HOUSE OF COMMONS
CHAMBRE DES COMMUNES
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REPORT OF THE COMMITTEE

The Standing Committee on Procedure and House Affairs

has the honour to present its

TWENTY-THIRD REPORT

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

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

Following each federal general election, section 535 of the *Canada Elections Act*[1] (CEA) requires the Chief Electoral Officer (CEO) to provide a report to the Speaker of the House of Commons that sets out any amendments that are, in the CEO's opinion, desirable for the better administration of the Act. Accordingly, the CEO's report under section 535 of the CEA was tabled in the House of Commons on September 27, 2016. Pursuant to Standing Order 32(5), the CEO's report was referred to the Committee that same day.

The CEO's report places an emphasis on two chapters of narrative that provide context to 39 recommendations made by the CEO. The two chapters group recommendations into two broad topics: "modernizing Canada's electoral process" and "improving the political finance regulatory regime." During his appearance before the Committee on October 4, 2016, the CEO suggested that the Committee prioritize its review around these two chapters.

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

In the report's appendix, the CEO sets out further recommendations to the CEA organized under two broad categories: "other substantive recommendations" (44 recommendations) and "minor and technical recommendations" (49 recommendations). In total, the CEO's report contains 132 recommendations.

In conducting its work, the Committee attached importance to completing its study of the first two chapters of the CEO's report and providing the House with its assessment of the CEO's recommendations in a timely manner. The Committee, therefore, considers this report to be an interim report. In preparing its interim report, the Committee placed a priority on striving to achieve consensus among viewpoints; the recommendations made in this interim report were agreed to unanimously by members of the Committee.

Including its first meeting on the CEO's report, on October 4, 2016, the Committee studied the report over the course of 11 meetings.

The Committee wishes to acknowledge and express its gratitude to Elections Canada for the extensive technical assistance and collaborative support it provided to the Committee during its study. In addition to the appearance of Mr. Marc Mayrand, the now-retired Chief Electoral Officer of Canada, who appeared before the Committee accompanied by Mr. Stéphane Perrault, Associate Chief Electoral Officer, Mr. Michel Roussel, Deputy Chief Electoral Officer, Electoral Events and Mr. Jacques Mailloux, Executive Director, Voting Services Modernization, the Committee also heard from or received support from Ms. Mariann Canning, Assistant Director, Elector Services and External Relations, Mr. Trevor Knight, Senior Counsel, Ms. Anne Lawson, General Counsel and Senior Director, Mr. François Leblanc, Director, Political Financing and Audit, Mr. Paul Legault, Director, Field Personnel Readiness, Ms. Karen McNeil, Legal Counsel, Ms. Lyne Morin, Senior Director, Business Transformation, Ms. Karine Richer, Legal Counsel, Ms. Nicole Sloan, Analyst, Policy and Parliamentary Affairs, Mr. Duncan Toswell, Senior Director, Electoral Data Management and Readiness, and Ms. Susan Torosian, Senior Director, Policy and Public Affairs Branch. While all the contributions from Elections Canada officials was deeply appreciated, the Committee reserves a special thank you for Mr. Knight and Ms. Lawson, who were instrumental in guiding the Committee in its deliberations on the complexities of the CEA and the recommendations to reform its various provisions for the better management of the electoral process in Canada.

Chapter 1: Modernizing Canada's electoral process

A1. Appointment and duties of election officers

Provisions in the CEA: 22, 32, 33 to 39, 124 and multiple sections specifying duties of election officers)

This recommendation proposes to break the link in the CEA between the tasks performed at polling places and the specific election officers that must perform them.

Currently, the CEA prescribes various tasks and functions at polling places, with each task assigned to a specific election officer. In his report, the CEO states that the lack of

flexibility with respect to who performs what task can act as a barrier to meeting the evolving expectations of electors and can create unnecessary bottlenecks at some polling places.

Under the recommendation, all functions performed by election officers would remain in the CEA; the changes proposed by the recommendation would, instead, permit the assignment of functions to election officers to be carried out through instructions by the CEO. The CEO would issue instructions in advance of the election period and make them available to the public. The purpose of the recommendation is to increase the flexibility in the organization of functions at polling places and allow polling places to be redesigned in a way that better meets the needs of the elector.

Specifically, the CEO makes the following recommendations for amendments to the CEA:

- Delete the listed election officers from the CEA;
- Insert in the CEA that the Returning Officer (RO) shall, on the CEO's instructions, appoint sufficient election officers to carry out the tasks prescribed by the CEA;
- Tasks carried out by listed election officers should be carried out by an election officer or two election officers; and
- In certain circumstances, authorize ROs to hire election officers prior to the issue of the writ.

The Committee raised the concern that separating titles from duties could create an obstacle for candidates' representatives seeking to trace issues that occur at polling places back to individual election officers, especially should different people perform the same role throughout the day. A paper trail, especially if electronic technologies were introduced, was requested by the Committee.

The Committee agrees with this recommendation.

A2. Polling stations
Provisions in the CEA: 106, 108, 120, 122 to 124 and Form 3 in Schedule 1

This recommendation expands the definition of polling station to encompass the entire space where voting takes place. This would permit electors to vote at a place other than the specific table (in the current CEA, this is called a polling station) assigned to their polling division.

Currently under the CEA, an elector must cast his or her ballot only at that a specific table, even if it has a long line-up and other polling stations in the polling place are free. This CEO's report indicates that this causes understandable frustration for electors and stress for election workers.

