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## LEGISLATIVE SUMMARY



### **Bill C-586: An Act to amend the Canada Elections Act and the Parliament of Canada Act (candidacy and caucus reforms)**

Publication No. 41-2-C586-E  
14 January 2015

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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**.

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*Legislative Summary of Bill C-586*  
(Legislative Summary)

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Ce document est également publié en français.

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# LEGISLATIVE SUMMARY OF BILL C-586: AN ACT TO AMEND THE CANADA ELECTIONS ACT AND THE PARLIAMENT OF CANADA ACT (CANDIDACY AND CAUCUS REFORMS)\*

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## 1 BACKGROUND

Bill C-586, An Act to amend the Canada Elections Act and the Parliament of Canada Act (candidacy and caucus reforms) was introduced in the House of Commons by the bill's sponsor, Michael Chong, on 7 April 2014. After second reading, the bill was referred to the House of Commons Standing Committee on Procedure and House Affairs, which amended the bill and presented its report to the House on 26 January 2015. Bill C-586 is an amended version of Bill C-559, An Act to amend the Canada Elections Act and the Parliament of Canada Act (reforms), introduced in the House by Mr. Chong on 3 December 2013.

Bill C-586 proposes to change the process by which candidates for election to the House of Commons are endorsed by their political parties. It also adds to the *Parliament of Canada Act*<sup>1</sup> (PCA) a leadership review process to endorse or replace the leader of a party.

Finally, the bill establishes a process for the expulsion and readmission of members of a parliamentary caucus in the House of Commons as well as for the selection or removal of the chair of a parliamentary caucus.

The first part of this summary provides an overview of the current process by which political parties select the individuals to represent them in elections to the House of Commons, as well as the current situation with respect to leadership contests. This part also sets out the current status of caucuses within Parliament.

The second part of the summary provides an analysis of the bill's key provisions that will effect changes to the processes set out in the first part of the document.

### 1.1 THE CURRENT CANDIDATE SELECTION PROCESS

#### 1.1.1 POLITICAL PARTIES AND THE CANDIDATE SELECTION PROCESS

Nomination contests for selecting a political party's candidates for election to the House of Commons are held by the political party's electoral district association (EDA) in accordance with rules set out in the party's constitution. Since 2004, the *Canada Elections Act*<sup>2</sup> (CEA) has imposed rules concerning the financial aspects of the campaigns of individuals vying for a party's nomination.<sup>3</sup> Apart from these controls, nomination contests are generally treated as matters internal to the party, and thus not subject to regulation.

Although the process for selection of a candidate is conducted by the EDA, the CEA effectively gives the party leader a veto over the selection of a candidate by the EDA. Section 67(4)(c) of the CEA requires that a prospective candidate submit to the Chief Electoral Officer of Canada proof of a party leader's endorsement of the candidacy in order to approve the candidacy for that party in an election. This requirement was introduced when major amendments to the CEA were enacted in 1970.<sup>4</sup> Without such endorsement, the prospective candidate cannot represent the political party. The prospective candidate can, however, contest an election in an electoral district as an independent candidate.

### 1.1.2 CANDIDATE SELECTION PROCESS AND THE COURTS

The candidate selection or nomination process under the Act – and particularly the extent to which internal decisions made by political parties are subject to judicial review – has been the subject of court challenges.

In a recent case involving the nomination of a candidate for the Conservative Party of Canada in the riding of Calgary West, the Alberta Court of Appeal declined to intervene in a decision of the party's EDA to select its candidate by acclamation and to effectively dispense with a nomination contest.<sup>5</sup> In doing so, the Court affirmed the long-standing legal position that political parties are essentially private entities, or private associations of individuals coming together for a common purpose in pursuing political office and articulating political positions. This view puts them beyond the reach of judicial review for most purposes. The Court held as follows:

Neither constituency associations nor political parties are given any public powers under the Canada Elections Act, S.C. 2000, c. 9. They are essentially private organizations. It is true that their financial affairs are regulated: they may only give tax receipts in certain circumstances, and they may only spend the money they raise in certain ways. However, merely because an organization is subject to public regulation does not make it a public body subject to judicial review. The fact that the organization may require or may hold a licence or permit of some kind is also not sufficient, nor is the fact that the organization may receive public money. Many organizations are subject to public regulation. For example, all charities must be registered in order to issue charitable receipts, but that does not mean that they are exercising public functions and therefore are subject to judicial review.<sup>6</sup>

