully set out in the Act. These include revising the lists of electors during an election period. However, returning officers are not expressly provided with a role in updating the National Register of Electors between election periods.

Returning officers have unique knowledge of the geographic and demographic make-up of their electoral districts; this knowledge, which is already used in determining polling sites and polling division boundaries, could be further tapped by relying on returning officers to identify areas of high mobility and areas of new development that should be targeted for revision outside an election period. Work on updating the National Register of Electors outside an election period reduces the amount of revision that must be done once an election is called.

2.18 Updating Lists During Elections on the Basis of Information from the National Register of Electors

The Act should expressly provide that returning officers can update lists of electors by adding or deleting electors, or making other relevant changes, on the basis of information provided from the National Register of Electors.

[43] More than three million such changes were made in the 2004 election.

This recommendation was included in the 2001 report *Modernizing the Electoral Process*, and is repeated here.

As stated in the 2001 report, once an election is called, the focus of changes to lists of electors is on initiatives undertaken by electors. For example, section 101 provides for additions to the list in response to electors' requests. The Act, however, does not address the updating of a list of electors on the basis of information that had come to the Register earlier, but which had not yet been incorporated into the Register at the time the preliminary lists were prepared, or information that came to the Register after the preliminary lists of electors had been issued.

Substantial numbers of address changes and notifications of deaths come to the Register through statutorily authorized routes just before and after the issue of the writs for an election. The preliminary lists are prepared from information in the Register; because of the timing, changes that come to the Register just before or just after the dropping of the writ are not reflected in the preliminary lists. Failing to use the Register as a source for updates during an election imposes the full burden on individual electors to ensure that their changed information is accurately reflected in the lists.

During an election, updates to lists of electors are currently carried out from the Register, where warranted, to avoid the imposition of a significant burden on the electorate. Thus, in the 2000 general election, returning officers made 481,400 revisions to the lists by using data that came to them through the Register. In the 2004 general election, 337,588 updates were sent to returning officers from the Register; of these, 334,819 revisions were made to the list.

Returning officers have implicit authority to act on such information from the Register during an election, if the information applies to deceased electors, electors who have moved, or correction of omissions, inaccuracy or error. However, their authority to add electors is not as clear.

Consequently, express authority should be provided in the Act to clarify the authority of returning officers to revise lists of electors on the basis of information provided from the Register during an election. Such a provision would mirror the current provision that directs the updating of the Register, during an election, through information provided by returning officers (s. 47).

2.19 Provincial Use of Data from the National Register of Electors

The fact that neither sections 55 nor 56 preclude the use of provincial lists of electors according to provincial law should be made clear in the *Canada Elections Act*.

The wording of subsection 55(3) and paragraph 56(*e*) of the Act creates an uncertainty as to whether provincial authorities may use their own lists of electors, where such lists draw on personal information that originally came from the National Register of Electors, pursuant to an agreement under section 55 of the Act. More specifically, it is unclear whether paragraph 56(*e*) prohibits those authorities from using their own electoral lists for anything

other than a provincial election or referendum; nor is it clear whether subsection 55(3), which provides that provincial authorities receive personal information from the National Register for the creation of provincial lists of electors, authorizes those electoral authorities to use the lists for any other purpose.

This uncertainty limits the ability of the various Canadian electoral authorities to co-operate fully in the maintenance of their lists.

Section 55 authorizes the Chief Electoral Officer to share information in the National Register with provincial authorities responsible under provincial law for establishing a list of electors, for the purpose of creating those lists:

> 55. (1) The Chief Electoral Officer may enter into an agreement with any body responsible under provincial law for establishing a list of electors, governing the giving of information contained in the Register of Electors if that information is needed for establishing such a list.
>
> (2) The Chief Electoral Officer may, for the purpose of ensuring the protection of personal information given under an agreement mentioned in subsection (1), include in the agreement any conditions that the Chief Electoral Officer considers appropriate regarding the use that may be made of that information.
>
> (3) A body to whom information is given under an agreement mentioned in subsection (1) may use the information only for the purpose of establishing lists of electors for an election or a referendum held under a provincial law.
>
> (4) An agreement mentioned in subsection (1) may require valuable consideration to be provided in exchange for the information given.

Paragraph 56(*e*) provides that no person shall knowingly use personal information that is recorded in the Register for purposes other than those listed in that section – one of which is the use of the information in an election or referendum held under provincial law, if the information is subject to, and transmitted in accordance with an agreement made under section 55.

> 56. No person shall …
>
> (*e*) knowingly use personal information that is recorded in the Register of Electors for a purpose other than
>
> (i) to enable registered parties, members or candidates to communicate with electors in accordance with section 110,
>
> (ii) a federal election or referendum, or
>
> (iii) an election or referendum held under provincial law, if the information is subject to, and transmitted in accordance with an agreement made under section 55.

Obviously, section 56 does not operate strictly as written. For example, notwithstanding its express words, it does not prohibit the use of personal information solely because that information is recorded in the Register. Such a reading would impose upon that information far greater restrictions than imposed even by the *Privacy Act* on personal information – insofar as section 56 of the *Canada Elections Act* does not contain the extensive list of permitted uses found in section 8 of the *Privacy Act*, or the general non-application rule set out in subsection 69(2) of the *Privacy Act*, which applies to publicly available personal information. Applying section 56 strictly as written would, for example, have the following consequences:

- It would preclude a person from using his or her own personal information, if that information came to him or her as a result of an inquiry under section 54.[44]
- No other person or entity could use an elector's personal information for any purpose other than a federal election or referendum, regardless of how that information came to them, if that personal information were recorded in the Register.

Furthermore, adopting strict interpretations of these prohibitions would lead to problems with the interaction of section 55 and section 111 of the *Canada Elections Act.* Section 111 prohibits the use of personal information found on a list of electors and is worded in a fashion similar to section 56.[45] Applying a strict reading to section 56 would argue for the adoption of a similarly strict reading of section 111, which would result in section 111 operating to preclude the use of federal personal information for the creation of provincial lists, from the moment that Register information appeared in a list of electors.

Therefore, it is evident that section 56 cannot be read strictly. And while it is clear that section 56 would not operate to preclude a person or organization from using personal information that is recorded in the Register but which came to them from some other source, it is not as clear how far the prohibition in paragraph 56(*e*) is to be interpreted. Does it extend to prohibiting a provincial authority from using a provincial list for a purpose authorized under provincial law, if any personal information from the National Register of Electors had been used in the construction of those provincial lists – even if that information had been confirmed, verified or duplicated from other provincial sources?

In its application to the ability of the Chief Electoral Officer to share personal information with provincial electoral authorities, section 55 of the *Canada Elections Act* expressly considers the use of personal information for the creation of lists of electors ("electors" being descriptive of the content of the list, not its use) under a provincial law. Subsection 55(1) authorizes the federal Chief Electoral Officer to enter into agreements with any body responsible under provincial law for establishing a list of electors, governing the giving of information contained in the National Register of Electors if that information is needed for establishing such a list. However, the province must be compiling that list of electors for the purposes of an election or a referendum. It must not be compiling that list for some other purpose.

[44] 54. At the written request of an elector, the Chief Electoral Officer shall send the elector all the information in the Chief Electoral Officer's possession relating to him or her.

[45] 111. No person shall …

(*f*) knowingly use personal information that is recorded in a list of electors for a purpose other than

(i) to enable registered parties, members or candidates to communicate with electors in accordance with section 110, or

(ii) a federal election or referendum.

Provided that the provincial authority is using the information for that purpose, it can be argued that there is no breach of subsection 55(3). However, it is not clear, once a provincial authority has created a list for use in its electoral proceedings, whether provincial legislation may authorize the list to be used for other purposes.

This ambiguity would be resolved if it were made clear in the Act that neither subsections 55 nor 56 were to operate to prohibit the use of provincially created lists of electors according to provincial law.

This inter-reliance of rights on federal and provincial law has a precedent in section 48(3) respecting the addition of electors to the National Register. The general rule is that one cannot be added to the federal Register without one's consent (s. 48(2)). Notwithstanding, the Act expressly provides for the addition of an individual to the Register if that individual appears on a list of electors established under provincial law and the Chief Electoral Officer considers the information on the provincial list to be sufficient for the inclusion of the elector on the federal list. In that case, the protection afforded the individual not to be added to a list of electors without consent is found in the requirements established under provincial authority respecting the creation of the provincial lists – not in the federal statute.

2.20 Sharing Elector Data with Provincial Electoral Authorities for Updating Purposes

The current authority in section 55 of the *Canada Elections Act* for the Chief Electoral Officer to enter into agreements with provincial electoral authorities governing the giving of information contained in the National Register of Electors should be expanded to include all information from which the Chief Electoral Officer is authorized to update the Register under sections 46 of the Act.

