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LEGISLATIVE SUMMARY

Bill C-23:

An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts

Publication No. 41-2-C23-E
24 February 2014
Revised 11 September 2014

Legal and Social Affairs Division
Parliamentary Information and Research Service

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative Summary of Bill C-23
(Legislative Summary)

Publication No. 41-2-C23-E

Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-23: AN ACT TO AMEND THE CANADA ELECTIONS ACT AND OTHER ACTS AND TO MAKE CONSEQUENTIAL AMENDMENTS TO CERTAIN ACTS*

1 BACKGROUND

Bill C-23, An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts (short title: Fair Elections Act) was introduced in the House of Commons by the Minister of State (Democratic Reform), the Honourable Pierre Poilievre, and received first reading on 4 February 2014.

The bill proposes various amendments to numerous aspects of the *Canada Elections Act* (CEA),[1] along with related amendments to various statutes, such as the *Telecommunications Act* (TA),[2] the *Electoral Boundaries Readjustment Act*,[3] and the *Director of Public Prosecutions Act*.[4] The amendments relate to the office of the Chief Electoral Officer of Canada (CEO), preparation for the vote, voting procedures, communications with electors, campaign financing, enforcement and prohibitions and the office of the Commissioner of Canada Elections, among other matters.

The changes proposed in the bill derive from a number of sources. They are, in part, a response by the government to a series of recommendations proposed by the CEO in his report to Parliament following the 40th federal general election.[5] The House of Commons Standing Committee on Procedure and House Affairs (the Committee) supported many of the recommendations in its study of the report during the 1st Session of the 41st Parliament.[6] Other amendments contained in the bill respond to reports prepared for or by Elections Canada which address concerns about irregularities in voting procedures and allegations of deceptive and unlawful voter contact practices during the 41st general election.[7] These reports include *Preventing Deceptive Communications with Electors: Recommendations from the Chief Electoral Officer of Canada Following the 41st General Election*,[8] and *Compliance Review: Final Report and Recommendations*.[9]

Some of the amendments proposed in the bill also formed part of other proposed legislation:

- Bill C-21, The Political Loans Accountability Act, which was read a second time and referred to the Committee in October 2012, but died on the *Order Paper* when Parliament was prorogued in September 2013; and
- Bill C-40, the Expanded Voting Opportunities Act, which died on the *Order Paper* without having received debate at second reading, when Parliament was prorogued in December 2009.

Finally, a number of amendments are government initiatives.

2 DESCRIPTION AND ANALYSIS

2.1 OFFICE OF THE CHIEF ELECTORAL OFFICER (CLAUSES 3 TO 11, 112 TO 124, 127, 136 AND 145)

2.1.1 TERM OF OFFICE (CLAUSES 3 AND 127)

The CEA gives the CEO considerable security of tenure. He or she is responsible to Parliament, rather than to the government; holds office until the age of 65; and can be removed only for cause and only by the Governor General upon a joint address of the Senate and the House of Commons.

Clause 3 limits the CEO's tenure to a 10-year term by amending section 13 of the CEA. Clause 127 is a transitional provision which states that the current CEO may continue to hold office until the age of 65. As a result of amendments made at the House of Commons committee stage, CEOs who have served in that position cannot be reappointed (new section 13(2)).

2.1.2 ADMINISTRATION OF PROVISIONS REGARDING VOTER CONTACT CALLING SERVICES (CLAUSE 4)

As discussed in section 2.4.3.4 of this Legislative Summary, the CEO will not have the authority to administer the new provisions regarding voter contact calling services (clause 76). Pursuant to new section 348.1, the Canadian Radio-television and Telecommunications Commission will be responsible for the administration and enforcement of these provisions.

2.1.3 GUIDELINES, INTERPRETATION NOTES AND OPINIONS

Clause 5 of the bill adds a series of provisions to the CEA requiring the CEO to issue to the various political entities whose electoral activities are regulated by the amended CEA non-binding guidelines and interpretation notes on the application of the legislation. The CEO is also required to provide binding written opinions on the application of the CEA at the request of registered political parties.

2.1.3.1 GUIDELINES AND INTERPRETATION NOTES (CLAUSE 5)

New section 16.1 requires the CEO to issue non-binding guidelines and interpretation notes regarding the application of the CEA to registered political parties, registered associations, nomination contestants, candidates and leadership contestants.[10] The obligation to issue these notes can arise from two sources: the CEO's own initiative (new section 16.1(1)) or the application of the chief agents[11] of registered political parties (new section 16.1(2)). Chief agents of political parties may request the CEO's guideline or interpretation on the application of any provision of the CEA to registered parties, registered associations, nomination contestants, candidates and leadership contestants (new section 16.1(2)). A new body, the Advisory Committee of Political Parties (discussed in section 2.1.3.4 of this Legislative Summary), is to be consulted before the issuance of any guideline or interpretation note (new section 16.1(3)).

As a result of amendments made at the House of Commons committee stage, the Commissioner must also be consulted before the issuance of any guideline or interpretation note. The Commissioner and the Advisory Committee have 15 days to provide written comments.

It appears that only registered political parties (through their chief agents) have the right to submit an application to the CEO under new section 16.1(2).

2.1.3.2 Opinions (Clause 5)

New section 16.2(1) will enable chief agents of registered political parties to require the CEO to issue an opinion on an activity or practice that the party or its registered associations, candidates, nomination contestants or leadership contestants propose to engage in. The Advisory Committee of Political Parties (discussed in section 2.1.3.4 of this Legislative Summary) is to be consulted in preparing an opinion (new section 16.2(2)).

As a result of an amendment made at the House of Commons committee stage, the Commissioner must be provided with the proposed opinion. Prior to this amendment, only members of the Advisory Committee were to be given the proposed opinion. Those members and the Commissioner have 15 days to provide written responses (compared with the original period of 30 days).

The bill originally provided that if the material facts provided to the CEO in the application are complete and accurate, the opinion is binding on the CEO and the Commissioner for as long as the facts remain substantially unchanged and the practice is carried out substantially as proposed (new section 16.2(6)).

Amendments made at the House of Commons committee stage narrow the effect of an opinion, so that an opinion is only binding with respect to the activity or practice of the party (or its registered associations, candidates, nomination contestants or leadership contestants) in question. Otherwise, for other purposes, the opinion is not binding on the CEO and the Commissioner, but it has precedential value for them until a contrary interpretation is issued by means of a guideline, an interpretation note or an opinion (new sections 16.2(7) and 16.2(8)).

Therefore, it appears that if, in an opinion, the CEO approves of the activity or practice, the registered party will be able to rely on the CEO’s opinion and engage in that activity or practice, provided that the material facts presented to the CEO are accurate and continue to be so.

Opinions may be superseded by a subsequent contrary guideline, interpretation note, or opinion issued by the CEO. The superseding interpretation becomes binding on the date it is issued (new section 16.3).

2.1.3.3 Disclosure of Documents or Information by the CEO to the Commissioner (Clauses 5.1 and 117)

At the House of Commons committee stage, clause 5.1 (new section 16.5) was added. This new provision states that the CEO may disclose any document or information obtained under the CEA to the Commissioner, if the CEO considers that it would be useful to the Commissioner in the exercise of his or her powers, duties and functions. The Commissioner may also require the CEO to disclose documents or information obtained under the CEA if the Commissioner believes that it is necessary for the exercise or performance of his or her powers, duties and functions.

An amendment to clause 117 (new section 540(4.1)) at the House of Commons committee stage enables the CEO to share information contained in the Register of Electors with the Commissioner to enable the Commissioner to exercise his or her powers, and to perform his functions and duties under the CEA.[12]

2.1.3.4 Advisory Committee of Political Parties (Clause 11)

Clause 11 adds new section 21.1 to the CEA and establishes an Advisory Committee of Political Parties. The Advisory Committee is comprised of the CEO and two representatives of each registered political party (new section 21.1(1)).[13] It is to meet at least once a year, and the CEO is to preside over the meetings (new section 21.1(4)).

This provision does not differentiate between parties of different sizes. Each registered party is entitled to appoint two members to the Advisory Committee. There are currently 17 registered political parties in Canada.[14] Assuming this number does not vary, the Advisory Committee will have 35 members, including the CEO.

According to new section 21.1(2), the purpose of this committee is to provide the CEO with advice and recommendations relating to elections and political financing. The Advisory Committee's advice and recommendations are non-binding on the CEO (new section 21.1(3)).

2.1.3.5 Pre-publication (Clause 5)

Before the CEO issues any guideline, interpretation note or opinion, it must be posted for 30 days on the CEO's website (new sections 16.1(5) and 16.2(4)). This step provides notice to affected parties before the guideline, interpretation note or opinion takes effect.

Where the CEO is responding to an application from a political party under new sections 16.1 and 16.2, the CEO must pre-publish her or his response. The bill originally stipulated that the response be published within 45 days of the application, or if there was overlap with a general election, 45 days after polling day for that election (new sections 16.1(6) and 16.2(4)).[15] Amendments at House of Commons committee stage extend the time within which the CEO must pre-publish his or her response. The CEO now must pre-publish a response in 60 days instead of 45.

2.1.3.6 Issuance by Registration (Clause 5)

New section 16.4 requires that the CEO establish and maintain a registry on the CEO's website. This registry contains all guidelines, interpretation notes and opinions issued by the CEO and all of the Commissioner's comments.

New sections 16.1(7) and 16.2(5) provide that once the pre-publication period has expired, the CEO is to register the guideline, interpretation note or opinion in the registry. The guideline, interpretation note or opinion is then considered "issued" by the CEO.

2.1.4 Power to Adapt the Legislation (Clause 6)

Section 17(1) of the CEA provides that, during an election period or within 30 days after it, the CEO may adapt any provision of the CEA if an emergency, an unusual or unforeseen circumstance or an error makes it necessary. Clause 6 of the bill amends section 17(1) of the CEA to limit the CEO's power to adapt the CEA "for the sole purpose of enabling electors to exercise their right to vote or enabling the counting of votes."[16]

A restriction in section 17(2) is also deleted by clause 6. The CEO currently cannot extend the hours during which a returning officer may receive nomination papers. The CEO may now use the adaptation power to do so.

2.1.5 Communications with Electors (Clause 7)

Clause 7 replaces section 18 of the CEA. The current section authorizes the CEO to implement public education and information programs "to make the electoral process better known," particularly for disadvantaged groups. In particular, section 18 provides that these programs can be aimed at persons or groups who are most likely to experience difficulties in exercising their democratic rights. Similarly, section 18(2) enables the CEO to use any form of media to disseminate information broadly on any aspect of the electoral process, the democratic right to vote and how to become a candidate.

New section 18(1) provides that the CEO's power to educate is limited to electoral processes, such as how to vote, how to become a candidate, how to be included on a voters' list, the identification requirements for voting and measures for assisting voters with disabilities. The reference to persons or groups who are most likely to experience difficulties in exercising their democratic rights is removed from the CEA.

At the House of Commons committee stage, new section 17.1 was added, and new section 18 was amended. The CEO's power to educate is now limited as follows:

- New section 17.1 enables the CEO to implement public education initiatives and information programs to make the electoral process better known to students at the primary and secondary levels;[17] and
- the CEO's power to "provide the public ... with information" has been replaced with the power to "transmit or cause to be transmitted advertising messages."

The advertising messages can still only address the electoral processes listed above. However, new section 18(1.1) was added to clarify that the CEO may advertise for any other purpose relating to the CEO's mandate.[18]

The CEO must ensure that any communications with electors under this section are accessible to persons with disabilities (new section 18(2)). In addition, the CEO cannot communicate with electors by way of unsolicited automated calls (new section 18(3)).

2.1.6 Alternative Electronic Voting Process (Clause 8)

Clause 8 grants the CEO broader powers to implement pilot projects on alternative voting processes (new section 18.1).The CEO recommended broadening his powers to allow pilot projects to test potential improvements to the voting system. The Committee agreed to the recommendations, and required that the CEO report to the Committee on pilot projects.[19]

Current section 18.1 allows the CEO to carry out studies on alternative voting means, and devise and test electronic voting processes with the approval of the committees of the Senate and House of Commons that normally consider electoral matters. Under new section 18.1, alternative voting processes may not be used for an official vote without prior approval of both committees. With respect to alternative *electronic* voting, prior approval of the Senate and the House of Commons is required before the process may be used for an official vote.[20]

2.1.7 Electronic Signatures (Clauses 9, 115 and 116)

New section 18.3 (clause 9) grants the CEO the authority to establish how a requirement in the CEA for a signature may be satisfied. The issue of electronic signatures was considered by the Committee in response to the CEO's 2010 recommendation to enable Elections Canada to implement a system of electronic signatures for various kinds of documents that participants in the electoral process are required to provide (party leader's endorsement and candidate's consent to be nominated for an election, among other documents).[21] The Committee supported the recommendation with a companion recommendation requiring the CEO to report to the Speaker of the House of Commons regarding how the requirement for a signature might be satisfied (clauses 115 and 116).[22]

2.1.8 Staffing Powers (Clause 10)

Clause 10 of the bill divides section 20 into two subsections:

- new section 20(1) authorizes the CEO to hire persons with specialized or technical knowledge or expertise in elections to assist the CEO in performing any of his or her powers, duties or functions on a casual or temporary basis and to set remuneration subject to Treasury Board approval; and
- new section 20(2) modifies the original provision (section 20) to specify that any additional temporary and casual election workers hired by the CEO for the preparation and conduct of an election would be subject to the *Public Service Employment Act* (PSEA).

Clause 10 appears to respond to a recommendation from the CEO following the 38th general election that section 20 be divided into two sections.[23] He recommended that the employees dealt with in the first part of the provision be hired from outside the scope of the PSEA while the second group of employees would be subject to the provisions of the PSEA dealing with casual and temporary employees. With respect to the latter, it may be noted that such employees were already subject to the PSEA, which had been amended in 2007 with the enactment of Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act.[24] This amendment made an exception to the length of time that casual employees may work for a particular government department or organization (90 days per calendar year) for Elections Canada's casual or temporary workers, extending that period to 165 days.[25]

The amendment to section 20 creates two groups of temporary employees subject to different employment rules: the first group would not be subject to the limitation imposed by the PSEA on temporary employees, while the second would continue to be subject to those limitations.

2.1.9 *Conflict of Interest Act* (Clause 145)

Clause 145 adds the CEO to the definitions of "public office holder" and "reporting public office holder" set out in section 2(1) of the *Conflict of Interest Act* (CIA).[26] Under the CIA, public office holders are required to avoid conflicts of interest, and recuse themselves in the event of a conflict. They may also not act in a manner that takes improper advantage of their office after their term ends.

Reporting public office holders are generally prohibited from engaging in commercial activities and from holding specific types of assets. They are also required to disclose their assets, make public declarations of conflicts of interest after a recusal, and declare some types of gifts. They must divest themselves of specific types of assets. Reporting officers are prohibited, for a specified amount of time after they leave office, from working for any entity with which they had had significant official dealings.

These related requirements and prohibitions now apply to the CEO.

2.1.10 Additional Duties of the Chief Electoral Officer

Part 21 of the CEA prescribes the various reports that the CEO must prepare for the Speaker of the House of Commons and for public dissemination. It also deals with a variety of responsibilities of the CEO, such as the payment of election expenses.[27]

2.1.10.1 Polling Division Reports (Clause 112)

Section 533 requires the CEO to prepare a report following each general election and by-election. Clause 112 requires that the CEO provide additional information, setting out the number of names added to or deleted from the official list of electors, as well as the number of corrections made to the list. The information is to be provided for each polling division.

As a result of an amendment at the House of Commons committee stage, the CEO is required to also report on the conclusions of the auditor engaged under new section 164.1 to perform an audit and report on whether deputy returning officers, poll clerks and registration officers have properly exercised their powers and duties under the voter identification provisions of the CEA. (See section 2.3.5 of this Legislative Summary.)

2.1.10.2 Reports to the Speaker (Clause 113)

For each general election and by-election, the CEO must provide a report to the Speaker of the House of Commons on any measures taken under his or her adaptation power in section 17 and any matters in relation to the office of the Commissioner of Canada Elections as set out in sections 509 to 513, since the issuance of the writ. The CEO may also report on any matter that he or she determines should be brought to the Speaker's attention since the last report (current section 534).

Section 534 is amended to provide that the CEO must also report on any measures taken or proposed to improve the accuracy of the lists of electors. In addition, references to the provisions governing the Commissioner of Canada Elections are removed.[28]

2.1.10.3 Fees and Expenses of Election Officers (Clauses 119 and 121)

In 2010, the CEO recommended a series of amendments to authorize the CEO to set the amount that may be paid for goods and services not covered by the Federal Elections Fees Tariff and that are required for an election; he also recommended amendments to authorize any additional sums the CEO considers fair and reasonable. In addition, he recommended that the Treasury Board's Travel Directive be directly incorporated in the CEA.[29] These changes would enable the adjustment of the amounts paid to elections workers where there are unforeseen expenses for these workers. Thus, clause 119 amends section 542 to grant the authorization sought by the CEO. A related amendment (clause 121) repeals section 545, which required Governor in Council approval for the payment of additional sums.