A similar view was expressed by the Ontario Court of Appeal, but with some qualifications. While the Court accepted that for many purposes political parties are private associations, it recognized that the role of political parties has evolved in Canada, given the important statutory rights and functions accorded to them under electoral legislation. The Court held:

In short, the Act is a sophisticated statutory regime under which registered political parties are recognized as entities with significant rights and obligations. Following the reasoning in *Berry*, I think registered political parties are legal entities at least for the purposes of fulfilling their roles in the election process. To do so they must control and regulate their internal affairs. It is as inappropriate to conceive of them as comprised simply of a web of contracts between members as it is to do so for trade unions.<sup>7</sup>

This decision effectively held that in matters relating to a political party's internal functions, including whom the party selects to represent it in a riding for election to the House of Commons or in the selection of its leaders, courts will generally not interfere. Limited recourse is available, however, where a member alleges the party has failed to comply with its constitution, by-laws or other rules governing the relationship between the member and the party.<sup>8</sup>

## 1.2 PARTY LEADERSHIP SELECTION

As with the selection of candidates for election to the House of Commons, the process for the selection of party leaders lies outside the CEA, the PCA, or any other statute, except with respect to the financing of the campaigns of leadership contestants. Otherwise, leadership selection is governed by the constitution of a political party.

The CEA only regulates certain aspects of the financing of leadership campaigns. For example, the Act sets a limit of \$1,500 on the amount that an individual may contribute to the campaign of a leadership contestant per calendar year. Leadership contestants are also subject to the rules governing the receipt and repayment of loans to a leadership contestant.

Leadership contestants must also fulfill extensive reporting obligations, including:

- a statement of campaign expenses;
- a report on the total contributions received and the total number of contributors;
- a report listing the names of contributors who contributed more than \$200 to the campaign; and
- a statement on all loans, their repayment schedule and the name of the lender.

While parties, candidates and nomination contestants are subject to spending limits during an election, no such limits are placed on the campaigns of leadership contestants.<sup>9</sup>

## 1.3 PARLIAMENTARY CAUCUSES

### 1.3.1 DEFINITION

The term “caucus” is not defined in any federal statute. A definition of national caucus is found in section 1 of the *Members By-Law* (made by the House of Commons Board of Internal Economy), but the definition applies only to the by-laws.<sup>10</sup> The definition states that a national caucus comprises all of the members of a recognized party. The lone reference to a caucus in the *Standing Orders of the House of Commons* is found in its appendix (also known as the *Conflict of Interest Code for Members of the House of Commons*) and pertains only to an “all-party caucus” or a caucus open to all political parties.<sup>11</sup> The *Glossary of Parliamentary Procedure* defines “caucus” as “[a] group composed of all Members [of the House of Commons] and Senators of a given party.”<sup>12</sup> Similarly, in *House of Commons Procedure and Practice*, a parliamentary caucus is described as the aggregated collectivity of members of the House belonging to the same political party, along with their counterparts in the Senate.<sup>13</sup>

The development of organized and disciplined political parties, and their parliamentary caucuses, took place over many years. The structures and role of Canadian parliamentary caucuses were originally simple and informal. Over the course of time, the assemblies evolved into formal bodies, with regular meetings, elected officers and a system of regional caucuses and subject-matter committees.<sup>14</sup>

In recent years, each party represented in the House of Commons has, by tradition, held its weekly caucus meetings on Wednesday mornings in Ottawa when the House of Commons is in session. These meetings are generally held *in camera* and the proceedings kept confidential. Among other things, caucus provides an opportunity for the parties to strategize, for members to pass on their concerns and ideas, and for the leaders to rally and inspire members.

### 1.3.2 EXPULSION OF MEMBERS FROM A PARTY CAUCUS

Neither the *Standing Orders*, the PCA, nor any other legislation imposes any limits on how political parties with representation in the House organize their caucuses, including who is entitled to participate in a party's caucus. Parties are, therefore, largely free to impose any conditions upon membership in a caucus, including imposing sanctions, such as dismissal from caucus. Any recourse a member may have to challenge a disciplinary decision by his or her party, such as a dismissal, would have to be based on the party's constitution and by-laws. Likewise, any disciplinary action would have to be sanctioned by the party's constitution and by-laws and be consistent with whatever procedures are prescribed by those documents.

From time to time, members affiliated with a political party are disciplined by the party for various transgressions, including failing to vote with the party on a particular bill or motion, or for certain conduct which the party finds objectionable. Such discipline often involves expulsion from the party caucus and from the party itself. The member seeking to return to the caucus or the party has no recourse under the *Standing Orders* or under any legislation.