The Act already provides for significant co-operation between federal and provincial electoral authorities in the maintenance of the National Register of Electors and provincial electoral data. Electors may be added directly to the National Register from lists of electors established under the various provincial laws specified in Schedule 2 of the Act, if those lists contain the information that the Chief Electoral Officer considers sufficient.[46] Similarly, section 55 of the Act permits the Chief Electoral Officer to enter into agreements with provinces, territories and municipalities to provide them with information contained in the Register for the purposes of their electoral lists. In this continuous co-operation, electoral authorities often build on each others' work. For example, information contained in the National Register may be used by a provincial authority in a targeted revision exercise – and the results of this exercise, once incorporated into the provincial list, can be used to update the National Register.

[46] Subparagraph 46(1)(*b*)(i) and section 49 of the *Canada Elections Act*.

However, section 55 authorizes the Chief Electoral Officer to share with provincial electoral authorities only information that has already been incorporated into the National Register. Until then, data that the Chief Electoral Officer collects for updating purposes cannot be shared with provincial electoral authorities. This restricts the ability of the Chief Electoral Officer to share Register source data with provincial electoral authorities for verification or supplementation purposes. Sharing of preliminary data can be extremely useful, because it enhances the ability of electoral authorities to coordinate and supplement their resources. This type of sharing can now be done indirectly through the adoption of appropriate mechanisms. For example, in 2003, Elections Ontario, in the conduct of a door-to-door provincial registration exercise agreed, for National Register purposes, to ask electors if they were Canadian citizens. However, it would be preferable if the Act were clarified to permit more direct sharing of statutorily authorized Register source data for updating purposes.

Permitting the sharing of information garnered from the statutorily authorized Register sources with Elections Canada's provincial, territorial and municipal partners would more easily permit those authorities to use this information to refine and maximize their local updating efforts. The resulting updates to the provincial lists would in turn be shared with Elections Canada for the updating of the National Register.

The existing protection in section 56 for personal information from the Register should be adjusted to include shared source data, in addition to personal information already recorded in the Register or on a list of electors.

2.21 Sharing Neutral Address and Geographic Information

The Chief Electoral Officer should be empowered to share, with other federal, provincial and territorial government agencies, geographic data and products and other information prepared in the course of performing his duties, if these do not constitute personal information about identifiable individuals.

In the course of performing his duties as outlined in the *Canada Elections Act* and the *Electoral Boundaries Readjustment Act*, the Chief Electoral Officer develops tools and secures data that may be of use to other government agencies. These include geographic tools such as detailed maps and a comprehensive list of addresses for the entire country. Sharing this information with other government agencies is often useful to those agencies, and can reduce duplication of effort within the government. Furthermore, by sharing address and geography information and co-operating in the maintenance of this data, the quality of the information is improved. For example, sharing addresses with Canada Post Corporation will improve elector mailing addresses, resulting in more effective delivery of the voter information cards and, consequently, improved service to electors. The authority to share information would not extend to personal information about identifiable individuals and should therefore not raise privacy concerns. While it appears that the authority to release information of this nature may be implicit in the mandate of the Chief Electoral Officer, it would be preferable if the Act contained express authority rather than relying on interpretation.

2.22 Verification of Eligibility at Polls

Section 144 of the *Canada Elections Act* should be amended to include the authority to require a written affidavit or solemn affirmation of eligibility by a potential elector where reasonable doubt is raised about that person's eligibility at a poll.

Recommendation 1.1.7 of the 2001 report *Modernizing the Electoral Process* recommended that section 144 of the Act be amended to provide that, where reasonable doubt is raised at a polling station about the eligibility of an elector to vote, the elector may establish that eligibility through a written affidavit or solemn affirmation. That recommendation is repeated here.

Currently, the Act provides that a deputy returning officer, poll clerk, candidate or candidate's representative who has doubts about the identity or right of a person intending to vote at a polling station may request that the person show satisfactory proof of identity and residence. The elector is also authorized to take the prescribed oath rather than showing proof of identity. However, when doubt about a person's eligibility (citizenship and age), rather than identity, arises at a poll, there is no authority to require any form of proof of that eligibility.[47]

There would be little additional burden on individual electors or on the system if, in cases where reasonable questions of eligibility arise, potential electors were required to verify their eligibility to vote by providing a written affidavit or solemn affirmation of their eligibility. The purpose of requiring the oath or affirmation to be in writing would be to create a record. The current enforcement provisions for oaths would also be available for these oaths or declarations.[48]

[47] Up to the 14th day before polling day, objections to a person's appearance on a list of electors, including objections based on eligibility, may be raised before the relevant returning officers. Sections 103 and 104 set out the procedure to be followed by returning officers in deciding whether the name of a person objected to should be retained or deleted from the list. This process, however, is available only for objections raised before the 14th day before polling day.

[48] Subsection 549(3) provides that no person shall falsely take an oath that is provided for under the Act. Paragraph 499(2)(*a*) makes it an offence to knowingly contravene subsection 549(3).

Chapter 3

Broadcasting

Chapter 3 – Broadcasting

3.1 A Simpler, Fairer Entitlement to Broadcasting Rights

The rules for apportioning paid and free-time political broadcasting should be made simpler and fairer, and allow the electorate adequate access to the views of existing and emerging parties, through the following measures:

- All registered parties should have the right to purchase up to 100 minutes of paid time from each broadcaster at the lowest unit rate.
- Each broadcaster should have a maximum cap of 300 minutes. Where requests of all parties amount to more than 300 minutes for one station, their requests for time at that station should be pro-rated.
- All registered parties should then have the right to purchase additional paid time from each broadcaster at the lowest unit rate, subject to availability.
- Party ability to purchase paid time would be subject to their election expenses limits.
- Each broadcaster (as opposed to network) that accepts advertising should be required to apportion 60 minutes of free time in prime time[49] equally among registered parties.

The existing legislative system that regulates the apportioning of free and paid broadcasting time is overly complex and must be reformed.

Furthermore, the viability of the existing free-time system has been significantly undermined by the fact that there is now only one English-language television network, the CBC, required to provide free political broadcasting time. The loss of network status by CTV in 2004 had the effect of halving the free-time English-language television broadcasting available to parties in the 38th general election.

Finally, the current process of apportionment is strongly driven by past electoral success and raises concerns about potential infringement of the principles laid down by the Supreme Court of Canada in its decision in *Figueroa v. Canada (Attorney General).*

The Current Legislative Scheme

There is no legal limitation on the amount of prime-time broadcasting that a registered or eligible party may purchase under the existing provisions of the *Canada Elections Act,* except that such purchases must fall within the general spending limits imposed by the Act. However, in recognition of the limited amount of prime-time broadcasting actually available for purchase, the Act sets out a scheme whereby a basic amount of prime-time broadcasting

[49] "Prime time" is defined in the Act: for television, "prime time" is between 6 p.m. and midnight; for radio, "prime time" is between 6 a.m. and 9 a.m., between noon and 2 p.m. and between 4 p.m. and 7 p.m.

(390 minutes) must be made available for purchase by registered parties. That available prime time is apportioned among the various registered parties according to a specific formula set out in the Act. Parties are free to purchase more prime time above this guaranteed amount, provided that broadcasters are willing to sell it.

Eligible parties may also request that paid broadcasting time be allocated to them. The Act requires that either six minutes or the lowest amount of time allocated to a registered party be allocated to each eligible party. At no time may this additional allocation to eligible parties exceed 39 minutes.

The Broadcasting Arbitrator is required to hold annual meetings to review the allocation. If, at the time of one of these meetings, the total time allocated to registered and eligible parties is more than 390 minutes, he or she is required to reduce the total allocated time to 390 minutes.

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

The Act also provides for arbitration by the Broadcasting Arbitrator of disputes over this purchase of actual time.

It should be noted that the allocation of paid broadcasting time does not necessarily result in the actual use of the resources available. For example, in the 1995 decision of the Alberta Court of Appeal in *Reform Party of Canada v. Canada (Attorney General)*,[50] the Court noted that, at that time, while the full allotment of time was purchased on a limited number of radio stations, no political party had purchased all of its allotment of broadcasting time on any television station. In fact, the Broadcasting Arbitrator has observed that, in the past few elections, smaller parties have rarely used any of the paid time apportioned to them because they are unable to afford it. Even the larger parties rarely, if ever, use their full allocation on any station, and all of them purchase time only on a select number of networks or stations.

[50] (1995), 123 D.L.R. (4th) 366 (Alta. C.A.).

To ensure that broadcasting is not totally dependent on financial resources, the Act also requires the provision by certain networks of an amount of free broadcasting time no less than the amount of free broadcasting time made available at the last general election. This pool of free time is apportioned among the parties as follows:

- Two minutes is first apportioned to every registered party and to every eligible party that has elected not to take part in the paid-time apportionment. That time is deducted from the pool.
- The remainder is then apportioned among the other registered and eligible parties in the same proportion as was the paid time apportioned to them.