In order to accomplish this, the CEO makes the following recommendations for amendments to the CEA:

- Amend the CEA to provide that all electors in a polling division are assigned to a specific polling station; however, that polling station would not be the particular table where the electors must vote, but rather the entire polling place. To do this, the CEA could be amended to require a Returning Officer (RO) to assign the electors from polling divisions to a polling station.
- Modify the ballot in Form 3 of Schedule to require that the polling division be indicated on the ballot.
- Consequential amendments: amend sections 106 and 108 to provide that the lists of electors would include all electors for the polling station, not just a single polling division. Also, provisions related to splitting polling stations and establishing central polling places (subsections 120(2) to (4) and 122(1), and sections 123 and 124) could be repealed as they would no longer be relevant.

A question was raised by the Committee as to whether the proposed process would increase the length of time to count the ballots or increase the complexity of the count.

As such, the Committee agrees with the CEO's recommendation but it flags this recommendation as one it expects Elections Canada to monitor and provide a review of to the Committee, with information about any increases in time for counting ballots, following the implementation of the recommendation into the voting process.

A3. Counting procedures
Provision in the CEA: 283(3)

This recommendation permits the ballot-counting process to take place in the manner prescribed by the CEO.

It is linked to recommendation A1 and A2, as the election officials participating in the count need to be the appropriate ones, and this may vary from polling station to polling station depending on which official has been assigned which task (recommendation A1). Further, it is Election Canada's intention to produce ballot-counting results at the polling division level despite taking in cast ballots at the polling place level (recommendation A2).

The CEO's report notes that the current ballot-counting process under current section 283 of the CEA is prescriptive and the level of detail hinders any potential future use of electronic counting devices or other technology to enhance efficiency. However, Elections Canada officials stated to the Committee that Elections Canada holds no plans whatsoever at this time to use electronic ballot counting technology.

The Committee agrees with allowing the CEO to prescribe instructions regarding the ballot counting process, provided that the enabling amendment to section 283(3) of the CEA does not allow the CEO to introduce technology into the process absent approval from the Committee.

A4. Oaths
Provisions in the CEA: 143, 147, 161 and 169

This recommendation proposes to permit the CEO to prescribe a uniform oath for all instances where an elector must demonstrate his or her qualification to vote.

Currently in the CEA, there are seven different oath requirements during the voting process. The aim of each oath is to provide an additional piece of evidence that a person is qualified as an elector and entitled to vote. The CEO's report states that having so many different oaths can cause confusion for election officers, may lead to unintentional non-compliance and slow the process for all electors.

The Committee agreed with the CEO's recommendation, provided that the oath prescribed by the CEO under sections 143, 147, 161 and 169 of the CEA seeks to verify, at the minimum, the following information:

- that the elector resides at the address indicated;
- that the elector is or will be 18 years old or older on election day;
- that the elector is a Canadian citizen; and
- that the elector has not previously voted in the same election.

The Committee notes that Bill C-33, An Act to amend the Canada Elections Act and to make consequential amendments to other Acts, introduced in the House on 24 November 2016, proposes to replace the option of attestation for residence, in which oaths must be taken as part of the process, with an option of vouching for identity and residence.

A7. Sharing information on non-citizens
Provision in the CEA: 46

With this recommendation, the CEO proposes to amend section 46 of the CEA to authorize the Minister of Immigration, Refugees and Citizenship Canada to share information, including information about non-citizens, with Elections Canada.

According to the CEO's report, few sources of information exist to help Elections Canada ensure that only Canadian citizens are included in the National Register of Electors (NROE). Over time, a small number of Canadian residents who are non-citizens have had their names inserted on the NROE through information-sharing agreements. The issue is known to Parliament; clause 2 of Bill C-50, An Act to amend the Canada Elections Act, introduced in the Second Session of the 41st Parliament sought to achieve enact this recommendation.

Elections Canada officials told the Committee that Immigration, Refugees and Citizenship Canada is an important source of information respecting those people who have acquired citizenship and those who have not. Having access to this information would allow Elections Canada to more quickly and accurately update and verify the information in the NROE. However, in order for Elections Canada to obtain this data, authorization to share it must be enacted by legislation.

The Committee agrees with this recommendation.

The Committee also notes that Bill C-33, An Act to amend the Canada Elections Act and to make consequential amendments to other Acts, introduced in the House on 24 November 2016, proposes to implement this recommendation.

A10. Assistance for electors with disabilities
Provisions in the CEA: 154 and 243

This recommendation proposes two changes to the CEA to provide assistance to electors with disabilities. It proposes that assistance be allowed to be given at the polls or in a Returning Officer's (RO) office to any elector who indicates that, because of a disability, they require assistance to vote. It similarly proposes to allow electors voting by special ballot in an RO office to be able to rely on the same people for assistance as at a polling station.

Currently under the CEA, assistance with voting at the polls or in an RO office may only be provided to electors who are unable to read or, because of a physical disability, are unable to vote in the manner prescribed in the Act. The CEA does not provide for assistance to be made available to all electors with physical disabilities or to those with intellectual or psychosocial disabilities that might limit their ability to vote independently.

For special ballot voting in an RO office, while electors can rely on an election officer for assistance, they currently cannot rely on a friend, spouse or other person known to them, as is possible at a polling station.

The Committee agrees with this recommendation.

A11. Transfer certificates for electors with a disability
Provision in the CEA: 159

This recommendation contains two elements related to transfer certificates for electors who are unable to vote without difficulty at their polling division. It seeks to make transfer certificates available to any elector with a disability who, because of his or her disability, wishes to vote at an alternative polling location. It also proposes to amend the CEA to allow the CEO to determine the form of the application process, rather than requiring in-person delivery to the RO or Assistant Returning Officer (ARO).