## 2 DESCRIPTION AND ANALYSIS

### 2.1 CANDIDATE SELECTION PROCESS

Bill C-586 amends the process by which political party candidates are chosen by political parties. It removes the veto power of a party leader over the endorsement of a prospective candidate for an electoral district. Initially, the amendments placed this power instead with a newly created nomination officer, which resembled a provision in Bill C-559; further to amendments made in committee, the power resides with a person or persons authorized by the party.

#### 2.1.1 ROLE OF THE NOMINATION OFFICER (CLAUSES 2 AND 5)

On 11 December 2014, the House of Commons Standing Committee on Procedure and House Affairs voted to reject proposed clauses 2 and 5.



Clause 2(2) amended the definition of “nomination contest” in section 2(1) of the Act. Currently, a nomination contest is defined as a competition for the selection of a candidate to be proposed to a political party for endorsement by the party leader. Initially, Bill C-586 defined the contest as a competition for the selection of a political party candidate to be proposed to a political party’s nomination officer for endorsement.

Clause 2(2) also created the position of “nomination officer” by adding a new definition in section 2(1) of the Act. One nomination officer per province and one for the territories would have been elected to endorse candidates to represent the party in the electoral district.

The bill also prescribed the process by which the nomination officer would have been selected. Clause 5 (new section 68.1(2) of the Act) required that the nomination officer be elected by secret ballot of a majority of the chief executive officers of the EDAs of a political party in each province and the territories.

The nomination officer would have been elected for a four-year renewable term, and the bill set out a two-step process through which a nomination officer could have been removed from that position by the majority of the chief electoral officers of the EDAs of a province or the territories.

### 2.1.2 THE NOMINATION PROCESS (CLAUSE 3)

On 11 December 2014, the House of Commons Standing Committee on Procedure and House Affairs also voted to reject proposed clause 3.

Clause 3 added new section 65.1 to the Act, which provided further legal recognition of the role of EDAs in the electoral process. Under clause 3, nomination contests would have been held by an EDA, according to any rules established by the association, thus preserving the internal character of nomination contests. By extension, this also preserved the role of political parties in the process, since EDAs are governed by rules established by the parties through their constitutions.

### 2.1.3 THE CANDIDATE ENDORSEMENT PROCESS (CLAUSES 4 AND 5)

The critical provision in the CEA, giving party leaders an effective veto power over candidate selection by an EDA, is contained in section 67(4)(c).<sup>15</sup>

Initially, clause 4 amended section 67(4)(c) by replacing the party leader with the nomination officer of the province or territory as the person who must endorse the candidacy of an individual selected for the electoral district. This process was reinforced in clause 5 (new section 68.1(1)), which set out the requirement that the prospective candidate be endorsed by a nomination officer in order for his or her name to be presented to Elections Canada for inclusion on a ballot as a party candidate.

However, on 11 December 2014, the House of Commons Standing Committee on Procedure and House Affairs voted to amend clause 4. The committee replaced the

person responsible for endorsing prospective candidates with “a person or persons authorized by the party” to do so. The chief agent of every political party must, in writing and no later than 25 days before election day, notify the Chief Electoral Officer of the names of the person or persons authorized by the party to endorse prospective candidates. As previously mentioned, the committee also voted to reject clause 5.

## 2.2 LEADERSHIP REVIEW PROCESS REQUIREMENT (CLAUSE 9)

Few, if any, attempts have been made in the past to regulate through federal legislation the methods used by political parties to select their leaders. The bill does so by adding a leadership review process to the PCA.

Under Bill C-559, a political party would have lost its eligibility to be registered under the CEA if its by-laws did not provide for a leadership review process as set out in the bill.<sup>16</sup> This provision has been removed from Bill C-586.

### 2.2.1 LEADERSHIP REVIEW PROCESS

Clause 9 of the bill adds a new Division C.1 to the PCA, defining a political party's leadership review as a process to endorse or replace the leader of a party, and setting out a new review process, as follows:

- A leadership review process may be initiated by submitting to the party's caucus chair a written notice signifying this intention, signed by at least 20% of the party's caucus (under Bill C-559, this threshold was 15%).
- The caucus chair must make public the content of the written notice immediately upon its receipt.
- The leadership review is to be conducted by a secret ballot among members of a caucus (under Bill C-559, the secret ballot vote occurred at a meeting of caucus).
- Where a majority of caucus members vote in favour of replacing a party leader, a second vote shall be conducted immediately following the first vote, by secret ballot, to select an interim leader until a new party leader has been “duly elected” by the party.