2.1.10.4 Electronic Payments (Clause 120)

Currently, all expenses relating to the conduct of an election are paid by way of cheque from the Receiver General. Clause 120, amending section 543, enables electronic payments.

2.1.10.5 Publication of Consolidated Versions of the CEA (Clause 124)

Clause 124 amends section 554(2) of the Act to require, upon the coming into force of any amendment to the legislation, that the CEO publish a consolidated version of the CEA on the Elections Canada website.

2.1.10.6 *Electoral Boundaries Readjustment Act* (Clause 136)

Clause 136 of the bill amends the *Electoral Boundaries Readjustment Act* to add a provision (section 28.1) which states that the CEO may, despite any other Act of Parliament, provide a variety of administrative support services (listed in the section) to commissions to assist them in performing their duties under the CEA.

2.2 Preparation for the Vote (Clauses 12 to 45)

This group of amendments affects Parts 3 to 8 of the CEA, which deal with election officers (Part 3), the Register of Electors (Part 4), the conduct of an election (Part 5), candidates (Part 6), revision of lists of electors (Part 7) and preparation for the vote (Part 8). The amendments cover such matters as the appointment of various election officers, the lists of electors available to political parties, and notification of the locations of polling stations.[30]

2.2.1 Additional Election Officers (Clauses 12 and 13, 17 to 23, and 44)

2.2.1.1 Field Liaison Officers (Clauses 12 and 13, 17)

Amendments to the CEA will enable the CEO to establish a new category of election officer: the field liaison officer (clauses 12 and 13, amending sections 22 and 23).

The CEO may appoint field liaison officers, specify their qualifications, determine the term of appointment, and remove them from office. The responsibilities of field liaison officers include (clause 13):

- providing support to returning officers;
- acting as an intermediary between the returning officers and the CEO; and
- providing support in relation to the appointment of returning officers.

Another amendment will allow returning officers, with the approval of the CEO, to appoint additional election officers necessary for the conduct of the vote or the counting of the votes (clause 17, new section 32.1).[31]

2.2.1.2 Deputy Returning Officers, Poll Clerks and Registration Officers (Clauses 18 to 22)[32]

Clauses 18 to 22 are amendments concerning the appointment of deputy returning officers (section 34), poll clerks (section 35) and registration officers (section 39).

Currently, the CEA places the responsibility for supplying lists of names of suitable persons to assume these positions on the candidates that finished first and/or second in the previous election.

The CEO's report following the 40th general election noted the difficulty Elections Canada has had in obtaining from candidates the names of suitable persons to be appointed to these positions. In light of these difficulties, both the CEO and the

Committee recommended that amendments be made to partly relieve candidates of the burden of providing such lists.[33]

Clauses 18 to 22 address these recommendations and introduce amendments to permit the returning officers to contact the appropriate party's registered association or the registered party for such lists, in addition to candidates (clauses 18 and 19). The bill originally provided that the selection process for central poll supervisors (original clause 44) would be the same as the process for deputy returning officers, poll clerks and registration officers. As a result of amendments made at the House of Commons committee stage, clause 44 was deleted, with the effect that the current process for the appointment of central poll supervisors will remain in place.

Clauses 20 and 21 address another recommendation made by the CEO and the Committee:[34] they tighten the deadline within which such lists must be submitted. The bill requires that lists must be submitted within 24 days of polling day, as opposed to the current 17 (sections 36 and 39 of the CEA).[35]

2.2.2 Changes Affecting Returning Officers (Clauses 14 to 16)

Sections 24 to 31 set out the provisions of the CEA that govern the positions of returning officers, including the appointment and removal process and their duties and functions. They are responsible, under the general direction of the CEO, for preparing and conducting an election in the electoral district for which they have been appointed.

Pursuant to section 24(6) of the CEA, returning officers are prohibited from engaging in certain partisan activities while in office, such as making campaign contributions, becoming a member of or working for a political party or a registered electoral district association.[36] The current CEA, however, does not list unregistered associations as one of the entities which a returning officer is prohibited from joining. Clause 14 of the bill addresses this omission.[37]

The CEO can remove a returning officer under certain grounds, as set out in section 24(7) of the CEA.[38] The CEA, however, does not explicitly give the CEO authority to suspend a returning officer. Clause 14 of the bill (new sections 24(8) and 24(9)) allows the CEO to suspend returning officers for the same reasons set out in section 24(7) and establishes the duration of suspensions. Clause 16(1) gives the CEO the power to designate a person to act in the place of a suspended returning officer (new section 28(3.01)).

Section 27 of the CEA enables a returning officer, with the CEO's prior approval, to delegate many of his or her functions to other election officials working under his or her direction, with several listed exceptions (section 57). Clause 15 amends section 27, removing the reference to section 57 and thus enabling a returning officer to delegate his duties in relation to election writs.

2.2.3 Amendments Affecting Candidates (Clauses 24 and 26) [39]

Section 64 of the CEA provides that, when there is more than one candidate nominated in an electoral district, the returning officer must post, within five days of the closing day for nomination, a notice of grant of a poll. This notice contains information on the candidates such as their names, addresses and political affiliations. Clause 24 amends sections 64(2)(*a*) and 64(2)(*b*) of the CEA by removing the requirement to include a candidate's address and the address of his or her official agent in a notice of grant of a poll.

Clause 26 corrects a discrepancy between the English and French versions of the CEA dealing with candidates' nicknames. The English version of section 66(2)(*b*) permits a candidate to replace "one or more given names" with a nickname. Clause 26 changes the French "*le ou les prénoms*" to "*un ou plusieurs des prénoms*" to accord with the English phrasing.[40]

2.2.4 List of Electors (Clauses 33, 35 to 39 and 41) [41]

The CEA currently does not permit the preliminary lists of electors approved for a by-election that has been superseded by a general election to be used in the general election. Clause 33 amends section 96 of the Act to facilitate this use. This amendment is in accordance with amendments recommended by the CEO.[42]

Section 101 prescribes the contents of the registration form for electors who wish to have their names added to the preliminary list of electors, typically on polling day. Clause 35 adds the requirement that the elector state on the registration form that he or she is qualified as an elector.[43]

Section 106 requires that the official, or final, list of electors for each polling division be prepared on the third day before polling day. Clause 36 enables the preparation of the official list of electors after the seventh day before polling day, but no later than the third day before polling day.

Clause 37 addresses a concern expressed by the Privacy Commissioner in her 2009 report, *Privacy Management Frameworks of Selected Federal Institutions,*[44] about the inclusion of electors' dates of birth on the lists of electors used by election officials on polling days. Sections 107(2) and 107(3) of the CEA are amended by replacing "date of birth" with "year of birth." This amendment was recommended by the Committee.[45]

Section 110(1) of the CEA restricts the purposes for which lists of electors may be used by registered parties. No restrictions currently apply to electronic lists (section 93(1.1)); clause 38 brings electronic lists within the scope of section 110.[46]

Clause 39(1) amends section 111 of the CEA to prohibit compelling, inducing or attempting to compel or induce any person to make a false or misleading statement relating to a person's qualification as an elector, for the purposes of inclusion on a list of electors.

Clause 39(2) amends section 111(*f*)(i) to subject "eligible parties"[47] to the prohibitions described in this section on the use of personal information contained in the lists of electors received by parties.[48]

Clause 41 amends section 119(1)(*g*) to ensure that deputy returning officers are provided with a ballot box for polling day and a separate ballot box for each day of advance polling.[49] (See also new Schedule 4 [new judicial recount procedures] and clause 60(6) related to custody of ballot boxes, discussed in section 2.3 of this Legislative Summary.)

2.2.5 Notification of Polling Stations (Clauses 32, 42 and 43)

The amended CEA requires the returning officer, on or before the fifth day before polling day, to send out a notice to electors if there is a change in the address of a polling station (clause 32, amending section 95).

Clause 42 amends section 123(2) of the CEA by decreasing the number of polling stations that a returning officer may group in a central polling place without the CEO's approval from 15 to 10.

The bill (clause 43) proposes a number of new provisions to deal with the manner in which returning officers are to communicate to candidates and parties about the location of polling stations and any changes to their location.

New section 125.1 of the CEA will require that returning officers inform candidates and registered political parties of the addresses of all polling stations in the electoral district by the later of the 24th day before polling day *or* the day on which the candidate's nomination is confirmed. The provision also sets out how changes in any of the addresses of polling stations are to be communicated.

2.3 Voting Procedures (Clauses 44 to 72 and Schedule)

2.3.1 Media at Polling Stations (Clause 44(1))

The CEA contains a list of persons who are entitled to be present at a polling station on polling day (section 135(1)). Absent from this list are persons representing the media. Since unfettered media access to polling stations may impinge on certain voters' rights under the CEA (such as the right to unimpeded access to a polling station and the right to cast a ballot in secrecy), Elections Canada has in place a policy that journalists cannot enter a polling station, but may film from its doorway provided they do not create a disturbance for electors.

Recently, questions have arisen as to whether this prohibition on media access to polling stations is inconsistent with the right to freedom of the press under the *Canadian Charter of Rights and Freedoms*.

During the 40th general election, the CEO granted the media access, on a trial basis, at polling stations while party leaders and candidates opposing them were casting their ballots. As recommended by the CEO and supported by the Committee,[50] the

amended CEA expressly permits any media representative who is authorized in writing by the CEO – subject to any condition the CEO considers necessary to protect the integrity of the vote and the privacy of any elector – to be present at a polling station of an electoral district in which a leader is a candidate (new section 135(1)(*h*)). Additional election officers appointed under new section 32.1 will also have access to polling stations.

2.3.2 Candidates' Representatives: Movement Between Polling Stations and Other Restrictions (Clauses 44(2) and 45)

2.3.2.1 Oaths and Movement Between Polling Stations (Clauses 44(2) and 45(1))

Candidates appoint a limited number of representatives to go from one polling site to the next in an electoral district to observe polling operations (section 136 of the CEA). The CEO and the Committee recommended[51] that a candidate's representative need only be sworn in once by the central poll supervisor or by a deputy returning officer and subsequently show a document proving that the oath has been taken, in order to move freely between polling stations. In addition, the CEO and the Committee recommended that the representative be able to move freely between polling stations in the same polling place before or during the counting of the votes, but should a representative leave the polling place after the counting of votes has begun, he or she would not be readmitted. Clauses 44 and 45 give effect to these recommendations.

2.3.2.2 Restrictions for Candidates' Representatives: Communication Devices (Clause 45(2))

Clause 45(2) replaces section 136(4) to allow a representative to use a communications device at a polling station provided it does not impede any elector from voting or violate the secrecy of the vote. It also adds that a representative cannot take a photograph or make any audio or video recording at a polling station.

2.3.3 Voter Identification (Clauses 46 to 50)

2.3.3.1 Vouching Replaced by Attestation

The majority of electors seeking to vote on election day are already registered at their correct address and upon presenting themselves at their designated polling station, they have their identity and address confirmed with a piece or pieces of identification to allow them to vote.[52]

Individuals who do not possess acceptable identification at the time of voting must undergo an exceptional procedure prescribed in legislation and administered by election officers in order to vote.[53] This procedure is known as vouching, a process by which an elector may prove his or her identity and residence by taking an oath, and being accompanied by an elector whose name appears on the list of electors for the same polling division who has the required identification and who vouches for him or her on oath.

Vouching as a mechanism to prove an elector's identity for voting under section 143 of the CEA has been replaced with attestation to residence through various amendments to the Act.

Amendments were made at the House of Commons committee stage to add a new process that allows electors who have established their *identity* (but not their residence) through two authorized identification pieces to establish their *residence* by taking a prescribed oath in writing.

In order to take this written oath, the elector must receive oral advice from the election official administering the oath as to the qualifications for electors, and the penalty that may be imposed under the Act for being found guilty of voting, or attempting to vote, knowing he or she is not qualified as an elector, or for taking a false oath (new section 143.1(1)).

As a result of amendments at the House of Commons committee stage, electors seeking to establish their residence by taking an oath must also be accompanied by another elector whose name appears on the list of electors
for the same polling division. This other elector must have proved his or her identity to the deputy returning officer and the poll clerk by using either one piece of identification containing a photograph and the name and address of the elector, or by using two pieces of identification, each of which establishes his or her name, and one of which establishes his or her address (clauses 46(4) and 46(5)).

The other elector must also attest to the residence of the elector who lacks sufficient acceptable identification in a prescribed oath in writing. Prior to being administered the oath, he or she must receive oral advice from the election official administering the oath, as set out in new section 143.1(2), regarding the penalties for electors found guilty of taking a false oath or of the contraventions set out in new clause 46(6): no elector can attest to the residence of more than one elector at an election, and no elector who has had his or her residence attested to may attest to another's residence at that election.

The written oath must include statements affirming that:

- the elector taking the oath has received the prescribed oral advice from the election official administering the oath;
- the elector knows the elector in question personally;
- the elector knows that the elector in question resides in the polling division;
- the elector has not in the same election attested to the residence of another elector; and
- the elector's own residence has not been attested to by another elector at the election.

2.3.3.1.1 Voter Information Cards Insufficient Identification (Clause 46(3))

The amended CEA specifies that voter information cards cannot be authorized by the CEO as a type of identification used by an elector whose name and address appear on the list of electors and who is seeking to establish his or her identity and residence (amended section 143(2.1)).

2.3.3.2 Ballot Cast by Person Other Than Voter on Voters' List (Clause 48)

Section 147 of the CEA provides that a person asking for a ballot at a polling station after someone else has voted under his or her name, will not be permitted to vote unless that person takes an oath. This provision will now require that the oath be taken *in writing* (currently the oath is taken orally). The oath is to be on a form which must indicate the penalty that may be imposed on the elector if he or she were to be found guilty of applying to receive a second ballot.

Similarly, section 148 of the Act is amended to provide that an elector who claims that his or her name was crossed off an official list of electors in error will not be permitted to vote unless either the returning officer verifies that the elector's name was crossed off in error or the elector takes the oath in writing referred to in section 147.

2.3.4 Election Day Registration (Clauses 50, 51 and 53)

2.3.4.1 Vouching Replaced by Attestation (Clauses 50(1), 50(5) and 51)

Currently, an elector whose name is not on the revised list of electors may register in person on election day by taking an oath and being vouched for by another elector. The other elector must appear on the list of electors in the same polling division as the unregistered elector and must have the approved pieces of identification. The elector must also vouch for the unregistered elector on oath and in the prescribed form, which must include a statement as to the residence of both electors.

The bill amends section 161(1) of the CEA, removing vouching as a mechanism for an elector to register in person on election day.[54] Amendments were made at the House of Commons committee stage to add a new process to allow electors whose names do not appear on the revised list of electors to register on election day, provided they have established their identity by using two authorized pieces of identification. They may establish their residence using the attestation process described in section 2.3.3.1 of this Legislative Summary (clauses 50(1), 50(5) and 51).

2.3.4.2 Non-handling of Identification by Candidates' Representatives (Clause 50(2))

In cases where an elector seeks to register in person on election day, the Act sets out that a registration officer shall permit one representative of each candidate in the electoral district to be present (section 161(3)). The bill adds to this section, granting

permission to the representative to examine, but not handle, any piece of identification provided by the elector.

2.3.4.3 Statement of Qualification by Unregistered Elector (Clause 50(3))

If an unregistered elector satisfies the requirements for establishing his or her identity and residence as required by the CEA, a registration certificate may be completed by a registration officer or deputy returning officer for that elector, permitting him or her to vote (section 161(4)). The bill adds that the registration certificate must include a statement by the elector that he or she is qualified to vote under section 3 of the CEA, which requires that the individual be at least 18 years of age and a Canadian citizen, amending section 161(4).[55]

2.3.4.4 Prohibitions on Registration on Election Day (Clause 50(4))

A set of prohibitions dealing with registration on election day is added to section 161 of the CEA. The bill creates prohibitions against individuals:

- knowingly applying to be registered on election day in a name that is not their own;
- knowingly applying to be registered on election day in a polling division in which they are not resident, except as authorized under the CEA;
- applying to be registered on polling day to vote in an electoral district knowing that they are not qualified or entitled to vote in that district; and
- compelling, inducing or attempting to compel or induce any person to make a false or misleading statement regarding that person's qualifications as an elector for the purposes of registering that person on election day.

2.3.5 Poll Clerks to Indicate Which Electors Have Voted (Clauses 52 and 53)

The CEA prescribes a list of duties that a poll clerk must perform (section 162). One of them is providing a candidate's representative, on request and at intervals of no less than 30 minutes, with a written list on the prescribed form that contains the identity of every elector who has voted on election day, excluding that of electors who registered on election day. The same information must be provided to a candidate's representative, on request, after the close of an advance polling station.