Currently under the CEA, transfer certificates are available to electors with a physical disability to allow them to vote at a polling station other than their own. These are only available to electors with physical disabilities and only in cases where the elector's polling station lacks level access. As such, the Act does not provide assistance to all disabled electors who may wish to vote at a different polling station because of a disability. In addition, to apply for a transfer certificate, the elector must hand-deliver the application to the RO or (ARO).

The Committee finds this process to be overly challenging for an elector seeking accommodation because of a disability and therefore agrees with this recommendation.

A12. Voting at home
Provision in the CEA: 243.1

This recommendation proposes to permit electors with a disability whose polling station is not accessible, as indicated on their voter information card (VIC), to be visited by an election officer in order to vote at home. In these situations, electors would mark their own ballot.

Currently under the CEA, electors who vote at home do so under the provisions related to special ballots. Special balloting is permitted up until day the sixth day before election day. The CEA restricts who is eligible to vote from home to those with a disability that prevents them from leaving their house to go to an RO office or polling station and an additional disability that prevents them from marking a ballot.

The Committee agrees with this recommendation.

A13. Curbside voting
Provisions in the CEA: None

This recommendation comes in response to demands made by some electors with mental or physical disabilities, who have told ROs they would like the option to vote, on request, at their polling place but outside the building.

The recommendation therefore seeks to permit curbside voting by electors with any type of disability. The procedure would provide for the same rigour (secrecy of the vote, etc.) that applies to regular voting at polling stations. Curbside voting would need to include limits on how far away from the building the voting may take place. Also, a record of curbside voting should be made in the poll book beside the name of each elector who uses this option. At least two election officers should be present for curbside voting, and candidates' representatives should be invited to attend.

Curbisde voting is not permitted currently under the CEA.

In considering this recommendation, some concerns were expressed by members of the Committee about having poll officials bring the voting apparatus outside of a polling place to allow for curbside voting, as this would effectively shut down a table inside of the polling place. Further, such a delay could potentially even be used as an obstruction tactic at a polling place. A committee member also wondered if Elections Canada could not reimagine the voting options offered within a polling division so that a process resembling mobile voting could be used for curbside voting.

The Committee agrees with the CEO's recommendation. However, the Committee flags it as a recommendation it expects Elections Canada to monitor and provide a review to the

Committee, with information about any unreasonable delays caused by the process or instances of abuse of the process. This review ought to be conducted at the earliest opportunity and no later than following the next general election.

A15. Pilot projects conducted by the CEO
Provision in the CEA: 18.1

This recommendation proposes several changes to section 18.1 of the CEA related to pilot projects conducted by the CEO. It seeks to remove the distinction between the approval requirement for testing an electronic voting process and any other alternative voting process. It seeks to put in place a single approval requirement for tests of any alternative voting process at an official vote consisting of prior approval by the House of Commons committee responsible for electoral matters, while removing the requirement to seek the approval of the Senate committee responsible for electoral matters. Lastly, the recommendation requests that Parliament require Elections Canada to conduct pilot projects on the use of technology in the voting process to benefit electors with disabilities.

Currently under the CEA, the CEO is authorized to test alternative voting processes, but these cannot be used for an official vote without the prior approval of the committees of the Senate and of the House of Commons that normally consider electoral matters. In the case of alternative electronic voting processes, prior approval from the House of Commons and Senate themselves is required.

The CEO's report states that these requirements impose a significant procedural limitation on the ability of Elections Canada to test new voting mechanisms, including those involving technology, at the polls. While pilot projects conducted by Elections Canada can benefit all electors, they are especially important for electors with disabilities who seek to vote independently and in secret through the use of technology.

The Committee agrees with this recommendation.

A16. Opening of advance polls
Provision in the CEA: 171(2)

Currently under the CEA, advance polling stations can only be open from noon until 8:00 p.m. This recommendation proposes to open advance polling stations at 9:00 a.m. rather than noon. The recommendation also suggests that should Parliament agree to open advance polling stations earlier than noon, it could also consider having them close earlier than the current time of 8:00 p.m.

The CEO's report states many electors do not distinguish between ordinary and advance polls and they expect advance polls to be open at 9:00 a.m. As a result, long lineups may form before the doors open at noon.

Further, reviews have shown that Canadians are increasingly making use of advance polls. At the 2015 general election, 21% of voters voted at an advance poll.

The Committee agrees with the CEO's recommendation to open advance polls at 9:00 a.m. and does not make any recommendation about having advance polls close earlier than 8:00 p.m.

A17. Advance poll procedures – signature requirement
Provision in the CEA: 174(2)(*b*)

This recommendation proposes that the requirement that every voter at an advance poll sign the record of votes cast be repealed.

The procedures that election officials must currently follow date from a time that precedes identification requirements. At the moment, the CEA prescribes four independent controls to verify the eligibility to vote of the elector at the advance poll. These are: the elector must show identification, the elector's name is manually crossed of the list of electors by a polling official, the poll clerk must write the name and address of each elector on the record of votes cast, and have the elector sign beside his or her name.

During the 42nd general election, long lineups occurred at some advance polls creating frustration among electors. The lineups were partly caused by the unduly onerous procedures that the poll clerk must follow at an advance poll.

Elections Canada officials told the Committee that their administrative experience suggests that the signature requirement does add to the lineup. Meanwhile, the signature requirement adds little if anything to the integrity of the process.

