42nd Parliament, First Session

REPORT OF THE COMMITTEE

The Standing Committee on Procedure and House Affairs

has the honour to present its

TWENTY-SEVENTH REPORT

A Second Interim Report in Response to the Chief Electoral Officer's Recommendations for Legislative Reforms Following the 42nd General Election

Pursuant to its mandate under Standing Order 108(3)(*a*)(vi), the Standing Committee on Procedure and House Affairs has studied the Report of the Chief Electoral Officer of Canada entitled "An Electoral Framework for the 21st Century – Recommendations from the Chief Electoral Officer of Canada Following the 42nd General Election" and has agreed to report the following:

According to section 535 of the *Canada Elections Act*[1] (CEA), the Chief Electoral Officer (CEO) must provide a report to the Speaker of the House of Commons following each federal general election that sets out any amendments that are, in the CEO's opinion, desirable for the better administration of the Act.

The CEO's report under section 535 of the CEA, entitled *An Electoral Framework for the 21st Century*, was tabled in the House of Commons on September 27, 2016. Pursuant to Standing Order 32(5), the report was referred to the Committee that same day.

The report contains a total of 132 recommendations divided into three sections: Table A contains 39 recommendations grouped under the broad themes of "Modernizing Canada's Electoral Process" and "Improving the Political Finance Regulatory Regime." The Committee studied the Table A recommendations over the course of 11 meetings and

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

presented an interim report to the House with its responses to these recommendations on 6 March 2017.

In this its second interim report, the Committee focuses on the recommendations made by the CEO in Table B of his report. There are 44 recommendations in Table B; these are explained in the appendix of the report under the heading "Other Substantive Recommendations." The Committee studied the Section B recommendations over the course of four meetings. Only recommendations that received unanimous support from all members of the Committee or, in one case, unanimous disapproval by the Committee are included in the Committee's report. The Committee further notes that its response to the CEO's recommendations B21 and B22 are found in its first interim report.

The Committee wishes to again acknowledge and express its gratitude to Elections Canada for the extensive technical assistance and collaborative support it provided to the Committee during its study.

While reviewing the Section B recommendations, the Committee was assisted by Mr. Trevor Knight, Senior Counsel, Ms. Anne Lawson, General Counsel and Senior Director, Mr. François Leblanc, Director, Political Financing and Audit, Ms. Karen McNeil, Legal Counsel, and Ms. Nicole Sloan, Analyst, Policy and Parliamentary Affairs.

Table B – Other Substantive Recommendations

B1. Statement of electors who voted

Provisions in the CEA: 2, 162(*i.1*), 291

This recommendation seeks to remove statements of electors who voted (known as "bingo sheets") from the definition of election documents in section 2(1) of the CEA. This would permit Elections Canada to manage a central distribution process after the election, if required.

Currently, bingo sheets are defined as election documents in section 2(1) of the Canada Elections Act. Election documents are heavily protected under the CEA, and include such documents as ballots, registration certificates, nomination papers and the writ of election.

Bingo sheets are completed by poll clerks and provided to candidates' representatives every hour on election day. At the end of the election, Returning Officers (ROs) must make all bingo sheets available to candidates and parties on request. However, bingo sheets that are returned to Elections Canada become election documents, which cannot be accessed except by court order. There is no reason to afford such protection to bingo sheets, and this protection prevents Elections Canada headquarters from coordinating their distribution to parties and candidates centrally after the election.

The Committee agrees with this recommendation.

B3. Assistant Chief Electoral Officer
Provisions in the CEA: 4(*b*), 19 and 21

This recommendation proposes that all references in the CEA to the Assistant CEO be deleted.

The CEA provides for the position an Assistant CEO, which is a Governor in Council appointment. However, all other Elections Canada staff are hired by the CEO, the Assistant CEO position has no specific statutory mandate, and the position has not been filled since 2001.

This recommendation was made twice previously by the CEO, in 2001 and 2005.

The Committee agrees with this recommendation.

B4. Voting by federal inmates
Provision in the CEA: 4(*c*) and 246 to 247

This recommendation contains two complimentary proposals: that section 4(*c*) of the CEA be repealed, as required by the Sauvé decision;[2] and that provisions be added to Division 5 of Part 11 to establish a voting process for electors who are incarcerated in federal institutions that is similar to what is already in place for provincial institutions.

In the Sauvé decision in 2002, the Supreme Court of Canada declared the provision preventing federal inmates (incarcerated persons serving a sentence of two years or more) from voting was of no force and effect, but section 4(c) has never been repealed. Provisions of an act that are declared unconstitutional remain in the act until they have been removed by legislation passed by Parliament.