Poll clerks must now prepare a document (using the prescribed form) which will permit the identification of every elector who has voted that day, at intervals of no less than 30 minutes, regardless of whether it has been requested by a candidate's representative.[56] When requested by that person, it must be provided. Similarly, each day after the close of an advance polling station, a poll clerk must prepare the same document, regardless of whether it has been requested by a candidate's representative. The document must be given to that person, if requested.

At the House of Commons committee stage, an amendment added new section 164.1 to the CEA. This section provides that for each general election and by-election, the CEO must engage an auditor to audit and report on whether deputy returning officers, poll clerks and registration officers have properly exercised their powers, duties and functions in respect of the oath-taking and attestation process for electors who do not possess sufficient acceptable identification to either establish their identity or register on election day. The clause specifies that the auditor cannot be a member of the staff of the CEO or an election officer, but must have technical or specialized knowledge (clause 53).

2.3.6 Advance Polls (Clauses 54 to 60)

2.3.6.1 Vouching Replaced by Attestation (Clauses 54(1.1), 54(4), 55 and 57)

Currently, an elector whose name is not on the revised list of electors may register in person before the deputy returning officer at an advanced poll by being vouched for by another elector who fulfils the requirements under the CEA (section 169). The requirements are the same as those for a registered voter obtaining a ballot without identification and for registering to vote on election day. The bill amends the CEA to remove vouching as a mechanism for an elector whose name is not on the revised list of electors to register at an advance polling station (section 169(2)).

Amendments were made at the House of Commons committee stage to add a new process to allow electors whose names do not appear on the revised list of electors to register at an advance polling station, provided they have established their identity by using two authorized identification pieces. They may establish their residence using the attestation process described in section 2.3.3.1 of this Legislative Summary (clauses 54(1.1), 54(4), 55 and 57).

2.3.6.2 Non-handling of Identification by Candidates' Representatives (Clause 54(1.2))

The bill adds to section 169(2), granting permission to a candidate's representative to examine but not handle any piece of identification provided by an elector at an advance poll. As mentioned in section 2.3.4.2 of this Legislative Summary, this right has been accorded under amended section 161 for election day polls.

2.3.6.3 Statement of Qualification by Unregistered Elector (Clause 54(2))

If an unregistered elector satisfies the requirements for establishing his or her identity and residence as required by the CEA, a registration certificate may be completed by a registration officer or deputy returning officer for that elector, permitting him or her to vote (section 169(3)). The bill adds that the registration certificate must include a statement by the elector that he or she is qualified as an elector.

2.3.6.4 Prohibitions on Registration at Advance Polls (Clause 54(3))

A set of prohibitions, mirroring those established for registration at regular polls, is added to section 169 of the CEA, dealing with registration of electors at an advance poll. The bill creates a prohibition against individuals:

- knowingly applying to be registered at an advance polling station in a name that is not their own;
- knowingly applying to be registered at an advance polling station in a polling division in which they are not resident, except as authorized under the CEA;
- applying to be registered at an advance polling station to vote in an electoral district knowing that they are not qualified or entitled to vote in that district; and
- compelling, inducing or attempting to compel or induce any person to make a false or misleading statement regarding that person's qualifications as an elector for the purposes of registering that person at an advance polling station.

2.3.6.5 Additional Advance Polling Day (Clause 56)

Several attempts have been made by the government to enact amendments to the CEA to increase the number of advance polling days. The most recent was Bill C-40, the Expanded Voting Opportunities Act (2nd Session, 40th Parliament), which proposed increasing the number of advance polling days from three to five. The added polling days were to be the two Sundays prior to election day (i.e., the eighth day and the day before election day). Bill C-40 died on the *Order Paper* in December 2009, without having received debate at second reading, when Parliament was prorogued.[57] The underlying premise of these bills was to increase voter turnout at general elections. Turnout at general elections has been in decline since 2008,[58] while turnout at advance polls has increased since 1997.[59]

Clause 56 of the bill amends section 171(2) of the CEA to add the eighth day before election day (a Sunday) as a day when advance polling stations will be open. The hours on which advance polls are open, noon to 8:00 p.m., remain the same as under the current legislation. Thus, there will be four advance polling days on the Friday, Saturday, Sunday and Monday, the tenth, ninth, eighth and seventh days before polling day.

2.3.6.6 Opening of Advance Polls: First Day (Clause 58(1))

Clause 58(1) amends section 175(1), which deals with the process of opening a poll on the first day of advance polling. It requires that the process set out in that section be carried out each of the four days of advance polling. It also adds that a ballot box will be provided for each day of advance polling.

2.3.6.7 Closing of Advance Polls (First, Second and Third Days) (Clauses 58(2) and 58(3))

Section 175(2) of the CEA sets out the process for closing an advance poll. Clause 58(2) amends that section to provide that it applies to the first, second and third days of advance polling (and by exclusion, not the fourth day).

In effect, the bill sets out a process which places all valid and spoiled ballots in a sealed box – one box for each day of advance polling – that is not to be opened until it is time to count ballots on election day. Unused ballots and a copy of the record of all electors who have cast their vote are placed in a separate sealed box.

Clause 58(3) retains much of the process for closing an advance poll that is set out under section 175(2): at the closing of an advance poll under the CEA,

- the ballot box is opened and emptied;
- valid ballots and spoiled ballots are separated;
- the valid ballots are not opened to disclose for whom any elector has voted;
- both sets of ballots are placed into separate envelopes and sealed; and
- each envelope has written on it the number of ballots it contains.

The unused ballots and the number of electors who have voted at the advance polling station are also counted; the unused ballots and a copy of the record of votes cast are placed in an envelope and sealed; and this envelope has written on it the number of unused ballots and electors who have voted.

Clause 58(3), however, provides that the two envelopes – one of which contains ballots which are in order, the other spoiled ballots – must be placed in the ballot box and the ballot box sealed. The provision further stipulates that the envelope which contains unused ballots and the copy of the record of votes cast at the advance polling station be placed in a separate box and sealed (both the box and the seal are to be provided by the CEO).

2.3.6.8 Reopening of Advance Polls (Second, Third and Fourth Days) (Clause 58(4))

On reopening an advance polling station at noon on the second, third and fourth days of advance polling, election officials are required to open the box that contains the unused ballots and record of votes cast and dispose of the box. A new ballot box is to be opened, sealed and placed in accordance with sections 175(1)(*a*) to 175(1)(*c*) of the CEA. That is, the ballot boxes will be placed on a table in full view of all the participants until the close of the advance polling station.

2.3.6.9 Closing of Advance Polls (Fourth Day) (Clause 58(4))

Clause 58(4) replaces the current sections 175(3) to 175(6) of the CEA. A new section 175(3) is added to the Act, setting out the process for closing an advance poll on the fourth day – the last day – of advance polling. The process set out in

clause 60(4) for opening the ballot box, counting all ballots (valid, spoiled and unused) and the number of electors who have voted at that advance polling station, placing the ballots and a copy of the record of votes cast in envelopes, sealing the envelopes, signing the envelopes and placing them in the ballot box, following a process similar to that employed under current section 175(2) of the CEA for the closing of the first, second and third days of advance polls.

Current section 175(3) prescribes the placing of the signatures of the deputy returning officer and the poll clerk on the seals affixed to the envelopes. The provision is renumbered 175(4) and added to it is a reference to the separate processes for closing advance polls on days one to three and on day four.

2.3.6.10 Custody and Recovery of a Ballot Box (Clause 58(4))

Currently, section 175(5) of the CEA provides that in the interval between the conclusion of voting at advance polling stations and the counting of ballots on election day, the deputy returning officer is charged with keeping the sealed ballot box in his or her custody.

No mechanism exists in the CEA to allow for the recovery of ballot boxes that are in the custody of deputy returning officers in instances where the returning officer or the CEO considers it more appropriate to not leave ballot boxes in their custody. During the course of the Committee's study of the CEO's recommendations following the 40th federal general election, the CEO indicated that he had employed his power to adapt during the 40th general election (as set out in section 17(1) of the CEA) to modify section 175 of the Act in order to recover ballot boxes in the custody of deputy returning officers.[60]

The CEO recommended, and the Committee agreed, that the returning officer ought to be authorized by the CEA to recover ballot boxes left in the custody of a deputy returning officer when instructed by the CEO, in order to better protect the integrity of the vote.[61]

Clause 58(4) adds a new section 175(7) to the CEA to provide that a returning officer may recover any ballot box that is in a deputy returning officer's custody if the CEO is of the opinion that such an action is necessary to ensure the integrity of the vote.[62]

2.3.7 Special Voting Rules (Clause 60)

Part 11, Division 4, of the CEA deals with electors residing in Canada seeking to vote by special ballot.

The purpose of special ballots is to allow an elector who cannot or does not wish to vote at a polling station to vote during an election by either mailing in his or her vote or by voting in person at the office of any returning officer.

Clause 60 amends the current process through which an elector can vote by special ballot. Clause 60 adds provisions regarding electors who go to the office of a returning officer to vote (new section 237.1). Prior to receiving a special ballot in

person, the elector must prove his or her identity and residence in accordance with section 143(2) of the CEA. The provision also incorporates a number of the processes in place for regular voting, including:

- proof of identification;
- enabling a candidate or a representative to examine but not handle the elector's identification and to observe the elector receiving the ballot and placing it in the prescribed envelopes; and
- secrecy of the ballot.

An amendment was made to section 237 at the House of Commons committee stage to incorporate into the special voting rules the new attestation process for voters with insufficient acceptable identification pieces who are seeking to establish their residence (clause 60).

2.3.8 Counting Votes (Clauses 61 to 70)

2.3.8.1 Additional Individuals Permitted to be Present During Count (Clause 61(1))

Current section 283(1) enumerates the individuals permitted to be present during the counting of the votes after the close of a polling station. Clause 61(1) amends this section to include the presence of individuals appointed under new section 32.1 (additional election officers appointed by the deputy returning officer) whose duties include being present at the count.

2.3.8.2 Count and Total of Electors Who Voted (Clauses 61(2) and 61(3))

The steps to follow to count votes after the close of a polling station are set out in current section 283(3) of the CEA. Under clause 61(2), in addition to counting the number of electors who voted at the polling station, the deputy returning officer must count the number of electors who voted by completing a registration certificate (new section 161(4)). This number must be stated at the end of the list of electors, which the deputy returning officer signs and places in the official envelope.

Clause 61(3) provides that the deputy returning officer must total the number of electors who voted at the polling station (a total which includes the number who voted by completing a registration certificate) and add this number to the total number of spoiled ballots and unused ballots, to ascertain that all ballots provided have been accounted for.

2.3.8.3 Handling, Delivery and Provision of Polling Day Documents (Clauses 62, 64 and 65)

Current section 288 of the CEA sets out the process the deputy returning officer must follow to enclose and seal all ballots and any other election documents after a polling station closes. New section 288.1 (clause 62) obliges the deputy returning officer to place all documents prepared under new section 162(*i.1*) in an envelope supplied for

that purpose. (New section 162(*i.1*) requires that documents be prepared at intervals of no less than 30 minutes by a poll clerk using a form prescribed by the CEO which enables the identification of every elector who has voted that day.) Amendments made to section 288 at the House of Commons committee stage (contained in clause 62) oblige the deputy returning officer to place all attestation documents for voters with insufficient voter identification in an envelope supplied for that purpose (new section 288.01).

Clause 64 creates an obligation on the deputy returning officer to include among the election materials that must be sent to the returning officer under section 290(1) of the CEA the registration certificates and, where applicable, the envelope containing all documents prepared under new section 162(*i.1*).[63] An amendment to section 290(1) requires that the documents described in new section 288.01 be included in the election materials to be sent to the returning officer (clause 64).

Clause 65 enables candidates and their representatives to obtain copies of the lists of voters provided to candidates at regular intervals during the election (under new section 162(*i.1*)) from the returning officer after polling day, in addition to the statement of the vote (amending section 291). An amendment added section 292.1, which stipulates that returning officers must also create a list of the names and addresses of all persons who took an oath in order to prove the residence of an elector with insufficient voter identification (clause 66).

2.3.8.4 Application of Rules for Counting Votes (Clause 63)

Current section 289(2) provides that the rules delineated in sections 283(1) and 283(2) (counting votes and tally sheets), sections 283(3)(*e*) and 283(3)(*f*) (examination of ballots and tallying) and sections 284 and 288 (rejection of ballots, objection to ballots, marked ballots, statement of the vote, etc.) apply with necessary modifications to the counting of the votes of an advance poll. Clause 65 adds to this section exceptions to account for the introduction of multiple ballot boxes as provided for by amendments to advance polling procedures under the bill.

2.3.9 Judicial Recounts (Clauses 67 to 71 and Schedule)

Clause 69 establishes that the current process for counting ballots during a recount as set out in section 304(3) of the CEA is replaced. The judicial recount process is substantially revised by the Schedule to the bill (Schedule 4 of the amended CEA), with the creation of a mini procedural code for the counting of ballots in a judicial recount.

Other amendments to the recount process include clause 67, whereby an individual applying to a judge for a recount must now give the returning officer notice of his or her application (amending section 301(1)).[64] As well, the bill enacts a new provision requiring the return of all election materials used in a recount to the applicable returning officer (clause 69).

2.3.9.1 Procedure for Recounts (New Schedule 4)

A new process for recounts is proposed under new Schedule 4 of the CEA. The persons who may be present during a recount, in addition to the judge who oversees the recount process, the returning officer, and the staff of the returning officer, are enumerated (section 1 of new Schedule 4) (clause 68 repeals the current provision in section 303 that sets out who may attend a recount). The judge establishes recount teams to examine and determine whether the ballots in a given ballot box are valid or disputed, and to count and report the number of ballots of either classification, in a report known as the Recount Ballot Box Report (RBBR).

Ballot boxes which have had their ballots examined, classified and reported on are returned to the returning officer. If there are no disputed ballots, the returning officer provides the judge with the RBBR and the original statement of the vote for his or her review and approval. If the judge approves of the report, the ballot box is sealed and placed in a secure location and the RBBR and statement are given to the person responsible for the preparation of the Master Recount Report (MRR). If the judge does not approve of the report, he or she must determine how to proceed with the ballot box (section 17(4) of new Schedule 4).

In the event a ballot box contains disputed ballots, photocopies of any disputed ballot are made for examination by the candidates, their representatives and their legal counsel (section 18(*a*) of new Schedule 4). Each party is permitted to make representations to the judge concerning a disputed ballot (section 18(*c*) of new Schedule 4). The judge will determine the classification of a ballot as either valid or invalid and must indicate any such decision in the RBBR. When all disputed ballots are dealt with, the ballot box is sealed and placed in a secure location, and an MRR is prepared by a person designated by the judge. The MRR contains, among other information, the number of valid votes cast for each candidate. Candidates, their representatives and their legal counsel are able to review the MRR and make submissions to the judge with respect to the accuracy of the MRR.

At any time during the recount, the candidates may agree to have the judge conduct the recount by adding the number of votes reported in the statements of the vote, instead of counting ballots (section 6 of new Schedule 4).

2.4 Communications (Clauses 72 to 77 and 137 to 144)

Communications with voters during election periods are regulated, for the most part, under Part 16 of the CEA. The CEA, however, only regulates certain aspects of communications. The following are some of the significant aspects of communication that are regulated:

- The candidate, party or their agents must indicate that the message being communicated in election advertising was authorized by the candidate or party (section 320).
- No election advertising is permitted on polling day before the close of polls (section 323), except advertising on the Internet if the advertising was transmitted

before polling day and the message remains on the Internet, and by means of pamphlets, signs or posters (section 324).

- The results of the vote in one electoral district may not be communicated to voters in another electoral district before the close of all polling stations in that electoral district (section 329).

The content of advertising messages, whether communicated by electronic or other means, is not regulated by Elections Canada. There are, however, offences prescribed by the Act that are of general application that may apply to certain types of communications with voters. These prohibitions are generally aimed at communications that might have the effect of undermining voting rights or that might disrupt the voting process. Some examples include:

- attempting to prevent a voter from voting (section 281(*g*));
- by pretence or contrivance, inducing a voter to vote or refrain from voting in general or voting or refraining from voting for a particular candidate (section 482(*b*)); and
- knowingly making or publishing a false statement as to the personal character of a candidate or prospective candidate with the intention of affecting the results of an election (section 91).

2.4.1 New Definition of Election Advertising (Clause 72)

Clause 72 modifies the definition of “election advertising” found in section 319 of the CEA by adding “the making of telephone calls to electors only to encourage them to vote” to the list of exclusions that do not constitute “election advertising.”

2.4.2 Reporting Vote Results (Clause 73)

Clause 73 of the bill repeals section 329 of the CEA which prohibits the premature transmission of election results from one electoral district to voters in another electoral district before the polls in that district have closed.