Concerns were raised by some members of the Committee about whether removing the signature requirement would adversely affect the integrity of the vote. Members decided that adequate safeguards remained in place, without the signature requirement, for ensuring the integrity of the vote at advance polls. As such, the Committee agrees with the CEO's recommendation.

A18. Mobile polls
Provision in the CEA: 125

This recommendation seeks to permit ROs to establish mobile advance polls at two or more locations, in accordance with the CEO's instructions, to serve remote and isolated communities.

Currently under the CEA, mobile polling stations can only be established in institutions where seniors or persons with a physical disability reside. When a mobile poll is created by an RO to serve either such institution, electors resident in the institution are assigned to the mobile poll, they are informed on their VIC and that becomes their voting opportunity. The mobile poll will split its time on election day serving two or more institutions in turn.

The CEO's report states that mobile polling stations could be usefully deployed in low-density areas with remote and isolated communities. In these places, a full four-day advance polling period is not necessary and leads to staffing challenges for Elections Canada. A mobile poll could travel the region, giving electors the opportunity to vote closer to home, at a specific time, during the advance polling period, rather than having one poll set up in a central location for four days.

A member of the Committee raised the idea that the CEO's recommendation about mobile polls could be expanded to include a service on election day whereby a mobile poll would visit small, rural communities at a designated time to allow electors in that area to vote at a mobile poll. The purpose would be to save electors from having to engage in long drives to distant polling stations. Elections Canada officials indicated to the Committee that they would give due consideration to the idea raised by the member, as a potential future recommendation to the Committee.

The Committee agrees with the CEO's recommendation.

A19. Making special ballot kits available electronically
Provisions in the CEA: 182(*f*), 227, 228, 237, 239, 267, 247 to 278 and Form 4 in Schedule 1

This recommendation proposed to amend certain aspects of the voting process for electors who use special ballot kits. It seeks to allow electors to receive or download their own special ballot electronically. These electors would have to return their ballot and a completed declaration using their own inner and outer envelopes.

Currently under the CEA, when the election period commences, 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 during the election.

Elections Canada faces several issues with the current process. A 36-day election campaign is a short period for electors to apply for a kit, be sent their kit and return their ballot. This is especially so when the elector lives in a remote country or one with less efficient mail service. From an administrative perspective, the ballot delivery process for Elections Canada is time-consuming and labour intensive. Plus, Elections Canada officials note that the cost to deliver ballot kits by courier or by regular postage at the next election will cost around $540,000.

In every election, many special ballots cannot be counted because they arrive at Elections Canada after polling day. In the 41st and 42nd general elections, the number of special ballots not received on time was 1,825 and 3,229, respectively. The number of ballots that were not returned was 7,636 and 12,909, respectively.

Under the CEO's recommendation, Elections Canada would engage disability groups in early 2017 to determine how to leverage the service to meet the needs of certain voters.

Further, electors will nonetheless continue to have the option to apply for a traditional mail-in ballot kit.

The proposed amendments required to the CEA are as follows:

- Modify Form 4 of Schedule 1 to remove the form from the back of the ballot, as ballots printed by electors would be one-sided.
- Amend sections 227, 228, 237 and 239 to allow for the possibility of declarations and ballots being sent to electors electronically, and of the declarations and ballots being returned by electors in inner and outer envelopes supplied by the elector.
- Amend sections 267 and 274 to 278 to reflect that not all special ballots being counted would be contained in outer envelopes as defined in section 2. Some would be in envelopes supplied by electors.

The Committee agrees with the CEO's recommendation.

A20. Prohibitions relating to requesting a ballot and voting
Provisions in the CEA: 5, 7, 122, 164, 167, 281, 282, 481 and 482

This recommendation seeks to better organize and make consistent the voting prohibitions and prohibitions related to improperly requesting and handling a ballot in the CEA.

The CEO's report indicates that the Commissioner has raised some difficulties with respect to enforcing these prohibitions. First, the prohibitions in section 5 of the CEA on voting when not qualified require that a person know what makes someone a qualified elector. This requirement is contrary to the criminal law principle that ignorance of the law is no excuse.

Second, having the words "knowing," "knowingly" or "wilfully" in a prohibition provision, as opposed to the provision that creates the offence (sections 480 to 499), may require a prosecutor to prove that an offender knew about or was wilfully blind to the elements of the offence for which knowledge is required.

Third, the current provisions of the Act do not adequately address the sharing of photos of ballots (colloquially called "ballot selfies"). Various provisions in the CEA require the secrecy of the ballot but these do not specifically address a prohibition on taking pictures of a marked ballot. Elections Canada officials told the Committee the main reason such a prohibition exists is to reduce opportunities for bribery and intimidation.

The report suggests the following changes be made to the CEA:

- Group the sections in the CEA that protect the secrecy of the vote and prohibit improper acts related to requesting and handling ballots so that they can apply to voting by any method, based on the facts of a particular situation. Duplication and overlap should be removed.

- Rewrite section 5 of the CEA to prohibit a person from voting when he or she is not qualified as an elector or is disentitled from voting. In addition, amend the section to prohibit a person from influencing another person to vote when he or she knows that the other person is not a Canadian citizen or at least 18 years of age on polling day. This would remove the need to prove that the person knew the requirements of the law.
- Amend the provisions protecting the secrecy of the ballot to include a prohibition on taking, disclosing or sharing a photograph or digital image of a marked ballot, including on social media. They should indicate that the prohibition applies during voting or after voting has occurred. It should be clear that the prohibition applies to individuals sharing an image of their own marked ballot or of another person's marked ballot. There should, however, be an exception to allow electors with a visual impairment to take and use a photo of their marked ballot, but only for the purpose of verifying their vote. The aim is to help these electors vote independently.
- The associated offence provisions in Part 19 of the Act should also be amended to reflect the changes made to the prohibition provisions.

