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LEGISLATIVE SUMMARY

BILL C-76:
AN ACT TO AMEND THE CANADA ELECTIONS ACT AND OTHER ACTS AND TO MAKE CERTAIN CONSEQUENTIAL AMENDMENTS

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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 Library of Parliament Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative Summary of Bill C-76
(Legislative Summary)

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CONTENTS

LEGISLATIVE SUMMARY OF BILL C-76: AN ACT TO AMEND THE CANADA ELECTIONS ACT AND OTHER ACTS AND TO MAKE CERTAIN CONSEQUENTIAL AMENDMENTS

1 BACKGROUND

Bill C-76, An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments (short title: Elections Modernization Act) was introduced in the House of Commons by the Minister of Democratic Institutions on 30 April 2018.[1] Following second reading on 23 May 2018, the bill was referred to the House of Commons Standing Committee on Procedure and House Affairs, which reported the bill back to the House of Commons with several amendments on 22 October 2018.[2] The bill passed third reading in the House of Commons as amended on 30 October 2018.

The bill was introduced in the Senate, where it received first reading on 31 October 2018. It received second reading and was referred to the Standing Senate Committee on Legal and Constitutional Affairs on 7 November 2018. On 6 December 2018, the committee reported the bill back to the Senate with one amendment and five observations.[3] The bill was passed by the Senate with that amendment on third reading on 10 December 2018, and a message was sent to the House of Commons the same day.

The House of Commons considered the Senate's amendment and adopted a motion approving it on 13 December 2018.[4] The bill received Royal Assent the same day.

The bill addresses four areas under the *Canada Elections Act*[5] (CEA):

- third-party spending;
- accessibility and voter participation during elections;
- modernizing voting services, facilitating enforcement, and improving the administration of elections and of political financing; and
- privacy and the protection of personal information.

Many of the proposed amendments reflect recommendations made by the Chief Electoral Officer (CEO) in his 2016 report to Parliament following the 42nd federal election.[6]

Bill C-76 reverses some of the legislative changes enacted in 2014 by the *Fair Elections Act*,[7] which amended the CEA in the following ways:

- It limited the CEO's public education and outreach mandate in relation to the electoral process.
- It eliminated the ability to vouch for the identity of voters who lack the requisite documentary identification to obtain a ballot and replaced it with an "attestation" of residence only. Previously, voters lacking the requisite documentary identification could have another voter vouch for both their identity and their residence. Since the enactment of the *Fair Elections Act*, voters without the required documentary identification can only have their residence attested to, meaning that individuals lacking the required documents to prove their identity are not able to receive ballots.
- It prevented the voter information card from being designated as a valid secondary piece of identification for voters who lacked a primary piece of identification containing a photograph and an address.
- It moved the Office of the Commissioner of Canada Elections, which is the investigative arm of Elections Canada, to the Office of the Director of Public Prosecutions.[8]

Bill C-76 also removes a long-standing ban on voting by persons who have been continuously absent from Canada for five years or more. The bill also enables Canadian citizens between the ages of 14 and 17 to register as "future electors" to facilitate their addition to the Register of Electors upon attaining the voting age of 18.

1.1 THIRD-PARTY SPENDING

Following the 2015 federal election, the number of complaints received regarding third-party involvement in the election jumped from 12 complaints in 2011 to 105 in 2015.[9]

The CEO's 2016 report recommended modifying the regime applicable to third-party spending but contained few specific recommendations, stating that third-party pre-writ spending was a matter "better left to parliamentarians."[10]

The House of Commons Standing Committee on Procedure and House Affairs (PROC) produced its Thirty-fifth Report in response to the CEO's recommendations for legislative reforms following the 42nd federal general election. PROC adopted its report in June 2017 and recommended that

> other amendments should be made to expand the third-party regime in the CEA in order to ensure that third parties, especially ones that receive foreign funds, do not undermine the transparency and level playing field in Canadian elections.

> In particular the scope of regulated activities of third parties should be expanded beyond "election advertising" to cover a broader range of promotional activities such as direct voter contact and polling research in support of campaign activities.[11]

1.2 ACCESSIBILITY AND VOTER PARTICIPATION

1.2.1 Register of Future Electors

In his 2016 report, the CEO recommended the creation of a Register of Future Electors (RFE).[12] In that report, he observed that registering electors once they turn 18 years of age and thus can vote federally is a "continual challenge," and that 18-to-34-year-olds are disproportionately underrepresented on voter lists. Consequently, the CEO recommended that the CEO be given the authority to retain information on citizens aged 16 and 17 so that they might be added to the Electoral Register as soon as they are old enough to vote.

1.2.2 Chief Electoral Officer's Education and Communication Mandate

In 2014, the *Fair Elections Act* imposed certain limitations on the ability of the CEO to educate and inform the public about the electoral process and democratic rights more generally. As a result, such efforts could target only primary and secondary school students and not the general public. Prior to the *Fair Elections Act*, the CEO had the power to implement public education and information programs and engage in outreach programs for particular groups of voters without restriction and with particular emphasis on persons or groups most likely to experience difficulties exercising their democratic rights.[13]

In the CEO's report following the 42nd federal general election, he recommended that

> [t]he CEO should again be given the mandate to implement public education and information programs to make the electoral process better known to the general public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights. This mandate should specifically include outreach activities to groups of electors that have a lower registration rate than the general population.[14]

1.2.3 Electors Resident Outside Canada and the Right to Vote

Voting by non-resident citizens of Canada first occurred during the First World War when the vote was extended to soldiers fighting abroad.[15] For most of the 20th century, only certain types of non-resident citizens, such as Canadian Forces (CF) personnel and public service staff posted abroad, were permitted to vote in federal elections. The CEA was amended in 1993 to enable all Canadian citizens who reside outside

Canada to vote in federal elections, provided that they have been absent from Canada for less than five years and plan to return to Canada (certain electors, such as those serving abroad in the CF or those working at embassies abroad, are exempt from the five-year absence rule).

In his September 2005 report following the 38th federal general election, the CEO recommended removing the limitation contained in section 11(d) of the CEA that prohibited voting by persons who have been absent from Canada for five consecutive years or more and who intend to return to Canada.[16]

In 2006, PROC issued a report agreeing with the CEO's recommendations, and further suggested that all Canadian citizens absent from Canada should be able to vote and that the requirement that there be an intention to return to Canada be dropped.[17]

In his statutory report following the 41st federal general election, which took place on 2 May 2011, the CEO explained changes made following the 39th federal general election in 2006 to the manner of calculating the residency requirement for Canadians living abroad, indicating that a visit to Canada was no longer being considered a resumption of residence in Canada and so would not interrupt the five-year period.[18]

Subsequently, the constitutionality of the five-year limit for Canadians living abroad was challenged in court by two Canadians living in the United States. In *Frank et al. v. AG Canada*,[19] the Ontario Superior Court held that the CEA's prohibition on voting for Canadian citizens absent from Canada for more than five years was unconstitutional as it violated those citizens' democratic right to vote guaranteed by section 3 of the *Canadian Charter of Rights and Freedoms* (the Charter). The Ontario Court of Appeal overturned the trial decision, finding that while the limitation violated section 3 of the Charter, it was justified under section 1 (the "reasonable limits clause").[20] The original applicants were granted leave to appeal to the Supreme Court of Canada, and the case was heard on 21 March 2018. The Court handed down its decision on 11 January 2019. It struck down the disputed prohibition on voting after finding that it breached section 3 of the Charter and could not be justified under section 1.[21]

1.3 MODERNIZING VOTING AND ENFORCEMENT, AND IMPROVING THE ADMINISTRATION OF ELECTIONS AND OF POLITICAL FINANCING

The federal electoral process was originally conceived of as a paper-based and highly decentralized process, one that assumed elections would be run by teams of workers in rural communities who would function without centralized oversight. In modern elections, this is no longer the case.[22]

1.3.1 Voter Identification: Proving a Voter's Identity and Residence

Since 2007, in order to be allowed to vote, every elector has been required to confirm their identity and residence with the deputy returning officer (DRO) and poll clerk.

Currently, electors can establish their identity and residence by providing election officers with the following:

- once piece of identification, issued by any level of government, containing a photograph and the name and address of the elector; or
- two pieces of identification, each of which establishes the elector's name, and least one of which establishes the elector's address.

Individuals who do not possess acceptable identification at the time of voting must undergo a procedure prescribed in legislation and administered by election officials in order to vote.

1.3.2 Commissioner of Canada Elections

The Commissioner of Canada Elections (the Commissioner) is the independent officer who ensures compliance with and enforcement of the CEA and the *Referendum Act*.[23] Under current section 511 of the CEA, if the Commissioner believes that an offence has been committed, they can refer the matter to the Director of Public Prosecutions (DPP), who is responsible for deciding whether to initiate a prosecution, and, if so, to conduct the prosecution.

From 1974 to 2014, the CEO appointed the Commissioner. The Commissioner reported to the CEO within Elections Canada. The *Fair Elections Act* changed this structure and provided that the Commissioner be appointed by the DPP for a non-renewable term of 10 years, removable before that time by the DPP for cause. The *Fair Elections Act* also specified that the DPP cannot consult the CEO when appointing the Commissioner.

1.4 PRIVACY AND PERSONAL INFORMATION

Political parties are entitled by law to receive lists of electors annually and at election times. Larger parties use these lists to update databases containing personal information on millions of electors. In Canada, federal political parties are not subject to privacy legislation such as the *Privacy Act* or the *Personal Information Protection and Electronic Documents Act*.[24] British Columbia is the only province where political parties are subject to privacy legislation under the *Personal Information Protection Act*.[25]

2 DESCRIPTION AND ANALYSIS

This Legislative Summary describes the substantive legislative changes contained in Bill C-76 but does not examine each individual provision.

2.1 THIRD-PARTY SPENDING

New measures to regulate third parties are intended to increase transparency regarding the participation of third parties in the federal electoral process and to level the financial playing field for political actors.[26] Third-party organizations, such as advocacy groups, are subject to a spending cap during official campaign periods and face new spending and reporting requirements under Bill C-76 related to partisan activities, partisan advertising and election surveys.

2.1.1 Third Party Advertising, Partisan Activities and Election Surveys (Clauses 2(7) and 221)

Clause 221 of Bill C-76 amends the title of Part 17 of the CEA, replacing the current title "Third Party Election Advertising" with the new title "Third Party Advertising, Partisan Activities and Election Surveys." As the new title indicates, the bill creates obligations for third parties regarding partisan activities and election surveys that are not currently included in the CEA, in addition to modifying the provisions currently applicable to third-party advertising.

The bill also distinguishes between expenses incurred during the election period from those incurred during the pre-election period. Clause 2(7) of the bill defines the pre-election period as beginning on 30 June before the election date provided for by section 56.1(2) of the CEA and ending the day before the earlier occurrence of either

- the first day of an election period for a federal general election; or
- the 37th day before the election date.

