**LS-343E**

# Bill c-2: The Canada Elections Act

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## LEGISLATIVE HISTORY OF BILL C-2

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| **Bill Stage** | **Date** | **Bill Stage** | **Date** |
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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

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# BILL C-2: THE CANADA ELECTIONS ACT

## BACKGROUND

On 14 October 1999, Bill C-2 was introduced and received first reading in the House of Commons. The bill, which would replace the existing *Canada Elections Act*, is designed to provide the framework for the operation of federal elections in Canada. The bill had originally been introduced as Bill C-83 on 7 June 1999 in the first session of the 36th Parliament, but died on the *Order Paper* when Parliament was prorogued in September 1999.

The existing electoral legislation was first passed in 1970, with many of the electoral finance provisions being added in 1974. While various provisions have been amended over the years, Bill C-2 represents the first full-scale overhaul of the legislation. After almost 30 years, parts of the Act needed to be modernized, while certain administrative issues and problems had to be addressed and remedied. In addition, the bill is an attempt to respond to a number of electoral matters that have been the subject of court decisions in recent years.

The Canadian electoral system has evolved over the years, and is known as a model of electoral democracy around the world. While the system has served the country and its citizens well, there is always room for improvement and new challenges to be addressed. In recent years, several studies and reports have recommended changes to Canada's federal electoral laws.

In November 1989, for instance, the federal government appointed a five-person Royal Commission on Electoral Reform and Party Financing – often referred to as the "Lortie Commission," after its chairman, Pierre Lortie. Its four-volume Report, entitled *Reforming Electoral Democracy*, was tabled in the House of Commons on 13 February 1992. The Report contained 267 separate recommendations, including draft legislation. The Royal Commission also commissioned extensive research into various aspects of Canadian electoral law and policy, much of which was subsequently published. Following the release of the Royal Commission's report, the House of Commons in February 1992 established an eight-person Special Committee on Electoral Reform to undertake a comprehensive review of it. The Committee, which was chaired by Jim Hawkes, M.P., produced five reports to the House. The Special Committee's Third Report formed the basis for Bill C-114, which was passed by Parliament in the spring of 1993. The Special Committee tabled a Fifth Report, dealing with the second phase of its study in May 1993; Parliament was dissolved before any of these recommendations could be implemented or legislation introduced, while other matters, with which the Special Committee had intended to deal, were never addressed.

In addition to the work of the Royal Commission, the Chief Electoral Officer, Jean-Pierre Kingsley, has presented reports to Parliament in accordance with the *Canada Elections Act*. On 29 February 1996, he tabled *Canada's Electoral System: Strengthening the Foundation*, as an Annex to his report on the 1993 federal general election. Built on the work of the Royal Commission, the Special Committee, Bill C-114, and other related developments, the report contained 122 recommendations for modernizing the *Canada Elections Act.*. Following the June 1997 federal general election, the Chief Electoral Officer prepared the *Report of the Chief Electoral Officer of Canada on the 36th General Election*, which was tabled in the House of Commons on 24 September 1997; this contained a number of specific recommendations for legislative changes.

In 1997, the House of Commons Standing Committee determined that, in view of all the work that had been done, the issue of electoral reform should be treated as a priority. The members of the Committee also felt that it was important to deal with this matter while the experience of the 1997 general election was still fresh. Throughout late 1997 and early 1998, the Committee consulted with the registered political parties, Members of Parliament, the Chief Electoral Officer, and others, and undertook a comprehensive review of the various issues and proposals for amendments to the *Canada Elections Act*. Its report, which was tabled in June 1998, was an attempt to synthesize previous work and to gather together in one place the various recommendations made over the years. Bill C-2 is based in part on this all-party committee report.

Much of Bill C-2 deals with the nuts and bolts of running elections at the federal level in Canada and is concerned with the operation of the electoral system. Administrative issues include adjusting the voting hours for areas that do not switch to daylight savings time; giving returning officers the right to vote; providing for the first time for the merger of registered parties; allowing registered parties that do not field the required number of candidates to retain their assets in certain cases; ensuring the rights of candidates to canvass and of electors to post election signs in multiple-unit residential buildings; providing a full refund of a candidate's nomination deposit if reports are filed; and adjusting dollar amounts to account for inflation.

In addition, the bill seeks to legislate in two areas that have been the subject of successful court challenges in recent years: first, it would impose a new system of regulation on third party advertising during election periods, including spending limits and reporting and disclosure requirements; second, it would re-impose a blackout on new public opinion polls **at the end** of an election campaign.

**On 19 October 1999, prior to second reading, Bill C-2 was referred to the House of Commons Standing Committee on Procedure and House Affairs. The Committee held hearings with witnesses through October and November; it reported the bill back to the House with numerous amendments on 3 December 1999. Following report stage in the House, further amendments to the bill were adopted. The following description is based on the bill as adopted by the House of Commons. While every effort has been made to summarize the bill and all amendments accurately, reference should be made to the bill itself.**

DESCRIPTION AND ANALYSIS

The full title of Bill C-2 is "An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts." Its short title, according to clause 1, is the "Canada Elections Act."

Clause 2 contains numerous definitions. Many of these are identical or similar to those found in the existing legislation, while others have been added or modified to reflect new provisions in the bill. Clause 2(2) provides that commercial values of property or services would be deemed to be nil if provided by a person not in the business of providing that property or service or if the amount charged was under $200. Clause 2(3) provides that the Chief Electoral Officer would be able to prescribe what constitutes satisfactory proof of an elector's identity and residence.