The Committee agrees with these recommendations.

A23. Residency requirement for field liaison officers, ROs, AROs and AAROs
Provision in the CEA: 22(4)

The first part of this recommendation seeks to replace the residency requirement for ROs, Assistant Returning Officers (AROs) and Additional Assistant Returning Officers (AAROs) with a requirement that they reside in the electoral district where appointed or in an adjacent electoral district.

Currently, the CEA requires ROs, AROs and AAROs to reside in the electoral district in which he or she is to perform duties. This requirement restricts the pool of potential candidates for these positions, and is not as important a requirement as that these election officers have a sophisticated understanding of their electoral district.

Some members expressed the concern that this recommendation was more appropriate for small urban ridings, and that for large rural ridings, it remained important that ROs, AROs and AAROs reside in the riding and have extensive knowledge of the riding. Elections Canada officials assured the Committee that the aim of the recommendation was to provide the CEO with flexibility when hiring and that the CEO would not appoint an RO who had insufficient knowledge of the riding.

In response to the concerns raised by the Committee, Elections Canada officials proposed the language, found in section 503 of Quebec's *Elections Act*,[2] to be used as part of the recommendation, in conjunction with requiring ROs, AROs and AAROs to reside in the electoral district adjacent to the one they are being appointed to work in. The language is as follows:

2 Publications Québec, *Elections Act,* chapter E-3.3.

> "that the person is in a position to carry out his duties in as satisfactory a manner as if he were domiciled in the electoral division for which he is appointed."

The Committee agrees with the first part of the CEO's recommendation.

In addition, the recommendation proposes to correct a technical error in section 22(1) of the CEA. As a result of a 2014 amendment that renumbered the election officer positions listed in section 22(1), field liaison officers are now unintentionally covered by the electoral district residency requirement. This is not possible given that their function is to coordinate between a number of electoral districts. Field liaison officers should not be subject to any residency requirement.

The Committee agrees with the second part of the CEO's recommendation.

A26. Candidate nomination process
Provisions in the CEA: 27(1), 66, 67, 69, 72(1), 73, 539 and Schedule 3

This recommendation groups together several technical changes to the current candidate nomination process. Each element of the recommendation will be discussed in turn.

Currently, the nomination process under the CEA requires candidates to obtain the signatures of 100 (or, in some cases, 50) electors in their electoral district and to swear an oath consenting to the nomination in the presence of a witness. Nomination papers must be filed by the witness, who must verify the addresses of the electors and swear an oath before the RO. Candidates may not file their own nomination paper.

In the view of the CEO and Elections Canada, this process is cumbersome and outdated. The purpose of the CEO's recommendation, therefore, is to remove barriers to candidacy and reduce the administrative burden faced by election officials and prospective candidates.

First, the CEO's report recommends that prospective candidates should be responsible for filing their own nomination papers, thereby eliminating the need for a witness to take part in the process. To that end, several amendments are required to the CEA. Sections 67(1) and (4) of the CEA would need to be amended to provide that it is the prospective candidate, and not the witness, who files the nomination paper, the deposit, the auditor's consent to act and the party endorsement, with the RO. Further, the requirements in the CEA for prospective candidates to swear an oath consenting to the nomination in the presence of a witness, for the witness to provide a signature, and for the witness to swear an oath would also need to be repealed. The CEO's report suggests that these requirements are inconvenient and belong to a bygone era.

The Committee agrees with this element of the recommendation.

Second, the CEO's report recommends the deletion of the requirement for the witnessed signatures of 100 or 50 electors (sections 66(1)(e)–(g) of the CEA), together with the requirement that the witness to those signatures exercise due diligence regarding the residence of those electors (section 67(2)). Further, it recommends all the text in section 71(2) relating to elector signatures be deleted.

According to the CEO's report, while the requirement for signatures is intended to discourage frivolous candidacies, it is not clear that it does so. The report notes that signers do not need to state that they support the candidate, and many candidates receive fewer than 100 votes, suggesting that those who signed did not in fact support the candidate. In addition, verifying the names and addresses of 100 electors to confirm that they reside in the electoral district is a time-consuming task for ROs and delays the confirmation of the candidate's nomination.

The CEO's report suggests that if the requirement for 100 or 50 elector signatures is repealed, the nomination period (section 69 of the CEA) could be shortened, as could the timeline for the RO to approve a nomination. An advantage for Elections Canada of a shortened nomination period would be that ballot printing could begin earlier. Further, the report proposes that section 539 and Schedule 3 of the CEA ought to be repealed if the signature requirement is repealed. The report notes, however, that if the signature requirement is not repealed, then an alternative to the current process for amending the list in Schedule 3 should be devised, as the revision process is cumbersome and, among other problems, relies on information from 1971 that is no longer relevant.

The Committee considered the matter and remains convinced that the signature requirement serve its purpose as a disincentive that reduces the number of frivolous candidates. The Committee, as such, does not agree with this part of the recommendation.

However, Elections Canada officials provided the Committee with an alternative option for assessing the ridings that are to be listed in Schedule 3 of the CEA. The suggestion made was to employ population density as the sole criterion for the inclusion of a riding in Schedule 3. Specifically, ridings that have a population density that is less than the average population density of Canada, as calculated at the time of the most recent decennial census, could be included in Schedule 3. The Committee agrees with this proposal.