The CEO has used his statutory authority under section 179 to design a process for voting by federal inmates that is similar to the process in sections 246 and 247 of the CEA for persons incarcerated in provincial correctional institutions.

The Committee agrees that the use of the CEO's discretionary power under section 179 is meant for extraordinary situations, and its ongoing use as the means to provide for a process through which federal inmates can vote is not desirable. The Committee, therefore, agrees with the CEO's recommendation.

B5. Publication of written opinions, guidelines and interpretation notes
Provisions in the CEA: 16.1 and 16.2

This recommendation proposes to create a distinction for the publication requirements and timelines between guidelines and interpretation notes issued by the CEO regarding

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2 Sauvé v. Canada (Chief Electoral Officer), 2002 SCC 68.

the application of the CEA, on the one hand, and written opinions issued by the CEO, on the other.

Currently under the CEA, guidelines and interpretation notes must be published for 30 days on the Elections Canada website before they are issued and placed in the registry. Guidelines and interpretation notes are not binding and are issued for information purposes only; as such, this notice period serves no purpose. For guidelines and interpretation notes, the recommendation proposes that the requirement for the CEO to publish them before they are officially issued be deleted. In the case of written opinions, the recommendation proposes to maintain the requirement for pre-publication.

Further, the timelines for Elections Canada to consult with political parties and the Commissioner of Elections Canada, and to issue the final documents, have not proven achievable. In practice, Elections Canada has allowed the consultation period to last 45 days, a lengthened time period which political parties have indicated is necessary for them to provide feedback. More time is also needed to allow Elections Canada to finalize these documents, including editing and translating them and fulfilling electronic publication requirements.

In the case of guidelines and interpretation notes, the recommendation proposes that the consultation period with the Commissioner of Elections and political parties ought to be lengthened to 45 days from 15, and the overall production deadline should be deleted.

In the case of written opinions, the CEO's recommendation takes into account the practical document production challenges need to be balanced against the importance of their timely production, in order for them to remain useful. As such, the recommendation proposes to lengthen the consultation period for written opinions to 30 days from 15, and the period for the overall production or written opinions be lengthened to 90 days from 60.

The Committee agrees with this recommendation.

B6. Restrictions on use and disclosure of personal information by election officers
Provision in the CEA: 23(2) and 111(*f*)

This recommendation proposes to prohibit election officers from using or disclosing personal information they obtain in the course of their duties, other than for a purpose related to the performance of those duties. The Commissioner proposed this recommendation to the CEO.

Currently, the CEA restricts the use of personal information contained in a list of electors (paragraph 111(f)) and the communication of information obtained by election officers during the course of their duties (subsection 23(2)).

However, in executing their duties under the CEA, election officers can be presented with personal information from electors that come from a source other than a list of electors. The CEO recommends that the provision in the CEA that prohibits communication of

information obtained by election officers during the course of their duties should be broadened to prohibit the disclosure and improper use of that information.

The Committee agrees with this recommendation.

B7. Appointment of Assistant Returning Officers
Provisions in the CEA: 26(1)

This recommendation proposes to make the appointment of an assistant returning officer (ARO) by a returning officer (RO) be subject to the CEO's approval.

Currently, ROs have complete discretion in appointing their Assistant Returning Officer (ARO). The ARO role is of high importance to the conduct of an election in an electoral district; he or she must be ready to replace the RO in all circumstances. Yet under the CEA, the CEO does not have a direct relationship with AROs or any involvement in their selection. The CEO's report states that, in some cases, this had created difficulties for the CEO. It was further noted by Elections Canada officials that under some provincial statutes, the CEO is responsible for hiring both the RO and the ARO.

The Committee agrees with the CEO's recommendation. The Committee additionally recommends that, in the event the CEO withholds his or her approval of an ARO, the CEO must provide an explanation in writing containing the reason or reasons for withholding approval. The Committee flags this recommendation as one it expects Elections Canada to monitor and report on to the Committee at the earliest opportunity.

In its deliberations on the CEO's recommendation, the Committee also discussed the merits of having criteria be developed that AROs must meet in order to be hired. The Committee does not make any recommendations regarding this matter. The Committee, nonetheless, places importance on having the hiring process for the ARO be as objective and fair as possible. The Committee also considered recommending that the CEO be provided with the power to approve the hiring of an ARO, provided this approval shall not be unreasonably withheld. The Committee does not, however, make any recommendations regarding this matter.