Pursuant to section 2 of the CEA, the election period begins with the issue of the writ of election and ends on polling day.

2.1.1.1 Definitions (Clauses 2(7) and 222)

Clause 222(1) repeals the current definitions of "election advertising" and "election advertising expenses" in relation to third-party election advertising contained in section 349 of the CEA. These terms are newly defined in clause 2(7), which amends section 2(1) ("Interpretation") of the CEA. The definition of "election advertising" is unchanged, while "election advertising expense" is redefined as an expense incurred in relation to the following:

(a) the production of an election advertising message; and

(b) the transmission of an election advertising message to the public.

Clause 222(2) amends section 349 to refine the definition of "third party" in its various applications in the Act.

New Division 0.1 of Part 17 of the CEA regulates the use of foreign funds by third parties. As amended by clause 222(2) of the bill, during an election period, the term "third party" refers to any person or group other than a candidate, a registered party or an electoral district registered association. Outside an election period, potential candidates or nomination contestants are also excluded from third-party status.

Bill C-76's new definition of "third party" during a pre-election period also applies in new Division 1 of Part 17 of the CEA, which regulates partisan activities, partisan advertising and election surveys during the pre-election period. The definition provided in current section 349 does not exclude nomination contestants or potential candidates from the definition of "third party." The definition of third parties regarding partisan activities, election advertising and election surveys during election periods, which is used in new Division 2 of Part 17, also applies in new Division 0.1.

Clause 222(3) amends section 349 of the CEA to include new definitions in relation to third parties. In amended section 349, an election survey is defined as one that is conducted by a third party during a pre-election period or an election period where the third party will use the results to decide whether and how to carry out and organize partisan activities or partisan advertising. A partisan activity is defined as a third-party activity that promotes or opposes a party or the election of a candidate, potential candidate or nomination contestant, among others. It includes canvassing, calling electors and organizing rallies. It does not include advertising, fundraising activities or taking a position with which a party or a person is associated.

2.1.1.2 Use of Foreign Funds by Third Parties, Partisan Activities, Partisan Advertising and Election Surveys During Pre-election Period (Clause 223)

Clause 223 of Bill C-76 amends the CEA by adding to Part 17, after section 349, new Division 0.1, entitled "Prohibition on Use of Foreign Funds by Third Parties"; and new Division 1, entitled "Partisan Activities, Partisan Advertising and Election Surveys During Pre-election Period."

These new divisions create obligations for third parties.

2.1.1.2.1 Spending Limit

New section 349.1 of the CEA fixes a spending limit of $700,000 for a third party during the pre-election period. This includes expenses regarding partisan activities, partisan advertising and election surveys conducted during the pre-election period. However, up to $7,000 of the $700,000 can be spent in order to promote or oppose the election of potential candidates or nomination contestants in a given electoral district. This $7,000 limit does not apply to expenses incurred with respect to the leader of a registered party or eligible party unless the expenses are made to promote or oppose the election of the leader in a specific electoral district.

2.1.1.2.2 Prohibitions

New section 349.2 of the CEA prohibits a third party from circumventing the spending limit in a pre-election period, for example by splitting itself into multiple third parties or by acting in collusion with other third parties. New section 349.3 prohibits collusion between a third party and a registered party, a potential candidate or an associated person in order to influence the third party's partisan activities, partisan advertising or election surveys.

New section 349.4 prohibits foreign third-party spending regarding partisan activities, partisan advertising or election surveys in the pre-electoral period. A foreign third party is either:

- an individual who does not reside in Canada and is not a Canadian citizen or permanent resident;
- a corporation or entity that does not carry on business in Canada (or its only activity in Canada is trying to influence an election) and was not incorporated or formed in Canada; or
- a group where no person responsible for the group resides in Canada or is a Canadian citizen or permanent resident.

New section 349.02 of the CEA prohibits third parties from using funds from a foreign entity to pay for partisan activities, advertising, including election advertising, or election surveys. Third parties cannot circumvent or attempt to circumvent this prohibition. Advertising is defined in new section 349.01 as the transmission to the public of any message that promotes or opposes a political party, or the election of a candidate or nomination contestant. It does not include taking a position on an issue with which a party or person is associated, among other activities. Foreign entities include

- an individual who does not reside in Canada and is not a Canadian citizen or permanent resident;

- a corporation or entity that does not carry on business in Canada (or whose sole activity in Canada is trying to influence an election) and was not incorporated or formed in Canada;
- a trade union that does not hold bargaining rights for employees in Canada;
- a foreign political party; or
- a foreign government or their agent.

New section 349.94 prohibits third parties from using a contribution for partisan activities, partisan advertising or election surveys during the pre-election period if they do not know the name and address of the contributor or are otherwise unable to categorize them.

2.1.1.2.3 Identification and Registration

New section 349.5 of the CEA requires third parties to identify themselves in any partisan advertising message, which must state that a third party authorized the message's transmission.

New section 349.6 requires third parties to register with the CEO immediately after spending $500 during a pre-election period on partisan activities, partisan advertising or election surveys.

New sections 349.7 and 349.8 impose an obligation for a registered third party (a party that spent more than $500) to appoint a financial agent and, if its pre-election expenses reach $10,000, an auditor. The financial agent must authorize every contribution made by or on behalf of the third party during a pre-election period, as provided for under new section 349.9.

2.1.1.2.4 Interim Expenses Return

New sections 349.91 and 349.92 of the CEA require registered third parties to file interim third-party expenses returns when they meet certain conditions, such as spending an amount of $10,000 or more during a specified time frame. The third-party expenses return must contain, among other things, a description of the pre-election expenses related to partisan activities, partisan advertising and election surveys of the third party, the amount of contributions received by the third party (including loans), as well as a description of the contributors by class (individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital other than trade unions, and unincorporated organizations or associations other than trade unions).

New section 349.93 prohibits third parties from providing false, misleading or incomplete information in an interim third-party expenses return.

2.1.1.3 Partisan Activities, Election Advertising and Election Surveys During Election Period (Clauses 223 to 230 and Clause 232)

Clause 223 of the bill also creates Division 2 of Part 17 of the CEA, entitled "Partisan Activities, Election Advertising and Election Surveys During Election Period." This division includes modified versions of sections 350 to 358 of the CEA. It regulates third parties' partisan activities, election advertising and election surveys during the election period.

2.1.1.3.1 Spending Limit

Clause 224(1) amends sections 350(1) to 350(4.1) of the CEA, which provide the spending limits for third parties during the election or by-election period.

Section 350(1) is amended so the spending limit during an election period is increased from a total amount of $150,000 to an aggregate amount of $350,000. However, while the $150,000 limit under the current CEA refers only to advertising expenses incurred during the election period, Bill C-76 broadens the scope of activities subject to the new spending limit. The new limit of $350,000 applies to expenses related to partisan activities, election advertising and election surveys during the election period.

Under the current CEA, a maximum of $3,000 out of the total $150,000 allowed under section 350(1) can be spent to promote or oppose the election of one or more candidates in a given electoral district (section 350(2)). Bill C-76 raises the dollar amount specified in section 350(1) to $350,000. Section 350(3) specifies that this limit does not apply to expenses incurred with respect to the leader of a registered party or eligible party unless the expenses are made to promote or oppose the election of this leader in a specific electoral district. While the bill increases the total spending limit, the maximum spending in a specific electoral district ($3,000) remains unchanged. Amended section 350(4) of the CEA imposes the same conditions for by-elections. Section 350(4.1), which focuses on uncancellable spending, is amended to add partisan activity expenses and election survey expenses to the scope of activities.

Clause 224(3) repeals section 350(6) of the CEA, which provides for increases in the maximum amount of expenses for election periods lasting more than 37 days.

2.1.1.3.2 Prohibitions

Clause 225 of the bill amends sections 351 and 352 of the CEA, which provide for prohibitions for third parties.

Section 351, which prohibits a third party from circumventing the maximum amounts set out in section 350, is amended to add partisan activity expenses and election survey expenses to the scope of activities.

New section 351.01 of the CEA prohibits a third party from acting in collusion with a registered political party, a candidate or a person associated with a candidate's campaign in order to influence the third party in its partisan activities, election advertising or election surveys during an election period. The definition of "acting in collusion" includes the sharing of information.

Current section 351.1 of the CEA prohibits foreign third parties from incurring election advertising expenses totalling $500 or more during the election period of a federal general election or a by-election. Amended section 351.1 prohibits foreign third parties from incurring any expenses during an election period related to partisan activities, election advertising or election surveys.

Section 352 is amended to provide that third parties must identify themselves in advertising messages – including their name, telephone number, civic or Internet address – and that the message must specify that a third party has authorized their transmission.

Clause 230(3) repeals section 357(3) of the CEA, which prohibits the use of contributions for election advertising by third parties if they are unable to find the name and address of the contributor or to classify them. This prohibition is replaced by new section 357.1, which prohibits the use of a contribution for a partisan activity, election advertising and election survey during an election period if the third party does not know the name and address of the contributor or is unable to determine which class the contributor falls into as set out in section 359(6) of the CEA (individual, business, commercial organization, government, trade union, corporation without share capital other than a trade union, and unincorporated organization or association other than a trade union).

Clause 232 repeals section 358 of the CEA. This section prohibits third party use of foreign funds for a partisan activity, election advertising or election survey. This prohibition is now included in new section 349.02.

2.1.1.3.3 Identification and Registration

Section 353(1) of the CEA currently provides that a third party must register immediately after incurring election advertising expenses of a total amount of $500 during an election period. Clause 226 of the bill amends section 353(1) to add partisan activity expenses and election survey expenses to the $500 threshold for registration as a third party. If the third party is an entity with a governing body, the application for registration of a third party must include a copy of a resolution passed by the governing body authorizing it to incur these expenses (amended section 353(5)).

Clause 226 also amends section 353(2) of the CEA, which deals with third-party applications for registration, replacing the current requirement under section 353(2)(b) for third parties to certify that they have a link with Canada with a requirement to provide a declaration to that effect.

Clause 227 adds section 354(1.1) to the CEA, which adds an exception to the requirement that a registered third party appoint a financial agent. This new section permits the continuation of a third party's pre-election financial agent's mandate during the election period.

Current section 355 of the CEA imposes an obligation for a registered third party to appoint an auditor if its election-period expenses total $5,000 or more. Clause 228 amends this section to increase the spending threshold for appointing an auditor to an aggregate $10,000 or more and to add partisan activity expenses and election survey expenses to the list of expenses when calculating whether the threshold has been reached.

Clause 228 creates new section 355(1.1), which permits the continuation of the mandate of a third party's pre-election auditor during the election period.

Clause 229 repeals section 356 of the CEA, which requires the CEO to maintain a registry of third parties for the period they deem appropriate.

Clause 230(1) amends section 357(1). Under the amended section, every contribution made for partisan activities, election advertising or election surveys to a third party during the election period must be accepted by its financial agent, and every expense of that nature must be approved by the financial agent.