A companion amendment to the PCA will, for the first time, provide a statutory definition of the term “caucus” (see section 2.3.1 of this Legislative Summary).

The leadership review process appears to contemplate that a new leader will be chosen by an election process. This is suggested by the use of the terms “duly elected” and “elected.” Such an election would be conducted by the party either after the removal of a party leader triggered by the process set out in the bill or following the death, incapacity or resignation of the leader of a party.

The bill does not address whether a party may choose its leader by another means, such as by acclamation. However, it would appear to limit the ability of a political party to amend its constitution and by-laws where it wishes to dispense with an election process, for example.

## 2.3 AMENDMENTS TO THE *PARLIAMENT OF CANADA ACT* AFFECTING PARLIAMENTARY CAUCUSES (CLAUSE 9)

In addition to the changes to the leadership review process discussed above, clause 9 makes a number of changes to the process of electing and removing a caucus chair, along with expelling and readmitting a caucus member.

### 2.3.1 CAUCUS, CAUCUS CHAIR AND REMOVAL OF CAUCUS CHAIR

Clause 9 adds new section 49.1, which includes a definition of “caucus” that applies to Division C.1 of the PCA. The new section sets out that, for the purposes of electing and removing a caucus chair and/or expelling or readmitting a caucus member, a caucus is a group composed solely of members of the House of Commons who are members of the same recognized party. As such, senators would not be eligible to participate in the election or removal of a caucus chair and/or the expulsion or readmission of a caucus member. Further, members of the House of Commons who are members of parties that are not recognized would not be considered a caucus under this definition.<sup>17</sup>

Under section 49.4(1), a caucus chair must be elected by a majority vote held by secret ballot in which only members of a caucus present at the meeting are eligible to participate. A caucus chair is to be elected following each general election, or following a vacancy in that position caused by death, incapacity, resignation or removal.

The process for the removal of a caucus chair is set out under sections 49.4(2) and 49.4(3). The chair must receive a written notice, signed by at least 20% of the caucus members, requesting that the occupancy of the chair be reviewed (under Bill C-559, this threshold was 15%). A vote on the removal of the chair is presided over by the most senior member of the caucus.<sup>18</sup> The chair is removed from his or her position if the removal is approved by a majority vote held by secret ballot of caucus members. Following the removal of a chair, section 49.4(1) would apply and a new caucus chair would be elected.

### 2.3.2 EXPULSION AND READMISSION OF A CAUCUS MEMBER

New section 49.2 provides the sole manner in which a member of a caucus can be expelled from his or her caucus. The caucus chair must receive a written notice, signed by at least 20% of the members of the caucus, which requests that a member's membership in caucus be reviewed (under Bill C-559, the threshold was 15%, and the review occurred at a meeting of caucus). A member is expelled from caucus if the expulsion is approved by a majority of all caucus members voting by secret ballot.

New section 49.3 provides the two methods by which a member who has been expelled from his or her caucus can be readmitted to that caucus:

- the member is re-elected to the House as a candidate for that party; or

- a process identical to that of expulsion is followed:
  - the caucus chair must receive a written notice, signed by at least 20% of the members of the caucus, which requests that a member's readmission to the caucus be reviewed by caucus (under Bill C-559, the threshold was 15%); and
  - the readmission is approved by a majority of the caucus members voting by secret ballot at a meeting of the caucus.

### 2.3.3 BAR AGAINST JUDICIAL REVIEW

New section 49.7 of the PCA precludes determinations concerning the internal operations of a party by the caucus, a caucus committee or a caucus chair from being reviewed by a court. This kind of clause is often referred to as a privative clause.

### 2.3.4 CONFLICTS BETWEEN THE LEGISLATION AND PARTY CONSTITUTIONS OR BY-LAWS

Initially, clause 9 also provided in new section 49.8 of the PCA that in the event of a conflict between a political party's constitution or by-laws and the amendments to the PCA set out in the bill, the bill would prevail to the extent of the inconsistency.

On 11 December 2014, the House of Commons Standing Committee on Procedure and House Affairs voted to amend new section 49.8. The amendment sets out that the caucus of every party with a recognized membership of 12 or more members in the House must, during its first meeting following a general election, conduct a separate vote among caucus members on each of the following questions:

- whether the process to expel and readmit caucus members, as set out in the bill, will apply to their own caucus;
- whether the process to elect a caucus chair, as set out in the bill, will apply to their own caucus; and
- whether the process for conducting a leadership review, including the election of an interim leader and replacement leader, as set out in the bill, will apply to their own caucus.