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

This system, despite its laudable goals, is neither effective nor efficient, and has given rise to a number of concerns. The current statutory apportionment of paid time favours existing, more successful parties by unduly fettering the ability of emerging parties to purchase enough time to make a meaningful case to the Canadian public. In an attempt to offset the adverse discriminatory effects of the existing formula, the Broadcasting Arbitrator, since 1992, has exercised his discretionary authority under the Act to modify the statutory apportionment formula, by apportioning one third of the base time equally among all registered parties.

Despite this continual adjustment, the statutory formula for the apportionment of paid time (and the consequent apportionment of free time) still results in registered parties that enjoy broader support receiving more time than less popular registered parties do. For example, in the 38th general election, free time on a network required to provide such free time resulted in the Liberal Party of Canada being apportioned a total of 65 minutes of free time and the Conservative Party of Canada 47 minutes, while the Progressive Canadian Party and the Libertarian Party were apportioned only 3 minutes each.[51] Similarly, the Liberal Party of Canada was apportioned 122 minutes and 30 seconds of paid time and the Conservative Party of Canada 88 minutes and 30 seconds, as compared to 6 minutes each for the Progressive Canadian Party and the Libertarian party.

Furthermore, the current reliance of the free-time system on the paid-time system introduces a substantial degree of artificiality into the system because parties are required to participate in the apportionment of paid time (which they might never use) to secure their allocation of free time.

[51] See the *Report of the Chief Electoral Officer of Canada on the 38th General Election Held on June 28, 2004*, pp. 73–75.

The current requirement that free time need only be provided by "networks" also makes that system dependent upon an organizational arrangement of diminishing national importance.[52] As noted above, the only English-language broadcasters still required to provide free broadcasting time are CBC Television and CBC Radio One.

Under the current free-time system, networks are entitled to provide the required free time at whatever time the network feels is appropriate, and to package time in broadcasts of specific lengths, as they see fit. The Broadcasting Arbitrator has noted that free time is usually given out in 5- or 10-minute blocks and that it is typically packaged with other free-time blocks.

Finally, although the Act purports to give political parties the benefit of the lowest applicable rates for paid time, the Broadcasting Arbitrator believes that the provision is poorly worded and does not achieve this purpose. The Arbitrator is of the view that the provision does not give candidates and parties access to the same rates that are given the station's most favoured commercial advertisers, and that it allows stations to charge much higher rates for political broadcasts.[53]

Ideally, an efficient legislated system would:

- recognize radio and television broadcasting as an important means of communication during an election
- recognize that broadcasting resources are not unlimited or without cost
- allow the electorate adequate access to the views of parties that reflect their aspirations and beliefs, as well as to new or emerging views
- recognize the importance of parties' ability to determine when and how they wish to communicate their views to the electorate
- ensure adequate and real access by the parties to broadcasting time

[52] The Broadcasting Arbitrator noted, in both 1997 and 1993, that the term "network" is no longer a sufficient ground for distinguishing between obligations of stations and station groups (*Report of the Chief Electoral Officer of Canada*, 1993 and 1997).

[53] No provinces or territories have regulations on the provision of broadcasting time during an election (although Quebec and New Brunswick allow broadcasters to provide voluntary time), and only four provinces regulate the rates charged for broadcasting. For instance, Newfoundland and Labrador regulates the rates charged for broadcasting by requiring that broadcasters and publishers offer political parties and candidates the lowest rate offered to another party within the election broadcasting period, as well as outside the election broadcasting period [E.A., s. 226.2(2)].

The Royal Commission on Electoral Reform and Party Financing recommended that broadcasters be required to provide time to registered parties at half the rate they offered to other advertisers in the same period (rec. 1.6.18).

The political broadcasting system should be recast so that it is simpler, reflects more closely the principles enunciated by the Supreme Court of Canada in *Figueroa*, and allows the electorate adequate access to the views of existing and emerging parties. The following recommendation is closely patterned on that recommended earlier in the 2001 report *Modernizing the Electoral Process*:

- All registered parties should have the right to purchase up to 100 minutes of paid time from each broadcaster at the lowest unit rate.
- Each broadcaster should have a maximum cap of 300 minutes. Where requests of all parties amount to more than 300 minutes for one station, their requests for time at that station should be pro-rated.
- All registered parties should then have the right to purchase additional paid time from each broadcaster at the lowest unit rate, subject to availability.
- Party ability to purchase paid time would be subject to their election expenses limits.
- Each broadcaster (as opposed to network) that accepts advertising should be required to apportion 60 minutes of free time in prime time equally among registered parties.
- Apportionment of paid time in this fashion would be materially simpler than the current system and, unlike the apportionment directions of the current process, would not give rise to potential concerns about infringement of the constitutional principles recognized in *Figueroa.*

Such an approach would give *all* registered parties significantly more free time than they receive now.

This is a substantially simpler scheme than the current paid-time/free-time apportionment process, and would not require annual apportionment. It will increase public access to new messages from newer or smaller parties as well as more familiar messages from established parties, and may help to revitalize public interest in the electoral process.

There should be no real cost to the public purse or to individual broadcasters, insofar as this approach would not take away time that broadcasters could sell to someone else. Such political broadcast time does not count toward the 12-minute commercial restrictions imposed on television broadcasters (there do not appear to be any commercial timing restrictions on radio). Nor would it result in a loss of sales revenues from party purchases of paid time. Parties already purchasing time would likely continue to do so, in addition to free time.

Disputes would continue to be resolved by the Broadcasting Arbitrator.

Chapter 4

Financial Matters

Chapter 4 – Financial Matters

4.1 Examination and Inquiry Powers for the Chief Electoral Officer

The *Canada Elections Act* should be amended to provide the Chief Electoral Officer with examination and inquiry powers for purposes relating to the accuracy or completeness of any financial return required under the Act by a registered party, registered association, candidate, nomination or leadership contestant, or third party. Any action, related to such an audit or inquiry, directed at some other person or entity, or involving entry to residential premises, would require advance judicial approval unless the person or entity consents.

Disclosure is an important aspect of electoral regulation. All primary political entities, registered parties, registered electoral district associations, candidates, and nomination and leadership contestants are now required to make reports to the Chief Electoral Officer either following an electoral event or annually, or both. Registered parties that receive quarterly allowances under the Act are also required to make quarterly reports. Movements of resources between those entities are also disclosed. Together, these various reports detail the contributions made to the reporting entity, and its other revenues and expenses, which are statutorily required to be accessible to the public. Third parties are required as well to make returns detailing their election advertising expenses. These reports are also publicly accessible.

Disclosure serves at least two public purposes: first, it is an important aspect of the informed vote; second, it serves as the basis for public reimbursement of election expenses to eligible political parties and to candidates.[54]

For the purpose of the informed vote, disclosure allows electors to take into consideration the financial relationships and operations of a political entity when they vote. Disclosure also contributes to the public confidence in political entities by permitting the public to dispel, or confirm, allegations or suspicions of illegal or inappropriate activities or influences. For example, to the extent that the public may have concerns about potential connections between financial support for a party and the award or refusal of public contracts, public disclosure of contributions serves as an important tool in identifying any such relationships or dealings.

[54] Disclosure can also be relevant to the enforcement of the Act to the extent that breaches of financing provisions of the statute may be found as a result of such disclosure. This, however, is an incidental aspect of disclosure rather than a primary purpose.

For the purposes of public reimbursement, it is necessary to know the details of a party's or candidate's paid election expenses before the appropriate reimbursement can be made.

Inaccurate, erroneous or fraudulent disclosure obviously does not serve either of these purposes; nor does unverified or unverifiable disclosure. Information that cannot be verified does not contribute to the public confidence. To the extent that public reimbursement is based on disclosure, reimbursement should be made upon the basis of verifiable information. Incorrect information is counterproductive: undetected errors, omissions or misrepresentations may serve as the basis for incorrect judgements. Such judgements may operate to the advantage or disadvantage of a particular political entity.[55]

The Chief Electoral Officer possesses only limited verification powers over candidate and nomination contestant returns and no effective review power over the returns of registered parties, registered electoral district associations, leadership contestants or third parties. The current verification authority of the Chief Electoral Officer is not sufficient to serve the purposes of disclosure adequately.

Under the current state of affairs, the public must accept what the political entity submits (subject to complaint, investigation and enforcement by the Commissioner of Canada Elections).