2.1.1.4 Third Parties' Bank Accounts, Registry of Third Parties and Third-Party Expenses Returns (Clauses 233 to 238)

Clause 233 of Bill C-76 amends the CEA by adding Division 3 to Part 17, entitled "Third Parties' Bank Accounts, Registry of Third Parties and Third-Party Expenses Returns." This division applies to expenses incurred during the pre-election period and during the election period.

New section 358.1 requires registered third parties to open a separate bank account for the sole purpose of partisan activities carried out during a pre-election or election period, partisan advertising, election advertising and election surveys. The account needs to be in a Canadian financial institution as defined by the *Bank Act*. The account has to be closed after polling day "once all unpaid claims and any outstanding balance have been dealt with," and the third party has to provide the CEO with the final statement of the account.

New section 358.2 requires the CEO to maintain a registry of registered third parties that contains information, including their name, address, telephone number, a signed declaration that they are a Canadian citizen, permanent resident, or reside in Canada, and the names, addresses and telephone numbers of their financial agent and current auditor if one is appointed.

Clause 234 of the bill replaces current sections 359(1) to 359(3) of the CEA, which detail requirements pertaining to an election advertising report, with new provisions concerning a third-party expenses return, including requirements on the content of the return that third parties have to file with the CEO within four months after polling day.

Clause 235 creates new section 359.1, which prohibits third parties from filing a third-party expenses return containing false, misleading or incomplete information.

Clause 236 amends section 360 in order to create the obligation, for a third party that spent an aggregate amount of $10,000 or more on partisan activities, partisan advertising, election advertising or election surveys to include an auditor's report in its third-party expenses return.

Clause 237 amends section 361 of the CEA to add provisions that allow the CEO to make minor corrections to a third-party expenses return or to request in writing that the third party make a correction or revision. It also allows the CEO to specify the deadline by which such a corrected or revised expenses report must be submitted. New section 361.2 provides that a third party can request that the CEO authorize the correction or revision of the third-party expenses return and sets out the deadlines applicable to such corrections or revisions. New section 361.3 also allows third parties to apply to a judge for an order to relieve them from correcting or revising their third-party expenses return, to extend a deadline, or to allow them to correct or revise their third-party expenses return.

Clause 238 amends section 362 by adding an obligation for the CEO to publish third-party expenses returns as soon as feasible and interim third-party expenses returns within one year after the issue of the writ.

2.1.2 Maximum Partisan Advertising Expenses by Parties (Clause 262)

Clause 262 of the bill creates new section 429.1 of the CEA, entitled "Maximum Partisan Advertising Expenses." New section 429.1 sets a limit of $1,400,000 for partisan advertising by a registered party during the pre-election period.

New section 429.2 prohibits a chief agent of a registered party from incurring expenses of more than the amount set out in new section 429.1 for partisan advertising and prohibits circumventing the maximum amount through collusion with a potential

candidate or a third party. New section 429.3 imposes an obligation on the registered party to identify itself in any partisan advertising message. Messages must also name the party that authorized the message's transmission.

2.1.3 Offences Under Part 17 (Third Party Advertising, Partisan Activities and Election Surveys) (Clauses 336 to 338)

Clauses 336 to 338 of the bill list offences related to third-party spending on partisan activities, partisan advertising and election surveys during a pre-election period and during an election period. They also create offences concerning the use of foreign funds by third parties, as well as offences related to third parties' bank accounts, registry of third parties and third-party expenses returns. The offences created are divided into four parts:

- offences under new Division 0.1 (Prohibition on Use of Foreign Funds by Third Parties);
- offences under new Division 1 of Part 17 (Partisan Activities, Partisan Advertising and Election Surveys During Pre-election Period);
- offences under new Division 2 of Part 17 (Partisan Activities, Election Advertising and Election Surveys During Election Period); and
- offences under new Division 3 of Part 17 (Third Parties' Bank Accounts, Registry of Third Parties and Third-Party Expenses Returns).

2.1.3.1 Offences Under New Division 0.1 of Part 17 (Prohibition on Use of Foreign Funds by Third Parties) (Clause 336)

Clause 336 creates offences under new section 495.21 of the CEA that are either strict liability offences (not requiring intent) or dual procedure offences (requiring intent) for third parties that use foreign contributions or circumvent the prohibition on using foreign contributions (as set out in new sections 349.02 and 349.03(a) of the CEA).

2.1.3.2 Offences Under New Division 1 of Part 17 (Partisan Activities, Partisan Advertising and Election Surveys During Pre-election Period) (Clause 336)

Clause 336 creates new section 495.3 of the CEA, which lists offences related to partisan activities, partisan advertising and election surveys during a pre-election period.

New section 495.3(1) sets out strict liability offences (where there is no requirement to prove fault, negligence or intention) for third parties:

- exceeding or circumventing pre-election period expenses limits (new sections 349.1(1) to 349.1(3));
- as a foreign third party, incurring pre-election period expenses (new section 349.4);
- failing to self-identify in advertising (new section 349.5);
- failing to register (new section 349.6(1));
- failing to appoint a financial agent (new section 349.7) or failing to appoint an auditor (new section 349.8(1));
- failing to file an interim third-party expenses return (new section 349.91(1) or 349.92(1)) or failing to provide documents evidencing expenses on request (new section 349.91(10));
- filing an interim third-party expenses return that is substantially incomplete (new section 349.93(b)); and
- using anonymous contributions (new section 349.94).

New section 495.3(2) sets out dual procedure offences (where the prosecutor may proceed by either summary conviction or by indictment) requiring intent:

- being a third party and exceeding or circumventing pre-election period expenses limits (new sections 349.1(1) to 349.1(3) or 349.2);
- being a third party or registered party and colluding to influence a third party (new section 349.3(1));
- being a third party or potential candidate and colluding to influence a third party (new section 349.3(2));
- being a third party or official agent of a potential candidate and colluding to influence a third party (new section 349.3(3));
- being a foreign third party and incurring pre-election period expenses (new section 349.4);
- being a third party and failing to register (new section 349.6(1));
- appointing an ineligible person to act as a financial agent or auditor (new section 349.7(2) or 349.8(3));
- failing to file an interim third-party expenses return (new section 349.91(1) or 349.92(1)); and
- filing an interim third-party expenses return that contains false or misleading information or one that is incomplete (new section 349.93(a) or 349.93(b)).

2.1.3.3 Offences Under New Division 2 of Part 17 (Partisan Activities, Election Advertising and Election Surveys During Election Period) (Clause 337)

Clause 337 of the bill amends section 496 of the CEA, which lists offences related to election advertising by third parties, by extending its scope. Amended section 496 now applies to offences related to partisan activities, election advertising and election surveys during an election period.

Current sections 496(1)(a) and 496(1)(b) of the CEA list strict liability offences. These are replaced by new offences:

- exceeding election period expense limits (under amended sections 350(1) to 350(4));
- as a foreign third party, incurring election period expenses (amended section 351.1); and
- failing to self-identify in advertising (amended section 352).

Current section 496(2), which lists third-party dual procedure offences requiring intent, is amended to provide the following offences:

- being a third party and knowingly exceeding or circumventing election period expenses limits (pursuant to amended sections 350(1) to 350(4) or amended section 351);
- being a third party or a registered party and knowingly colluding to influence the third party (new section 351.01(1));
- being a third party or candidate and knowingly colluding to influence the third party (new section 351.01(2));
- being a third party or official agent of the candidate and knowingly colluding to influence the third party (new section 351.01(3));
- being a foreign third party and knowingly incurring election period expenses (new section 351.1);
- being a third party and knowingly failing to register (amended section 353(1));
- knowingly appointing an ineligible person to act as a financial agent or auditor (amended section 354(2) or 355(3));
- being a third party and knowingly failing to file an interim third-party expenses return (new section 357.01(1) or 357.02(1)); and
- being a third party and knowingly filing an interim third-party expenses return that contains false or misleading information or one that is incomplete (new section 357.03(a) or 357.03(b)).

2.1.3.4 Offences Under New Division 3 of Part 17 (Third Parties' Bank Accounts, Registry of Third Parties and Third-Party Expenses Returns) (Clause 338)

Clause 338 creates new section 496.1 of the CEA, which lists offences related to third parties' bank accounts, registry of third parties and third-party expenses returns.

New section 496.1(1) sets out strict liability offences for third parties that

- fails to satisfy bank account requirements (pursuant to new section 358.1);
- fails to file a third-party expenses return (amended section 359(1)) or fails to provide documents evidencing expenses on request (amended section 359(9));
- files a third-party expenses return that is substantially incomplete (new section 359.1(b));
- fails to provide a corrected or revised return within the specified period (new section 361(3)); and
- fails to provide corrected or revised return within a 30-day period or any extension of that period (new section 361.2(3)).

New section 496.1(2) sets out dual procedure offences requiring intent for third parties that

- knowingly fails to file a third-party expenses return (under amended section 359(1));
- files a third-party expenses return that contains false or misleading information or knowingly files one that is incomplete (new section 359.1(a) or 359.1(b), respectively);
- knowingly fails to provide a corrected or revised return within the specified period (new section 361(3)); and
- knowingly fails to provide a corrected or revised return within the 30-day period or any extension of that period (new section 361.2(3)).

2.2 REDUCING BARRIERS AND INCREASING ACCESSIBILITY

2.2.1 Register of Electors and Register of Future Electors (Clauses 2(7), 34, 36, 39, 40, 134 and 135)

Clause 36 of Bill C-76 amends section 44 of the CEA, which contains provisions pertaining to the Register of Electors, by creating a new Register of Future Electors (RFE). The amended section allows the CEO to collect the information of consenting young people, aged 14 to 17 ("future elector[s]" as defined in amended section 2(1)), so that when they turn 18 years of age they are automatically placed on the Register

of Electors. Other clauses of Bill C-76 detail such matters as the contents and maintenance of the registers, among other matters.

2.2.1.1 Future Electors and Register of Future Electors (Clauses 2(7), 34, 134 and 135)

Clause 2(7) amends section 2(1) of the CEA (the interpretation clause) to include two new definitions:

- "future elector": a Canadian citizen aged 14 to 17; and
- "Register of Future Electors": the register established under new section 44(1)(b) ("a register of persons who are qualified as future electors").

Clause 34 changes the heading of Part 4 of the CEA to "Register of Electors and Register of Future Electors" from "Register of Electors."

Clause 134 replaces sections 192 to 198 of the CEA with new provisions on the registration of CF members as electors or future electors. Clause 135 amends section 199(2) in relation to the information the coordinating officer must provide to the CEO about CF members as electors or future electors.

2.2.1.2 Maintaining the Registers (Clause 36)

Clause 36 amends section 44 of the CEA. Like the existing section 44, amended section 44 states that the CEO is responsible for the maintenance of the Register of Electors, which contains identifying information on electors along with a unique, randomly generated identifier to help track changes to electors' records; it also provides that inclusion in the register is optional. Amended section 44 establishes that the CEO also maintains the RFE, which contains the same type of information as the Register of Electors but specific to future electors (amended section 44(2)). It also indicates that inclusion in the RFE is optional (new section 44(5)).