B8. Appointment of revising agents
Provision in the CEA: 33(3) and 100(1)

This recommendation proposes to delete the requirement in the CEA that revising agents must always work in pairs. Instead, sections 33(3) and 100(1) should authorize the CEO to determine in which situations revising agents will work in pairs and instruct ROs accordingly.

Currently, under the CEA, revising agents are required to work in pairs, made up as much as possible of partisan nominees from different parties. Historically, enumerators worked in pairs as a measure to prevent partisan conduct during the door-to-door enumeration process.

The revision process has, however, changed and the CEO's report indicates that there is no longer a need for revising agents to work in pairs in all cases to ensure the integrity of the lists of electors. Integrity is ensured under the CEA in other ways: the RO or ARO must approve all changes made to the lists, and revising agents work under a revision supervisor. Elections Canada officials told the Committee that having revising agents always work in pairs is impractical, noting for example that revising agents must presently sit two-by-two in returning offices to work on the computer and take information by phone.

The Committee agrees with this recommendation.

B10. Withdrawal of a writ in case of disaster
Provisions in the CEA: 59

This recommendation proposes to authorize the CEO to recommend to the Governor in Council that an election in any electoral district be postponed for a maximum period of one week, rather than cancelled altogether, in circumstances where a postponement is practicable. Further, when a writ is withdrawn and a new writ must be issued, it should be clear in the CEA that the Governor in Council, not the CEO, is responsible for setting the date for a new election in that electoral district.

Currently, the CEA provides that the writ in any electoral district may be withdrawn by order of the Governor in Council where the CEO has certified that it is impracticable to conduct an election because of "flood, fire or other disaster." When a writ is withdrawn, the election period for the affected electoral district must be entirely restarted, with all the attendant costs, time delays and political financing considerations.

As such, the CEO's report states that it would be preferable to have the option of postponing election day for up to seven days, rather than withdrawing the writ entirely in an electoral district. Elections Canada officials provided information to the Committee about the various provincial electoral regimes that allow postponements.

In addition, in cases where the writ is withdrawn, the CEO's report states that the CEA should affirm that the Governor in Council retains the authority to order the issue of a new writ. The wording of the current provision suggests that the CEO might bear this responsibility.

The Committee agrees with both elements of this recommendation.

B11. Notice of election
Provision in the CEA: 27, 62, 67, 77, 130, 293, 548 and Form 2 in Schedule 1

This recommendation proposes to repeal the requirement in section 62 of the CEA for ROs to publish a Notice of Election. Repealing this requirement requires a series of consequential amendments to remove all references in the CEA to the Notice of Election (sections 27, 67, 77, 130, 293 and 548), including Form 2 in Schedule 1, which prescribes the notice's format.

Currently, ROs must issue a Notice of Election with certain basic information about the timing of the election, the validation of results and the location of the RO office. According to Elections Canada, this is an antiquated requirement that no longer serves to effectively inform electors. In practice, the notice is merely posted in the RO's office and mailed to candidates.

More usefully, Elections Canada disseminates relevant information on its website and by other means, such as the voter information card. When elections are called, the website is updated with all the information that must be included in the notice, except for the date and time of the validation in each electoral district, which could easily be added. The CEO's report suggests that deleting the requirement for ROs to issue a Notice of Election would allow them to focus on more important tasks.

The Committee agrees with the Elections Canada officials that electors currently inform themselves about elections in numerous other ways beyond looking at a notice posted at the RO's office. As such, the Committee agrees with the recommendation to repeal the requirement in section 62 for ROs to publish a Notice of Election.

B16. Transfer certificates
Provisions in the CEA: 158 and 159

This recommendation makes several similar or related proposals: that the CEA be amended to make it clear that transfer certificates can be used to vote at advance polls; that election officers who work at advance polls be entitled to obtain transfer certificates to vote there; and that any election officer working at a polling station, as well as the RO and ARO, should be authorized to issue a transfer certificate.

Under the CEA, transfer certificates allow electors who are unable to vote at their assigned polling station, for one of several specified reasons, to vote at another polling station. It is currently unclear whether transfer certificates issued under sections 158 and 159 can be used at advance polls.

As well, section 158 only permits election officers who work on polling day to obtain transfer certificates, not those who work at advance polls. Finally, under subsection 158(2), only an RO or ARO may issue a transfer certificate to an election officer.

The Committee agrees with all parts of the CEO's recommendation.