Third, section 72(1) of the CEA requires the RO to issue a receipt to the witness who files the deposit. The CEO's report proposes that this provision be amended to allow either the RO or a delegate to issue the receipt, and to include in the CEA that the receipt is issued to the prospective candidate. In section 27(1), which lists sections of the CEA containing RO functions that may not be delegated, the report proposes to delete the reference to section 72(1).

The Committee agrees with this element of the CEO's recommendation.

Lastly, under the CEA at present, nomination papers can be filed electronically but paper copies of the original documents must be received by the returning office within 48 hours. Elections Canada officials told the Committee it is the CEO's view that this process, as set out in section 73 of the CEA, ought to be repealed. Instead it should be clear that electronic filing of a candidate's nomination papers is available as an alternative to paper filing.

The Committee agrees with this element of the CEO's recommendation.

A27. Candidate identification
Provisions in the CEA: 66 and 67

This recommendation seeks to oblige prospective candidates to provide an RO with proof of their identity and confirm the name to be used on the ballot. The determination what constitutes satisfactory proof of identity would be made by the CEO. In addition, the recommendation proposes to replace the current nickname provisions in the CEA with a general requirement that if candidates wish to use a name other than what is on their identification, they must provide evidence that they are "commonly known" by that name (including a nickname).

Since 2007, electors have been required to show identification; however, no similar obligation has been placed on candidates. The CEA provides that prospective candidates can replace their given names by a nickname on their nomination paper. As ROs cannot validate a prospective candidate's identity or confirm the name to be used on the ballot, it has led to occasional instances where candidates have used frivolous names.

The Committee expressed concerns that this recommendation could impede prospective candidates from utilizing, on the ballot, a name of their choosing that they are commonly known by (e.g. they go by a different name or an abbreviation) but may not possess documentary proof of this name. In response to these concerns, Elections Canada officials suggested to the Committee that the CEO could issue a set of detailed instructions to ROs that sets out guidelines for determining what evidence is considered satisfactory or sufficient in order for candidates that do not possess documentary proof of a name to have that name placed on the ballot.

The Committee agrees with this suggestion, and the recommendation, provided the instructions issued by the CEO to ROs are sufficiently detailed, containing also a catch-all provision, so that they are applied in all cases in a consistent manner.

Chapter 2: Modernizing compliance

A28. Administrative monetary penalties (AMPs)
Provisions in the CEA: Parts 16, 17 and 18

This recommendation proposes that an administrative monetary penalty (AMP) regime be developed for Parts 16, 17 and 18 of the CEA, which regulate political financing and communications.

Currently under the CEA, enforcement of compliance matters is resolved almost entirely through criminal sanctions. Under an AMPs regime, contraventions of prescribed prohibitions or requirements are established through an administrative as opposed to a judicial process.

The CEO's report states that in many cases of non-compliance, neither the degree of harm caused, nor the level of wrongdoing merits, the stigma of a criminal prosecution. Individuals or entities subject to an AMP do not face imprisonment or a criminal record. In the view of Elections Canada, the use of AMPs is a more efficient, timely and, in many cases, effective approach to achieving compliance than the possibility of a criminal prosecution.

Elections Canada officials explained that under the proposed AMPs regime, Elections Canada would make a determination of instances of non-compliance with the CEA, according to publicly available criteria developed through a guideline (i.e. in consultation with all political parties). Cases of non-compliance would be assessed on a balance of probabilities and could result in the issuance of a monetary penalty of up to a maximum of $5,000. The person or entity that received the monetary penalty would be afforded 30 days to contest the matter.

It was further noted by Elections Canada officials that Part 16.1 of the CEA, dealing with voter contact calling services, is currently governed by AMPs, as it is administered by the Canadian Radio-television and Telecommunications Commission, under the *Telecommunications Act*.[3] This statute provides for the issuance of AMPs.

The Committee agrees with the CEO's recommendation.

A29. Failure of EDAs to file financial transactions returns within deadlines
Provisions in the CEA: 448, 473 and 475.4

This recommendation aims to dissuade the occurrence of EDAs that have been deregistered for failing to meet their reporting obligations from re-registering a new association the following day. Also, in the past, Elections Canada has had difficulty obtaining financial transactions returns from both registered and deregistered EDAs. In some cases, returns are filed after the deadline; in other cases, they are never filed.

In 2010, Elections Canada recommended that EDAs that fail to file the required returns be prevented from re-registering for four years. The House of Commons Standing Committee on Procedure and House Affairs revised this recommendation and agreed with a two-year ban, but no change was included in amendments made to the Act in 2014.

3 *Telecommunications Act*, S.C. 1993, c. 38

This recommendation contains three elements; each will be dealt with in turn.

The CEO's report recommends a suspension on the ability to issue tax receipts of registered EDAs that fail to comply with their financial reporting obligations by filing financial returns after the applicable deadline, until all their returns are received. The CEA should be amended to make it an offence for EDAs to issue tax receipts after having received a notice of non-compliance with filing obligations. The Committee agrees with this part of the recommendation.

The report also recommends that an EDA be prohibited from registering with Elections Canada if it has assets that cannot be traced back to contributions or transfers made in compliance with the CEA. This would prevent a deregistered EDA that failed to file its financial return from re-registering with all the assets of the previous EDA (as well as new, unreported assets). The Committee agrees with this part of the recommendation.

Lastly, the report recommends that the CEA be amended to prevent a newly registered EDA from issuing tax receipts for four years (one electoral cycle) if the previous EDA for the same party in the same electoral district did not comply with its financial reporting obligations. The ban could be lifted if the outstanding returns are received. The Committee expressed concerns that the proposed sanctions for this part of the recommendation were too severe and its punishment had the effect of potentially penalizing members of a new EDA for wrongdoings committed by completely different individuals.