Clause 36 adds two further provisions to section 44:

- new section 44(4), which allows for information on future electors to remain in the RFE after the future electors have become electors and until they are included in the Register of Electors; and
- new section 44(6), which states that parental consent is not necessary for a future elector to be included in the RFE.

2.2.1.3 Updating the Registers (Clauses 39 and 40)

Clauses 39 and 40 amend current sections 46(1), 46.1 and 46.2 of the CEA, which deal with populating and updating the Register of Electors, to include populating and updating the RFE.

Section 46(1) of the CEA currently outlines the sources of information the CEO may use to update the Register of Electors. It specifies that some information that is not kept in the register itself may be retained for the purposes of correlating new information with previously collected information in the register.

Clause 39 clarifies that those same sources may also be used to populate and update the Register of Future Electors and that the same information may be retained for correlation purposes.

Clause 39 adds section 46(1.01) to the CEA, which provides that when future electors included in the RFE become electors, their RFE information will be added to the Register of Electors. Clause 40 adds section 46.01, which allows the Minister of Citizenship and Immigration to provide the CEO with specified information about permanent residents and foreign nationals contained in the databases of the minister's department, in response to a written request by the CEO. The purpose is to assist the CEO in updating the Register of Electors, including by deleting the names of people who are not electors.[27]

The bill retains the provisions in current sections 46.1 and 46.2 of the CEA, through which the CEO can gather information about electors from the Minister of National Revenue (MNR). Section 46.1 permits the MNR, for the purposes of assisting the CEO in updating the Register of Electors, to request that any individuals making a return of income under the *Income Tax Act*[28] indicate whether they are Canadian citizens. Section 46.2 requires that the MNR provide the CEO with the name, date of birth and address of any individual who is deceased, whose legal representatives filed a return of income, and whose legal representatives have authorized the sharing of that information.

Clause 40 amends sections 46.1 and 46.2 so that they apply to the RFE, in addition to the Register of Electors.

2.2.2 Accessible Voting

2.2.2.1 Assistance by a Friend or Related Person (Clause 165)

Under the current CEA, electors voting in an office of a returning officer (RO) who cannot read or who have a physical disability may only rely on an election officer

for assistance. They cannot rely on a friend or relative for assistance, as is allowed at a polling station.

Clause 165 adds section 243.01(1) to the CEA, which allows an elector who requires assistance when voting in an RO office to be accompanied into the voting compartment by a friend, spouse or relative who will assist the elector to mark the ballot, subject to that accompanying person making a sworn declaration (new section 243.01(2)). The provision also removes the requirement that the elector's disability be physical.

2.2.2.2 Voting at Home (Clause 166(1))

The current CEA restricts voting from home to electors who are unable to read or those with a physical disability that prevents them from leaving their house to go to an RO office or a polling station and an additional physical disability that prevents them from marking a ballot. The election officer marks the ballot on behalf of the elector. Clause 166(1) amends section 243.1(1) to remove the requirement that the elector's disability be physical.

2.2.2.3 Accessible Offices of Returning Officers and Polling Stations (Clauses 49 and 84)

Clauses 49 and 84 stipulate that RO offices and polling stations must be accessible to electors with a disability (amended sections 60(1) and 121(1) of the CEA, respectively). Where it is not possible to establish a polling station that is accessible to electors with a disability, the prior approval of the CEO is required to establish a non-accessible polling station (amended section 121(2)).

2.2.3 Financial Incentives to Accommodate Electors with Disabilities (Clause 270)

Clause 270 amends section 444(1) of the CEA, which provides financial incentives to political parties and individual campaigns to accommodate people with disabilities. Under amended section 444(1), 90% of a registered party's accessibility expenses are eligible for reimbursement, up to a maximum of $250,000.

2.2.4 Treatment of Certain Expenses

2.2.4.1 Personal Expenses (Clauses 239(1), 243 and 299)

Clause 239(1) amends section 364 of the CEA, which sets out provisions dealing with campaign and nomination or leadership contest contributions. New section 364(1.1) makes clear that candidates or contestants may opt to pay personal expenses such as childcare and disability expenses, which would normally constitute electoral

campaign expenses, using their personal funds, and are not obligated to report them as contributions, as long as they are not paid for out of campaign accounts (section 476.65(1) in the case of a nomination contestant, section 477.46(1) in the case of a candidate and 478.72(1) in the case of a leadership contestant). Clause 243 of the bill provides that, if the campaign chooses to use regulated funds, the expenses (and related contributions) must be reported and should be eligible for reimbursement as personal expenses (new section 374.1(1) of the CEA). Clause 299 amends sections 477.73(2) and 477.73(3) to allow for a reimbursement of up to 90% of these expenses.

2.2.4.2 Litigation Expenses (Clauses 239(1) and 282(1))

In the current CEA, candidates who incur litigation expenses, such as those that arise from a contested election, a judicial recount or an application to correct a political financing document, must pay their litigation expenses using regulated funds. Under this regime, it is possible that a person could be denied legal representation even though they are able to pay for it personally.

Clause 239(1) of the bill amends section 364 of the CEA to indicate that candidates may opt to pay litigation expenses using their personal funds (new section 364(1.1)). If paid using personal funds, such expenses are not considered personal expenses under section 378 and consequently are not reimbursable, nor subject to the spending limit. Under clause 282(1), amended section 476.75(2)(a) requires campaigns to file a separate statement of litigation expenses along with the candidate's return. Where the fees are not paid from the campaign bank account, the report must also include the sources for payment.

2.2.4.3 Travel Expenses (Clauses 243, 249 and 252)

Under the current CEA, expenses for travel occurring outside the election period are reimbursed. Travel expenses are currently classified as a subcategory of personal expenses.

Clause 249 removes section 378(1)(a) and replaces section 378(2) of the CEA to clarify that travel and living expenses are not personal expenses of a candidate. In addition, clause 252 amends section 382(3)(a) to state that all travel expenses and living expenses related to travel will be treated as election expenses. They must be paid using campaign funds, and only expenses for the portion of travel that occurs during the election period will be reimbursed.

Clause 243 adds sections 374.1 to 374.4, which set out nomination contest expenses. The provisions, which are substantially similar to those applicable to leadership expenses, include:

- categories of expenses considered to be nomination expenses when incurred as an incidence of a nomination contest (new section 374.1(1));
- the costs, non-monetary contributions received, and acceptance of goods and services that are considered to be nomination contest expenses (new sections 374.2(1) and 374.2(3));
- exclusions (new sections 374.1(2), 374.2(2) and 374.4(2));
- a definition of costs incurred (new section 374.2(4));
- a definition of litigation expenses (new section 374.3); and
- a definition of personal expenses (new section 374.4).

2.2.5 Special Voting Rules for Canadian Forces Electors

The Special Voting Rules that apply to CF electors were introduced originally in 1915. Members of the CF are automatically included in the CF voting regime under Division 2 of the CEA.

2.2.5.1 Canadian Forces Registration (Clauses 134 and 136)

Clause 134 provides for a CF elector to be informed of the right to be included in the Register of Electors, or for their registration to be updated. Similar provisions exist for CF future electors who wish to be included in the RFE (new section 192(2)). A CF member must provide their service number to the CEO for identification purposes in the Register of Electors or the RFE (new section 192(3)).

Clause 134 also repeals sections 194 and 195 of the CEA, thereby removing the time restrictions for updating CF elector statements of ordinary residence. Under the CEA, a CF elector's completed statement of ordinary residence is the basis of the CF voting process.

The bill removes many of the references to paper-based processes. In addition, clause 136 of the bill adds a new subsection 199.2(1) to the CEA, which states that liaison officers will be designated to work with the CEO and coordinating officer during and between elections so that they are trained and ready at the start of the election period.

2.2.5.2 Proof of Identity: Service Numbers (Clause 143)

Clause 143 amends sections 210 to 212. When voting, a CF elector must provide their personal information at the polling station, including their service number (new section 211.1.(1)), as well as proof of identity that includes their service number (new sections 211.1(3) and 211.2(1)). An application for registration and special

ballot must also include the CF elector's service number, in addition to other information (new section 211.2(2)).

2.2.5.3 Assistance to Vote (Clause 147)

Clause 147 clarifies that a unit election officer will assist an elector who is unable to read or has a disability that would otherwise prevent the elector from voting (amended section 216(1)). The current CEA does not specifically permit assistance for a CF elector who is unable to read.

2.2.5.4 Delivery of Marked Canadian Forces Ballots (Clauses 145 and 149)

Clause 145 requires that CF electors be informed of Elections Canada's deadline for receipt of special ballots and of the CF's delivery service for marked ballots (amended section 214(1) of the CEA).

Clause 149 provides that marked special ballots are to be delivered to the unit commander at the end of each voting day and, upon receipt, forwarded to Elections Canada to be counted (amended section 219(1)). Under the current CEA, marked ballots are held until the end of the voting period and delivered all at once.

2.2.6 Chief Electoral Officer's Mandate: Public Education (Clause 14)

Clause 14 amends sections 18(1) to 18(2) of the CEA to restore the broad-based authority of the CEO to educate and inform the public about the electoral process and the democratic right to vote, and to use various media to inform the public about the electoral process.

Prior to the *Fair Elections Act*, the relevant provision read:

> 18(1) The Chief Electoral Officer may implement public education and information programs to make the electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights.

At the time, the CEO also had broad latitude in the use of communications media to transmit any information related to the electoral process.

Under amended section 18(1) and new section 18(1.2) of the CEA, the CEO's outreach activities may again target groups of electors that are "most likely to experience difficulties in exercising their democratic rights," and may include electors outside Canada. Advertised messages with information on how to vote must be accessible to electors with a disability (new section 18(2)).

2.2.7 Electors Resident Outside Canada and the Right to Vote (Clause 152)

Clause 152 replaces current section 222(1) of the CEA with new section 222 to remove the two limitations on voting for non-resident electors, namely that electors must have been residing outside Canada for less than five years and that electors must intend to resume residence in Canada in the future.

2.2.8 Increasing Accessibility: Miscellaneous Amendments

2.2.8.1 Opening of Advance Polls (Clause 119)

Currently, under section 171(2) of the CEA, advance polling stations can only be open from noon until 8:00 p.m. Clause 119 of the bill amends section 171(2) to specify that advance polling stations must open at 9:00 a.m. rather than noon and remain open until 9:00 p.m.