In a case challenging section 329 of the CEA as infringing freedom of expression under the *Canadian Charter of Rights and Freedoms*,[65] the Supreme Court of Canada narrowly upheld the prohibition on premature reporting of vote results. In her dissenting opinion (concurred in by three other judges), Justice Abella posited that the ban found in section 329 of the CEA “impairs the right both to disseminate and receive election results at a crucial time in the electoral process.”[66] She added that “Canadians are entitled to know, as soon as possible, who their elected representatives are.”[67]

2.4.3 Regulation of Voter Contact Calling Services (Clauses 75 to 77)

Clauses 75 through 77 of the bill create a new Part 16.1 of the CEA called “Voter Contact Calling Services” containing sections 348.01 through 348.19 of the Act. These clauses address some of the concerns raised, and recommendations made, by the CEO in his report to Parliament dated 26 March 2013 on automated and live

telephone communications with voters.[68] The CEO's report stemmed from allegations of telephone communications with voters during the 41st general election that falsely claimed to originate from Elections Canada and allegedly misled voters about the location of polling stations. Elections Canada had neither made nor authorized the calls. This issue was also the subject of a proceeding in the Federal Court of Canada seeking to invalidate the elections in seven electoral districts on the basis that the automated calls constituted fraudulent or unlawful acts that may have affected the election results in those electoral districts.[69]

2.4.3.1 New Definitions Applicable to Voter Communications (Clause 75)

Clause 75 contains the definitions that apply to new Part 16.1 (in section 348.01, entitled "Division 1"). The new definitions include the following:

- "automatic dialing-announcing device,"[70] is a device that dials telephone numbers automatically and delivers a pre-recorded message;
- "call," includes both live voice calls and calls made by automatic dialing-announcing devices;
- "calling service provider," means a person or group that carries on a business that includes making calls for or on behalf of another person or group; and
- "voter contact calling services" are services involving the making of calls during an election period for any purpose related to an election, including:
  - promoting or opposing a party or candidate,
  - encouraging electors to vote or refrain from voting,
  - providing information about election voting hours and the location of polling stations,
  - gathering information about past voting practices, and
  - raising funds for a party or contestant.

2.4.3.2 Contracts with Voter Contact Calling Services (Clause 76)

Clause 76, through sections 348.02 to 348.05, sets out what must be contained in agreements relating to voter contact calling services and who may enter into such contracts. Under proposed section 348.02, only the following may enter into agreements for voter contact calling services:

- candidates and their official representatives;
- registered parties, electoral district associations and nomination contestants;
- registered third parties;[71] and
- certain unregistered third parties, including corporations, trade unions, unincorporated associations and individuals.

Under section 348.03, the person or group entering into the contract with the calling service provider must inform the latter that the agreement is for voter contact calling services, and must provide the calling service provider with their name, contact

information, and a copy of a piece of identification approved by the Canadian Radio-television and Telecommunications Commission (CRTC).

New section 348.04 creates an obligation for the calling service provider to obtain their prospective client's identification information, and to keep a record of such information for one year after the end of the applicable election period.

New section 348.05 obliges the calling service provider to confirm whether the services that it will be providing constitute voter contact calling services. Before a first call is made, the person or body seeking the services must authorize the provision of the voter contact calling services and provide the calling service provider with their name, contact information, and a copy of a piece of identification approved by the CRTC, and the calling service provider is similarly obliged to obtain said identification information, a record of which must be kept for one year after the end of the applicable election period.

2.4.3.3 Filing Obligations (Clause 76)

Under new section 348.06 of the CEA (contained in clause 76 of the bill), calling service providers providing voter contact calling services must file a registration notice with the CRTC containing the calling service provider's name, the name of the person or group with whom the calling service provider is contracting, and the type of calls to be made under the agreement.

The person or group entering into an agreement for voter contact calling services with a calling services provider must also file a registration notice with the CRTC, providing information similar to that described above, as well as identification information. Failure to provide the identification information results in the registration notice being deemed to have not been filed (new section 348.07).

New section 348.08 sets out similar obligations for third parties that use internal services to make live voice calls, while new section 348.09 sets out similar obligations for persons or groups who use their own internal services to make automatic dialing-announcing device calls for any purpose relating to an election (including voter contact calling services).

2.4.3.4 Role of the Canadian Radio-television and Telecommunications Commission (Clause 76)

New sections 348.1 through 348.15 (contained in clause 76 of the bill) set out the role of the CRTC. New section 348.1(1) makes the CRTC responsible for administering and enforcing the provisions of the CEA related to voter contact calling services. New section 348.1(2) specifies that the CRTC do so under Part V of the *Telecommunications Act*, which in turn is amended by clauses 137 through 144 of Bill C-23.

New section 348.11 makes the CRTC responsible for establishing the Voter Contact Registry, which will contain the registration notices required in new sections 348.06

through 348.09 of the CEA. New section 348.12 obliges the CRTC to publish these notices "as soon as feasible after the expiry of 30 days after polling day."

New section 348.13(1) provides that the CRTC may delegate to a third party the responsibility for establishing the Voter Contact Registry as well as the obligation to publish the regulation notices. Under new section 348.13(2), the CRTC may revoke this delegation.

New section 348.14 allows the CRTC to authorize the types of pieces of identification required to enter into a contract for voter contact calling services and to authorize the provision of these services.

New section 348.15 obliges the CRTC to disclose to the Commissioner of Canada Elections, when requested to do so by the Commissioner, any document or information it receives regarding voter contact calling services that the Commissioner considers necessary to ensure compliance with the CEA, other than the provisions related to the voter contact calling services, which are enforced by the CRTC.

2.4.3.5 Investigative Powers Under the *Telecommunications Act* (Clauses 137 to 144)

Clauses 137 through 144 amend Part V of the TA, under which, as stated in clause 76, the CRTC is responsible for administering and enforcing the provisions related to voter contact calling services. The amendments relate to inspection, administrative monetary penalties and offences.

2.4.3.5.1 Inspection (Clause 137)

Clause 137 amends section 71(1) of the TA to allow the CRTC to designate inspectors to verify compliance with the provisions of the CEA related to voter contact calling services. It also amends section 71(4)(*a*) of the TA to allow inspectors to enter any place in search of any document, information or thing relevant to the enforcement of the voter contact calling services provisions and finally, amends section 71(6)(*b*) of the TA to allow a justice to issue a warrant to enter any dwelling-place if necessary for the enforcement of these provisions.

2.4.3.5.2 Administrative Monetary Penalties (Clauses 138 to 143)

Clause 138 amends section 72.01 of the TA so that a person contravening any provision of the CEA related to voter contact calling services has committed a violation and is liable to an administrative monetary penalty of up to $1,500 in the case of an individual and up to $15,000 in the case of a corporation. Inspectors may issue notices of violation under section 72.07 of the TA.

Clause 139 amends section 72.05 of the TA to allow inspectors to require a person who has information needed to administer the provisions of the CEA related to voter contact calling services to submit the information.

Clause 140(1) amends section 72.06(1)(*a*) of the TA to allow persons authorized to issue notices of violation to enter any place and examine any document, information

or thing or remove it for examination. Clause 140(2) allows a justice to issue a warrant to enter a dwelling-place.[72]

Section 72.1 of the TA sets out the availability of certain defences for contravention of the legislation. These defences, which include having exercised "due diligence," and anything that makes a circumstance a justification or an excuse, are common law concepts that have been imported from criminal law into the legislation. Clause 141 amends section 72.1(2) of the TA to extend the common law defence of "justification" and "excuse" to the provisions of the CEA related to voter contact calling services.

Clause 142 amends section 72.14 of the TA to provide that a contravention of the provisions of the CEA related to voter contact calling services can be proceeded with either as a violation (under the administrative monetary penalty regime) or as an offence, but not both. Offences are set out in section 73 of the TA.

Clause 143 amends the TA by adding section 72.16, which specifies that for the purposes of the sections related to administrative monetary penalties, a group as defined in new section 348.01 of the CEA (registered party, registered association, unincorporated trade union, trade association or other group of persons acting together by mutual consent for a common purpose) is considered to be a corporation. The effect of this provision is to deem these entities as "persons" for purposes of the administrative monetary penalty regime.

2.4.3.5.3 Offences (Clause 144)

Clause 144(1) amends section 73(2) of the TA so that a person who contravenes any provision of the CEA related to voter contact calling services is guilty of an offence punishable on summary conviction. Individuals who are found guilty are liable to a maximum fine of $10,000 for a first offence or $25,000 for a subsequent offence. Corporations are liable to a maximum fine of $100,000 for a first offence and $250,000 for a subsequent offence.

Clause 144(2) amends section 73 of the TA by specifying that for the purposes of this section, a group as defined in new section 348.01 of the CEA is considered to be a corporation (see clause 143).

2.4.3.6 Scripts and Recordings (Clause 77)

Clause 77 of the bill, creating proposed sections 348.16 to 348.19 of the CEA, adds Division 2 to new Part 16.1 of the Act. In the original version of the bill, these new sections required calling service providers who provide voter contact calling services (section 348.16), as well as the persons or groups who enter into agreements with them (section 348.17) to keep, for one year following the end of the election period, the following information:

- a copy of each unique script used in live voice calls made under the applicable agreement;
- the dates on which the script was used;

- a recording of each unique message conveyed via automatic dialing-announcing devices; and
- a record of every date on which the message was so conveyed.

As a result of amendments at the House of Commons committee stage, contact calling service providers must keep the information for a period of three years.[73]

New sections 348.18 and 348.19 create obligations to provide scripts and recordings for persons or groups using their internal services to make calls through automatic dialing-announcing devices, as well as for third parties using internal services to make live voice calls, for any purpose relating to the election (including voter contact calling services) for a period of one year.

2.5 Campaign Finance (Clauses 78 to 81 and 84 to 87)

2.5.1 Overview

Bill C-23 makes a number of significant changes to the campaign financing rules in federal elections. These include:

- an increased individual contribution limit;
- increased election spending limits for political parties, candidates and nomination contestants;
- financial penalties for candidates and political parties that exceed the election spending limit; and
- a new regulatory regime that will impose tighter regulation of campaign loans and that will limit loans by individuals.

In addition, a number of changes will affect the way third parties may conduct their election advertising campaigns.

The bill also reorganizes and renumbers Part 18 of the CEA, which serves as a mini-code to regulate the financing of political campaigns, and it amends many provisions within Part 18 that affect all political entities (clause 86). A concordance between the existing and new divisions and sections within Part 18 is set out in Table 1.

Table 1 – Concordance, Existing Part 18 and New Part 18, *Canada Elections Act*

Existing Part 18	New Part 18
Division 2 – General Financial Provisions (sections 404 to 414)	Division 1 – General Financial Provisions (sections 363 to 384)
Division 1 – Registration of Political Parties (sections 366 to 403) Division 3 – Financial Administration of Political Parties (sections 415 to 435.02)	Division 2 – Political Parties (sections 385 to 446)
Division 1.1 – Electoral District Associations (sections 403.01 to 403.42)	Division 3 – Electoral District Associations (sections 447 to 475.93)
Division 5 – Nomination Contestants (sections 478.01 to 478.42)	Division 4 – Nomination Contestants (sections 476 to 476.94)
Division 4 – Candidates (sections 436 to 478)	Division 5 – Candidates[a] (sections 477 to 477.95)
Division 3.1 – Leadership Contestants (sections 432.03 to 435.47)	Division 6 – Leadership Contestants (sections 478 to 478.97)

Note: a. Added to this Division are the provisions concerning "Gifts and Other Advantages" currently found in Part 6 of the CEA, dealing with candidates and their obligations, sections 92.1–92.6. The new provisions are now numbered 477.89 to 477.95.

Clause 86 comes into force six months following Royal Assent, or sooner if the CEO determines that his office is ready to implement the necessary changes to bring the provisions into effect. Further provisions affecting campaign finance come into force on different dates, some of which depend upon the coming into force of other provisions. (See the table in Appendix C of this Legislative Summary, which sets out the possible coming-into-force dates of selected campaign finance provisions.)

2.5.2 Contribution Limits (Clauses 80, 81, 86 and 87)

2.5.2.1 Individual Contributions (Clauses 80 and 87)

The CEA permits only individuals to contribute to political campaigns. Corporate and union donations are not permitted. Limits on contributions by individuals are as follows:

- $1,000 in total in any calendar year to each registered party;
- $1,000 in total in any calendar year to the electoral district associations, nomination contestants and candidates of each registered party;
- $1,000 in total to the contestants in a leadership contest; and
- $1,000 in total to independent candidates in an election.[74]

The maximum contribution is adjusted annually for inflation (section 405). The current inflation-adjustment maximum contribution in each category is $1,200.

The bill increases the maximum allowable contributions to $1,500 (clauses 80(1) and 87(1)).The amount, however, will not be indexed to inflation, as the provision in the legislation for indexation is repealed (clause 81). Instead, the amount will increase by $25 on 1 January of each year (clause 87(2)).

Clauses 80(1) and 81 come into force on 1 January of the year following the year in which Royal Assent is given to the bill.

Clause 87(1) ($1,500 individual contribution limits) comes into force on 1 January of the year following the year in which clause 86 (the reordered Part 18, campaign finance mini-code) comes into force. As mentioned above, clause 86 comes into force six months following Royal Assent, or sooner if the CEO determines his office is ready to implement the necessary changes to bring the provisions into effect.

Clause 87(2) ($25 annual increase in contribution limits) comes into force on 1 January of the year following the year in which clause 87(1) ($1,500 individual contribution limit) comes into force.

2.5.2.2 Contributions to Leadership Contestants (Clause 80)

An important change affects leadership contestants and their ability to raise funds for their campaigns. Currently, the $1,000 unindexed limit applies *per leadership contest*. It means that an individual can make a one-time contribution to a campaign. Amendments to the CEA enable individuals to contribute $1,500 *per calendar year* to a leadership campaign. This will result in an increased source of funding for leadership contestants, particularly those who obtain loans and must repay them over several calendar years.

This change was recommended by the CEO in his report to Parliament following the 40th general election.[75] The proposal was also contained in Bill C-21, The Political Loans Accountability Act.[76]

2.5.2.3 Limits on Bequests (Clause 80(2))

Currently, the legislation (section 405(2)) exempts bequests to political entities from the contribution limits. Clause 80(2) amends the CEA to limit the amount that may be contributed by means of a testamentary disposition to the maximum amount that may be made by an individual per calendar year, or $1,500 annually under the new financing regime set out in the bill.

2.5.2.4 Contributions to Own Campaign (Clause 80(3))

Currently, electoral candidates and nomination contestants of a registered party, party leadership contestants and independent candidates may contribute $1,000 of their own funds to their own campaigns or nomination contests over and above the maximum campaign contribution permitted. These amounts are deemed not to be contributions.

Clause 80(3) raises the maximum amount that a candidate and a leadership contestant may contribute to his or her own campaign, without the amount being treated as a contribution, to $5,000 and $25,000 respectively. The contribution limit for nomination contestants remains $1,000. Any contribution over any of these amounts would be subject to the contribution limit for individuals of $1,500.

2.5.3 Reduction of Reimbursement of Election Expenses for Candidates and Parties Exceeding the Spending Limit (Clauses 84 to 86)

During its study of the Chief Electoral Officer's recommendations following the 40th general election, the Committee considered a recommendation to penalize candidates who overspend during an election by reducing the amount by which they are reimbursed for their election expenses. The CEO had recommended a dollar-for-dollar reduction. The Committee wished to go further, developing an increasing scale of reduction based on the percentage by which a candidate's spending exceeded the spending limit.

The bill implements the Committee's recommendation and imposes the same scale of penalties on political parties. Thus, political parties (clause 84, amending section 435 and clause 86, new section 444(1)) and candidates (clause 85, amending section 465, and clause 86, new section 477.74(3)) who exceed their spending limits during an election will see their election expense reimbursement reduced according to the scale shown in Table 2.

Table 2 – Scale of Reductions in Election Expenses Reimbursements

Percentage Spending in Excess of the Spending Limit	Reduction of Candidate's or Party's Reimbursement
Less than 5%	One dollar for each dollar exceeding the limit
Between 5% and less than 10%	Two dollars for each dollar exceeding the limit
Between 10% and less than 12.5%	Three dollars for each dollar exceeding the limit
12.5% and more	Four dollars for each dollar exceeding the limit

2.5.4 Third Parties (Clauses 78, 78.1 and 79)

2.5.4.1 Third Party Spending (Clauses 78 and 78.1)

Currently, under section 350(1), third party spending limits of $150,000 apply *during an election period*. To ensure third parties do not circumvent the limits on election advertising expenses by incurring expenses prior to the issuance of an election writ, clause 78 amends section 350 to require that the spending limit apply *in relation to a general election*. As the Committee noted in its report on the CEO's recommendations following the 40th general election, spending during the pre-writ period in anticipation of an election may be a cause for concern given the fixed-date election provisions of the CEA.[77]

At the House of Commons committee stage, a number of amendments were made to clause 78. The limits on third-party advertising spending during an election period will increase if the election period exceeds 37 days. The amount shall be increased by 1/37 of the maximum spending amounts in effect – $150,000 in total for an election and $3,000 per electoral district – for each day the election period exceeds 37 days (new section 350(6)).