While the Chief Electoral Officer possesses no express verification powers over the returns of candidates and nomination contestants, some aspects of those returns can be verified indirectly through cross-referencing of different aspects of the returns – notably through the use of vouchers, such as bank statements. However, this review method of document examination and comparison is not applicable to the returns of registered parties, registered associations or leadership contestants, insofar as those political entities are not required to provide bank statements and other supporting vouchers with their returns. Furthermore, complete failures to comply with the statutory requirements of the Act can render this review

[55] To illustrate this, it is not uncommon for a candidate to erroneously report election expenses in excess of the legal limit. Such overspending would amount to an offence under the Act. However, on review, it is often discovered that expenses that did not qualify as election expenses had been included in the return. Thus, the verification of the return operates to the advantage of both the candidate and the public by correcting the impression of improper conduct on the part of the candidate.

process ineffective in its application to candidates and nomination contestants. A decision to make some financial transactions wholly outside of the Act will not be evident from a review by document examination and comparison. For example, the collection of an ineligible contribution, particularly if made in cash, that is not deposited in a campaign account and which is used to meet an unreported election expense, also paid in cash, cannot be detected through a simple review of the documents filed with a campaign return.

The Act does provide for some forms of verification through independent audits of returns. Registered parties and candidates are required to provide auditor reports with their returns under the Act. Registered associations, nomination contestants, leadership contestants and third parties that meet specified financial benchmarks are also required to submit auditor reports with their returns.[56] However, for a number of reasons, these requirements may not adequately serve the purposes of either the informed vote or the good management of public finances.

First, the auditor has the authority to access the information of the audit subject only and cannot compel information from other individuals or entities that may have had relationships or dealings with the audit subject.[57]

[56] Registered electoral district associations – ss. 403.35(1) and 403.37(1) (contributions or expenses in excess of $5,000.00); nomination contestants – ss. 478.23(1) and 478.25(1) (contributions or nomination campaign expenses in excess of $10,000.00); leadership contestants – ss. 435.3(1) and 435.33(1) (contributions or leadership campaign expenses in excess of $5,000.00); third parties – s. 360(1) (election advertising expenses in excess of $5,000.00).

[57] The Act requires that an auditor have access at any reasonable time to the documents of the audit subject and provides that the auditor may require the audit subject to provide any information or explanation that, in the auditor's opinion, is necessary to prepare the report. This authority extends only to the audit subject and not others with whom the audit subject may have relationships or dealings. See ss. 360(4) (third parties), 403.37(3) (registered electoral district associations), 426(3) and 430(3) (registered parties), 453(4) (candidates), 435.33(3) (leadership contestants) and 478.28(3) (nomination contestants). Furthermore, it is not an offence for an audit subject to fail to provide an auditor with required access unless that failure is done with the intent of delaying or obstructing the electoral process (s. 480(1)). An auditor who feels that not all of the required information has been provided is to make a statement to that effect in the auditor's report; this statement will disentitle the audit subject to an election-expense reimbursement. This enforcement mechanism therefore applies only to those to whom an election reimbursement is payable.

Second, where the Act requires an auditor's report, the auditor is required to report only on whether the return "presents fairly the information contained in the financial records on which it is based." In other words, the auditor is reporting only on whether the return is an accurate reflection of the political entity's records. The auditor is neither able to fully verify, nor required to report on, the initial completeness of those financial records.[58]

Third, the auditor is not a public official but is selected and retained by the political entities.

Fourth, past reviews of submitted candidates' returns have revealed that the requirement for an auditor's report does not guarantee a reliable or accurate report. Candidates' returns have shown a high frequency of errors or omissions that must be corrected – 99 percent of those submitted for the 38th general election – notwithstanding the fact that they may have been audited; this finding is consistent with earlier elections.[59] This degree of error highlights the need for independent review of candidate election expenses by the Chief Electoral Officer as part of the reimbursement process.

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[58] In illustration, see the following quotations from chapters 5 and 6 of the *Guide for the Auditor of a Candidate in a Federal Election,* published by the Canadian Institute of Chartered Accountants:

> **Completeness**: It should be noted that the Act does not require the auditor to determine that all financial transactions have been recorded in the candidate's accounting records. As with most organizations that receive funds by donation, it is not possible to determine the extent, if any, of unrecorded donations. Furthermore, since donated property and services are both contributions and expenses, it is not possible to determine that all expenses have been recorded. The auditor should, nevertheless, be alert for specific circumstances arousing suspicion that the information in the Return is not complete. Such circumstances would include situations where campaign expenditures were significantly in excess of receipts or the reconciliation of the bank account was not properly done. In such a situation, it is possible that some cash receipts (through donations, loans) have not been recorded. The auditor should question how the expenditures were made. In the absence of suspicious circumstances, however, the auditor has no obligation to carry out procedures directed at a determination of the completeness of the accounting records.
>
> …
>
> The use of the wording "the Return presents fairly the information contained in the financial records on which it is based" in the auditor's report helps to avoid any possible implication that the auditor is expressing an opinion as to the completeness of the accounting records. As discussed in Chapter 5, it is not practicable to determine whether all revenues and expenses are recorded in this type of engagement where much of the revenue is in the form of donations. The Act does not, therefore, require that the auditor express an opinion as to the completeness of the Return. This is discussed further in Chapter 5.

The *Canada Elections Act* attempts to ameliorate this aspect of the private audit process (but only in the case of candidate returns) by requiring the completion of an auditor's checklist that sets out the task the auditor is required to have performed in the completion of the checklist. This must be included with the auditor's report. (s. 453(2))

Where, on examination, it appears to the auditor that proper accounting records have not been kept, the auditor is to include in the auditor's report a statement to that effect.

[59] Errors ranged from serious to minor.

There is no doubt that private auditors serve an important purpose by reducing the burden on the public authority. But for the reasons set out above, there should be a review mechanism for appropriate cases.

It is an offence under the Act to provide a false or misleading return. The Commissioner of Canada Elections, whose duty is to ensure that the Act is complied with and enforced, also possesses no specific review or audit powers over returns under the Act. Where the Commissioner has reasonable grounds to suspect that a regulated entity has committed an offence, the Commissioner can rely on the search-warrant provisions of the *Criminal Code.* However, this authority is useful only in the context of criminal enforcement and not for achieving the principal aims of disclosure: the informed vote and the good management of the public purse.

For these reasons, the Chief Electoral Officer should be given the necessary statutory authority to conduct audits and reviews of the returns of political entities. Such reviews would not likely be conducted on a universal and comprehensive basis; it is more likely that they would be conducted on a spot-audit basis when appropriate.

In some cases, this review authority would have to extend beyond the records of the audit subject to the records of other individuals or entities that may have been operating in conjunction with, or that may have had some operational relationship with, the audit subject. Specific safeguards would have to be built into the review authority for such circumstances. This report recommends that the types of review authority described below be provided to the Chief Electoral Officer:

1. The Chief Electoral Officer should have the power to examine any document that relates to, or may relate to, the information that is or should be contained in the records of the entity, or that has been or should be included in a return.

2. The Chief Electoral Officer should be given the power to enter any premises or place as required, in order to exercise the power of examination and to require the owner, occupant or person in charge of the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the accuracy or completeness of their records or books.

3. If the premises or place into which the Chief Electoral Officer seeks to enter is a dwelling-house, entry should be permitted only with the consent of the occupant or under the authority of a warrant issued *ex parte* by a judge.

4. For the purposes relating to the accuracy or completeness of any return required under the Act by a registered party, registered association, candidate, nomination or leadership contestant, or third party, the Chief Electoral Officer should be authorized to require, by notice served personally or by confirmed delivery service, that any person provide, within such reasonable time as is stated in the notice,

   (a) any information or additional information, including any information regarding a return or supplementary return; or

   (b) any document.

5. A judge's authorization should be required in order to impose on any person, other than a registered party, registered association, candidate, nomination or leadership contestant, or third party, a requirement to provide information or any document.

6. If a document is examined or provided in accordance with these provisions,

   (a) the person by whom it is examined or to whom it is provided, or any employee of the Office of the Chief Electoral Officer, may make one or more copies, or have them made; and

   (b) any document appearing to be certified by the Chief Electoral Officer or an authorized person to be a copy made under this subsection is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

7. The Act should also provide that no person shall hinder, molest or interfere with any person doing anything that the person is authorized to do by or under these provisions, and, notwithstanding any other Act or law, every person shall, unless the person is unable to do so, do everything required by or under these provisions.

Overall, the Chief Electoral Officer would not be permitted to use the civil review and inquiry power to obtain information with the intent to provide the Commissioner of Canada Elections with the means to prosecute a person. This power would be subject to the Charter protections respecting the right to silence and the right against unreasonable search and seizure, as noted by the Supreme Court of Canada in *R. v. Jarvis* (2002), 219 D.L.R. (4th) 233 (S.C.C.).

4.2 Reports of Volunteer Labour

A registered party that receives an annual allowance under section 435.01 of the *Canada Elections Act* should minimally be required to submit, as part of its annual financial transactions return described in paragraph 424(1)(*a*), a statement of the volunteer labour provided to the party.