2.2.8.2 Voting by Special Ballot: Flexibility in the Provision of Ballots to Electors (Clauses 155, 160, 182, 183 and 186 to 188)

Currently, when an election is called, Elections Canada sends ballot kits to international electors. These consist of a ballot, an inner envelope and an outer envelope. The kits are also provided to electors in Canada who apply to vote by mail. The bill amends various sections of the CEA to provide that

- the CEO no longer has to provide envelopes to electors on the special ballot register, thereby allowing electors to use their own envelopes (clause 155, which amends sections 227(1), 227(2)(b) and 227(2)(d); clause 182, which amends section 267; clause 187, which amends section 277; and clause 188, which amends section 278); and
- references be removed about the declaration on the outer envelope that must be signed by electors, to be replaced by a new requirement for a declaration prescribed by the CEO to be signed and sealed in an outer envelope in cases where special ballot envelopes are not mailed to special electors (clause 155, which amends section 227(2)(c); clause 160, which creates new section 237(1); clause 182, which amends section 267; clause 183, which amends section 272; clause 186, which amends section 276; and clause 187, which amends section 277).

2.3 MODERNIZING VOTING SERVICES AND FACILITATING ENFORCEMENT OF THE ADMINISTRATION OF ELECTIONS AND POLITICAL FINANCING

2.3.1 Appointment and Duties of Election Officers (Clauses 20, 29, 86 and 320(1))

Currently, the CEA prescribes various tasks and functions at polling places, with each task assigned to a specific election officer.

Current section 22 lists all the various election officers under the CEA. Clause 20 of the bill deletes the majority of these officers (current sections 22(1)(d) to 22(1)(k) and 22(1)(o)) and replaces them with a generic position held by persons who exercise powers and perform duties as authorized by an RO (amended section 22(1)(c)). References to the positions deleted in section 22 are also, consequentially, replaced throughout the CEA.

Clause 29 amends current section 32 to provide the RO with the power to appoint, in accordance with the CEO's instructions, the election officers they consider necessary for exercising election officers' powers and performing duties under the CEA in the RO's electoral district (new section 32(1)).

Clause 86 deletes sections 123 and 124 of the CEA dealing with the establishment by an RO of a central polling place and the various staff positions at central polling places.

Clause 320(1) removes the power of arrest without a warrant and the power to forcibly eject. An election officer retains the power to maintain order at the polls and may order a person to leave if the person is committing or reasonably believed to be committing an offence (amended sections 479(2) and 479(3)).

2.3.2 Maximum Length of an Election Period (Clause 47)

Under the current CEA, section 57 provides for a minimum length for an election period of 36 days after the issue of the writs of election, but not a maximum length for an election period. Clause 47 amends section 57(1.2)(c) of the CEA to provide for a maximum length of 50 days for an election period.

2.3.3 Hiring of Election Officers

2.3.3.1 Appointment of Election Officers Who Live Outside Electoral District or Are Under the Age of 18 (Clause 20(5))

Currently, the CEA requires ROs, assistant returning officers and additional assistant returning officers to reside in the electoral district in which the election officer is to perform duties. Clause 20(5) amends the qualifications to be an election officer found in current section 22(4) by adding that a person is eligible to work as an election officer in an electoral district adjacent to the one in which the officer resides.

The CEA also places restrictions on who ROs can hire. Clause 20(5) amends current section 22(5) to allow election officers who are at least 16 years of age to be appointed by the RO without the need for approval from the CEO.

2.3.3.2 Partisan Nominees for Election Officer Positions (Clause 29)

Currently, sections 32 to 39 of the CEA deal with the hiring by an RO of election officers. The current provisions stipulate that ROs must solicit the registered parties whose candidates finished first and second in the last election in the electoral district for names of suitable persons to fill certain election officer positions. ROs are required to consider partisan nominees for the positions of DRO, poll clerk and registration officer until the 24th day before polling day, and for revising agents until three days after the parties receive the request for names from the RO. This means that ROs cannot staff the key DRO and poll clerk positions until late in the election period.

Clause 29 of the bill amends or repeals these sections of the CEA. Of note, new section 32(2) now allows an RO, in accordance with instructions from the CEO, to appoint election officers before the issue of the writ if the RO wishes to do so for the purpose of training. However, new section 32(3) now provides that an RO cannot appoint more than half of the total number of election officers that will be hired until the eighth day after the issue of the writ.

As amended, section 33(1) of the CEA provides that the RO must, as soon as possible after the issue of the writ, solicit names of persons suitable to be election officers from any of the following that endorsed candidates in the last election in that electoral district:

- candidates of registered parties;
- registered associations of those registered parties; or
- registered parties.

Amended section 33(2) now provides that the RO must total the names provided under amended section 33(1) in the seven days following the issue of the writ. If the number of names is less than or equal to the number of election officers remaining to be appointed, the RO must appoint as election officers those whose names were provided under amended section 33(1).

Amended section 33(3) provides that, in the case where the total number of names provided within seven days after the issue of the writ exceeds the number of election officers remaining to be appointed, the RO must appoint as election officers those whose names were provided under amended section 33(1) in proportion to the votes received by candidates of registered parties in the last election in the electoral district.

Clause 29 also adds an obligation under amended section 33(4) for election officers to return all election documents and election materials in their possession to the RO or to an authorized person should they be removed or replaced as an election officer by the RO.

Clause 29 maintains the power possessed by an RO under current section 37(1) of the CEA to refuse to appoint an election officer recommended by a candidate, electoral district association (EDA) or political party. It also maintains the right of candidates, EDAs and political parties to recommend another person following a refusal by an RO to hire a recommended candidate.

2.3.3.3 Returning Officer to Keep Record of Election Officer Duties (Clause 29)

Clause 29 of the bill adds a new obligation on ROs to keep a record that captures the powers and duties assigned to each election officer and the time during which each election officer performed the assigned duties (amended section 38 of the CEA).

2.3.4 Solemn Declarations (Clauses 2(2), 21, 53(1), 88(3), 101(3), 110(3), 196, 199 and 372)

In numerous places throughout the CEA, Bill C-76 replaces the use of oaths with the use of solemn declarations. The bill provides for the use of solemn declarations in the process for vouching and, in a variety of instances, for solemn declarations authorized by the CEO in the electoral process.

Instances in the CEA where the use of solemn declarations replaces oaths include the following:

- a solemn declaration taken by election officers prior to assuming their duties (clause 21, which amends section 23(1));
- as part of the nomination of a prospective candidate (clause 53(1), which amends section 66(1)(a));
- as part of admitting a representative of a candidate or an elector representing a candidate to a polling station (clause 88(3), which amends sections 135(4) and 135(5));
- as part of a person assisting an elector in marking a ballot (clause 101(3), which amends section 155(3));
- as part of the duties of an election officer assigned to a polling station (clause 110(3), which amends sections 162(f) and 162(g));
- election officers placing solemn declarations in an envelope (clause 196, which amends sections 288.01 and 288.1); and

- the requirement to create a list of the names of persons who made a solemn declaration (clause 199, which amends section 292.1).

Clause 372 provides for solemn declarations to be used by electors in the voting and vouching process (new sections 549.1(1) and 549.1(2), respectively). New section 549.1(1) provides that the following persons may make a solemn declaration in order to vote:

- electors without acceptable identification who are seeking to prove both their identity and residence;
- electors without acceptable identification who are seeking to prove their residence only;
- persons seeking to prove that they are qualified as an elector; and
- persons seeking to prove that they have not already voted at the election.

The solemn declaration must include the statements that

- the elector resides at the address at which they claim to reside;
- the elector is 18 years of age or older or will be on election day;
- the elector is a Canadian citizen;
- the elector has not already voted in the election; and
- the elector has not had an application to vote by special ballot accepted.

New section 549.1(2) provides for the solemn declaration to be used by those vouching for another elector. According to this new section, the solemn declaration must include the statements that

- the other elector resides in the polling division;
- to the best of the voucher's knowledge, the other elector has not previously voted at the election;
- the elector knows the other elector;
- the elector is a Canadian citizen when the other elector votes;
- the elector has not already vouched for another elector at the election; and
- the elector has not been vouched for by another elector at the election.

For solemn declarations used as part of the electoral process, clause 2(2) of the bill amends the definition of the term "prescribed" in section 2(1) of the CEA to refer to forms or solemn declarations that have been authorized by the CEO.

2.3.5 Voter Identification (Clauses 93 to 95, 107, 108, 117, 118 and 161)

2.3.5.1 Vouching Replaces Attestation to Establish Identity and Residence at an Election (for Voters on the List of Electors) (Clause 93)

Under current section 143(3) of the CEA, if an elector is able to establish their identity – but not residence – using two authorized pieces of identification, the elector can establish residence by a two-stage attestation process:

- The elector can take a prescribed oath in writing.
- Another elector whose name appears on the list of electors for the same polling division and who has proven their identity and residence can attest to the elector's residence by written oath (an attestation).

Section 143(3) of the CEA is amended by clause 93(5) of Bill C-76 to permit an elector without acceptable identification to prove *both* identity and residence by a similar two-stage process:

- The elector can make a solemn declaration in writing in the form prescribed by new section 549.1(1).
- Another elector whose name appears on the list of electors for the same polling station can vouch for the elector's identity and residence by making a solemn declaration in writing in the form prescribed by new section 549.1(2).

If the elector is a resident of a long-term care institution, an elector who is an employee of the same institution can vouch to the elector's identity and residence. The employee is not required to reside in the same electoral district as the elector (new section 143(3.01)).

Further, clause 93(6) sets out that in cases where an election officer, a candidate or the candidate's representative has reasonable doubts concerning the proof of residence provided by an elector under current section 143(3.1), the elector can be requested to make a solemn declaration in order to prove residence.

2.3.5.1.1 Form of Solemn Declaration for Vouching at an Election (Clause 94)

Currently, under section 143.1(1) of the CEA, the person who administers the written oath regarding an attestation must orally advise the oath taker of the qualifications for electors and the penalty that may be imposed for being found guilty of voting fraudulently or attempting to vote fraudulently. Clause 94 amends section 143.1(1), replacing the requirement that oral advice be given with the requirement that an election officer advise the elector in writing of the qualifications for electors to vote and the penalty for fraudulent voting, prior to making the solemn declaration under new section 549.1(1).

Clause 94 also amends section 143.1(2) of the CEA, which currently requires that oral advice be given to the attester regarding the penalty for attesting for more than one elector and for taking a false oath. It replaces this provision with a requirement that the person vouching for the elector be advised by an election officer in writing of the penalties related to vouching illegally and fraudulent voting, prior to making the solemn declaration under new section 549.1(2).

Further, clause 94 amends section 144 to set out that in cases where an election officer, a candidate or the candidate's representative has reasonable doubts concerning whether a person is qualified to vote, that elector can be requested to make a solemn declaration in order to prove residence.

2.3.5.2 Removal of the Prohibition on Authorizing Voter Information Cards (Clause 93(4))

Under current section 143(2.1) of the CEA, it is the CEO who authorizes the types of identification that electors can use to prove their identity and residence. Currently, the CEA specifically prohibits the CEO from authorizing as identification a notice of confirmation of registration, also known as the voter information card. Clause 93(4) amends section 143(2.1) to remove the prohibition against authorizing the voter information card as a type of identification.