B19. Advance poll – closing procedure
Provision in the CEA: 175

This recommendation proposes to replace sections 175(2) and (3) of the CEA with a provision indicating that, on each day of advance polls, the DRO must close the polling station and seal the ballot box and envelopes in accordance with instructions prepared by the CEO.

The current regime was put in place in 2014 when the CEA was amended to require that separate ballot boxes be used for each day of advance polls and another box is required for keeping supplies. The CEO's report states that while in certain cases it may be desirable to use extra ballot boxes due to a large number of electors, the use of multiple boxes generally renders opening and closing procedures complex, and creates a physical burden in terms of the number of boxes the DRO must carry. In many cases, the large number of boxes and accompanying paperwork is unnecessary. As such, the report states that the CEO should retain some flexibility for streamlining the number of ballot boxes used at advance polls where possible.

The Committee agrees with this recommendation.

B20. Voting by incarcerated electors
Provision in the CEA: 177, 246 and 247

This recommendation contains two separate elements regarding the voting opportunities provided to incarcerated electors. Each element of the recommendation will be discussed in turn

First, under the CEA at current, Division 5 of Part 11 sets out the Special Voting Rules that allow incarcerated electors to vote. It applies specifically to electors confined in "correctional institutions." However, the CEA does not define this term. As a result, Division 5 does not necessarily apply to some electors who should logically be covered, insofar as they are confined and cannot vote at the polls nor easily vote by regular mail.

The CEO's report recommends that a definition of "correctional institution" be added to the CEA. This definition should expressly enumerate the institutions contemplated for the purposes of Division 5. The CEO's report states that this definition needs to be broad enough to include electors confined in a variety of institutions, such as a prison, jail, correctional centre, correctional facility, penal institution, secure youth custody facility, detention centre, remand centre, lock-up or other place designated or established pursuant to an Act of Parliament or of a legislature for the confinement of an elector upon arrest, pending or following a court hearing.

However, the definition should not include residential facilities that provide accommodation to offenders who are on parole, conditional release or temporary absence, or living in a halfway house, as persons in these facilities are not confined and are able to vote at the polls or by mail. The report further states that the definition should also not include addictions treatment facilities, and hospitals or other health institutions operated for the care of people who have a disease, injury, sickness, disability or mental disorder. These electors can be served as part of Elections Canada's hospital voting program.

The Committee agrees with this part of the recommendation.

Lastly, the CEO’s report recommends that sections 246 and 247 of the CEA be amended to ensure that the references to responsible ministers cover all provincial ministers who have oversight over potential electors in Division 5, including youth. Elections Canada officials told the Committee that this part of the recommendation addresses the reality that, in the provinces, some ministers responsible for corrections are not necessarily also responsible for young offenders.

The Committee agrees with this part of the recommendation as well.

B23. Deadline for applying to vote by special ballot
Provision in the CEA: 232

This recommendation seeks to authorize the CEO to extend the deadline for receiving applications beyond the sixth day before election day, to no later than the day before election day.

Currently, the CEA provides that an elector who opts to vote under division 4 of the Special Voting Rules must have their application to vote by special ballot received by the Special Voting Rules Administrator (SVRA) or RO no later than the sixth day before election day. Special ballot voting cannot be initiated after this deadline.

The current deadline of the sixth day before election day was presumably set to allow enough time before election day for the lists of electors to be updated to indicate who has received a special ballot. However, if electronic lists are used at the polls in the future, it may be operationally feasible to add updates about special ballot voting closer to polling day. Elections Canada officials told the Committee that in certain circumstances, the current deadline can prevent eligible electors from voting, such as, for example, an elector who is hospitalized after the sixth day before election day and who must remain in the hospital until after election day.

The Committee agrees with the CEO’s recommendation.

B24. Advertising “using a means of transmission of the Government of Canada”
Provision in the CEA: 321

This recommendation proposes to clarify the purpose of, or repeal, section 321 of the CEA, which states: “No person shall knowingly conduct election advertising or cause it to be conducted using a means of transmission of the Government of Canada.”

The Commissioner has suggested to the CEO that he would welcome a clarification of the scope of this provision. The CEO recommends that the scope of the provision be clarified, or that the provision be repealed.

The CEO’s report states that this provision deals specifically with the way that election advertising is transmitted, and not with its content. The report notes that it is not clear what this prohibition is meant to cover beyond what is already prohibited by the Policy on

Communications and Federal Identity and the Directive on the Management of Communications.