The Act provides that "volunteer labour" does not constitute a contribution to a regulated political entity. Volunteer labour is defined as follows:

> any service provided free of charge by a person outside their working hours, but does not include such a service provided by a person who is self-employed if the service is one that is normally charged for by that person.[60]

Allegations have been made at the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the Gomery Commission) that a registered party benefited from the full-time work of "volunteers" who were in fact on the payroll of an outside organization while they provided their services to the party. This sort of activity would constitute a contribution to the registered party on the part of the organization paying the salary. However, if it is not reported as such by the party, and if the party is not required to report volunteer labour either, there is a higher risk that such schemes may never become known, thus frustrating the application of the Act.

To provide a more comprehensive picture of the contributions provided to them, registered parties should minimally be required to report information related to the volunteer labour they receive during the year. Specifically, these reports should include the names and addresses of volunteers.

The reporting obligation should fall only on registered parties that receive an annual allowance under section 435.01 of the Act – specifically, those that received at least two percent of the national vote or five percent of the vote in the districts in which they ran candidates in the most recent general election. Disclosure is of greatest interest for these parties, which are most likely to play a role in Parliament or the government. Furthermore, because they receive a quarterly allowance, these parties are able to devote more resources toward complying with somewhat more stringent reporting requirements.

Because candidates, small parties and registered associations function almost exclusively through volunteers, the burden on these organizations of reporting volunteer labour would likely outweigh the benefit from disclosure.

4.3 Mailing Householders After the Issue of the Writs

It should be made clear in the *Canada Elections Act* that householders that are issued by members of the House of Commons during an election period, and that have the effect of promoting or opposing a registered party or the election of a candidate, constitute election advertising.

[60] Section 2.

The status of householders sent out by members of the House of Commons during an election is an ongoing source of confusion.[61]

Section 319 of the Act defines election advertising as "the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated."[62] For this reason, a householder of a member of the House of Commons that has the effect of promoting or opposing a registered party or the re-election of a member of the House or another candidate, or takes a position on an issue with which a registered party or a candidate is associated, can constitute election advertising if issued during an election.

A party or candidate may be promoted or opposed in many ways beyond simple express statements. Promotion or opposition may be indirect, through the promotion or opposition of issues with which a party or candidate is associated, or through the praising or criticism of past successes or failures. Thus, in the context of third-party election advertising, subsection 350(2) refers to the spending of money to promote or oppose the election of candidates:

> including by
>
> (*a*) naming them;
>
> (*b*) showing their likenesses;
>
> (*c*) identifying them by their respective political affiliations; or
>
> (*d*) taking a position on an issue with which they are particularly associated.

[61] See the evidence of the Chief Electoral Officer before the Committee on Procedure and House Affairs on December 6, 2001.

[62] The full definition reads:

> "election advertising" means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated. For greater certainty, it does not include
>
> (*a*) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news;
>
> (*b*) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;
>
> (*c*) the transmission of a document directly by a person or a group to their members, employees or shareholders, as the case may be; or
>
> (*d*) the transmission by an individual, on a non-commercial basis on what is commonly known as the Internet, of his or her personal political views.

Having said this, however, the Board of Internal Economy of the House of Commons on March 30, 2004, approved as a policy issue that all members with a householder entitlement can print and mail a one-page householder within 10 days of the dissolution of Parliament on a first-come, first-served basis.[63] Content related to the election was prohibited.

While householders issued outside of an election forge a useful link between members of the House and their constituents, play a key role in engaging Canadians in the federal political process, and provide valuable insights and information to constituents about the work of the House and its members, householders issued during an election period that promote a registered party or the re-election of a candidate serve as a significant form of election advertising. Such promotional material, when taxpayer supported and subsidized, if not recognized as election advertising and thus subject to the controls of the Act respecting election expenses, provides a significant advantage to members of the House which is not available to non-parliamentary parties or to other candidates.

During election periods, Elections Canada invariably receives several complaints from candidates and members of the public stating that the issuance of householders during an election campaign is unfair.

For these reasons it should be made clear in the Act that the issuance of a householder by a member of the House of Commons during an election period that has the effect of promoting or opposing a registered party or the election of a candidate, including promotion by the various means noted in subsection 350(2) of the Act, constitutes election advertising. This clarification of the existing law would ensure that all candidates are on a level playing field for election advertising expenses.

As is currently the case, the cost of a householder whose distribution is beyond the control of a member of the House when the writs are issued (for example, if the householder is in the hands of Canada Post at the time) would not constitute an election expense.

[63] The ability to continue to access state-subsidized communication for 10 days after the dissolution of Parliament is also provided for indirectly in section 35 of the *Canada Post Corporation Act*:

> 35. (3) Subject to regulations made pursuant to section 36, in any calendar year a member of the House of Commons may transmit by post free of postage to his constituents up to four mailings of printed matter without further address than "householder", "boxholder", "occupant" or "resident".
>
> (5) The privileges provided under subsections (2) and (3) to a person who is a member of the House of Commons begin on the day that notice of his election to serve in the House of Commons is given by the Chief Electoral Officer in the *Canada Gazette* and end ten days after the day he ceases to be a member of that House.

4.4 Extension of Deadline Process for Candidates' Returns

The current extension system for candidates' returns should be replaced by a more flexible one (described below) that reduces the need for candidates to seek a court order to be able to file their late or amended returns.

The *Canada Elections Act* requires the official agent of each candidate to provide the Chief Electoral Officer with a return on the financing received and expenses incurred by the candidate for his or her electoral campaign. The official agent must accompany this with an auditor's report on the return and a declaration, signed by both the candidate and the official agent, attesting to the correctness and completeness of the return. The return itself must include detailed information on the candidate's election expenses and other electoral campaign expenses, disputed and unpaid claims, contributions received, goods and services provided, funds transferred by the candidate to other regulated political entities and made to him or her by these entities, and contributions returned. Failure to include all this material does not invalidate a return, but does constitute an offence.

These documents must be provided to the Chief Electoral Officer within four months of polling day.[64]

Section 458 of the Act authorizes the Chief Electoral Officer to extend the period provided for the submission of these returns. This extension may be granted only under certain circumstances (inadvertence or an honest mistake of fact; illness of the candidate; or absence, death, illness or misconduct of the official agent or of his or her predecessors, agents or employees). Furthermore, the application for extension must be made within the four-month period after polling day.

Under the Act, if, for one reason or another, neither the candidate nor the official agent asks for an extension prior to the deadline for filing the return, or cannot show at that time that their situation is one of those described above, their only recourse is to apply to a judge for an order authorizing an extension of the deadline. The Act further requires that this application to a judge be made during the same four-month period or within two weeks after the expiration of that period.[65]

The Chief Electoral Officer is authorized to grant only one extension. If a return cannot be filed as required by the extended date, a request for a further extension must also be made to a judge. Again, the request must be made within two weeks of the expiry of the extension period.

[64] Section 451 of the Act.

[65] Section 459.

The provisions of the Act aim at obliging all candidates and their official agents to prepare and file their returns speedily after the election. This goal is fundamental and should remain the primary consideration. It is worth noting that this goal is further reinforced by the penalty attached to failing to provide a return as required under the Act. Elected candidates who do not meet these requirements may not continue to sit or vote as a Member of Parliament until the reports are provided in accordance with the Act.[66] Furthermore, candidates who do not file their returns as required by the Act may not be reimbursed for a portion of their election expenses even if they are otherwise eligible,[67] lose the nomination deposit (section 468) and are subject to prosecution for not having filed the return.[68]

This process is complex, inflexible and burdensome, and is undermined by the fact that there is no record of a court refusing an application for an extension.[69]

Out of 1,686 candidates who had to file returns after the 38th general election, approximately 400 did not file their returns on time and requested an extension of the filing deadline; about 40 candidates filed portions of their returns on time but did not include all four of the required documents on time.

For a number of reasons, including the degree of experience of the candidates or their agents, and the significant amount of information to be provided on the return, some candidates do not realize that their returns are incomplete until so informed by Elections Canada. Though Elections Canada conducts a preliminary review as soon as possible after receiving a return to determine its completeness and to advise candidates of any easily detectible defects,[70] some missing elements might not be detected until long after the deadline to apply for an extension has passed.[71] Similarly, candidates do not always seek the necessary extensions to update their returns once they discover that a correction must be made.

[66] Subsection 463(2).

[67] Section 465.

[68] Paragraphs 497(1)(*u*), (*v*), (*x*) and others.

[69] The expenditure of time and money to secure a judicial authorization can be seen as a form of *de facto* penalty and an untoward use of judicial resources.

[70] Elections Canada offices remain open to midnight on filing date to assist last-minute filers.