In response to the Committee's concerns, Elections Canada officials proposed a different approach for addressing such matters. Under this new proposal, the person who was the financial agent of the former EDA, which had not filed its required documents, would not be permitted to be a financial agent, a chief executive officer of an EDA or an official agent of a candidate, for four years. The Committee agrees with this proposal.

A30. Auditor's report
Provisions in the CEA: 477.62, 475.8 and 477.75

This recommendation contains three related proposals to do with auditor's reports. Each proposal will be discussed in turn.

First, the recommendation proposes that the CEA be amended to provide that candidates only be required to submit an audit report if they incur expenses or accept contributions of $10,000 or more. The recommendation includes the proviso that should a candidate be eligible for reimbursement of election expenses, he or she is nonetheless required to have an audit regardless of expenses incurred or contributions received.

Currently under the CEA, all candidates who participate in an election must submit an auditor's report with their financial return. By comparison, EDAs and leadership contestants only require an audit report if their expenses or contributions exceed $5,000.

For nomination contestants, an audit report is required if the contestant has expenses or contributions that exceed $10,000.

Candidates are required to appoint an auditor at the outset of their campaign, prior to receiving contributions or incurring expenses. The reports of external auditors are increasingly expensive for candidates and, in the case of candidates with few financial transactions, they do not add a great deal in terms of transparency.

The proposed amendment would align the reporting obligations of candidates with nomination contestants. Based on the financial returns for the 2015 general election, the proposed amendment would remove the requirement for 689 audits out of 1,800 candidates.

The Committee agrees with this proposal.

Second, the recommendation proposes that the subsidy currently provided for by the CEA to auditors of candidates and EDAs should be subject to an inflation adjustment. The report suggests that the inflation adjustment factor found in section 384 of the CEA should be used for this calculation.

Currently under the CEA, auditors of candidates and of EDAs receive a subsidy of between $250 dollars and $1,500, calculated according to expenses incurred. Elections Canada officials told the Committee that the amount of the subsidy was set in 2003 and has not been adjusted since to account for inflation.

The Committee agrees with this proposal.

Lastly, the recommendation proposes to add an audit subsidy for nomination contestants. This subsidy would be subject to the inflation adjustment factor found in section 384 of the CEA.

The Committee agrees with this proposal.

A31. Subsidy for official agents
Provisions in the CEA: None

This recommendation proposes that a subsidy be paid by Elections Canada to official agents of candidates. The receipt of the subsidy by official agents would be contingent on them meeting certain conditions established by Elections Canada (for example, completing training, filing complete returns and filing required documents on time). The amount of the subsidy would reflect the volume of transactions in (and therefore complexity of) the campaign return, using either a sliding scale or a set of thresholds, and be capped at a maximum amount (for example, $3,000). Campaigns with no or little financial activity would not be entitled to the subsidy.

Elections Canada officials told the Committee that official agents play a fundamental role in supporting the integrity of the political financing system. They are instrumental in ensuring that a candidate's file is completed correctly, and submitted to Elections Canada in a timely manner. Currently under the CEA, official agents are not reimbursed for the work they do.

The Committee agrees with the CEO's recommendation.

Also, during the discussion on this recommendation, the Committee stated it was of the view that there was merit in providing a further subsidy to EDAs for submitting their annual financial reports in a timely manner.

A32. Requiring some court procedures to take place in the Federal Court
Provisions in the CEA: 2 and Part 18

This recommendation proposes that the adjudication of political financing matters, including applications for extensions of financial return filing deadlines or for authorizations to correct or revise documents related to financial reporting obligations, be transferred to the Federal Court. This would require a change to the definition of "judge" in section 2 of the CEA, as well as possible amendments to the applicable political financing provisions (sections 443, 475.93, 476.73, 476.86, 476.88, 477.57, 477.68, 477.7, 477.71, 477.93, 478.78, 478.89, 478.91 and 478.92).

Currently, the CEA requires that judicial procedures that relate to requests for extensions and corrections by regulated entities must take place in provincial superior courts. The CEO's report states that this may result in inconsistent jurisprudence among provinces in matters under the CEA and limits the development of judicial expertise in the subject matter.

The Committee considered the matter and agreed with the CEO's recommendation.

A36. Definition of leadership and nomination contest expenses
Provisions in the CEA: 2 and 476.67

This recommendation seeks to amend the CEA to install a consistent regime for the definitions and restrictions related to an election expense for candidates, a leadership campaign expense, and a nomination campaign expense.

To do so, the CEO's report recommends that the definitions of "leadership campaign expense" and "nomination campaign expense" (section 2 of the CEA) be amended to include expenses incurred as an incidence of the campaign, not just expenses incurred "during the contest." Further, non-monetary contributions and transfers provided to contestants that are received as an incidence of the contest should be captured in these definitions. Lastly, the limit on nomination campaign expenses (section 476.67) should be amended to apply only to expenses in relation to goods or services used during the nomination contest period, regardless of when they were incurred.

Currently under the CEA, leadership and nomination campaign expenses do not include expenses incurred outside the contest period, even if the goods or services are used during the contest. Nor do these expenses include non-monetary contributions or transfers. Contestants can use unregulated money to fund much of their campaigns and avoid reporting campaign-related expenses.

Moreover, contestants are prevented from using campaign funds to pay for expenses directly related to the campaign if these expenses were incurred prior to or after the contest period (for example, audit fees or office rent).