The provision appears to have been created in the 1970s to complement an advertising blackout at the start of the election period, which no longer exists.

The Committee considers this provision to no longer serve a purpose and therefore recommends that it be repealed.

B25. Opinion polls and election surveys
Provisions in the CEA: 326

This recommendation seeks to make several related changes to the CEA regarding the requirements for transmitting opinion polls and election surveys.

First, the recommendation proposes that the requirement for survey sponsors to provide additional information in a written report be deleted.

Currently under the CEA, the first person who transmits the results of an election survey (for example, an opinion poll), or anyone else who transmits them within 24 hours, must provide background information about the survey. This includes the date on which the survey was conducted, the population surveyed and the margin of error.

For all means of transmission other than broadcasting, additional information must be provided, including the wording of the questions asked and how to obtain a detailed written report on the survey. No matter how the survey results are transmitted, the survey sponsor must make this report available to anyone upon request.

The CEO's report states that the requirement for a written report is onerous. It would be less of a burden on the sponsor, and more useful to electors, if the report were in electronic format. A link to the report or information on how to obtain it could be provided in the case of all means of transmission, including broadcasts.

The recommendation also proposes that the obligation to provide a website address or link to where the additional information can be found ought to apply to all persons, including broadcasters, who first transmit the results or who transmit them within the next 24 hours.

The Committee agrees with both parts of the CEO's recommendation.

B26. Broadcasting outside Canada
Provisions in the CEA: 330

This recommendation deals with the prohibition in the CEA on persons using a broadcasting station outside of Canada with the intent to influence Canadian electors to vote or refrain from voting at an election or for a particular candidate.

The Commissioner has recommended to the CEO that this provision ought to be amended to limit its scope. The prohibition in the CEA on broadcasting outside Canada should not capture broadcasting stations that transmit broadcasting signals to the United States for retransmission (and termination) in Canada. In such situations, the broadcasting signal is transient; the sole goal of routing the signal this way is to better reach Canadian audiences.

As such, the CEO's report recommends that section 330 be amended to exclude situations where, at any point, the signal is carried by a broadcaster subject to the Canadian government's broadcasting policies and regulations (for instance, where a broadcast signal originates in Canada and is destined for Canadian audiences, but is retransmitted via a foreign broadcasting station).

The Committee agrees with this recommendation.

B28. CRTC publication of registration notices relating to voter contact calling services

Provision in the CEA: 348.12

This recommendation proposes to change the publishing time for registration notices relating to voter contact calling services published by the CRTC, from 30 days after election day to as soon as feasible. For greater certainty, the CEA ought to also provide that the notices may be published during an election period and may be published even if they only include partial information. The Canadian Radio-television and Telecommunications Commission (CRTC) recommended to the CEO that this change be included in his report.

Currently, the requirement in the CEA is that the CRTC publish registration notices that it receives in relation to voter contact calling services, but no earlier than 30 days after election day.

During the 42nd general election, Canadians who received calls from various political entities called the CRTC to ask whether these entities were properly registered. The CEO's report states that these callers needed the information during the election period, but because the CEA does not require timely publication of the registration notices, Canadians were prevented from independently ascertaining whether entities providing the calling services were properly registered, until after the election.

The Committee agrees with the CEO's recommendation.

B29. Requirement to keep lists of numbers called

Provisions in the CEA: 348.16 to 348.19

This recommendation proposes to amend the CEA to add a requirement for certain persons or groups to retain lists of telephone numbers called and file them with the CRTC. This requirement would apply to calling service providers and others under the CEA who

are entitled to conduct voter contact calls, as well as to the entities for whom the calls are being made.

Currently, no requirement exists under the part of the CEA that regulates voter contact calling services to keep lists of telephone numbers called and provide them to the CRTC. The CEO's report states that this information could prove extremely useful for investigations into breaches of the voter contact calling rules or of the CEA's other rules on transmitting information to electors. The CEO made a recommendation on this issue in 2013. The CEO's report also notes that the Commissioner and the CRTC agree with this recommendation.

The Committee agrees with this recommendation.

B30. Third party election advertising reports
Provisions in the CEA: 361, 382, 496 and 541

This recommendation proposes to make the third party regime for election advertising reports consistent with the candidate and party regimes, by means of the following changes:

- add a provision allowing a third party to request extensions of the filing deadline for its election advertising report;
- allow the CEO to require corrections to an election advertising report, and allow a third party to request corrections to its own report (section 361);
- require the publication of the revised report (section 382);
- include third party reports in the list of documents that are public records and that may be inspected by any person on request (section 541); and
- section 496, which is the relevant offence provision, would need to be updated as a consequence of these changes.