[71] For example, an auditor's report signed by a person who does not meet the conditions of eligibility for auditors set out in subsection 85(1) of the Act is not a problem that is always identifiable on the face of the file. This problem may be identified only at a later date, during a more thorough review of the return. As a result of the identification of this error, the return then becomes incomplete, at a time when all possibilities of extension have been exhausted.

The following process would be more flexible, and would reduce the need for candidates to seek a court order to be able to file their late returns:

1. If an application is made prior to the end of the four-month deadline to file a return, the Chief Electoral Officer should be required to grant an extension, unless there is evidence of bad faith, or an attempt to subvert the electoral reporting system on the part of the candidate or his or her official agent. An explanation would have to be provided to support the request and it would be an offence for this explanation to contain false or misleading statements.

2. Once this deadline has passed, an application for an extension may be made in the following two weeks, but the Chief Electoral Officer may not authorize it unless he is satisfied that the circumstances giving rise to the application arose by reason of inadvertence or an honest mistake of fact; illness of the candidate; or absence, death, illness or misconduct of the official agent or of his or her predecessors, agents or employees.

3. The Chief Electoral Officer may authorize the filing of a late return at any time after the two weeks following the four-month deadline, if the circumstances giving rise to the application arose by reason of inadvertence or an honest mistake of fact; illness of the candidate; or death, illness or misconduct of the official agent or of his or her predecessors, agents or employees; the application for late filing would also have to be accompanied by a cheque payable to the Receiver General for Canada ($1,000 is used as a working assumption).

4. If the Chief Electoral Officer dismisses an application for an extension of time or does not authorize a late filing, the candidate could seek judicial review of this decision.

5. The current provisions (sections 461 and 462) entitling candidates to seek relief from any liability or consequence as a result of an act of the official agent or the destruction of documents by fire, flood or a similar disaster would remain as options.

The proposed amount of $1,000 as a further condition for the Chief Electoral Officer to consider the late application for an extension is equal to the fine that could be imposed, on summary conviction, on a candidate whose return has been filed late. This fee should also be considered in light of the amounts that are currently required in lawyers' fees and court costs associated with seeking an extension from a judge.

The option of applying to a court to seek an extension would be eliminated. As stated above, there is no record of such an application having been refused; some may perceive this recourse as an unnecessary use of the judicial system. However, candidates whose applications for an extension are refused by the Chief Electoral Officer could seek judicial review. In situations where an applicant is too late to seek an extension, the option of filing remains open if this filing is accompanied by the payment of the $1,000 amount and an explanation for the late filing.

The current enforcement mechanisms (the right to sit in the House, to receive a partial reimbursement for election expenses, the risk of being prosecuted for not filing on time) would remain, unless the extension is granted or the late return is accepted by the Chief Electoral Officer. These enforcement measures would therefore continue to act as inducements to file returns promptly.

4.5 Candidate Audit Fee Subsidies

Drafting errors that obscure the intent of sections 466 and 467 of the *Canada Elections Act* should be corrected. Section 466 should be amended to expressly determine the amount of the subsidy for candidates' audit fees as the amount of the audit expense, up to a maximum of the lesser of 3 percent of the candidate's election expenses and $1,500, and a minimum of $250.

Since the inception of the requirement for audited candidate returns with S.C. 1973-74, c. 51, the Act has always provided for a minimum auditor subsidy.[72] The current French- and English-language versions of sections 466 and 467[73] appear to be the result of the drafters of the 2003 Bill C-24 structuring those versions on the English-language version of section 466, which appeared with Bill C-2 in 2000, without realizing that the 2000 English-language version of section 466 was drafted incorrectly.

[72] The legislative history of the two sections may be traced as follows:

- S.C. 1973-74, c. 51, ss. 63.1(2) and (3)
- S.C. 1980-81-82-83, c. 164, ss. 63.1(3.4) to (3.6)
- R.S.C. 1985, c. E-2, ss. 243 and 244
- S.C. 2000, c. 9, ss. 466 and 467 (Bill C-2)
- S.C. 2001, c. 21, the French-language version of s. 467 amended to correct a different error
- S.C. 2003, c. 19, ss. 466 and 467 (Bill C-24)

[73]

466. On receipt of the documents referred to in subsection 451(1) and, if it applies, subsection 455(1), including the auditor's report, and a copy of the auditor's invoice for that report in an amount of $250 or more, the Chief Electoral Officer shall provide the Receiver General with a certificate that sets out the amount of the expenses incurred for the audit, up to a maximum of the lesser of 3% of the candidate's election expenses and $1,500.	466. Sur réception des documents visés au paragraphe 451(1) et, le cas échéant, au paragraphe 455(1) et du rapport du vérificateur ainsi que d'une copie de la facture de celui-ci pour le rapport — dans la mesure où elle n'est pas inférieure à 250 $ —, le directeur général des élections transmet au receveur général un certificat indiquant le montant des dépenses engagées pour la vérification, représentant 3 % des dépenses électorales du candidat, jusqu'à concurrence de 1 500 $.
467. On receipt of the certificate, the Receiver General shall pay the amount set out in it to the auditor out of the Consolidated Revenue Fund.	467. Sur réception du certificat, le receveur général paie au vérificateur, sur le Trésor, la somme qui y est précisée.

As grammatically interpreted, the sections provide that a public subsidy for a candidate's auditor fees shall be paid only for an auditor's invoice of $250 or more. Furthermore, where there is such an invoice, the subsidy is to be the actual amount of the invoice billed, up to a ceiling of the lesser of 3 percent of the candidate's election expenses or $1,500. If this interpretation were followed, it would mean that no audit subsidy would be paid to an auditor whose invoice is less than $250. It would also mean that, regardless of the size of the actual auditor invoice, no subsidy would be paid to candidates who have no election expenses; the subsidy would be minimal in cases of candidates with minimal election expenses. This would be notwithstanding the fact that the Act requires that all campaign returns for candidates be audited and that a copy of the audit report be filed with the Chief Electoral Officer (section 453 and subsection 451(1)). The audit obligation applies to campaigns where the election-expense limit was reached and to campaigns where very little or nothing was expended.

Such a grammatical reading of the provisions is clearly wrong and does not reflect the legislative history of the audit subsidy and the intent of that subsidy.

Elections Canada has never applied a strict grammatical interpretation of these provisions, but instead follows the traditional approach to the audit subsidy by adopting a purposive interpretation of the provision, according to standard techniques of statutory interpretation. The provisions for candidates' audit subsidies are interpreted as directing that, where an audit fee is incurred for the audit of a campaign return, and there has been a proper filing of the return under section 451, an audit subsidy at the amount of the expense is to be paid up to a maximum of the lesser of 3 percent of the candidate's election expenses and $1,500, with a minimum payment of $250. Elections Canada believes this interpretation reflects the intent of Parliament and this report recommends that sections 466 and 467 be amended to reflect that intent.

Chapter 5

Technical Amendments

Chapter 5 – Technical Amendments

5.1 Condition for Party Names to Appear on Ballots

Paragraph 117(2)(*c*) should be amended so that a party must have registered status within 48 hours after the close of nominations, if that party's name is to appear on the ballot under the names of candidates endorsed by that party.

Currently, paragraph 117(2)(*c*) provides that a party must be registered "at the close of nominations" if its name is to appear on the ballot below the name of a candidate it has endorsed. The expression "close of nominations" is defined in section 2 of the Act as the deadline for the receipt of nominations set out in section 70(2), that is, at 2:00 p.m. on closing day for nominations. However, returning officers are given 48 hours after receiving the nomination paper of a prospective candidate to confirm the candidate's nomination (see s. 71(1)). An eligible party, which needs one candidate whose nomination has been confirmed to become a registered party, could be deprived of the benefits of this status if the returning officer has not yet confirmed the nomination "at the close of nominations."

The proposed 48-hour extension supports the Chief Electoral Officer's obligation to give notice to an eligible party that it meets the requirements for registration, as soon as practicable after the 48-hour period following the close of nomination (s. 370(3)). This legislative change would also better accord with past practice.

5.2 Word and Number Changes

The word "contributions" in paragraphs 497(1)(*z*.1) and 497(3)(*x*) should be replaced by "funds" in English and "fonds" in French.

The offence refers to section 476, which contains a prohibition to transfer funds to a candidate after polling day, except to pay claims related to the candidate's electoral campaign.

The word "expense" in paragraph 497(3)(*s*) should be replaced by "return" in the English version.

This change would reflect the wording of the provisions to which it refers (s. 451(1)(*e*) and 451(5)).

In section 2, the reference to paragraph 57(1)(*c*) in the definition of "polling day" should be changed to 57(1.2)(*c*) in both the French and English versions of the Act.

This change ensures that the reference is to the correct provision of the Act.