A new provision, new section 351.1, has been added to the CEA thatrequires third parties, whether individuals, corporations or groups, to establish a sufficient connection to Canada in order to incur election advertising expenses. An individual must be either a Canadian citizen or permanent resident or reside in Canada. A corporation must carry on business in Canada. If the third party is a group, the person "responsible" for the group must be a Canadian citizen or permanent resident or reside in Canada (clause 78.1).

Another new provision in the CEA (new section 351.2), also created by clause 78.1, clarifies "for greater certainty" that if election advertising is transmitted during an election period, it shall be treated as an election advertising expense, regardless of when that expense was incurred. This provision reinforces the purpose behind the amendments to section 350: to regulate spending *in relation to* an election, rather than spending *during* an election.

2.5.4.2 Third Party Connection to Canada (Clause 79)

Clause 79 imposes new requirements when third parties wish to register with Elections Canada. Individual third parties must certify that they are Canadian citizens or permanent residents or that they reside in Canada. In the case of corporations and groups, an officer of the corporation must certify that the corporation carries on business in Canada, while a person responsible for a group must certify that he or she is a Canadian citizen or a permanent resident or resides in Canada (amending section 353).

At the House of Commons committee stage, clause 79 was amended to make the mandatory registration provision (when a third party spends more than $500 on election advertising) subject to new section 351.1 of the CEA, requiring third parties to have a connection to Canada. The effect of this provision is that third parties that are not able to establish their connection to Canada in accordance with the new provisions would not be able to register, and thus, not be entitled to spend more than $500 in election advertising.

2.5.5 Loans and Guarantees (Clause 86)

2.5.5.1 The Current Loan Regime

Loans have become increasingly important sources of campaign financing, particularly in light of the reduced contribution limits and the ban on corporate and union contributions resulting from various legislative reforms.[78] Loans to parties, candidates, riding associations, nomination contestants and leadership contestants are permitted under the Act, subject to a number of reporting obligations and approvals by the CEO, and such loans are not treated as contributions to the political entity that receives them. Moreover, there is no limit on the amount that may be loaned to a political entity and no ban on loans by corporations and unions, even though they are prohibited from making political contributions.

Loans are referred to in various sections of the legislation as "unpaid claims." There is an expectation that loans, like all unpaid claims, will be repaid by the borrowing entity.[79]

The Act prescribes specified periods within which unpaid claims and loans must be repaid. The dates range from six months after the due date of the claim for electoral district associations and political parties, four months after polling day for candidates and nomination contestants, and 18 months from the date of a leadership contest in the case of leadership contestants. The repayment period may also be extended by the CEO, or failing that, a judge.

The CEA states that claims against a political entity that remain unpaid are deemed to be campaign contributions 18 months after polling day or the date the claim was due.

The Act, however, exempts unpaid claims from that provision if the claim:

- is the subject of a binding agreement to pay;
- is the subject of a legal proceeding to secure payment;
- is subject to a dispute as to the amount to be repaid; or
- has been written off by the creditor as uncollectible in accordance with the creditor's usual accounting practices.

Among the more significant deficiencies in the current regime are that loans that remain unpaid or are forgiven can serve as a means to circumvent the contribution limits and restrictions. This and other deficiencies in the current regime for political loans were identified by the CEO in a special report on "specific issues of political financing," prepared for the Committee and presented in 2007.[80]

More recently, the CEO and the Commissioner of Canada Elections announced that the current mechanisms in the CEA to enforce the loans provisions applying to leadership contestants were ineffective, particularly for sanctioning non-compliance.[81] They stated that the offence provisions of the CEA contain significant gaps for dealing with non-payment of outstanding claims and loans after the expiry of the 18-month period or an extension to that period, since there is no offence for non-payment of claims beyond those periods. In addition, they pointed out that the "deeming" provision, whereby a loan is deemed to be a contribution beyond the statutorily permissible period, cannot be enforced.

2.5.5.2 The New Loan Regime: Rules Applicable to All Political Entities

Many of the reforms to the regime governing the use of loans in federal political campaigns proposed in Bill C-23 originate from the CEO's report on specific issues of political financing, mentioned in section 2.5.5.1 of this Legislative Summary.

Among the CEO's key recommendations were these:

- Loans in excess of the contribution limit should only be made by financial institutions at commercial rates and on commercial terms.
- The individual limit on loans should be combined with the individual limit on contributions.
- More detailed reporting and disclosure of information relating to loans should be required.

The government introduced legislation to implement many of the CEO's proposed reforms through Bill C-21, The Political Loans Accountability Act, which died on the *Order Paper* when Parliament was prorogued in September 2013.[82]

Bill C-23 imposes limits and other restrictions on loaning money to political entities. Loans from individuals are subject to a limit. Loans in excess of the limit may only be made by registered banks or by political parties and their electoral district associations to each other and their candidates (but not to nomination contestants or leadership contestants) (new section 373).

Individuals who are otherwise entitled under the legislation to make political contributions (citizens and permanent residents) may make loans, or guarantee a loan, to political campaigns which, when combined with any contribution, cannot exceed the contribution limit for individuals. Under the bill, that limit is $1,500 per calendar year. For independent candidates, the limit is per election. Thus, the amount of the loan or guarantee plus any contribution, cannot exceed the limit of $1,500 (new section 373).

Banks, as defined under the *Bank Act*, may make political loans at market rates without limits on the amount of the loan. The bill does not prescribe any limits on the amount that political parties and their electoral district associations may loan to each other and to their candidates, nor does it impose any conditions, such as repayment periods and whether interest must be charged. However, as discussed in section 2.5.5.6 of this Legislative Summary, a political party or electoral district association may be liable to assume a candidate's unpaid debts if they are not repaid within a specified period.

The provisions that deem an unpaid claim or loan to be a contribution, found in the divisions of Part 18 applicable to all political entities, are repealed under the new regime.

Finally, a standard three-year period is applied for the repayment of loans, subject to extensions being granted by the CEO or a judge to candidates, nomination contestants and leadership contestants.

Table 3 – Concordance of Existing and New Loan and Unpaid Claim Repayment Periods

Political Entity	Loan and Unpaid Claim Repayment Periods	
	Existing Regime	New Regime
Political party	Within 6 months after due date of claim (section 418) Extension permitted by the Chief Electoral Officer (CEO) or judge	Within 3 years after due date of claim (section 428) No extension permitted
Electoral district association	Within 6 months after due date of claim (section 403.3) Extension permitted by CEO or judge	Within 3 years after due date of claim (section 475.2) No extension permitted
Nomination contestant	Within 4 months after polling day (section 478.17(1)) Extension permitted by CEO or judge	Within 3 years after selection day, or polling day if selection day falls during election period (section 476.7) Extension permitted by CEO or judge
Candidate	Within 4 months after polling day (section 445(1)) Extension permitted by CEO or judge	Within 3 years after polling day (section 477.54) Extension permitted by CEO or judge
Leadership contestant	Within 18 months after a leadership contest (section 435.24(1)) Extension permitted by CEO or judge	Within 3 years after a leadership contest (section 478.75) Extension permitted by CEO or judge

2.5.5.3 Rules for Political Parties

Included in clause 86 of the bill are requirements that any claims for unpaid debts be repaid within three years either of the date on which the debt was due or of the date on which the claimant or lender sent the party an invoice or other document evidencing the claim. A claimant has recourse to the courts if the party's registered agent refuses to pay the claim or after the end of the three-year period (new sections 427 to 429).

The party must report on its annual financial return a statement of all loans made to the party, including the amount of the loans, the interest rates, the lender and repayment terms. This information must be published by the CEO (new section 432(4)).

With the return the party must provide a statement of unpaid claims that remain unpaid 18 months and 36 months after the date on which they were due. Among other things, the statement must also include (new section 432(7)):

- whether the claim is the subject of a legal proceeding or a dispute as to the amount to be paid;
- whether the party and the lender or claimant have agreed to a repayment schedule; and
- whether an unpaid amount has been written off by the creditor as uncollectible in accordance with the creditor's normal practices.

This latter provision (new section 432(7)) is based in part on recommendations made by the CEO in his statutory report to Parliament following the 40th general election.

The recommendation was made for candidate and nomination contestant loans, but it appears to have been adapted for political parties.[83]

The provision that deems an unpaid claim or loan to be a contribution after 18 months (section 423.1(1)) has been repealed. This was also recommended by the CEO.

Under the new offence provisions of the bill, it will be an offence for a chief agent of a political party to fail to pay a debt within 36 months from the date it is due (new sections 428 and 497.1(1)(*g*)).

2.5.5.4 Rules for Electoral District Associations

The provisions governing loans applicable to electoral district associations mirror those for political parties (new sections 475.1 to 475.4).

2.5.5.5 Rules for Nomination Contestants

The rules on the repayment of loans and unpaid claims for nomination contestants, like the rules applicable to political parties and electoral district associations, require that loans be paid no later than three years from polling day (new section 477.54(1)). Repayment of a loan or unpaid claim after that date requires the approval of the CEO, or where the CEO declines to do so, the approval of a judge (new sections 477.56 and 477.57).

A claimant or lender has recourse to the courts if the nomination contestant (typically through his or her agent) refuses to pay the amount claimed or disputes the amount. A proceeding may also be commenced after the expiry of the three-year period.

The provision that deems an unpaid claim or loan to be a contribution to a nomination contestant's campaign after 18 months has been repealed (section 478.22(1)), in keeping with the CEO's recommendation.

The financial reporting obligations have also been revised, with additional requirements on the reporting of loans, identical to the reporting requirements for political parties and electoral district associations (new section 476.75). Reporting requirements of note in relation to loans are:

- unpaid or disputed amounts;
- whether disputed amounts are subject to a proceeding;
- whether an agreement has been reached on a repayment schedule and the details of that schedule; and
- whether any loans have been written off as uncollectible debt in accordance with the lender's usual accounting practices.

Under current section 478.03, a person is deemed to be a nomination contestant from the moment he or she accepts a contribution or incurs an election expense. New section 476.2 adds to those conditions that of borrowing money to finance a nomination contest. Being deemed to be a nomination contestant triggers a variety of

obligations under the CEA, including the obligation to appoint an agent to accept contributions and to create a campaign bank account.

2.5.5.6 Rules for Candidates

The new loan regime for candidates is similar to that for nomination contestants. Loans must be repaid no later than three years from polling day unless an extension is obtained from the CEO or, where the CEO does not grant the extension, from a judge (new sections 477.54(2), 477.56 and 477.57).

The financial reporting obligations are similar, with one important difference: a candidate's loans may be subject to a determination by the CEO that the loan was written off as an uncollectible debt in accordance with the lender's normal accounting practices. If such a determination is made, the candidate's political party or electoral district association may become liable to repay the loan as if they had guaranteed the loan (new section 477.6(4)). There is no similar provision for the other political entities within a political party.

The provision that deems an unpaid claim to be a contribution after 18 months following polling day is repealed.

The provision to deem a person to have been a candidate for purposes of the campaign finance provisions of the CEA is continued in revised Part 18 of the CEA. The new provision is expanded and provides that a person is deemed a candidate from the moment he or she accepts a transfer of goods, services or funds, incurs an election expense, accepts a contribution or borrows money to finance an election (new section 477). The predecessor provision, current section 365, deems a person to be a candidate from the moment he or she accepts a contribution or incurs an election expense. Being deemed to be a candidate also triggers various obligations under the campaign finance provisions of the CEA.

2.5.5.7 Loans to Leadership Contestants

For the purposes of the campaign finance provisions of the CEA, a leadership contestant is deemed to be a contestant from the moment he or she accepts a contribution, incurs an expense, or borrows money for the contest (new section 478.2(2)).

Loans must be repaid within three years of the date on which the leadership contest ends (new section 478.75). The repayment period may be extended by the CEO or, where the CEO declines to do so, by a judge. A lender may also apply to a court to have the loan repaid if there is a dispute as to the amount, if the financial agent of the leadership contestant refuses to pay the loan, or at the end of the three-year period or of any extended period (new section 478.79).

In addition to a leadership campaign return, leadership contestants must provide two updates on the amount of unpaid claims, including loans, and their status. These updates are to be provided 18 months and 36 months following the day of the leadership contest (new section 478.8).

2.5.6 Election Spending

Currently, the legislation imposes limits on the amount of money that political parties, nomination contestants and candidates may spend during an election. It also prohibits election advertising expenses by electoral district associations. There are no spending limits on campaigns by leadership contestants. Bill C-23 increases the limits on election spending by political parties, candidates and nomination contestants. It also introduces a change to the definition of election advertising expense in respect of electoral district associations.

2.5.6.1 Political Parties

Limits on spending by political parties during an election are currently determined by multiplying $0.70 by the number of names on the preliminary list of electors for constituencies in which the party has endorsed a candidate (current section 422 of the CEA).

This means that the spending limit for the various political parties could vary depending upon the number of ridings in which they contest an election. By way of example, during the 41st general election, the Liberal Party's election expense limit was $21,025,793 after indexation. It contested elections in each of Canada's 308 ridings. The amount was identical for the New Democratic Party. For the Conservative Party of Canada the spending limit was $20,955,089, because it contested elections in 307 ridings. The Green Party's limit was $20,765,345, as it endorsed candidates in 304 ridings.[84]

The bill increases the political party spending limit by raising the multiple to $0.735 if the election period is no longer than 36 days (clause 86, new section 430(1)).

The original bill contained a provision that had the effect of increasing the spending limit if the election period exceeded 36 days. The spending limit would have increased by adding to the amount determined under the formula noted in new section 430(1) 1/36 of that amount for each day in excess of the 36-day period. At the House of Commons committee stage, this provision was amended such that the increase will come into effect if an election period exceeds 37 days; the adjustment factor is 1/37. This change responds to concerns expressed by the CEO that the election period, based on its definition in section 2 of the CEA as beginning with the issue of the writ and ending on polling day, is 37 days.[85]

The bill also originally contained a provision to enable political parties to exclude certain expenses from the calculation of election expenses. The commercial value of services provided to a political party to solicit contributions would not have been considered an election expense if the solicitation was directed at contributors to the party who contributed more than $20 in the five years prior to polling day for the election for which the services are provided (proposed section 376(3)).

At the House of Commons committee stage, clause 86 was amended to remove proposed section 376(3), thereby eliminating from the spending limit the proposed exemption for fundraising solicitation calls. This measure was recommended by the Standing Senate Committee on Legal and Constitutional Affairs in its *Sixth Report*

following its study of the subject-matter of the bill.[86] The CEO had also recommended that this provision not be included in the bill, saying it would be difficult to distinguish fundraising solicitation calls from calls promoting a party or its candidates, and thus make verification extremely difficult.[87]

2.5.6.2 Compliance Audits of Election Spending by Political Parties

New sections 438 and 444(1)(*a*) in clause 86 require that a political party's auditors include in an election expense return a so-called "compliance audit" of the party's election spending. Such an audit must indicate whether the party and the chief agent of the party have complied with the campaign finance requirements in new Part 18, Division 1 (general provisions) and Division 2 (provisions applicable to political parties).[88]

2.5.6.3 Electoral District Associations

There are no spending limits prescribed in the legislation for electoral district associations except that the associations are prohibited from incurring advertising expenses during an election (current section 403.04). The bill introduces one change to this provision. If an election is held on a date other than the fixed-date prescribed in sections 56.1 and 56.2, expenses incurred as a result of advertising purchased prior to the issue of the writ and whose transmission cannot be cancelled are not considered election advertising expenses (new section 450(2)). This clause appears to respond in part to concerns raised by the CEO and supported by the Committee.

2.5.6.4 Candidates

Current limits on spending by a candidate in an election are $2.07 for each of the first 15,000 electors in the constituency; $1.04 for each of the next 10,000 electors; and $0.52 for each of the remaining electors. This amount is increased if the number of electors per square kilometre of a constituency is fewer than 10 (section 441).

The bill changes the multiples used to arrive at the spending limit for a candidate as follows (new sections 477.5(3) and 477.5(7)):

- $2.1735 for each of the first 15,000 electors;
- $1.092 for each for the next 10,000 electors; and
- $0.546 for each remaining elector.

The bill originally provided that if an election was longer than 36 days, the limit would be increased by adding to the amount calculated to be the spending limit 1/36 of that amount per day exceeding 36 days (new section 477.49). At the House of Commons committee stage, an amendment was made with the following effect: the pro-rated increase to the spending limit will apply if an election is longer than 37 days, with the pro-rating factor increased to 1/37. This change was also proposed by the CEO.

2.5.6.5 Nomination Contestants

Current limits on spending by nomination contestants are 20% of the spending limit established for electoral candidates (section 478.14). Since the formula for determining a candidate's spending limit is revised, resulting in a higher spending limit, the nomination contestant spending limit increases accordingly (see section 2.5.6.4 of this Legislative Summary).