Each vote and any related debate is presided over by the senior caucus member, the vote of each member must be recorded, and the provisions will apply only if a majority of all caucus members votes in favour of their applicability. The outcome of each vote is binding on the caucus until the next dissolution of Parliament. The caucus chair must, as soon as possible, inform the Speaker of the House of the outcome of each vote.

## 2.4 COMING INTO FORCE

The bill comes into force seven days after the day on which the next general election is held, provided the bill at that point has received Royal Assent.

## NOTES

- \* Much of the content of this paper is based on material prepared by Sebastian Spano, formerly of the Library of Parliament.
- 1. [Parliament of Canada Act](#), R.S.C., 1985, c. P-1.
- 2. [Canada Elections Act](#), S.C. 2000, c. 9.
- 3. See Sebastian Spano, *Political Financing*, Publication no. 07-50E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 19 September 2008. Part 18, Division 5, of the *Canada Elections Act* imposes various reporting requirements for nomination contests, as well as a body of rules governing the financing of nomination contests, including the imposition of spending limits and disclosure of financial information related to the campaign.
- 4. *Canada Elections Act*, R.S.C. 1970 (1<sup>st</sup> Supp.), c. 14. See A. Gauja, *Political Parties and Elections: Legislating for Representative Democracy*, Ashgate Publishing, 2010, pp. 104–105.
- 5. *Knox v. Conservative Party of Canada*, 2007 ABCA 295.
- 6. *Ibid.*, para. 26.
- 7. *Ahenakew v. MacKay*, 2004 CanLII 12397 (ON CA). The Court relies on the reasoning in a labour union case decided by the Supreme Court of Canada, *Berry v. Pulley*, 2002 SCC 40. The Court held that trade unions have come to be recognized as legal entities for purposes of discharging their labour relations functions because they have been accorded significant statutory rights and obligations in labour relations. The Ontario Court of Appeal extended this characterization to political parties, rejecting the notion that they are mere private associations.
- 8. *Knox*, paras. 27–31. See also *Berry*, paras. 5 and 47–49, where the Court held that the constitution and by-laws of the union serve as a contract between the member and the union, breach of which entitles the member to a judicial remedy.
- 9. See Spano (2008).
- 10. Parliament of Canada, Board of Internal Economy, *Members By-Law*, s. 1(1).
- 11. “Conflict of Interest Code for Members of the House of Commons,” Appendix to the *Standing Orders of the House of Commons*, s. 3(1).
- 12. House of Commons, [Glossary of Parliamentary Procedure](#), 7<sup>th</sup> ed., Ottawa, June 2011.
- 13. Audrey O’Brien and Marc Bosc, eds., “[Parliamentary Caucuses](#)” in *House of Commons Procedure and Practice*, 2<sup>nd</sup> ed., House of Commons, Ottawa, 2009.
- 14. James R. Robertson, *The Role of the Caucus in a Parliamentary System*, a paper prepared for the 36<sup>th</sup> Commonwealth Parliamentary Association Regional Conference, Regina, 13–18 July 1997.
- 15. The party leader may delegate this function to another representative of the party. See section 383(2) of the Act. This provision, however, will be repealed by clause 8 of the bill.

16. A party that is registered by Elections Canada is entitled to numerous advantages, including:
- the right to issue tax receipts enabling contributors to receive tax credits;
  - the right to place the name of the party beside the names of the candidates it has endorsed on election ballots;
  - re-imbursement of 50% of the party's electoral expenses;
  - a quarterly allowance of roughly \$0.255 per vote, based on the number of votes a party receives during an election; and
  - the right to keep surplus funds following an election.

The quarterly allowance will be gradually eliminated by April 2015.

17. Neither the *Parliament of Canada Act*, nor the *Standing Orders of the House of Commons* sets out an explicit definition of a recognized party; however, according to the section "[Political Parties](#)" in O'Brien and Bosc (2009), in recent practice, for procedural matters, and for conferring financial benefits under the *Parliament of Canada Act*, a recognized party is defined as one that has 12 or more members in the House of Commons.
18. The senior caucus member is the member with the greatest number of years of service in the House of Commons. On 11 December 2014, the House Commons Standing Committee on Procedure and House Affairs voted to amend this definition, to be the caucus member with the longest period of unbroken service in the House as determined by reference to the *Canada Gazette*.