Summary of the Chief Electoral Officer's Recommendations to Parliament

Summary of the Chief Electoral Officer's Recommendations to Parliament

Chapter 1 – Operational Issues

1.1 An Advance Administrative Confirmation Process

The nomination confirmation process should be simplified and be possible to complete before the drop of a writ. This recommendation consists of four interrelated components:

1. The nomination process should be reformed into a purely administrative registration process that can confirm an eligible person as a candidate for a given electoral district, in advance of the issue of a writ for the next election. This confirmation should be carried out by Elections Canada, rather than through a local returning officer.

2. Confirmation of nomination should be a simple registration process that requires any eligible person seeking candidature to provide only the necessary contact and other administrative information. The individual seeking confirmation would be permitted to file the application himself or herself; there should be no requirement for electors' signatures in support of the nomination.

3. Individuals who wish to run as a candidate in the next election should be permitted to confirm their status as a candidate before the drop of the writ. Once confirmed, they would be required to file with the Chief Electoral Officer annual reports of contributions until the year of the election in which they are confirmed as candidates.

4. Confirmation as a candidate should be through the Office of the Chief Electoral Officer rather than through the individual returning officers. Where candidates wish, this would also permit the filing of applications by registered parties, including the filing of leaders' endorsements, and the paying of deposits for candidates, with the Chief Electoral Officer.

These individual recommendations should be viewed as components of a single reform.

1.2 Integration of the Office of the Chief Electoral Officer and Returning Officers

The *Canada Elections Act* should be amended to modify the appointment process for returning officers and to provide for the closer integration of the independent offices and the Office of the Chief Electoral Officer. Specifically, the Act should provide:

1. that returning officers be selected and appointed by the Chief Electoral Officer, following a merit-based process, and that they be appointed for a period of 10 years, an appointment that could terminate earlier in case of death, resignation, ceasing to reside in the electoral district or removal from office (reasons for removal from office would be unchanged, except that they would be applied under the authority of the Chief Electoral Officer, following due process)

2. that local election officers continue to be selected by the respective returning officers

3. that the Chief Electoral Officer have the authority to appoint replacement returning officers to perform all or part of the duties of returning officers when he or she determines that a returning officer is unable for any reason to perform those duties, until such time as the returning officer is able to perform those duties or a new returning officer is appointed

The legal responsibility for the delivery of elections should be imposed upon the Chief Electoral Officer, rather than independently on each of the geographically limited 308 returning officers. This responsibility should be executed by the Chief Electoral Officer in each electoral district, with the assistance of the returning officers, according to who is in the better position to perform those tasks in light of the particular circumstances.

1.3 Expansion of the Statutory Budgetary Authorization

Section 553 of the *Canada Elections Act* should be amended to provide for statutory authority to pay all of Elections Canada's expenses related to the administration and enforcement of the Act out of the unappropriated funds forming part of the Consolidated Revenue Fund.

As a corollary amendment, provision should be made to enhance the review function of the Auditor General as it applies to the operations of Elections Canada. The practice of the Chief Electoral Officer of reporting annually on the use of the statutory payment authority and of appearing before a House of Commons Committee to be examined thereon could also be statutorily codified.

1.4 Extension of the Adaptation Power

The period during which the Chief Electoral Officer is authorized to adapt the *Canada Elections Act* under section 17 for emergencies or unusual or unforeseen circumstances should be extended from the current period of the election to 90 days past the return of the writ.

1.5 Appointment of the Chief Electoral Officer

Consideration should be given to the Senate having a role in the appointment of the Chief Electoral Officer.

1.6 The Office of Assistant Chief Electoral Officer

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

1.7 Appointment of Revising Agents

Section 33 of the *Canada Elections Act* should be amended to remove the requirement that returning officers solicit names from registered parties in the hiring of revising agents.

1.8 The Right of Elections Canada Staff to Strike

Employees of the Chief Electoral Officer should not have the right to strike.

1.9 Hiring and Payment of Temporary Elections Canada Staff Hired Directly for Preparation and Conduct of Elections

Section 20 of the *Canada Elections Act* deals with the authority of the Chief Electoral Officer to hire additional employees and workers. It should be divided into two subsections: one subsection would deal with the additional individuals that the Chief Electoral Officer considers necessary for the direct preparation for, conduct of and reporting on an election; the second subsection would deal with other additional individuals needed for the exercise of the Chief Electoral Officer's powers, duties and functions under the Act.

The workers required specifically for the direct preparation for, conduct of and reporting on an election would be employed by the Chief Electoral Officer on a casual or temporary basis outside the scope of the *Public Service Employment Act*, which restricts the length of time for which such workers may be hired to between 90 and 125 days. The proposed approach is the same as that applicable to election officers under the *Canada Elections Act*.

The Chief Electoral Officer would retain the current authority to hire, on a casual or temporary basis, other additional persons considered necessary for the exercise of his or her powers, duties and functions under the *Canada Elections Act*, but the hiring of these individuals would remain subject to the applicable provisions of the *Public Service Employment Act.*

Section 542 should be amended to allow for the payment, under the existing *Federal Elections Fees Tariff*, of fees to workers hired by the Chief Electoral Officer for the direct preparation for and conduct of an election.

1.10 Greater Flexibility in the Establishment of Advance Polling Stations

It should be possible to establish an advance poll for a single polling division rather than requiring that the advance poll must be for two or more divisions.

1.11 Transfer Certificates and Accessibility

Section 159 of the *Canada Elections Act* should be amended to remove any time limit for application for a transfer certificate in the event that a polling station lacks level access.

1.12 Provision of Transfer Certificates

The *Canada Elections Act* should permit the issuance of a transfer certificate to any elector who presents himself or herself at the wrong polling station as a result of a change in the assignment of polling stations or advance polls that took place after the issuance of the original voter information card to the elector.

1.13 Establishment of Mobile Polling Stations

Subsection 538(5) of the Act should be expanded to allow for the creation of mobile polling stations for any institution that serves as the ordinary residence of its residents who, for reason of age, health or other circumstances giving rise to their residence in the institution, may have difficulties in getting to the regular polls.

1.14 Access to Multiple-residence Buildings, Gated Communities and Other Premises

The electoral access rights provided in section 81 of the *Canada Elections Act* should be expanded.

First, candidates' rights of access to multiple-residence buildings should be expanded beyond single buildings containing multiple residences, to include any collection of residences where access to any particular dwelling is controlled by someone other than the residents of this dwelling. This would encompass the new development of gated communities.

Second, section 81 should be extended to include election officials for electoral purposes during an election.

Third, any person who has control over premises to which the public is generally invited and who has permitted a registered or eligible party or a candidate to conduct election advertising in or on those premises in that year or in that election period, should provide, on request, a similar opportunity to all other registered or eligible parties and all other candidates for election in that electoral district in that same year or election period.

As a corollary, it should be made clear that permitting a registered or eligible party or candidate to conduct election advertising at less than commercial value in or on premises to which the public is generally invited does not constitute a contribution.

1.15 Right to Vote of Inmates Serving Sentences of Two Years or More

Sections 246 and 247 of the *Canada Elections Act*, which set out the process for voting in provincial correctional institutions, should be amended to provide a similar process for voting in federal institutions. This would ensure the existence of a process through which prisoners serving a sentence of two years or more might exercise their right to vote, pending a legislative response to the striking down of paragraph 4(*c*) by the Supreme Court of Canada in 2002.

1.16 Voting by Electors Absent from the Country for More Than Five Consecutive Years

The limitation contained in paragraph 11(*d*) of the *Canada Elections Act* that prohibits voting by persons who have been absent from Canada for five consecutive years or more, and who intend to return to Canada as residents, should be removed.

The Special Voting Rules for electors temporarily resident outside Canada found in Division 3 of Part 11 of the Act (more particularly sections 222, 223 and 226) should consequently be reviewed to allow these persons to apply for registration or to remain listed in the register of electors absent from Canada, which is maintained by the Chief Electoral Officer.

1.17 Review of the Special Voting Rules

Parliament should review the entire process for electors who do not fall under the specialized circumstances, detailed in Division 4 of the Special Voting Rules (ss. 231–243.1), to vote by special ballot. This should be a far-ranging review that considers whether the right, the process and the protections set out in those rules are appropriate to current needs and technological capabilities, with a view to ensuring that electors are best able to exercise their democratic rights.

1.18 Extension of the Limitation Period for the Prosecution of Offences

Section 514 of the Act should be amended to extend the period in which a prosecution under the *Canada Elections Act* may be instituted from 7 years to 10 years after the day on which the offence was committed.

1.19 Removing the Sunset Provision in Bill C-3

Section 26 of S.C. 2004, c. 24 (Bill C-3), the provision that automatically repeals, on May 15, 2006, the amendments to the *Canada Elections Act* made by Bill C-3, should be repealed.

Chapter 2 – Registration of Electors

2.1 Registration Through Income Tax Returns

There should be express statutory authority for electors to communicate with Elections Canada, through their income tax returns, for the purposes of registering with the National Register of Electors or of updating their information in the Register.