2.5.7 Transfers of Goods, Services and Funds

The current legislation permits the various entities that make up a political organization to transfer funds between themselves with few restrictions. With some exceptions, these transfers are not considered contributions, and thus are not subject to the contribution limits set out in the CEA.[89]

The bill enables candidates to transfer money, goods and services from a campaign for a by-election that is cancelled to their campaign in a general election called following the cancelled by-election (new section 364(2)(*f*)).

2.5.8 Transfer or Sale of Capital Assets by Candidates

Under the current legislation, candidates, nomination contestants and leadership contestants must transfer any surplus electoral funds to the political party with which they are affiliated or to a party's electoral district association. The CEA is silent with respect to surplus assets purchased during an election campaign, such as computers and office equipment. New section 477.8(2) requires candidates to either transfer the assets to their parties or electoral district associations or sell them and transfer the funds. This was recommended by the CEO and supported by the Committee.[90]

2.6 Enforcement and Prohibitions (Clauses 88 to 107)

2.6.1 New Offences – Impersonation and Obstruction (Clauses 88, 89 and 102)

The bill creates two general offences: impersonation and obstruction.

Impersonation is to falsely represent oneself as the CEO, an election officer or a person authorized to act on behalf of a registered party, a candidate or any other person with a designated function under new section 480.1 of the CEA.

Obstruction is committed if any person obstructs or hinders an inquiry conducted by the Commissioner of Canada Elections or knowingly makes a false or misleading statement (new section 482.1).

These two offences carry the same punishments: a fine of up to $20,000 and/or imprisonment for up to one year on summary conviction, or a fine of up to $50,000 and/or imprisonment for up to five years on conviction on indictment (new section 500(5) of the Act).

2.6.1.1 Ineligibility to Sit in the House of Commons (Clause 102)

A conviction for either impersonating or obstructing the Commissioner of Canada Elections will have more serious consequences than those prescribed in the CEA (clause 102(3) of the bill).

The bill designates these two offences as “corrupt practices” as defined in section 502(2) of the CEA. A conviction for a corrupt practice results in the additional sentence of loss of one’s seat in the House of Commons (if the candidate was elected) and being forbidden from contesting an election to the House of Commons for a period of seven years, as well as being banned for seven years from holding public office that requires an order in council.

2.6.2 New Offences Relating to Polling Day and Advance Poll Registration (Clauses 93 and 94)

Clauses 93(4) and 94 create new offences relating to the new prohibitions created in Part 9 of the CEA (Voting) dealing with registration on polling day and at an advance poll (see sections 2.3.4.4 and 2.3.6.4 of this Legislative Summary). The new provisions for polling day and advance poll registration prohibit, among other things, knowingly applying to be registered on polling day in a name that is not one’s own, knowingly applying to be registered (without authorization) in a polling division in which one is not ordinarily resident, and applying to be registered to vote in an electoral district knowing that one is not qualified to vote or not entitled to vote in that electoral district. These prohibitions are found in new sections 161(5.1) (polling day registration) and 169(4.1) (advance poll registration).

2.6.3 New Offences Relating to Attesting to Residence (Clauses 93 and 94.1)

At the House of Commons committee stage, the bill was amended to add two new offences relating to attesting to residence. Clause 93 was amended to prevent an elector from attesting to the residence of more than one elector (sections 143(5), 161(6) and 169(5)) or from attesting to a residence when the elector’s own residence has been attested to (sections 143(6), 161(7) and 169(6)). Similar amendments (new clause 94.1) were made regarding Part 11 of the CEA (special voting rules – see section 2.3.7 of this Legislative Summary).

2.6.4 New Offences Relating to Communications with Voters Through Voter Contact Calling Services (Clauses 96 and 105)

Clause 96 of the bill creates new offences relating to scripts and recordings used to provide voter contact calling services. The key difference for these new offences is the degree of fault required to obtain a conviction: the offence is classified either as a “strict liability offence”[91] or an “offence requiring intent.”

Anyone who fails to meet the legal obligation to keep, for one year, each script used for live voice calls or the recording of the message conveyed by an automatic dialing-announcing device is guilty of a strict liability offence (new sections 495.1(1) and

495.2(1)) (see section 2.4.3.6 of this Legislative Summary). The maximum punishment for this offence under new section 500(1) is a fine of up to $2,000 and/or imprisonment for up to three months. However, a conviction can be avoided by showing that due diligence had been exercised.

This defence is not permitted for the offences listed in new sections 495.1(2) and 495.2(2) of the CEA. These sections require that the prosecution prove that the accused *knowingly* contravened their obligations to keep scripts and recordings. Therefore, the maximum punishment under new section 500(5) is harsher: a fine of up to $20,000 and/or imprisonment for up to a year on summary conviction, or a fine of up to $50,000 and/or imprisonment for up to five years on conviction on indictment.

Clause 105 of the bill also specifies that any act done by a member or an official representative of a group is deemed to have been done by the group for the purposes of a prosecution brought under one of the new offences relating to scripts and recordings (new sections 505.1 to 505.4 of the CEA).

2.6.5 Offences Relating to Third Party Election Spending Limit (Clause 97)

The CEO, supported by the Committee, recommended amending section 350(1) of the CEA to ensure third parties do not circumvent the limits on election advertising expenses by incurring expenses prior to the issuance of an election writ. As the Committee noted, spending during the pre-writ period in anticipation of an election will be a cause for concern given the fixed-date election provisions of the CEA.[92] As noted in section 2.5.4 of this Legislative Summary, the current wording of the provision indicates that the spending limit applies to expenses incurred *during an election period*. The amendment to the provision states that the limit applies *in relation to a general election*. Clause 97 creates an offence for breaching this provision. At the House of Commons committee stage, a new offence was created relating to foreign third parties that exceed the third party spending limits (new section 351.1 of the CEA).

2.6.6 Offences Under Part 18 of the Act (Financial Administration): Increased Fines (Clauses 99, 100, 106 and 107)

Bill C-23 increases the maximum fines for offences under Part 18 (financial administration) of the CEA, including new sections 497 (general financial provisions), 497.1 (political parties), 497.2 (electoral district associations), 497.3 (nomination contestants), 497.4 (candidates) and 497.5 (leadership candidates). Maximum terms of imprisonment remain the same.

The amendments are made under clause 100 of the bill. Essentially, the bill increases the maximum fines as follows:

- from $1,000 to $2,000 for strict liability offences (e.g., producing an incomplete document (new sections 436(*b*), 439(*b*), 497.1(1) and 500(1));
- from $2,000 to $5,000 for summary conviction offences requiring intent (e.g., accepting contributions without authorization (new sections 426(3), 497.1(2) and 500(2)); and
- from $2,000 to $20,000 and from $5,000 to $50,000 for dual-procedure offences[93] requiring intent (e.g., collusion (new section 369(2), 497(2) and 500(5)).

The tables in appendices A and B to this Legislative Summary give an overview of the increase in maximum fines payable for offences under Part 18 of the CEA. Specifically, they show offences relating to general financial provisions (new section 497) and political parties (new section 497.1) respectively.

2.6.7 Offences Under Part 17 of the Act (Third Party Election Advertising): Increased Fines for Corporations (Clause 104)

Bill C-23 increases the maximum fines for groups or corporations convicted of an offence under section 353(1) of the CEA, that is, failure to register immediately after having incurred election advertising expenses of $500.

Clause 104 of the bill raises the maximum fine from $10,000 to $50,000 (strict liability offences) and from $25,000 to $100,000 (offences requiring intent) for such groups or corporations (new sections 505(3) and 505(4)).

2.7 Commissioner of Canada Elections (Clauses 108 to 110, 146 and 148 to 152)

2.7.1 Appointment and Staffing (Clauses 108, 148 and 150 to 152)

Under Bill C-23, the Commissioner of Canada Elections is still responsible for investigations of alleged violations of the CEA. However, the bill changes how the Commissioner of Canada Elections is appointed. Currently, the Chief Electoral Officer appoints the Commissioner of Canada Elections (section 509). Clause 108 of the bill establishes that, under the new legislation, the Commissioner is appointed by the Director of Public Prosecutions (DPP) for a non-renewable term of seven years, removable before that time by the DPP only for cause (new section 509(1)). New section 509(2) of the CEA specifies that the DPP cannot consult the Chief Electoral Officer when appointing the Commissioner.

New section 509(3) of the CEA lists the categories of persons not eligible to be appointed as Commissioner, such as a candidate, an employee of a registered party, or the Chief Electoral Officer or a member of his or her staff.

New section 509.1(1) provides that the position of Commissioner of Canada Elections is within the Office of the DPP. For the employees appointed by the Commissioner to enable him or her to exercise the functions, duties and powers of the office, the Commissioner is considered the deputy head for the purpose of human resource management both under sections 11 to 13 of the *Financial Administration Act* and under the *Public Service Employment Act* (new sections 509.1(2) and 509.1(3)).[94] This enables the Commissioner to hire permanent and term employees (sections 509.3(1) and 509.3(2)).

The Commissioner may authorize DPP employees to help perform his or her functions under the CEA, and the Commissioner may also hire additional temporary employees, including investigators (new sections 509.3 to 509.5).[95] Currently, the Commissioner may, through a Memorandum of Understanding with the Royal Canadian Mounted Police, access technical assistance or other support for his or her investigations. If certain additional expenses are required by the Commissioner, funds may be drawn from the Consolidated Revenue Fund, but only on the certificate of the Chief Electoral Officer. Under Bill C-23, the DPP is now responsible for authorizing such payments (new section 509.6).

Clause 152 of the bill provides that the DPP is to report annually on the activities of the Commissioner of Canada Elections (except in relation to the details of investigations) to the Attorney General (this amends section 6(4) of the *Director of Public Prosecutions Act*). The House of Commons committee amended clause 152 to require that the Commissioner provide the section of the annual report on the Commissioner's activities prepared in accordance with the CEA.

2.7.2 Investigations and Prosecutions (Clauses 108, 110 and 146)

Currently, if the Chief Electoral Officer believes on reasonable grounds that an offence has been committed, he or she may direct the Commissioner to make any inquiry.[96] The Commissioner may also initiate an inquiry on his or her own initiative. The bill originally provided that "the Commissioner, on his or her own initiative or in response to a complaint, may conduct an investigation if he or she believes on reasonable grounds that an offence under [the CEA] has been committed" (clause 108); new section 510(1)). The House of Commons committee amended clause 108 to remove the provision stating that the Commissioner may conduct an investigation only if he or she believes on reasonable grounds that an offence has been committed under the CEA.[97] The bill also provides that "the Commissioner is to conduct the investigation independently of the Director of Public Prosecutions" (new section 510(3)).

Subject to the general requirement of notifying the person whose conduct is being investigated (new section 510(2) and certain exceptions enumerated in the new section 510.1(2)), all investigations are confidential. The DPP may refuse to disclose

any record requested under the *Access to Information Act* that contains information that relates to investigations conducted by the Commissioner (clause 146).

Bill C-23 does not change the process for the commencement of proceedings, which is set out in section 511 of the CEA:

> If the Commissioner believes on reasonable grounds that an offence under this Act has been committed, the Commissioner may refer the matter to the Director of Public Prosecutions who shall decide whether to initiate a prosecution.

Instead of laying charges for prosecution, the Commissioner may enter into a compliance agreement with a person who the Commissioner believes on reasonable grounds has committed or is about to commit an act that could constitute an offence under the CEA. The compliance agreement is aimed at ensuring compliance with the Act.[98] Whereas the Commissioner must currently publish only a summary of the compliance agreement, Bill C-23 requires that the text of the agreement, except the parties' signatures, be published (new section 521).

At the House of Commons committee stage, clause 108 was further amended to give the Commissioner the authority to disclose information to the public that, in the Commissioner's opinion, is in the public interest (new section 510.1(2)(*g*)).[99] In making such a disclosure, the Commissioner must take into account the privacy rights of the person who is the subject of the disclosure, the presumption of innocence and public confidence in the fairness of the electoral process.

2.7.3 Limitation Period on Commencement of Proceedings (Clause 109)

The current limitation period on commencement of proceedings is set out in section 514. This section provides for a general limitation period of five years from the date on which the Commissioner becomes aware of the facts giving rise to the prosecution, with an absolute limitation period of 10 years from the date on which the offence was committed. This provision is amended with the following effects: for strict liability offences (set out in section 500(1)) the limitation period is six years from the date on which the subject-matter of the proceedings arose (clause 109; new section 514(1)). The House of Commons committee amendment to clause 109 clarifies that there is no limitation period for offences requiring intent (new section 514(3)). Proceedings for these types of offences can now be commenced at any time (offences mentioned in sections 500(2) to 500(5)).[100]

2.8 Coming into Force

2.8.1 Coming into Force on Royal Assent

The amendments presented in this section come into force when Bill C-23 receives Royal Assent.

2.8.1.2 Amendments Affecting the Office of the Chief Electoral Officer

The amendments in the following clauses deal primarily with the office of the CEO:

- clauses 2(5) and 2(6) (definition of judge);
- clause 3 (term of CEO);
- clause 6 (power of CEO to adapt Act);
- clause 8 (alternative voting processes, entering into contracts, etc.);
- clause 10 (staffing);
- clause 11 (advisory committee); and
- clause 15 (delegation of powers).

2.8.1.3 Amendments in Relation to Voting

The following clauses concern preparation for the vote and voting procedures:

- clauses 26(2) and 26(3) (nicknames);
- clause 28 (sanction);
- clause 34 (revision offices);
- clause 35 (registration form);
- clause 39(1) (prohibition against false inclusion on register of electors);
- clauses 50(3) and 50(4) (registration certificate);
- clause 54(2) (prohibition – registration on election day);
- clause 54(3) (prohibition – registration at advance polling station); and
- clauses 72, 74 and 111 (technical amendments).

2.8.1.4 Amendments in Relation to Campaign Finance

The amendments in the following clauses deal with campaign finance (see the table in Appendix C of this Legislative Summary, which sets out the possible coming-into-force dates of selected campaign finance provisions):

- clause 80(2) (testamentary dispositions);
- clause 80(3) (contributions to own campaign);
- clause 82 (prohibited agreements);
- clause 83 (contribution to own campaign loans – candidates and leadership contestants); and
- clauses 84 and 85 (reduction of reimbursement).

2.8.1.5 Amendments in Relation to Offences and Punishments

The amendments in the following clauses affect the offences and punishments provisions of the CEA:

- clause 88 (impersonation);
- clause 89 (obstruction);
- clause 90 (prohibition for field liaison officers);
- clause 91 (certain offences repealed);
- clause 92 (offences requiring intent);
- clause 93(4) (forbidden acts – polling day registration);
- clause 94 (certain contraventions);
- clause 95 (premature transmission of election results);
- clauses 97(1) and 97(2) (election advertising expense limits);
- clause 98 (exceeding contribution limit);
- clause 100(1) (punishment);
- clause 101(2) (campaign returns);
- clause 102(3) (offences);
- clause 104 (prosecution of third parties);
- clause 106 (deregistered parties);
- clause 109 (limitation period);
- clause 110 (publication); and
- clause 124 (publication of consolidated version of the CEA).

2.8.1.6 Other Amendments

The amendments in these clauses deal with the office of the CEO, the repeal of the current transitional provisions in the CEA and the coming into force of the coordinating amendments:

- clause 125 (transitional provisions repealed);
- clause 127 (term of CEO);
- clause 136 (boundaries readjustment – support of commissions);
- clause 145 (CEO added as public office holder); and
- clauses 153 to 157 (coordinating amendments).

2.8.2 Coming into Force on Day or Days to be Fixed by Order in Council

The amendments in these clauses, which mainly affect the office of the Commissioner of Canada Elections, come into force on a day or days to be fixed by order of the Governor in Council:

- clause 2(1) (definition);
- clause 5.1 (CEO may disclose documents to the Commissioner)
- clause 108 (Commissioner of Canada Elections);
- clause 114 (consultation with DPP);
- clause 117 (inspecting documents);
- clause 123(2) (certain payments from the consolidated revenue fund);
- clauses 134 and 135 (transitional);
- clause 146 (DPP and access to information);
- clause 148 (*Financial Administration Act*); and
- clauses 150 to 152 (DPP).

2.8.3 Coming into Force Six Months after Royal Assent or Sooner upon Notice by Chief Electoral Officer

A significant number of amendments will come into force six months after the day on which the bill receives Royal Assent unless, prior to that date, the CEO publishes a notice in the *Canada Gazette* that the necessary preparations for the bringing into operation of those provisions have been made and that they may come into force accordingly, in which case they come into force on the day on which the notice is published.

2.8.3.1 Office and Powers of the Chief Electoral Officer

The following provisions affect the office and powers of the CEO:

- clauses 2(2) to 2(4) and 2(7) to 2(9) (definitions, etc.);
- clause 5 (guidelines and interpretation notes);
- clause 7 (communication with electors);
- clause 9 (signature);
- clauses 12 and 13 (field liaison officers);
- clause 14 (no partisan conduct); and
- clauses 16 to 25 (appointment of election officers).