According to the CEO's report, the CEA's rules for third party election advertising reports, specifically, the rules about filing deadlines, corrections, the publication of revised reports and public access to reports, are out of step with the regime in place for candidate and party returns. Meanwhile, the number of third parties registered with Elections Canada increased in the 42nd general election from 54 in the previous election to 114. The CEO's report states that the more of a role third parties play in elections, the more striking it is that they are not subject to the same obligations as other political participants.

The Committee agrees with the CEO's recommendation.

B31. Length of party name
Provisions in the CEA: 385(2)

This recommendation proposes to give the CEO the authority to limit the length of party names on the ballot in order to ensure that the ballot is legible.

Currently under the CEA, there is no limit to the length of a party name as it appears on the ballot, called its “short-form” name. The CEO’s report states there is a risk that parties will choose to use longer and longer “short-form” names (for example, to include slogans), and that this will impact the readability of the ballot.

The Committee raised some concerns about Elections Canada needing to provide clarity and certainty about the maximum length of a party name that it will permit. Officials from Elections Canada told the Committee that any issues related to the length of a party’s short-form name would be dealt with at the time a party registers with Elections Canada. This information alleviated the Committee’s concerns. As such, the Committee agrees with this proposal.

B32. Political party expenses
Provisions in the CEA: 437

This recommendation proposes to authorize the CEO to request that political parties provide any documents and information that may, in the CEO’s opinion, be necessary to verify that the party and its chief agent have complied with the requirements of the CEA with respect to the election expenses return.

The CEO’s report points out that currently under the CEA, unlike candidates, political parties are not required to provide documents to prove the expenses set out in their election expenses return. The report states that Elections Canada needs such documents to properly review party returns to ensure that the transparency sought by the CEA is being achieved. Further, Elections Canada officials told the Committee that over $60 million in direct public subsidies were paid to political parties following the last general election. For candidates, who, unlike parties, are required to provide documentation, the projected amount of reimbursement for the last general election is $37.6 million. In addition, in 2015 the estimated cost of tax credits, which reflect individually documented and receipted contributions to political entities, was $35 million.

The CEO has twice previously (in 2005 and 2010) recommended that parties be required to provide some evidence of their expenses. This is in the interests of transparency and would ensure that the subsidy is being properly paid out. As an alternative, the CEO recommended in 2010 that party auditors be given increased responsibility to consider whether the parties they audited have complied with their statutory reporting obligations.
In 2014, the Act was amended to enhance party auditors’ responsibilities. Nonetheless, Elections Canada officials noted that their organization continued to believe that, as a matter of transparency and because of the large amount of public money at issue, parties ought to be required to produce documentation evidencing the expenses claimed in their returns on the CEO’s request.

The Committee agrees with the CEO’s recommendation.

B34. Candidate bank account
Provisions in the CEA: 477.46(1)

This recommendation proposes to remove the requirement for candidates who conduct no financial transactions to open a separate bank account for the campaign.

The CEO's report notes that many candidates conduct no financial transactions during the campaign, but are still required to open a bank account by law. The CEO also made this recommendation in 2001 and 2010.

In discussing the matter with Elections Canada officials, the Committee decided there was merit in extending the CEO's recommendation to cover nomination contestants and leadership contestants.

Elections Canada officials told the Committee that a similar recommendation was made in 2010 by the CEO regarding candidate bank accounts. Specifically, recommendation *II.13 Bank Account and Audit of a Candidate's Campaign Return,* made in the CEO's report entitled *Responding to Changing Needs – Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election*, tabled in the House on June 10, 2010, contains a proposal related to candidate bank accounts and the audit of a candidate's campaign return. In respect of candidate bank accounts, this recommendation proposes that candidates who conduct no financial transactions should not be required to open a separate bank account. The use of the term "candidate" in the recommendation regarding the requirement to open a separate bank account also refers to leadership contestants and nomination contestants.

The Committee considered the matter and agrees with the CEO's 2016 recommendation and the part of the CEO's 2010 recommendation that deals with candidate bank accounts.

B35. Exceeding expenses limit
Provisions in the CEA: 477.47(5), 477.48 and 477.52

This recommendation proposes to amend the CEA to provide that candidates may incur election expenses only in accordance with written authorization from the official agent, as is already the case for any other person authorized by the official agent to incur expenses on behalf of the campaign. The intention of this recommendation is to make it easier to enforce the existing prohibition against exceeding the limit.