In his 2016 annual report, the Commissioner noted that he received complaints from members of the public about nomination contestants underreporting their expenses. On being informed of the Act's lack of regulation for significant expenses incurred by campaigns, the complainants questioned the integrity of the political financing system applicable to contestants.

The Committee agrees with this recommendation.

A37. Treatment of certain expenses (childcare, disability, litigation, travel)
Provisions in the CEA: 376 and 378

This recommendation groups together several elements related to the treatment of certain regulated and unregulated expenses. Each element of the recommendation will be discussed in turn.

Firstly, the introduction of contribution limits to the CEA has led to unintended consequences respecting "personal expenses" – specifically, childcare expenses and expenses to care for a person with a disability that candidates incur as an incidence of their candidacy. Parliament has categorized these expenses as personal expenses. This means the expenses are not subject to the spending limit, but may still be reimbursed, whether incurred inside or outside the election period. The aim was to reduce barriers to participation for persons who need to incur such expenses. However, contribution limits now prevent this objective from being attained. Because these expenses are regulated, they have to be paid using contributions that the candidate receives; however, the source and amount of contributions are restricted. This reduces the ability of candidates to pay for these expenses, including from their own resources.

The CEO's report recommends that the CEA be amended to clearly indicate that candidates may opt to pay childcare and disability expenses, which would normally constitute electoral campaign expenses, using their personal funds. 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, as they are now. In addition, Parliament should consider increasing the level of reimbursement available for these expenses, given their importance in enabling certain individuals to run as candidates. A reimbursement of up to 90% of these expenses should be considered.

The Committee agrees with this part of the recommendation.

Next, for 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, the possibility exists that a person may be denied legal representation even though he or she is able to pay for it personally. The CEO's report, therefore, recommends that an amendment be made to the CEA, in respect of candidates' litigation expenses, to ensure that contribution limits are not a barrier to the right to counsel. Candidates should be able to choose whether or not to use regulated funds for the legal process. This includes litigation expenses for recounts, contested elections and proceedings related to the CEO's application of political financing provisions, including extension requests. As is the case now, such expenses would not be reimbursable, nor subject to the spending limit.

Because legal fees can be quite significant, the CEA should require campaigns to file a separate report in this area along with the candidate's return. The report would set out any litigation expenses and, where the fees are not paid from the campaign bank account, the payment sources. This would ensure transparency with respect to the fee amounts and how they are paid.

The Committee agrees with this part of the recommendation.

Lastly, travel expenses are a subcategory of personal expenses, even expenses for travel occurring outside the election period, are reimbursed. Only expenses for travel that occurs during the election period should be reimbursed. The CEO's report recommends that while all travel expenses should continue to be treated as campaign expenses so they must be paid using campaign funds, only expenses for the portion of travel that occurs during the election period should be reimbursed.

The Committee agrees with this part of the recommendation.

A38. Costs to accommodate electors with disabilities
Provisions in the CEA: n/a

This recommendation proposes to provide financial incentives to political parties and individual campaigns that make accommodations for people with disabilities. The CEO's report cites numerous opportunities that have not been seized in the past to provide accommodation, including video products prepared without captioning, paper and electronic products created in inaccessible formats, and a lack of sign language interpretation at events.

The report recommends that the reimbursement of expenses related to the accommodation of electors with disabilities be increased to 90% to encourage candidates and parties to incur such expenses.

The Committee agrees with this recommendation and the CEO's suggestion that Parliament may wish to also consider prescribing categories of expenses that could qualify for such a reimbursement, and may consider whether these expenses should be exempt from the spending limit.

B21. Special Voting Rules for CF electors
Provisions in the CEA: Part 11, Division 2

This recommendation proposes that Division 2 of Part 11 of the CEA be reviewed by Elections Canada, in consultation with the Canadian Forces (CF), to determine the best way to facilitate voting by CF electors.

The Special Voting Rules that apply to CF electors were introduced originally in 1915. Members of the CF are automatically included into the CF voting regime under Division 2 in the CEA. According to Election Canada officials, the CF voting process is currently outdated; it relies on paper based processes and applies (with limited exceptions) whether CF electors are deployed or not. As such, CF electors cannot vote in an RO office or by mail. In 1993, when the special voting rules were expanded to provide for a more flexible regime for electors voting under these rules, the voting regime for CF electors was not likewise expanded.

Elections Canada officials indicated the discussions with the CF could entail a lengthy process. As such, they noted that if the review of Division 2 of Part 11 cannot be completed prior to the next general election, they asked the Committee to consider endorsing recommendations B22 and C14 to C17 in the CEO's report.

The committee endorsed the principle of reviewing Division 2 of Part 11 of the Act. It asked that EC return to the Committee, at a later date, with specific recommendations for the Committee's consideration. The Committee also indicated it supported the changes proposed in recommendations B22 and C14 to C17 should the review of Division 2 not occur prior to the next general election.

B22. Hiring of liaison officers
Provision in the CEA: 201

This recommendation proposes to authorize the Minister of National Defence to designate liaison officers before the writs are issued, so that these individuals can be trained and ready at the start of the election period.

The CEO's report explains that liaison officers are the election workers that link the commanding officers of each military unit with the Canadian Armed Forces and Elections Canada during an election.

Currently, section 201 only permits the Minister of National Defence to designate liaison officers upon the Minister being informed of the issue of the writs.

The Committee agrees with the CEO’s recommendation.

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

A copy of the relevant Minutes of Proceedings (Meetings Nos. 32, 33, 34, 35, 36, 37, 38, 41, 42, 44 and 48) is tabled.

Respectfully submitted,

LARRY BAGNELL
Chair