2.3.5.3 Person in Whose Name Another Has Voted (Clause 95)

Clause 95 adds a new obligation for persons asking for a ballot at a polling station after someone else has voted under that name. New section 147(2) sets out that an election officer must, in addition to requiring that the elector make a solemn declaration, advise the elector in writing of the penalty for voting or attempting to vote more than once.

2.3.5.4 Multiple or Serial Attesting (Clauses 93(7), 107(6) and 117(5))

Clauses 93(7), 107(6) and 117(5) repeal sections of the CEA that prohibit multiple or serial attesting at an election, at election day registration or at advance polls. These repealed sections prohibit:

- a person from attesting to the residence of more than one elector at an election (sections 143(5), 161(6) and 169(5)); and
- an elector whose own residence had been attested to from attesting to another elector's residence at an election (sections 143(6), 161(7) and 169(6)).

2.3.5.5 Vouching Replaces Attestation for Election Day Registration (Clause 107(3))

Currently, under section 161(1)(b) of the CEA, an elector whose name is not on the revised list of electors (which is prepared for each division before polling day) may register in person on election day, provided that the elector

- has established their identity by using two authorized pieces of identification;
- proves residence by taking a written oath; and
- is accompanied by another elector whose name appears on the list of electors for the same polling division who proves their own identity and residence in the prescribed manner and attests to the elector's residence through a written oath.

Clause 107(3) amends section 161(1)(b) to provide that the elector may register in person on election day, provided that the elector

- proves both identity and residence by making a solemn declaration in writing in the form prescribed by new section 549.1(1); and
- is accompanied by another elector whose name appears on the list of electors for the same polling division. This person must provide the prescribed pieces of identification and vouch for the elector through a solemn declaration in writing (under new section 549.1(2)). In this way, the qualified elector vouches for the elector rather than attests on written oath, and may vouch not only for the elector's residence, but also for their identity.

2.3.5.5.1 Form of Solemn Declaration for Vouching at Election Day Registration (Clause 108)

Clause 108 amends sections 161.1(1) and 161.1(2) of the CEA to make identical amendments to the procedures for proving identity and residence before voting on election day as contained in clause 94 and applies them to electors registering on election day.

2.3.5.6 Vouching Replaces Attestation for Registration at Advance Polls (Clause 117(3))

Currently, under section 169(2)(b) of the CEA, an elector whose name is not on the revised list of electors may register in person before the DRO at an advanced poll, provided that the elector

- has established their identity by using two authorized pieces of identification;
- proves residence by taking a written oath; and

- is accompanied by another elector whose name appears on the list of electors for the same polling division who proves their own identity and residence in the prescribed manner and attests to the elector's residence through a written oath.

Clause 117(3) amends section 169(2)(b) to provide that the elector may register in person before the electoral officer assigned to the advance polling station (amended section 169(1)) provided that the elector

- proves both identity and residence by making a solemn declaration in writing in the form prescribed by new section 549.1(1); and
- is accompanied by another elector whose name appears on the list of electors for the same polling division. This person must provide the prescribed pieces of identification and vouch for the elector through a solemn declaration, as stipulated in new section 549.1(2). In this way, the qualified elector vouches for rather than attests on written oath, and may vouch not only for the elector's residence, but also for their identity.

Where the elector is a resident of a long-term care institution, the vouching elector can be an employee of the same institution (new section 169(2.01)). The employee's name is not required to be on the list of electors for the same polling division.

2.3.5.6.1 Form of Solemn Declaration for Vouching at Advance Polls (Clause 118)

Clause 118 amends sections 169.1(1) and 169.1(2) of the CEA to make identical amendments to procedures for proving the identity and residence of an elector as contained in clause 94 and applies them to electors registering in person at an advance polling station.

2.3.5.7 Multiple or Serial Attesting in Special Voting (Clause 161(1))

Division 4 of Part 11 of the CEA enables voters residing in Canada to vote by special ballot. The special ballot is available to electors who cannot or do not wish to cast a ballot at an ordinary or advance poll. Current sections 237.1(3.1) and 237.1(3.2) provide that multiple attestations and serial attestations are not permitted when an elector seeks to obtain a special ballot by visiting the office of a returning officer. Clause 161(1) repeals both of these provisions.

2.3.5.8 Offences Regarding Improper Vouching (Clauses 190, 328 and 331)

Clause 190 creates new Part 11.1, entitled "Prohibitions in Relation to Voting." It adds prohibitions in relation to improper vouching to the CEA, among other matters. New section 282.1(1) prohibits vouching for more than one person except in the case of electors residing in long-term care homes. New section 282.1(2) prohibits

vouching where the voucher: (a) is not qualified as an elector; (b) does not personally know the elector; or (c) does not reside in the same polling division as the other person. New section 282.1(3) prohibits a person who has been vouched for from vouching for another person at that election.

Currently, sections 489(2) and 491 of the CEA categorize as summary conviction offences both the offence of attesting to residence for more than one elector (found respectively in sections 143(5), 161(6), 169(5) and 237.1(3.1)) and the offence of attesting to residence when one's own residence has been attested to (respectively, sections 143(6), 161(7), 169(6) and 237.1(3.2)).

Clauses 328(1) and 328(2) of Bill C-76 repeal these offences.

Clause 331 amends section 491 to add that it is an offence to contravene any of the new section 282.1 prohibitions on improper vouching (new section 491.1(j)).

2.3.6 Advance Polls: Miscellaneous Amendments to Procedures

2.3.6.1 Elimination of Signature Requirement (Clause 122)

Currently, the procedures at advance polls contain four independent controls to verify an elector's eligibility to vote. These are as follows: the elector must prove their identity and residence or take an oath; the elector's name must be manually crossed off the list of electors by a DRO; the poll clerk must write the name and address of each elector on the record of votes cast; and the elector must sign the record of votes cast beside the elector's name.

Clause 122 of the bill amends sections 174(1) and 174(2) of the CEA to repeal the requirement that every voter at an advance poll sign the record of votes cast.

2.3.6.2 Closing Procedures (Clause 122)

The CEA currently requires that separate ballot boxes be used for each day of advance polls and that there be another box for keeping supplies. The CEO's 2016 report indicates that while, in some cases, it may be desirable to use extra ballot boxes because of the number of electors, the use of multiple boxes renders opening and closing procedures complex.

Clause 122 of the bill amends sections 175(2) and 175(3) to provide that upon the closing of advance polls on each of the four days of advance polling, an election officer assigned to the polling station must, in full view of the candidates or their representatives who are present, take the measures necessary to ensure the integrity of the vote in accordance with the instructions given by the CEO. Also, additional ballot

boxes can be utilized as needed, as determined by an election officer, according to instructions made by the CEO and taking the steps set out under the bill.

2.3.6.3 Custody of Ballot Boxes (Clause 122)

Under the current CEA, DROs are generally entrusted with the safekeeping of election documents, including ballot boxes and their contents. Only with the CEO's prior approval can an RO recover a ballot box from a DRO if that action is deemed necessary to ensure the integrity of the vote. According to the CEO's 2016 report, in cases where ROs need to recover a ballot box from a DRO, the need for the CEO's approval in each individual situation is an administrative hurdle that delays ROs from acting promptly to protect ballot boxes.

Clause 122 of the bill revises current section 175(6) of the CEA (which becomes new section 175(5)) by adding a provision that entrusts an election officer with keeping the sealed ballot box or boxes until ballots are counted on election day, in accordance with instructions from the CEO. Further, under amended section 175(6), the RO is given the power to recover any ballot box from another election officer where the RO considers the action necessary to ensure the integrity of the vote. The RO must inform the CEO of such an action at the earliest opportunity.

Amended sections 175(7) and 175(8) of the CEA give the RO the power to obtain a warrant from a justice of the peace, upon satisfying conditions set out in the bill, to enter a dwelling or vehicle without the occupant's or owner's consent. In such cases, the RO must be accompanied by a peace officer. New section 175(9) provides that the RO may obtain a telewarrant instead of appearing in person to make an application for a warrant if they believe it impractical to do so.

2.3.6.4 Counting Ballots Before Polls Close (Clauses 120 and 197)

Currently under the CEA, the counting of ballots from advance polls can only begin after the polls close on election day. The CEO's 2016 report noted that this can make it difficult to count ballots from advance polls in a timely manner, especially when there has been high voter turnout.

Clause 120 of the bill amends current section 172(a)(iv) of the CEA to allow ballots from advance polls to be counted up to one hour before the close of polling stations, provided the CEO's approval has been obtained. Clause 197 of the bill amends current section 289(4) of the CEA by adding an exception that provides that ballots given to the advance polling station one hour before the close of the poll on polling day may also be counted, with the prior approval of the CEO and where certain other conditions are met.

2.3.7 Commissioner of Canada Elections

2.3.7.1 Office of the Commissioner (Clauses 351 and 352)

Clause 351 replaces sections 509(1) and 509(2) of the CEA, giving the responsibility for the appointment of a commissioner back to the CEO, who is to consult with the DPP. Similarly, remuneration is to be fixed by the CEO after consultation with the DPP. The term of the appointment is lengthened to a non-renewable term of 10 years, and the Commissioner may be removed by the CEO, not the DPP, for cause.

Current section 509.1 of the CEA places the position of Commissioner within the Office of the DPP. Clause 352 reverses this provision prescribed by the *Fair Elections Act* to put the position back within the Office of the CEO (amended section 509.1(1)).

Clause 352 amends section 509.2 to specify the measures that the Commissioner may take to ensure the CEA is complied with and enforced. These measures are

- conducting investigations;
- instituting prosecutions;
- entering into compliance agreements;
- issuing notices of violation with an administrative monetary penalty; and
- accepting undertakings to comply with the CEA.

Decisions related to enforcement under Part 19 of the CEA are to be made independently by the Commissioner (new section 509.21(1)), though the Commissioner may consult with the CEO when appropriate (new section 509.21(2)).

Clause 351(2) repeals sections 509(3)(d) and 509(3)(e), which currently limit the persons eligible for appointment as Commissioner.

2.3.7.2 Power of the Commissioner

2.3.7.2.1 Prosecution (Clauses 360 and 361)

Under current section 511 of the CEA, the Commissioner does not possess the authority to lay a charge (or "initiate a prosecution"). Rather, the Commissioner must obtain prior authorization from the DPP to do so. Similarly, current section 512(1) prohibits anyone but the DPP from laying a charge without the DPP's prior written consent.

Clause 360 amends section 511 to authorize the Commissioner to lay a charge on their own initiative. In addition, clause 361 amends section 512(1) to provide that

no prosecution for an offence under the CEA can be initiated by a person other than the Commissioner or a person acting under their direction, without the prior written consent of the DPP, provided after consultation with the Commissioner.

2.3.7.2.2 Compelling Testimony (Clause 357)

Currently, the CEA does not provide the Commissioner with the power to seek a court order to compel witnesses to provide evidence. Clause 357 adds provisions after section 510 of the CEA to provide for a process by which the Commissioner can seek to compel either witness testimony or a written return, including bank statements, deposit slips and cancelled cheques related to a party's election expenses return.