Currently, the CEA provides that no candidate, official agent or other person with authority to incur expenses shall exceed the election expenses limit.

The Commissioner, who supports this recommendation, has indicated that the way this prohibition is worded can create challenges in enforcement, as it is sometimes difficult to prove which expense, incurred by whom, pushed the campaign over the limit. Because the official agent and the candidate can incur expenses or cause them to be incurred

independently from one another, it may be impossible to enforce the spending limit where there was no coordination between the persons allowed to incur expenses.

The Committee agrees with the CEO’s recommendation. In addition, the Committee recommends that Elections Canada develop a form letter for the use by official agents in giving authorization to a person to incur election expenses. The Committee also notes that its deliberations on this matter did not cover whether Parliament may also wish to consider a similar amendment with regard to the election expenses of political parties. As such, it has no recommendations to make on this matter.

B37. Suspension of members of the House of Commons for non-compliance
Provision in the CEA: 477.72(2)

This recommendation proposes to amend the CEA to provide a two-week grace period for all elected candidates who fail to produce, correct or revise their electoral campaign returns within the prescribed or extended deadlines.

Currently under the CEA, some elected candidates who fail to produce, correct or revise their electoral campaign returns by the applicable deadline or any extension to that deadline have the benefit of a grace period before they can be precluded from voting and sitting in the House of Commons, whereas others do not.

Only a member who fails to make, within the specified period, a correction or a revision requested by the CEO under subsection 477.65(2) is entitled to such a grace period. The member is suspended not when the filing deadline has passed, but two weeks after the end of the period for making the correction or revision if the candidate has not applied to a judge to be relieved from complying with the CEO’s request (or, if the candidate has applied, when the application is denied by a judge).

The CEO’s report states that the same rule should apply to all cases of members not complying with the CEA’s filing rules.

The Committee agrees with the CEO’s recommendation.

B38. Independent candidates’ surpluses
Provision in the CEA: 477.82 to 477.84

This recommendation proposes a process that would allow an independent candidate’s surplus of funds following a general election to be held in trust by the CEO until the next general election. Under this recommendation, if the candidate is nominated in that next general election (or any intervening by-election) as an independent or non-affiliated candidate, the money will be paid to the candidate’s campaign. If the candidate is not nominated in the next general election, or is endorsed by a party, the funds should revert to the Receiver General. The CEO made a similar recommendation in 1996 and 2001. Currently under the CEA, independent candidates must dispose of any surplus of electoral funds to the Receiver General. This is in contrast to candidates endorsed by a party, who

are able to dispose of their surplus to either their party or their party's EDA in the electoral district. The difference in treatment means that candidates of registered parties can have surplus funds available to them for a future election, but independent candidates cannot.

The Committee agrees with the process proposed by the CEO, as it serves to level the playing field between candidates representing political parties and those who run as independents. However, the Committee recommends three additional elements be added to the CEO's recommendation. First, the Committee recommends that an independent candidate's surplus of funds be made available to the candidate, under this provision, provided they remain independent candidates. Second, the surplus funds ought to be made available to the independent candidate in any electoral district in the country. Lastly, the surplus funds ought to be made available to the independent candidate for the period of three general elections, as opposed to the shorter period one general election proposed by the CEO. The Committee's recommended period of three general elections can only be shortened if the independent candidate notifies Elections Canada that he or she no longer desires to run in a future federal election or if he or she becomes deceased. Elections Canada officials are in agreement with these recommendations made by the Committee.

B39. Maintaining order at the polls
Provision in the CEA: 479

This recommendation proposes to delete from the CEA an election officer's power of arrest at the polls without a warrant, the election officer's use of force and listing procedures in the event of an arrest. An amended section 479 would continue to make it clear that the relevant election officer has the power to maintain order at the polls and may order a person to leave if the person is committing or reasonably believed to be committing an offence.

Currently, the provisions in the CEA for maintaining order at an RO office or at a polling place grant considerable powers, including forcible ejection or arrest of a person.

The CEO's report states that these provisions are complex, call for a difficult exercise of judgment, and require election officers to perform duties for which they are not trained and likely cannot be adequately trained, given the extent of their current duties and skill sets. The potential risks arising from section 479 include violence and injury as well as violation of fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms*. Elections Canada officials told the Committee that arrest and use of force are outside the domain of an average election officer and that Elections Canada hesitant to instruct election officers to use the powers. Local law enforcement officials are better trained and equipped to perform these functions.