2.2 Income Tax Returns as a Source of Information About Deceased Electors

There should be express statutory language to permit the provision to Elections Canada of the names, addresses and dates of birth reported on income tax returns of deceased tax filers, where the deceased elector had consented to the sharing of such information on his or her last filed return.

2.3 Removal of the Need for Signed Certification

Subsections 48(2) and 49(1) of the *Canada Elections Act* should be amended to replace the existing requirements for an elector's signed certification that he or she is an elector with a general requirement that the Chief Electoral Officer should not add a person to the National Register of Elections unless he or she is satisfied that the person is qualified to be an elector.

2.4 Proof of Identity When Registered at Residence

Paragraphs 101(1)(*a*) and (*b*) of the *Canada Elections Act* should be amended to provide, where a request to add an elector's name to the preliminary list of electors is made by that elector, or by another elector who lives at the same residence, that where evidence of proof of identity is not available, identity may be established by the elector providing a written affirmation in the prescribed form.

2.5 Inter-district Changes of Address

Subsection 101(6) of the *Canada Elections Act* should be extended to all changes of address by registered electors – both inter- and intra-district changes.

2.6 Authority to Determine When to Send Out Voter Information Cards

The timing of the issuance of the voter information card under section 95 of the *Canada Elections Act* should be amended to provide that the Chief Electoral Officer should fix the date by which voter information cards must be issued in each electoral district. The Act would further provide that the Chief Electoral Officer must specify the earliest date possible after all of the information that must be set out on the card is known in a given electoral district; in any event, this must be no later than a date sufficient to provide reasonable notice of the advance polls. On that date, the card would be sent to the electors on the list.

2.7 Addition of Year of Birth on Lists of Electors Used on Polling Days

Subsection 107(2) should be amended to add that the revised and official lists of electors, used at the advanced and regular polls, must indicate the year of birth of each elector. This additional information would not be included on copies of these lists provided to candidates.

2.8 Retention of Statutorily Authorized Personal Identifiers for Later Use

Section 46 of the *Canada Elections Act* should be amended to permit the Chief Electoral Officer to retain and employ, for purposes of updating the National Register of Electors, information that is provided from any source authorized under the Act but which is not incorporated into the Register under section 44.

2.9 Release of Information from the National Register of Electors in the Interests of Public Safety, Health or Security

The Chief Electoral Officer should be authorized to release personal information from the National Register of Electors where, in his opinion, this is necessary in the interests of public safety, health or security.

Any such release should be required to be reported in the next report made by the Chief Electoral Officer under section 534 of the *Canada Elections Act* to the Speaker of the House of Commons, except to the extent necessary to protect public security.

2.10 Use of Personal Information by Political Parties and Members of Parliament

Parties and members of Parliament, who are provided with lists of electors under section 45 or 109 of the *Canada Elections Act*, should be permitted to share the personal information recorded therein with other members of Parliament and registered electoral district associations of the same party.

A party, a member of Parliament or a registered electoral district association that receives personal information under the above authority should be able to use it for any electoral purpose, including the solicitation of contributions. However, it should prohibit that the information be used for any commercial purpose.

2.11 Stable, Unique Identifier for Electors

The *Canada Elections Act* should be amended to permit Elections Canada to assign each individual in the National Register of Electors a randomly generated, unique and stable identifier. This identifier would be included in the generation of any lists of electors under the Act and would be shared with political parties, candidates and members of Parliament, along with other Register information.

As a corollary provision, the Act should be further amended to prohibit the use of the electoral identifier number by any person other than for the purposes of updating the Register or a federal or provincial electoral list.

2.12 Distribution of Lists of Electors to Registered and Eligible Parties

Sections 45 and 109 of the *Canada Elections Act* should be amended to provide for the distribution of lists of electors to all registered and eligible parties, whether or not they have run a candidate in the previous election in the district for which they are requesting a copy of the list.

2.13 Distribution of Additional Lists of Electors to Candidates on Day 19

Following the close of nominations, returning officers should be directed to provide updated lists of electors, in electronic format, to all candidates by the 19th day preceding polling day.

2.14 Distribution of Preliminary Lists of Electors to Parties at the Issue of Writ

The *Canada Elections Act* should be amended to authorize the Chief Electoral Officer to provide any registered party or eligigible, on request, at the same time or after the provision of the preliminary list of electors to returning officers, with an electronic copy of the preliminary list of electors for any electoral district in which a writ has been dropped.

2.15 Change in the Date for the Annual Distribution of Lists of Electors

Section 45 of the *Canada Elections Act* should be amended to provide that the annual lists of electors must be provided to parties and members of Parliament by November 15 each year.

2.16 Exception Period for Production of Annual Lists of Electors

The three-month exception period following an election, during which the October 15 lists need not be produced, should be extended to six months.

2.17 Use of Returning Officers Outside of Elections for Updating Initiatives

The *Canada Elections Act* should be amended to provide that returning officers may perform tasks relating to the National Register of Electors between election periods, as requested by the Chief Electoral Officer.

2.18 Updating Lists During Elections on the Basis of Information from the National Register of Electors

The Act should expressly provide that returning officers can update lists of electors by adding or deleting electors, or making other relevant changes, on the basis of information provided from the National Register of Electors.

2.19 Provincial Use of Data from the National Register of Electors

The fact that neither sections 55 nor 56 preclude the use of provincial lists of electors according to provincial law should be made clear in the *Canada Elections Act*.

2.20 Sharing Elector Data with Provincial Electoral Authorities for Updating Purposes

The current authority in section 55 of the *Canada Elections Act* for the Chief Electoral Officer to enter into agreements with provincial electoral authorities governing the giving of information contained in the National Register of Electors should be expanded to include all information from which the Chief Electoral Officer is authorized to update the Register under sections 46 of the Act.

2.21 Sharing Neutral Address and Geographic Information

The Chief Electoral Officer should be empowered to share, with other federal, provincial and territorial government agencies, geographic data and products and other information prepared in the course of performing his duties, if these do not constitute personal information about identifiable individuals.

2.22 Verification of Eligibility at Polls

Section 144 of the *Canada Elections Act* should be amended to include the authority to require a written affidavit or solemn affirmation of eligibility by a potential elector where reasonable doubt is raised about that person's eligibility at a poll.

Chapter 3 – Broadcasting

3.1 A Simpler, Fairer Entitlement to Broadcasting Rights

The rules for apportioning paid and free-time political broadcasting should be made simpler and fairer, and allow the electorate adequate access to the views of existing and emerging parties, through the following measures:

- All registered parties should have the right to purchase up to 100 minutes of paid time from each broadcaster at the lowest unit rate.
- Each broadcaster should have a maximum cap of 300 minutes. Where requests of all parties amount to more than 300 minutes for one station, their requests for time at that station should be pro-rated.
- All registered parties should then have the right to purchase additional paid time from each broadcaster at the lowest unit rate, subject to availability.
- Party ability to purchase paid time would be subject to their election expenses limits.
- Each broadcaster (as opposed to network) that accepts advertising should be required to apportion 60 minutes of free time in prime time equally among registered parties.

Chapter 4 – Financial Matters

4.1 Examination and Inquiry Powers for the Chief Electoral Officer

The *Canada Elections Act* should be amended to provide the Chief Electoral Officer with examination and inquiry powers for purposes relating to the accuracy or completeness of any financial return required under the Act by a registered party, registered association, candidate, nomination or leadership contestant, or third party. Any action, related to such an audit or inquiry, directed at some other person or entity, or involving entry to residential premises, would require advance judicial approval unless the person or entity consents.

4.2 Reports of Volunteer Labour

A registered party that receives an annual allowance under section 435.01 of the *Canada Elections Act* should minimally be required to submit, as part of its annual financial transactions return described in paragraph 424(1)(*a*), a statement of the volunteer labour provided to the party.

4.3 Mailing Householders After the Issue of the Writs

It should be made clear in the *Canada Elections Act* that householders that are issued by members of the House of Commons during an election period, and that have the effect of promoting or opposing a registered party or the election of a candidate, constitute election advertising.

4.4 Extension of Deadline Process for Candidates' Returns

The current extension system for candidates' returns should be replaced by a more flexible one that reduces the need for candidates to seek a court order to be able to file their late or amended returns.

4.5 Candidate Audit Fee Subsidies

Drafting errors that obscure the intent of sections 466 and 467 of the *Canada Elections Act* should be corrected. Section 466 should be amended to expressly determine the amount of the subsidy for candidates' audit fees as the amount of the audit expense, up to a maximum of the lesser of 3 percent of the candidate's election expenses and $1,500, and a minimum of $250.

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The word "expense" in paragraph 497(3)(*s*) should be replaced by "return" in the English version.

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