2.8.3.2 Preparation for the Vote and Voting

The amendments contained in the following clauses deal with preparation for the vote and voting procedures:

- clause 23 (deletion of names);
- clause 24 (notice of grant of poll);
- clauses 25, 26(1) and 27 (technical);
- clause 29 (obligations of candidates);
- clause 30 (prohibition on official agents);
- clause 31 (repeal of gift prohibitions);
- clause 32 (change in polling station address);
- clause 33 (cancellation of by-election);
- clauses 36 to 38 and 40(2) (list of electors);
- clause 40 (technical);
- clauses 41 to 43 (preparation for the vote);
- clauses 44 to 49, 50(1), 50(2), 50(5), and 51 to 53 (voting);
- clauses 54(1) to 54(1.2), 54(4) and 55 to 58 (advance polling);
- clause 59 to 60 (special voting rules);
- clauses 61 to 66 (counting votes); and
- clauses 67 to 71 (judicial recounts).

2.8.3.3 Communications

These provisions affect communications with voters:

- clause 72 (definition of election advertising);
- clause 77 (scripts and recordings); and
- clauses 78 and 79 (third party election advertising).

2.8.3.4 Campaign Finance

Clause 86 will result in the renumbering and reorganization of Part 18 of the CEA, functioning as a code within the CEA to govern most aspects of campaign finance. (See the table in Appendix C of this Legislative Summary, which sets out the possible coming-into-force dates of selected campaign finance provisions.)

2.8.3.5 Enforcement

This group of provisions will affect the enforcement of the CEA:

- clauses 90, 91, 93(1) to 93(3), 96, 97(1.1), 97(3), 99, 100(2), 100(3), 101(1), 102(1), 102(2), 102(4), 103, 105, and 107 (enforcement of the CEA).

2.8.3.6 Reporting Obligations of the Chief Electoral Officer

The following amendments deal with the CEO's reporting obligations:

- clauses 112, 113 to 116, 118 to 122, 123(1) (report on alternatives to signature).

2.8.3.7 Technical Provisions

The following are largely technical provisions:

- clauses 126 and 128 to 133 (transitional provisions); and
- clauses 147 and 149 (technical).

2.8.4 In Force on Day on Which Parliament Is Dissolved

The following provisions come into force on the day on which Parliament is next dissolved or, if that day occurs less than six months after the day on which Bill C-23 receives Royal Assent, these sections come into force six months after the day on which Parliament is next dissolved:

- clause 4 (powers and duties of the CEO);
- clause 76 (voter contact calling services); and
- clauses 137 to 144 (*Telecommunications Act*).

2.8.5 In Force When Sections 76 or 77 Come into Force

Clause 75 (interpretation of voter contact calling services) comes into force on the day on which clause 76 (voter contact calling services) or clause 77 (communications – scripts and recordings) comes into force, whichever comes first.

2.8.6 In Force on 1 January of Year Following Royal Assent

The following provisions come into force on 1 January of the year following the year in which Bill C-23 receives Royal Assent (see the table in Appendix C of this Legislative Summary, which sets out the possible coming-into-force dates of selected campaign finance provisions):

- clause 80(1) (contribution limits); and
- clause 81 (repeal of indexation for inflation).

2.8.7 In Force on 1 January Following the Year That Is Six Months Following Royal Assent or Sooner

Clause 87(1) ($1,500 individual contribution limit) comes into force on 1 January of the year following the year in which clause 86 (the reordered Part 18, campaign finance mini-code) comes into force. Clause 86 comes into force six months following Royal Assent or sooner if the CEO determines his or her office is ready to implement the necessary changes to bring the provisions into effect.

Clause 87(2) ($25 annual increase in contribution limits) comes into force on 1 January of the year following the year in which clause 87(1) ($1,500 individual contribution limit) comes into force. The coming into force of clause 87(1) is dependent upon the coming into force of clause 86 (see the table in Appendix C of this Legislative Summary, which sets out the possible coming-into-force dates of selected campaign finance provisions).

NOTES

* This Legislative Summary was prepared by the following authors:

- Andre Barnes — Section 2.3
- Andre Barnes and Sebastian Spano — Section 2.8
- Michael Dewing and Dara Lithwick — Section 2.4
- Eric Pelot — Sections 2.1 to 2.1.9
- Sebastian Spano — Sections 2.1.10 and 2.5
- Dominique Valiquet — Sections 2.6 and 2.7
- Erin Virgint — Section 2.2

1. *Canada Elections Act* [CEA], S.C. 2000, c. 9.
2. *Telecommunications Act* [TA], S.C. 1993, c. 38.
3. *Electoral Boundaries Readjustment Act*, R.S.C., 1985, c. E-3.
4. *An Act respecting the office of the Director of Public Prosecutions*, S.C. 2006, c. 9, s. 121.
5. Elections Canada, *Responding to Changing Needs: Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election*, 2010.
6. House of Commons, Standing Committee on Procedure and House Affairs, *Response to the Chief Electoral Officer's Recommendations for Legislative Reforms Following the 40th General Election*, February 2012.
7. This bill also follows a series of court cases pertaining to the 41st general election. See *Opitz v. Wrzesnewskyj,* 2012 SCC 55 (allegations of irregularities affecting the result of the election); and *McEwing v. Canada (Attorney General)*, 2013 FC 525 (deceptive or fraudulent communications with voters).
8. Chief Electoral Officer of Canada [CEO], *Preventing Deceptive Communications with Electors: Recommendations from the Chief Electoral Officer of Canada Following the 41st General Election*, 2013.
9. Harry Neufeld, *Compliance Review: Final Report and Recommendations – A Review of Compliance with Election Day Registration and Voting Process Rules*, 2013.

10. Third parties as defined in Part 17 of the CEA are excluded by omission from these new provisions, as are eligible political parties or political parties that have met some but not all of the requirements for registration.

11. Note that the definition of "chief agent" of a registered political party is amended by clause 2(2). The definition now includes the chief agent as well as her or his replacement.

12. Both of these amendments may be seen to be a response to recommendations by the Standing Senate Committee on Legal and Constitutional Affairs made following its study of the subject-matter of the bill. See Standing Senate Committee on Legal and Constitutional Affairs [LCJC], *Sixth Report*, 2nd Session, 41st Parliament, 15 April 2014.

13. Being a registered party, that is, a party registered under the CEA, brings considerable benefits to the party, including:

    - entitlement to issue tax receipts;
    - reimbursement of election expenses;
    - annual access to copies of the voters' lists; and
    - access to broadcasting time.

    The CEA also recognizes eligible parties, or parties that have applied for registration but have not completed all the requirements for registration.

14. Elections Canada, "Registered Political Parties and Parties Eligible for Registration."

15. The provision gives no indication of whether the CEO can make changes to a guideline, interpretation note or opinion after it has been pre-published or before it is issued. The language in sections 16.1(5) and 16.2(4) suggests that once an interpretation is pre-published, that same interpretation will be issued at the expiry of the pre-publication period. This is reinforced by the requirement that in addition to the guideline, interpretation or opinion, the CEO must provide a notice that the relevant document will be issued on the expiry of the prescribed time period.

16. The Committee considered the CEO's adaptation power in its report, *Response to the Chief Electoral Officer's Recommendations for Legislative Reforms Following the 40th General Election* (2012). The CEO has reported in several statutory reports following general elections that he has had to use the power of adaptation to enable inmates in federal prisons to vote. He requested an amendment to the CEA that would allow the CEO not to have to resort to the adaptation power. A majority of the Committee declined to support the recommendation, and suggested that a broader discussion of the CEO's power of adaptation would be beneficial at some future date.

17. This amendment was recommended in LCJC (2014).

18. See ibid.

19. House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 2.

20. Also included in clause 8 are amendments that reflect current realities and practice with respect to the CEO's power to contract, enter into leases during an election period and to collaborate with international organizations and electoral agencies in other countries (new sections 18.01 and 18.2). These provisions address points raised in recommendations III.1 and III.2 in Elections Canada (2010).

21. Elections Canada (2010), recommendation III.3.

22. The Speaker is also required to submit this report to the House of Commons (clause 116).

23. Elections Canada, *Completing the Cycle of Electoral Reforms: Recommendations from the Chief Electoral Officer of Canada on the 38th General Election*, 2005, pp. 27–29.

24. *An Act to amend the Canada Elections Act and the Public Service Employment Act*, S.C. 2007, c. 21, s. 40. See also Michel Bédard and Sebastian Spano, *Legislative Summary of Bill C-31: An Act to amend the Canada Elections Act and the Public Service Employment Act*, Publication no. LS-542E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised 22 June 2007.

25. See the *Public Service Employment Act*, s. 50.1.

26. *Conflict of Interest Act* [CIA], S.C. 2006, c. 9, s. 2. It appears that all other Officers of Parliament are already subject to the CIA, as they are Governor in Council appointments and therefore captured by the definition of "public office holders" and "reporting public office holders" in section 2(1) of the CIA. The CEO is actually appointed by a resolution of the House of Commons. For further information about the Officers of Parliament, see Élise Hurtubise-Loranger and James R. Robertson, *Appointment of Officers of Parliament*, Publication no. 2009-21-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 February 2012.

27. A number of technical amendments in this part of the document are not discussed in detail. Clauses 117, 118, 122 and 123 amend a number of provisions in Part 21 of the CEA that will be renumbered as a result of amendments elsewhere in the CEA.

28. A companion amendment, clause 114, removes the reference to the CEO consulting with the Director of Public Prosecutions before reporting on measures relating to the Commissioner of Canada Elections.

29. Elections Canada (2010), recommendation IV.6; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 23.

30. Clauses considered to be minor or housekeeping in nature or that result from renumbering of the CEA are not discussed in detail in this part of the document. Some of these clauses are addressed in endnotes.

31. Elections Canada (2010), recommendation I.3; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 3.

32. Note that many clause numbers were renumbered in the version of the bill that was passed by the House of Commons. Revised numbers are printed in boldface.

33. Elections Canada (2010), recommendations I.2 and I.3; and House of Commons, Standing Committee on Procedure and House Affairs (2012), pp. 2–3. The recommendation to enable returning officers to recruit central poll supervisors from lists submitted by electoral district associations or political parties was initiated by the Committee. Elections Canada assisted the Committee by proposing appropriate amendments to the legislation to give effect to the recommendation. Amendments made at the House of Commons committee stage restore the existing process for the appointment of these officials.

34. Elections Canada (2010), p. 13; and House of Commons, Standing Committee on Procedure and House Affairs (2012), pp. 3–4.

35. Clause 22 is a technical amendment that deals with transposing the results of a previous election to polling stations in a new electoral district created as a result of redistribution. Clause 23 addresses how to attribute votes to a candidate representing a party that is the result of a merger of two or more parties. These clauses affect sections 41 and 42.

36. The CEA makes a distinction between registered and unregistered associations. An electoral district association may be unregistered for a variety of reasons, including not having completed the steps for registration or having been deregistered by Elections Canada for not complying with the various reporting requirements in the legislation. (See Division 1.1 of Part 18 of the CEA, which sets out the requirements for registration.)

37. Elections Canada (2010), pp. 109–110; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 22.

38. Section 24(7) of the CEA provides that:

> The Chief Electoral Officer 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), whether or not the contravention occurs in the exercise of his or her duties under this Act.

39. Clauses 26–28 and 30–32 are technical amendments resulting from the reorganization and renumbering of the campaign finance provisions in Part 18 of the CEA. The amendments to the campaign finance regime are discussed in section 2.5 of this Legislative Summary. Clause 29 corrects a discrepancy between the English and French versions of section 73 of the CEA. The word “rejetée” is replaced with the word “annulée.”

40. See Elections Canada (2010), p. 105; and House of Commons, Standing Committee on Procedure and House Affairs (2012), pp. 20–21. Clause 27 contains other technical amendments to correct discrepancies between the English and French versions of section 66(3) of the CEA, also dealing with the use of nicknames by candidates.

41. There are a number of minor or housekeeping amendments in the parts of the bill dealing with revision of the lists of electors and preparation for the vote, including these:

- clause 24, which clarifies that the CEO has authority to delete from the National Register of Electors the name of individuals who are under a court-ordered guardianship (or curatorship in Quebec) if requested by the elector’s authorized guardian; this follows recommendations made by the CEO and the Standing Committee on Procedure and House Affairs.
- clause 35, which amends section 98 by replacing the text “the returning officer may rent one or more offices” with “the returning officers may open one or more offices.”
- clause 41, which amends section 117(2) regarding the contents of the application for registration of political parties to reflect a change in section numbers (current section 366(2)(*b*) becomes section 385(2)(*b*)).

42. See Elections Canada (2010), p. 20; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 5.

43. Following the 2011 general election, in the contested election in Etobicoke Centre, which was the subject of an appeal to the Supreme Court of Canada, the qualification of electors who registered to vote on polling day was an issue that the Court addressed. See *Opitz v. Wrzesnewskyj*.

44. Office of the Privacy Commissioner of Canada, *Privacy Management Frameworks of Selected Federal Institutions: Section 37 of the* Privacy Act, Audit report, 2009.

45. Elections Canada (2010), recommendation II.2; and House of Commons, Standing Committee on Procedure and House Affairs (2012), pp. 10–11.

46. See Elections Canada (2010), p. 114; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 24.

47. As explained earlier, “eligible parties” are political parties that have applied to be “registered parties” but have not completed the process for registration.

48. Elections Canada (2010), p. 114; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 24.

49. Currently, the deputy returning officer receives a ballot box for polling day alone. The CEO expressed concerns about the custody of ballot boxes following the close of advance polls and the counting of votes on polling day. (See Elections Canada (2010), pp. 21–22; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 5.) These changes are complementary to amendments concerning custody of ballot boxes in clause 60(4), which adds new section 175(6) to the CEA.

50. Elections Canada (2010), recommendation III.5; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 19.

51. Elections Canada (2010), recommendation I.5; and House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 5.

52. Neufeld (2013).

53. The voter identification requirement in the CEA is currently the subject of a challenge in British Columbia under section 3 (voting rights) of the *Canadian Charter of Rights and Freedoms*. The basis of the challenge is that individuals who lack the necessary documentary proof of identity and residence are prevented or impeded from exercising their right to vote. Although the Supreme Court of British Columbia agreed that the identification requirements interfered with the right to vote, it considered the interference to be a reasonable limit pursuant to section 1 of the Charter. The Court relied in large part on the fact that various options are available to voters to provide proof of identity, including vouching. Moreover, the voter identification provisions of the legislation were considered to be a proportionate response to a concern about voter impersonation and other kinds of electoral fraud. The court concluded that, even though it might not be possible to know the dimensions of the problem, the legislation was a justifiable attempt to preserve the integrity of the electoral process. The case was upheld by the British Columbia Court of Appeal. See *Henry v. Canada (Attorney General)*, 2014 BCCA 30.

54. Clause 53(5) is a companion amendment. It repeals sections 161(6) and 161(7), regarding vouching for a voter who wishes to register on polling day. Clause 54 is another companion amendment that repeals the requirement that the person at an advance polling station who administers the oath to an unregistered elector must orally advise the oath taker of the qualifications for electors (repealing section 161.1).

55. Voting day registration was an important issue in *Opitz v. Wrzesnewskyj*, where a number of ballots were contested due to concerns or allegations that some voters would have had an opportunity to vote twice – once in a poll in which they were registered, and again at a different poll by claiming that their names were not on the list of electors for that poll – due to the lack of adherence to registration procedures.

56. Without the opening qualifier that the document is to be provided “on request,” it is not clear how the expression “at intervals of *no less than* 30 minutes” should be interpreted, and the interval period may be construed as open-ended.

57. A substantially similar version of Bill C-40 had been introduced in the previous Parliament as Bill C-16, An Act to amend the Canada Elections Act (expanded voting opportunities). The bill died on the *Order Paper* when Parliament was dissolved in September 2008 but not before being amended by the House of Commons Standing Committee on Procedure and House Affairs to remove the last day before election day as a day for an advance poll, but retaining the eighth day before election day, for a total of four days of advance polling.

58. Elections Canada, *Voter Turnout at Federal Elections and Referendums*.

59. Elections Canada, *The Electoral System of Canada*, 2nd ed., Ottawa, 2007; and Elections Canada, *Estimation of Voter Turnout by Age Group and Gender at the 2011 Federal General Election*.

60. Elections Canada (2010), p. 21.

61. Ibid.

62. Currently, candidates or their representatives are permitted to take note of the serial number of the seal on ballot boxes at the close and reopening of an advance polling station (section 175(6)). References in renumbered section 175(8) to the additional day of advance polling and the additional boxes are added by clause 60(4) of the bill. Clause 60(4) also renumbers current section 175(5) as 175(6) and amends the word *box* to make it plural (in reference to the additional advance polling boxes created by the bill).