The bill adds section 510.01(1) to the CEA, empowering the Commissioner or an authorized representative to apply to a judge to compel a person be examined under oath by the Commissioner or the authorized representative before a "presiding officer"[29] or to compel a written return under oath within the timelines specified in the order. Any such order has effect anywhere in Canada (new section 510.01(8)). For such an application to be approved, the judge must be satisfied by information given on oath that there are reasonable grounds to believe that the CEA has been contravened or is about to be contravened, and that an individual has or is likely to have information that will provide evidence of the contravention.

Furthermore, new section 510.01(4) provides that a judge may proceed *ex parte* (without requiring all parties to be present) to hear and determine the application in the absence of the individual against whom the order is sought in certain cases set out in the bill.[30] In cases where the judge accedes to a request to proceed *ex parte*, all documents relating to the application will be sealed in a packet kept in the custody of the court under conditions set by the judge (new section 510.01(5)). Further, the judge must make an order prohibiting a person or entity from publicly disclosing information about the application (new section 510.01(6)).

Under new sections 510.02(1) and 510.02(2), individuals who are the subject of an order can be compelled to give evidence. They cannot be excused from an order on the grounds that their testimony or written return could tend to incriminate them. Compelled testimony or written returns cannot be used against such individuals in any civil or criminal proceedings against them, except for the prosecution of certain offences such as perjury (new section 510.02(5)).

New section 510.04 provides that the presiding officer is empowered to administer an oath and that the examination must take place in private. Further, the presiding officer must permit the individual who is being examined under an order to be represented by legal counsel (new section 510.02(8)).

2.3.7.3 Administrative Monetary Penalties (Clauses 350 and 365)

Currently under the CEA, compliance is enforced almost entirely through criminal sanctions.

Clause 350 amends the CEA to add section 508.1, which establishes an administrative monetary penalty (AMP) regime administered by the Commissioner. It applies to persons or entities that violate parts 16, 17 and 18 of the CEA, which cover communications; third party advertising, partisan activities and election surveys; and financial administration, respectively, as well as to new sections 281.3, 281.4 and 281.5, which are prohibitions related to voting. New section 508.4 states that the purpose of an AMP is to promote compliance with the CEA and not to punish.

New section 508.6(1) provides the criteria for establishing the amount of an AMP. These include

- the degree of intention or negligence on the part of the person or entity that committed the violation;
- the harm done by the violation;
- whether the person or entity derived any advantage from the violation;
- whether the person or entity made reasonable efforts to mitigate or reverse the violation's effects; and
- any other factor that, in the opinion of the Commissioner, is relevant.

New section 508.5(1) sets out that the maximum AMP for a violation committed by an individual is $1,500, while for a corporation or an entity, it is $5,000. The lone exception to these maximums is for violations arising from the contravention of section 363 (contributions) or 367 (contribution limits). In these cases, individuals are subject to an amount equal to twice the amount that was contributed in contravention of section 363 or 367 of the CEA plus $1,500, while entities and corporations are subject to an amount equal to twice the amount that was contributed in contravention of section 363 of the CEA, plus $5,000.

Clause 365 adds section 521.3 to the CEA, which provides that AMPs imposed on an individual are deemed imposed on them in a personal capacity regardless of the capacity in which the person acted when committing the violation.

2.3.7.3.1 Process in Respect of Violations Under the Administrative Monetary Penalty Regime (Clauses 243, 244(1), 251 and 365)

Clause 365 adds sections to the CEA detailing the process for dealing with violations under the AMP regime. Where the Commissioner reasonably believes that a person or entity has committed a violation of a provision of the CEA to which an AMP can be applied, the Commissioner may issue the person or entity a notice of the violation (new section 521.11(1)). This notice sets out, among other things,

- the provision in the CEA that was contravened or the requirement, including the provision of the compliance agreement that was not complied with;
- the act or omission to which the violation relates;
- the amount of the AMP for the violation;
- the person or entity's right to request a review by the CEO or the Commissioner of the alleged violation or proposed penalty;
- the undertaking that the person or entity, if accepted by the Commissioner, can engage in to end proceedings; and
- the consequences to the person or entity of failing to pay the penalty, request a review or provide the Commissioner with an undertaking.

A notice of a violation cannot be issued to a person or entity beyond five years after the day on which the Commissioner becomes aware of the violation, and in any case not later than 10 years after the day on which the violation occurred (new section 521.12(1)).

The person or entity named in the notice of violation may, within 30 days after the day on which the notice of violation is served, or the notice that the person or entity's undertaking has not been accepted is served, request a review by the Commissioner or the CEO (depending on the amount of the AMP) with respect to the alleged violation or the penalty, or both (new section 521.14). Upon receipt of a request for a review of an AMP new section 521.15(1) stipulates that the CEO or the Commissioner must

- determine, on a balance of probabilities, whether the person or entity committed the violation;
- confirm or reduce the amount of the AMP; or
- determine that there should be no AMP in respect of the violation.

Following this review, if the AMP is confirmed or reduced in amount, the person or entity must, within 30 days after being served with a copy of the decision of the review, pay the amount specified in the decision (new section 521.15(5)). Upon payment, the person or entity is deemed to have committed the violation and

the proceedings are ended (new section 521.16(1)). If the CEO or the Commissioner determines that the person or entity did not commit the violation, the proceedings are ended (new section 521.15(4)).

If the person or entity named in the notice of violation fails to, within 30 days, pay the AMP set out in the notice, request a review of the violation or penalty, or provide the Commissioner with an undertaking, then the person or entity is deemed to have committed the violation (new section 521.18). Similarly, a person or entity will be deemed to have committed the violation set out in the notice if

- the proposed undertaking is not accepted by the Commissioner and the person or entity does not pay the AMP or request a review (new section 521.19); or
- the person or entity fails to pay the amount determined by a review of the violation or penalty within 30 days after being served with the decision (new section 521.2).

New section 521.31(1) sets out that unpaid AMPs constitute debts due to Her Majesty in right of Canada that may be recovered in the Federal Court.

Clauses 243, 244(3) and 251 of the bill exclude AMPs from counting towards the following types of expenses:

- nomination campaign expenses (new section 374.1(2));
- electoral campaign expenses (new section 375(2)); and
- leadership campaign expenses (new section 379.1(2)).

2.3.8 Offences

2.3.8.1 Publishing False Statements to Affect Election Results (Clause 61)

Clause 61 of the bill amends sections 91 and 92 of the CEA to prohibit the act of publishing a false statement during an election period. This prohibition includes falsely stating

- that a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party has committed, is under investigation for having committed or has been charged with committing a federal or provincial offence;
- information about the citizenship, place of birth, education, professional qualifications or membership in a group or association of a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party (amended section 91(1)); or

- that a candidate has withdrawn (amended section 92).

This prohibition applies regardless of the place where the election is held or the place where the false statement is made or published (amended section 91(2)).

2.3.8.2 Impersonation (Clauses 322 and 323)

Currently, it is an offence for a person to falsely represent themselves, with intention to mislead, as any of a listed set of individuals found in the CEA. The CEO's 2016 report stated that the current impersonation offence in the CEA is not specific enough to capture the distribution of false communication material, including the creation of false campaign websites or other online or social media content for the purpose of impersonating a party or candidate.

Clause 323 of the bill expands the impersonation offence to cover misleading publications, prohibiting all persons or entities from distributing, transmitting or publishing any unauthorized or misleading material that purports to be made, distributed, transmitted or published by or under the authority of a political party, candidate, prospective candidate, the CEO or an RO (new section 481(1)). However, an exception to this offence is made for material that has the purpose of parody or satire (new section 481(3)).

Clause 322 adds an exception to the existing prohibition on impersonation found in current section 480.1 of the CEA for persons who establish that their representation was for the purpose of parody or satire (new section 480.1(2)).

Clause 323 also creates a new offence regarding the fraudulent use of computers intended to affect the results of an election (new section 482(1)). The offence prohibits, among other things,

- the direct or indirect interception of any function of a computer system by any means;
- the use of a computer system to destroy, alter or render computer data meaningless, useless or ineffective;
- obstruct, interrupt or interfere with the lawful use of computer data; and
- the use, possession or trafficking of a computer password that would enable a person or entity to commit an offence.

The prohibitions on bribery and intimidation set out in sections 481 and 482 of the current CEA are now found in new sections 282.7 and 282.8 of Part 11.1, which relate to prohibitions in relation to voting.

2.4 PROTECTION OF PERSONAL INFORMATION AND PRIVACY

2.4.1 Policy for the Protection of Personal Information (Clauses 254 and 255)

Clause 255 adds section 385.1 to the CEA. It provides that within three months of the coming into force of that provision, the leader of a political party must provide the CEO with the party's policy for the protection of personal information and the Internet address referred to in new sections 385(2)(k) and 385(2)(l) if

- on the day of the coming into force of section 385.1 the party is either an eligible party or a registered party; or
- before the day on which section 385.1 comes into force, the leader of the party has applied to become a registered party, but as of the day of the coming into force of the provision, has not yet been informed by the CEO whether the party is eligible for registration.

Clause 254 of the bill stipulates that under new section 385(2)(k), the party's policy for the protection of personal information must contain various statements, including

- the types of personal information gathered by the party and how it collects it;
- how the party protects the personal information under its control;
- how the party uses the personal information, and under which circumstances it may be sold to a third party;
- the training offered to employees of the party on the collection and use of personal information; and
- the practices of the party with respect to the collection and use of personal information created for online activity and the use of cookies.

In addition to the above-noted statements, the party's policy for the protection of personal information must include the name and contact information of a person to whom concerns regarding the party's policy for the protection of personal information can be addressed.

New section 385.1(2) imposes consequences for failing to comply with the requirement to have a privacy policy. Consequences vary according to the status of the party:

- A party that has applied to become a registered party on the date of the coming into force of new section 385.1(1), but is not yet eligible on that date, is ineligible.
- A party that is eligible but not yet registered on the date of the coming into force of new section 385.1(1) may not become a registered party.

- A registered party on the date of the coming into force of new section 385.1(1) will face the implementation of non-voluntary deregistration procedures (see sections 415, 416 and 418 of the CEA).

2.4.2 Obligations Under the Policy for the Protection of Personal Information (Clauses 258 and 260)

Clause 258 adds section 405.1 to the CEA to provide that after a party reports a change in its policy for the protection of personal information to the CEO, it must publish an updated version of the policy on its website as soon as feasible.

Clause 260 adds sections 412(2) and 412(3) to the CEA, allowing the CEO to deregister a political party if the party fails to publish on its website an updated version of its policy for the protection of personal information, or if the party does not continue to have a policy for the protection of personal information.

2.4.3 Contents of Application for Registration as a Political Party (Clause 254)

Section 385(2) of the CEA currently provides the list of contents that must be included in an application for registration submitted to the CEO by a political party.