The Committee agrees with the CEO's recommendation.

B40. Impersonation offence
Provision in the CEA: 480.1

This recommendation proposes that a new provision be added to the CEA to establish a specific offence for the creation and distribution of false candidate or party campaign communication material, including false websites or other online or social media content, with the intent to mislead electors.

Currently, it is an offence for a person, who has the intent to mislead, to falsely represent themselves as any of a listed set of individuals found in the CEA. The Commissioner has told the CEO that, based on his experience during the last general election, the provision is not specific enough to capture the distribution of false communication material, including the creation of false campaign websites or other online or social media content for the purpose of impersonating a party or candidate.

The Committee agrees with the CEO's recommendation but wishes to make clear that any new offence would not be used to punish incidents involving satire or comedy.

B41. Disclosure of correspondence with election officers and others
Provision in the CEA: 541

This recommendation proposes to delete the right of access to "all correspondence with election officers or others in relation to an election" from section 541 of the CEA. Instead, individuals ought to be allowed to request copies of this correspondence under the established federal access-to-information regime.

In his report, the CEO raises the concern that the requirement in the CEA that the CEO give the public access to "all correspondence with election officers or others in relation to an election" could lead to disclosures of sensitive personal information. The CEO has an obligation to make available to the public a wide variety of political financing reports and returns, as well as all instructions to election officers respecting their duties at the polls.

This requirement, while consistent with the need for transparency in the electoral process, is nonetheless out of step with the *Access to Information Act* and *Privacy Act*, which allow for a balance between disclosure of information and the protection of individual privacy.

The CEO's report states that it would be more appropriate to rely on that established regime to govern the disclosure of correspondence with election officers and others, rather than making such correspondence available to the public without restriction in all situations.

In response to concerns raised by the Committee, Elections Canada officials proposed to amend the CEO's recommendation to state that access to "all correspondence with election officers and others in relation to an election", as provided under section 541 of the CEA, be granted in accordance with the protections available for personal information under the relevant legislation. The Committee agrees with this proposal.

B42. Prohibition on partisan conduct by election officers and RO office staff
Provision in the CEA: n/a

This recommendation proposes that a new provision be added to prohibit anyone who is performing the duties of an election officer, or who is hired as a staff member of an RO, from encouraging a person to vote or not to vote for a particular candidate while the election officer or staff member is performing his or her duties. The Commissioner recommended this provision to the CEO.

Although ROs and field liaison officers are currently prohibited under the CEA from engaging in partisan conduct, there is no general prohibition on partisan conduct by other election officers in the performance of their duties.

The Commissioner has raised this as a gap in the CEA. A prohibition for election officers would have to be more targeted than the one applicable to ROs and field liaison officers, given that many other election officers do engage in partisan activities outside their electoral role.

The Committee discussed what would be an appropriate punishment for violating the prohibition recommended by the CEO. In response, the Elections Canada officials noted that s. 166(1)(*c*) of the CEA contains a prohibition against improper influence in a polling station that is similar in substance to the prohibition proposed by the CEO. As such, a similar punishment as that applicable to s. 166(1)(*c*) could be attached to the proposed prohibition. The Committee agrees with the CEO's recommendation and to the adoption of a similar punishment as that applicable to s. 166(1)(*c*).

B43. Privacy protection principles for parties
Provision in the CEA: n/a

This recommendation proposes add a provision to the CEA to withhold providing the list of electors to political parties until they obtain an assurance from an external management auditor attesting that the party has systems in place to protect the personal information of electors and that these systems respect generally accepted privacy principles. A party would need this assurance to continue to receive lists of electors from Elections Canada.

The CEO's report states that political parties and candidates are not subject to the basic privacy rules to which government bodies and private-sector business organizations must adhere. Political parties are entitled by law to receive lists of electors annually and at election time. These lists are used by the larger parties to update databases that contain personal information about millions of Canadians.

The Committee strongly agrees with the principle of protecting the privacy of individuals. The Committee, however, has concerns that the mechanism proposed in the CEO's recommendation for protecting personal information creates an undue administrative burden on candidates that must be complied with in order for them to receive the list of electors. The Committee further expressed concerns that differences exist in terms of data

sharing and consent in the political and electoral context and these would need to be recognized when developing generally accepted privacy principles. As such, the Committee disagrees with the CEO's recommendation.

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

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 49, 50, 51, 52 and 54) is tabled.

Respectfully submitted,

LARRY BAGNELL
Chair

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