63. The clause also enables the candidate or the candidate's representative to obtain the new lists of voters who have voted that have been provided to each candidate during the vote.

64. Elections Canada (2010); and House of Commons, Standing Committee on Procedure and House Affairs (2012), recommendation IV.10. It should be noted that the right to apply to a judge for a recount under section 301 of the CEA is a process that is distinct from the automatic recount triggered when the difference between the number of votes cast for the candidate with the most votes and any other candidate is less than 1/1,000th of the total votes cast (section 300). In the latter case, the returning officer must ask a judge for a recount within four days after the results of the vote have been validated.

65. *R. v. Bryan*, 2007 SCC 12. For more information on electoral rights and the *Canadian Charter of Rights and Freedoms*, see James R. Robertson and Sebastian Spano, *Electoral Rights: Charter of Rights and Freedoms*, Publication no. 08-50E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 September 2008.

66. *R. v. Bryan*., para. 128.

67. Ibid., para. 129.

68. Chief Electoral Officer of Canada (2013). See also House of Commons, Standing Committee on Procedure and House Affairs, *Evidence*, 1st Session, 41st Parliament, 28 May 2013, 1105 (Mr. Marc Mayrand, Chief Electoral Officer, Elections Canada).

69. *McEwing v. Canada (Attorney General)*. The proceeding was initiated under Part 20 of the CEA dealing with contested elections. A voter may apply to a court to have an election invalidated if the court finds that there were irregularities, fraud or other unlawful conduct that affected the results of the election.

70. Note that the CRTC has established *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*, which include three different sets of rules: the "National Do Not Call List Rules," the "Telemarketing Rules," and the "Automatic Dialing-Announcing Device Rules." These rules are made pursuant to section 41 of the *Telecommunications Act*. Political entities governed by the *Canada Elections Act* are governed by the "Telemarketing Rules" – though only when soliciting donations – as well as the "Automatic Dialing-Announcing Device Rules." The "National Do Not Call List Rules" do not apply to political parties and candidates, but these individuals and organizations must maintain their own internal "do not call" lists. As discussed in section 2.4.3.5 of this Legislative Summary (clauses 137–144 of the bill), the CRTC will be responsible for enforcement of the new Part 16.1 of the Act.

71. Third parties are defined in Part 17 of the CEA as "a person or group, other than a candidate, a party or an electoral district association." A third party must be registered after having incurred $500 in election advertising expenses (section 353).

72. Persons authorized to issue notices of violation for the purpose of administrative monetary penalties under section 72.04 of the TA are treated as distinct from persons designated as inspectors under section 71(1) of the TA. Separate provisions are found in the TA for both classes of persons. In theory, an inspector need not be the person issuing notices of violation.

73. The three-year period was recommended in LCJC (2014), following subject-matter study of Bill C-23 by the Committee.

74. See Sebastian Spano, *Political Financing*, Publication no. 07-50E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 19 September 2008, for an overview of the campaign finance regime in the CEA.

75. Elections Canada (2010), section II.11. The House of Commons Standing Committee on Procedure and House Affairs considered the recommendation but determined that it would study the issue together with Bill C-21, An Act to amend the Canada Elections Act (accountability with respect to political loans), which was introduced in the 1st Session of the 41st Parliament and died on the *Order Paper* when Parliament was prorogued in September 2013. For a discussion of the bill, see Michel Bédard, *Legislative Summary of Bill C-21: An Act to amend the Canada Elections Act (accountability with respect to political loans)*, Publication no. 41-1-C21-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 17 November 2011.

76. Bill C-21: An Act to amend the Canada Elections Act (accountability with respect to political loans) (short title: The Political Loans Accountability Act), 1st Session, 41st Parliament.

77. Elections Canada (2010), pp. 47–48; and House of Commons, Standing Committee on Procedure and House Affairs (2012), recommendation II.6.

78. In particular, Bill C-24: An Act to amend the Canada Elections Act and the Income Tax Act (political financing), 2nd Session, 37th Parliament; and Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability (short title: Federal Accountability Act), 1st Session, 39th Parliament.

79. See Spano (2008) for an overview of the current regime governing unpaid claims and loans.

80. Elections Canada, *Recommendations of the Chief Electoral Officer of Canada to the House of Commons Standing Committee on Procedure and House Affairs Respecting Specific Issues of Political Financing*, 2007.

81. Elections Canada, "Unpaid Loans and Claims of 2006 Liberal Leadership Contestants," Backgrounder.

82. Bédard (2011), pp. 1–2.

83. Elections Canada (2010), recommendation II.8.

84. Elections Canada, "Table 2 – Confirmed candidates and final registered party election expenses limits," in Appendix in *Report of the Chief Electoral Officer of Canada on the 41st general election of May 2, 2011*, 17 August 2011.

85. Elections Canada, *Elections Canada's Proposed Amendments to Bill C-23*, updated 8 April 2014.

86. See LCJC (2014).

87. See Elections Canada (8 April 2014).

88. In his report to Parliament, the CEO had recommended that he be given the power to require political parties to provide any documents or information necessary to verify that election expenses returns comply with the CEA (Elections Canada (2010), recommendation II.1). A majority of the Committee did not support the recommendation, but supported the CEO's alternative recommendation to expand the responsibilities of a party's external auditors (House of Commons, Standing Committee on Procedure and House Affairs (2012), p. 9). Related to this issue is the motion passed unanimously by the House of Commons on 12 March 2012 calling on the government to introduce legislation to, among other matters, give the CEO "the power to request all necessary documents from political parties to ensure compliance with the Elections Act" (see House of Commons, *Journals*, No. 94, 1st Session, 41st Parliament, 12 March 2012).

89. See Spano (2008), Part D.

90. Elections Canada (2010), recommendation II.4.

91. The Supreme Court of Canada (*R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299, p. 1326) described strict liability offences as follows:

> Offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act *prima facie* imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care.

92. Elections Canada (2010), pp. 47–48; and House of Commons, Standing Committee on Procedure and House Affairs (2012), recommendation II.6.

93. Dual-procedure offences are ones where the prosecution can choose to proceed by summary conviction or indictment.

94. The budget that was allocated to the Commissioner will now be transferred to the Director of Public Prosecutions (clause 135(2)). The deputy heads' powers are provided in *Financial Administration Act*, R.S.C., 1985, c. F-11, s. 12 (see also clauses 148, 150 and 151 of Bill C-23).

95. In contrast, new section 20(1) of the CEA provides that the CEO may engage the services of outside persons having technical or specialized knowledge, *but only with the Treasury Board's approval* (clause 10).

96. CEA, s. 510.

97. See Elections Canada (8 April 2014).

98. CEA, ss. 517–521.

99. See Elections Canada, "Remarks of the Commissioner of Canada Elections on Bill C-23, *An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts*, before the Standing Committee on Procedure and House Affairs," 1 April 2014.

100. See Elections Canada (8 April 2014).

APPENDIX A – MAXIMUM PUNISHMENTS UNDER BILL C-23 FOR OFFENCES RELATING TO GENERAL FINANCIAL PROVISIONS

Table A.1 – Maximum Punishments: Offences Relating to General Financial Provisions

Offence (New Sections, CEA)	Current Punishment		Punishment Under Bill C-23	
	Strict Liability	Requiring Intent	Strict Liability	Requiring Intent
Contribution made by an ineligible person or entity (363(1), 497(1) and 497(2))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to return contributions from ineligible contributors (363(2) and 497(1))	3 months and/or $1,000		3 months and/or $2,000	
Prohibited transfers (365, 497(1) and 497(2))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to issue a receipt (366, 497(1) and 497(2))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Making contributions that exceed contribution limits (367 and 497(2))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Circumventing contribution limits (368(1), 497(1) and 497(2))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Concealing the identity of the source of a contribution (368(2), 497(1) and 497(2))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Knowingly accepting excessive contributions (368(3) and 497(2))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Entering into a prohibited agreement (368(4) and 497(2))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Soliciting or accepting contributions (369(1) and 497(2))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Collusion (369(2) and 497(2))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Making indirect contributions (370, 497(1) and 497(2))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Exceeding the limit on cash contributions (371 and 497(2))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Failure to return contributions (372, 497(1) and 497(2))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000

Offence (New Sections, CEA)	Current Punishment		Punishment Under Bill C-23	
	Strict Liability	Requiring Intent	Strict Liability	Requiring Intent
Ineligible lenders, guarantors and borrowers (373, 497(1) and 497(2))			3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Making indirect loans (374, 497(1) and 497(2))			3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to keep evidence of payment (380 and 497(1))	3 months and/or $1,000		3 months and/or $2,000	
Failure to provide a statement and evidence of payment for petty expenses (381(3) and 497(1))	3 months and/or $1,000		3 months and/or $2,000	
Paying petty expenses in excess of the maximum amount authorized to pay (381(4) and 497(1))	3 months and/or $1,000		3 months and/or $2,000	

APPENDIX B – MAXIMUM PUNISHMENTS UNDER BILL C-23 FOR OFFENCES RELATING TO POLITICAL PARTIES

Table B.1 – Maximum Punishments: Offences Relating to Political Parties

Offence (New Sections, CEA)	Current Punishment		Punishment Under Bill C-23	
	Strict Liability	Requiring Intent	Strict Liability	Requiring Intent
Failure to provide the statement of assets and liabilities or a related document (392, 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to meet the requirements set out for officers, the chief agent, registered agents and the auditor (395, 396, 399, 400, 401 and 497.1(1))	3 months and/or $1,000		3 months and/or $2,000	
Ineligible person acting as an officer, chief agent, registered agent or auditor of a registered party or an eligible party (403 and 497.1(3))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Officer knows the party is not a political party (404 and 497.1(3))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Failure to report changes in party information (405 and 497.1(1))	3 months and/or $1,000		3 months and/or $2,000	
Failure to provide a statement confirming the validity of information concerning the party (407 and 497.1(1))	3 months and/or $1,000		3 months and/or $2,000	
Providing false or misleading information (408 and 497.1(3))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Making a false or misleading declaration (408 and 497.1(3))		1 year and/or $2,000 or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Failure to provide the financial transactions return, the election expenses return or a related document (420, 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000[a]	1 year and/or $20,000[b] or 5 years and/or $50,000

Offence (New Sections, CEA)	Current Punishment		Punishment Under Bill C-23	
	Strict Liability	Requiring Intent	Strict Liability	Requiring Intent
Failure to provide the financial transactions return for merging parties or a related document (424, 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to pay invoices within three years (428 and 497.1(1))	3 months and/or $1,000		3 months and/or $2,000	
Incurring more than the maximum amount of election expenses (431(1), 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000[c]	1 year and/or $20,000[d] or 5 years and/or $50,000
Acting in collusion to circumvent the maximum amount of election expenses of a registered party (431(2), 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000[e]	1 year and/or $20,000 or 5 years and/or $50,000
Failure to provide the financial transactions return of a registered party or a related report or document (432, 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000[f]	1 year and/or $20,000[g] or 5 years and/or $50,000
Failure to provide a quarterly return (433, 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to forward contributions a registered party cannot keep (434, 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000[h]	1 year and/or $20,000[i] or 5 years and/or $50,000
Providing an incomplete document (436(*b*), 439(*b*) and 497.1(1))	3 months and/or $1,000		3 months and/or $2,000[j]	
Providing a document with false or misleading information (436(*a*), 439(*a*) and 497.1(3))		1 year and/or $2,000[k] or 5 years and/or $5,000		1 year and/or $20,000 or 5 years and/or $50,000
Failure to provide an election expenses return or a related document (437, 497.1(1) and 497.1(3))	3 months and/or $1,000	1 year and/or $2,000 or 5 years and/or $5,000	3 months and/or $2,000[l]	1 year and/or $20,000[m] or 5 years and/or $50,000

Offence (New Sections, CEA)	Current Punishment		Punishment Under Bill C-23	
	Strict Liability	Requiring Intent	Strict Liability	Requiring Intent
Failure to provide a corrected or revised version of the document within the specified period (440, 497.1(1) and 497.1(3))			3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to provide the corrected or revised version of the document within 30 days or any authorized extension (442, 497.1(1) and 497.1(3))			3 months and/or $2,000	1 year and/or $20,000 or 5 years and/or $50,000
Failure to report changes in information (446 and 497.1(1))	3 months and/or $1,000		3 months and/or $2,000	
Paying or incurring expenses on behalf of a registered party (426(1), 426(2) and 497.1(2))		6 months and/or $2,000		6 months and/or $5,000
Accepting contributions or borrowing without authorization (426(3) and 497.1(2))		6 months and/or $2,000		6 months and/or $5,000
Accepting a provision of goods or services, or a transfer of funds, or providing goods or services, or transfer funds, without authorization (426(4) and 497.1(2))				6 months and/or $5,000

Notes:

a. Clauses 106 and 107 of the bill raise the maximum fine payable by a deregistered political party whose chief agent commits this offence from $25,000 to $50,000 (new section 506(1) of the CEA).

b. Clauses 106 and 107 of the bill raise the maximum fine payable by a deregistered political party whose chief agent commits this offence from $25,000 to $100,000 (new section 506(2) of the CEA).

c. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $50,000 (new section 507(1) of the CEA).

d. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $100,000 (new section 507(2) of the CEA).

e. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $50,000 (new section 507(1) of the CEA).

f. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $50,000 (new section 507(1) of the CEA).

g. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $100,000 (new section 507(2) of the CEA).

h. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $50,000 (new section 507(1) of the CEA).

i. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $100,000 (new section 507(2) of the CEA).

j. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $50,000 (new section 507(1) of the CEA).

k. Currently, section 507 of the CEA provides for a fine of not more than $25,000 when a chief agent of a registered party provides an electoral expenses report with a false or misleading declaration. It is not clear why, in Bill C-23, the maximum fine has not been increased as part of the new offence for a registered party to provide a document containing false or misleading information (new sections 436(*a*) and 439(*a*)).

l. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $50,000 (new section 507(1) of the CEA).

m. Clauses 106 and 107 of the bill raise the maximum fine payable by a registered political party whose chief agent commits this offence from $25,000 to $100,000 (new section 507(2) of the CEA).

APPENDIX C – COMING INTO FORCE OF SELECTED CAMPAIGN FINANCE PROVISIONS OF BILL C-23

Table C.1 – Coming into Force of Selected Campaign Finance Provisions of Bill C-23

Measure	Royal Assent (**19** June 2014)	Six Months After Royal Assent (**19** December 2014 or sooner if the CEO so determines)	1 January of the Year Following Royal Assent (1 January 2015)	1 January of the Year That Is Six Months After Royal Assent (**1 January 2015 or sooner** if the CEO so determines)	1 January of the Year Following the Coming into Force of Clause 87(1) (1 January 2016)
Contribution limits	$1,200 *No change: $1,000 + inflation = $1,200*	$1,200 *Clause 86: new section 367 in new Part 18 of the* Canada Elections Act	$1,500 *Clause 80(1), amending section 405(1) of the* Canada Elections Act*; clause 86: new section 367 in new Part 18* Repeal of inflation indexation *Clause 81*	$1,500 *Clause 87(1): amending new section 367 of the* Canada Elections Act	$25 annual increase to $1,500 contribution limit *Clause 87(2): amending new section 367 of the* Canada Elections Act
Contributions to own campaign	Candidates: $5,000 Leadership contestants: $25,000 *Clause 80(3), amending section 405(4) of the* Canada Elections Act *Current section 405(4) becomes sections 367(5) to 367(8) upon clause 86 coming into force six months after Royal Assent*				

Measure	Royal Assent (**19** June 2014)	Six Months After Royal Assent (**19** December 2014 or sooner if the CEO so determines)	1 January of the Year Following Royal Assent (1 January 2015)	1 January of the Year That Is Six Months After Royal Assent (**1 January 2015 or sooner** if the CEO so determines)	1 January of the Year Following the Coming into Force of Clause 87(1) (1 January 2016)
Political party spending limits	$0.70 per voter in each electoral district in which party endorses a candidate *No change*	If 37-day election period: $0.735 per voter in each electoral district in which party endorses a candidate If election period longer than 37 days: $0.735 × (1 + 1/37) per day exceeding 37 days *Clause 86: New section 430(1) in new Part 18 of the* Canada Elections Act			
Limits on contributions through testamentary dispositions	Set to individual contribution limit of **$1,200** *Clause 80(2), **amending** section 405(2) of the* Canada Elections Act	**Set to individual contribution limit of $1,200** **Clause 86, new section 367(2)**	**Set to individual contribution limit of $1,500** **Clause 86, new section 367(2)**		
Reduction of reimbursement of election expenses for exceeding the spending limit	For candidates and political parties. Scale of reduction based on percentage by which spending exceeds the limit *Clauses 84 and 85, amending new sections 435 and 465 of the* Canada Elections Act	Same *Clause 86: new sections 444(1) and 477.74(3) in new Part 18 of the* Canada Elections Act			

Source: Table prepared by the Library of Parliament.