Clause 254(1) extends the content requirement by providing for two additional elements to be included in an application for registration:

- the party's policy for the protection of personal information (new section 385(2)(k) of the CEA, as described in section 2.4.1 of this Legislative Summary); and
- the address of the page – accessible to the public – on the party's Internet site where its policy for the protection of personal is published (new section 385(2)(l) of the CEA).

Currently, section 385(2) provides that a party must, as part of its application for registration, submit the party's short-form name or the abbreviation that is to be shown on election documents. Clause 254(2) adds section 385(2.1) to grant the CEO the power to establish a maximum length for a political party's "short-form" name.[31]

Clause 254(3) adds section 385(4), which makes it mandatory for a political party to publish on the party's website its policy for the protection of personal information before the leader of the party applies for the party to become registered.

2.5 AMENDMENTS TO OTHER ACTS (CLAUSES 378, 379, 391 AND 393 TO 397)

2.5.1 *Parliament of Canada Act* (Clause 378)

Clause 378 adds section 31(1.1) to the *Parliament of Canada Act*[32] to prevent the calling of a by-election when a vacancy occurs in the House of Commons less than nine months before the day set for a federal general election under section 56.1(2) of the CEA.

2.5.2 *Public Service Employment Act* (Clause 379)

Clause 379 amends section 50.1 of the *Public Service Employment Act*[33] to clarify that the maximum period of employment for casual workers in the Office of the CEO, including workers appointed by the Commissioner of Canada Elections, is 165 days in one calendar year.

2.5.3 *Access to Information Act* (Clause 391)

Current section 16.31 of the *Access to Information Act*[34] (ATIA) affords the DPP, subject to section 541 of the CEA, the right to refuse to disclose records requested under the ATIA that contain information that was created or obtained through an investigation, examination or review under the CEA. Since, under Bill C-76, the Commissioner is no longer within the Office of the DPP, this right of refusal is no longer relevant, and section 16.31 of the ATIA is therefore repealed by clause 391.

2.5.4 *Financial Administration Act* (Clauses 393 and 394)

Clauses 393 and 394 amend Schedule IV of the *Financial Administration Act* ("Portions of the Core Public Administration")[35] to ensure that the Commissioner retains their human resources authorities when they return to the Office of the CEO.

2.5.5 *Director of Public Prosecutions Act* (Clauses 395 to 397)

Clauses 395 and 396 amend the *Director of Public Prosecutions Act*[36] (DPPA) to reflect the Commissioner's relocation from the Office of the DPP to the Office of the CEO.

Current section 3(2) of the DPPA states that, subject to sections 509.1(2) and 509.1(3) of the CEA, the DPP has the rank and status of a deputy head of a

department. Clause 395 amends section 3(2) of the DPPA to state that the DPP has the rank and status of a deputy head of department, without qualifications.

Section 16 of the DPPA deals with the annual report of the DPP, to be provided to the Attorney General of Canada, detailing the activities of the Office of the DPP in the immediately preceding fiscal year. Current section 16(1.1) of the DPPA requires this report to include a section, provided by the Commissioner, on their activities under the CEA in that year. Clause 397 repeals section 16(1.1) of the DPPA and amends section 16(1) to state that there shall be no report in relation to matters referred to in section 3(8) of the DPPA, which specifies that the DPP initiates and conducts prosecutions for any offences under the CEA.

2.6 COMING INTO FORCE (CLAUSE 401)

Clause 401 states that the amendments contained in Bill C-76, with certain exceptions,[37] come into force either six months after the bill receives Royal Assent or on a day before that date when the CEO publishes a notice in the *Canada Gazette* stating that the necessary preparations for the bringing into operation of the Act have been made.

NOTES

1. Bill C-76, An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments, 1st Session, 42nd Parliament (S.C. 2018, c. 31).
2. House of Commons, Standing Committee on Procedure and House Affairs [PROC], *Bill C-76, An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*, Seventy-second Report, 1st Session, 42nd Parliament, 22 October 2018.
3. Senate, Standing Committee on Legal and Constitutional Affairs, *Twenty-ninth Report*, 1st Session, 42nd Parliament, 6 December 2018.
4. House of Commons, *Debates*, 1st Session, 42nd Parliament, 13 December 2018, 1040.
5. *Canada Elections Act* [CEA], S.C. 2000, c. 9 [version in force 2016-01-01 to 2018-12-12]. The use of the terms “current” and “currently” in this Legislative Summary reflects the provisions of the CEA that were in force between these two dates.
6. Elections Canada, *An Electoral Framework for the 21st Century: Recommendations from the Chief Electoral Officer of Canada Following the 42nd General Election*, Report, 26 September 2016.
7. *Fair Elections Act*, S.C. 2014, c. 12.

8. Some of the measures in the *Fair Elections Act* being addressed by Bill C-76 were the subject of litigation initiated by the Council of Canadians and the Canadian Federation of Students in the Ontario Superior Court of Justice in October 2014. The two groups challenged various parts of the *Fair Elections Act* as contrary to section 3 (voting rights) of the *Canadian Charter of Rights and Freedoms* and thus of no force and effect. Specifically, the groups sought to have the court strike down the *Fair Elections Act* provisions on voter identification and attestation, on the Chief Electoral Officer's (CEO's) public education and communications mandate, and on the transfer of the Office of the Commissioner of Canada Elections to the Office of the Director of Public Prosecutions. The application was scheduled to be heard in October 2018 but did not proceed. Given that Bill C-76 restores the impugned provisions to their status before the enactment of the *Fair Elections Act*, Bill C-76 achieves the results sought by the applicants in this case.

   See *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s.3.

9. Mia Rabson, The Canadian Press, "Third-party election activities under scrutiny as complaints rise," *CBC News*, 23 May 2017.

10. Elections Canada (2016), p. 8.

11. PROC, *A Third Interim Report in Response to the Chief Electoral Officer's Recommendations for Legislative Reforms Following the 42nd General Election*, Thirty-fifth Report, p. 12.

12. Elections Canada (2016), Recommendation A6, pp. 14 and 43.

13. The following is the text of the relevant provisions of the CEA as they stood in 2013 prior to the *Fair Elections Act*:

> 18 (1) The Chief Electoral Officer may implement public education and information programs to make the electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights …
>
> 18(2) The Chief Electoral Officer may, using any media or other means that he or she considers appropriate, provide the public, both inside and outside Canada, with information relating to Canada's electoral process, the democratic right to vote and how to be a candidate.

   See *Canada Elections Act*, S.C. 2000, c. 9 [version in force from 2012-04-01 to 2014-03-14].

14. Elections Canada (2016), Recommendation A5, pp. 13 and 43.

15. The *Military Voters Act* of 1917 provided serving members of the Canadian Armed Forces (including women) with the federal franchise. See Elections Canada, "Uneven Progress 1867–1919," Chapter Two in *A History of the Vote in Canada*.

16. Elections Canada, "1.16 Voting by Electors Absent from the Country for More Than Five Consecutive Years," *Completing the Cycle of Electoral Reforms – Recommendations from the Chief Electoral Officer of Canada on the 38th General Election*. The CEO noted that

> [t]he absence of a mechanism to allow those who have been absent from Canada for five consecutive years or more to vote effectively deprives this latter group of individuals of their right to vote, a right protected by the *Canadian Charter of Rights and Freedoms*.

   He added that

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

17. PROC, *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*, Thirteenth Report, p. 11.

18. Elections Canada, *Report of the Chief Electoral Officer of Canada on the 41st General Election of May 2, 2011*, Ottawa, 2011, p. 31.

19. *Frank et al. v. AG Canada*, 2014 ONSC 907(CanLII).

20. *Frank v. Canada (Attorney General)*, 2015 ONCA 536 (CanLII).

21. *Frank v. Canada (Attorney General)*, 2019 SCC 1. In *Frank v. Canada (Attorney General)*, the Supreme Court of Canada reasoned that the voting restriction on citizens residing abroad for more than five years wasn't rationally connected to the goal of fair elections; it harmed citizens' rights more than necessary; and that its negative effects outweighed the good. By the time this decision was rendered, the relevant provisions of the CEA were no longer in force as a result of Bill C-76 having received Royal Assent.

22. Elections Canada (2016), p. 11.

23. Commissioner of Canada Elections, "Did You Know?," *About Us*. See also *Referendum Act*, S.C. 1992, c. 30.

24. *Privacy Act*, R.S.C. 1985, c. P-21; and *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

25. *Personal Information Protection Act*, S.B.C. 2003, c. 63.

26. Democratic Institutions, "Making the electoral process more transparent," Backgrounder, 30 April 2018.

27. The same provision appeared in clause 2 of Bill C-50, An Act to amend the Canada Elections Act, 2nd Session, 41st Parliament. Bill C-50 received second reading and was referred to PROC on 4 May 2015 but died on the *Order Paper* with the dissolution of the 41st Parliament in August 2015.

28. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

29. New section 510.03(1) of the CEA sets out that any individual may be designated as a "presiding officer" provided they are currently or have formerly been a barrister or advocate of at least 10 years' standing at the bar of a province.

30. A hearing for an order to require testimony or written evidence may proceed *ex parte* when the disclosure of any information set out in the application for the order would

    - compromise the identity of a confidential informant;
    - compromise an ongoing investigation;
    - endanger an individual using particular intelligence-gathering techniques and prejudice future investigations where similar techniques would be used;
    - prejudice the interests of an innocent individual; or
    - subvert justice.

31. Elections Canada (2016), Recommendation B31, p. 80. The CEO recommended a maximum length for party names as they appear on the ballot, called a "short form" name. The CEO stated that without a maximum length for short-form names, there is a danger that parties will choose to use longer and longer short-form names (for example, to include slogans) and that this could impact the readability of the ballot.

32. *Parliament of Canada Act*, R.S.C. 1985, c. P-1.

33. *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13.

34. *Access to Information Act*, R.S.C. 1985, c. A-1 [version in force 2018-11-05 to 2018-12-12]. The use of the terms "current" and "currently" in this Legislative Summary reflects the provisions of the Act that were in force between these two dates.

35. *Financial Administration Act*, R.S.C. 1985, c. F-11 [version in force from 2018-12-30 to 2019-03-31].

36. *An Act respecting the office of the Director of Public Prosecutions*, S.C. 2006, c. 9, s. 121 [version in force 2014-10-01 to 2019-03-31]. The use of the terms "current" and "currently" in this Legislative Summary reflects the provisions of the Act that were in force between these two dates.

37. These exceptions are the provisions contained in the following clauses: 351 (authority to appoint the Commissioner of Canada Elections); 389 (continuation of the Commissioner's term); 399 (coordinating amendment with Bill C-50, an Act to amend the Canada Elections Act); and 400 (coordinating amendment with Bill C-58, an Act to amend the Access to Information Act and the Privacy Act).

    Clause 389 states that the person who holds the office of the Commissioner on the day before amended section 509(1) comes into force will continue in office and will be deemed to have been appointed under the CEA, as provided in clause 351. However, the term of office begins on the day they were actually appointed.