## Part 1: Electoral Rights (clauses 3 – 12)

Section 3 of the *Canadian Charter of Rights and Freedoms* provides:

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Clause 3 of the bill sets out the general principle that every person who is a Canadian citizen and is 18 years of age or older on polling day is qualified to be an elector. Tying voting rights to citizenship is consistent with the Charter. As far as the voting age is concerned, while representations for lowering it to 16 have been made by some political parties and by young people, both the Royal Commission and the Standing Committee concluded that the minimum age of voting should remain at 18.

Clause 4 sets out a list of persons who are not entitled to vote: the Chief Electoral Officer, the Assistant Chief Electoral Officer and every person who is imprisoned in a correctional institution serving a sentence of two years or more. Canada's electoral legislation has always disqualified certain groups or individuals from voting. Many of these disqualifications have been removed by legislative action over the years, but since the introduction of the Charter in 1982 there have also been legal challenges regarding the denial of voting rights, some of which are still before the courts. Generally, the courts have ruled that the right to vote should not be denied except for very strong reasons.

The denial of the right to vote to the Chief Electoral Officer and the Assistant Chief Electoral Officer is consistent with the desire for an impartial electoral system. At present, returning officers – one of whom is appointed for each electoral district – have a right to vote only in the event of a tie. In his report on the 36$^{th}$ general election, the Chief Electoral Officer recommended that returning officers should have the same right to vote in federal elections as all other Canadians. (He went on to recommend that in the event of a tie, provision should be made for a second ballot, to be held according to the rules for a by-election, within time limits specified in a statute.) This recommendation was presented as a corollary to the recommendation that returning officers should be appointed by the Chief Electoral Officer on the basis of open competition. Some have expressed reservations about granting a vote to the returning officers as long as the current appointment process by the Governor in Council remains unchanged (as it would under the bill).

At one time, there was a blanket denial of the right to vote to persons who were incarcerated, on the grounds that they had forfeited this basic right of citizenship by committing a crime and the loss was part of the punishment. Following a series of court decisions holding that this prohibition violated the *Charter of Rights and Freedoms*, Bill C-114 removed the disqualification for prisoners serving less than two years, who, for all practical purposes, are serving in provincial rather than federal institutions. This action was successfully challenged, although the federal government has appealed the case and it is still before the courts.

Clause 5 makes it an offence to vote if one is not qualified or is disqualified, or to induce another person to do so.

Clause 6 provides that persons who are qualified as electors are entitled to have their names included in the list of electors for the polling division in which they are ordinarily resident and to vote at the polling station for that polling division. Clause 8 then sets out certain rules to determine the place of ordinary residence. The primary definition of this is the place that has always been, or that has been adopted, as the person's dwelling place and to which the person intends to return when away from it. It is further provided that a person can have only one place of ordinary residence, which cannot be lost until another is gained, and that temporary absence does not cause a loss or change of place of ordinary residence. If a person usually sleeps in one place and has his or her meals or is employed in another place, the place of ordinary residence is where he or she sleeps. Temporary residential quarters are considered to be a person's place of ordinary residence only if the person considers no other place to be such. A shelter, hostel or similar institution that provides food, lodging or other social services to a person who has no dwelling place is that person's place of ordinary residence. Clause 9 goes on to provide that, if these rules are not sufficient to determine the place of ordinary residence, it shall be determined by the appropriate election officer by reference to all the facts of the case.

The basic rules for determining ordinary residence are similar to those in the existing legislation, but are set out more clearly. Though there is usually little dispute or question about a person's residence, concerns have been expressed recently about the possible disenfranchising of persons who are homeless or transient; however, it is not clear how many such people have actually attempted to exercise their right to vote and been unable to do so. The rules set out in clause 8 would seem to address many of the issues, although they do not deal with people who live on the street, who are not residing in temporary accommodation or a shelter or hostel. Problems have sometimes arisen when voters have more than one residence – such as a house and cottage – especially if they feel that there may be a strategic advantage to voting in one or other of these locations.

Special provision is made in clause 10 for Members of the House of Commons (and persons living with them) to vote in the constituencies where they are candidates, even if they do not live there. In *Strengthening the Foundation*, the Chief Electoral Officer recommended the repeal of section 60 of the existing Act, which permits candidates who were Members at the dissolution of Parliament immediately preceding the election to register in electoral districts other than those in which they reside. As this right is not available to other candidates, the Chief Electoral Officer felt that, in the interests of fairness and consistency, it should be discontinued. Members of the Standing Committee were divided on this proposal, some agreeing with the reasoning of the Chief Electoral Officer, and others arguing that it is an

important provision which responds to the particular situation of Members of the House of Commons and their families. Clause 10, like the existing section, would enable former Members to register as electors in several locations, including the ridings in which they are candidates, even if they do not reside there.

The persons listed in clause 11 may vote in accordance with the Special Voting Rules, which are contained in Part 11 of the bill. This clause, which is identical to section 51.1 in the existing Act, is designed to facilitate voting by persons who are not at their place of ordinary residence on voting day or during the advance polls. This group includes members of the Canadian Forces, public servants posted outside Canada, non-resident Canadians who have been absent for fewer than five consecutive years, incarcerated electors, and a few others.

Clause 12, which deals with residency during by-elections, is the same as the existing section 61.

## Part 2: Chief Electoral Officer and Staff (clauses 13 – 21)

Part 2 of the bill deals with the Chief Electoral Officer and the staff of Elections Canada. The comparable sections in the current Act are sections 4 to 11.

Clause 13 provides that the Chief Electoral Officer will continue to be appointed by resolution of the House of Commons. He or she holds office during good behaviour until attaining the age of 65 but may be removed for cause by the Governor General on a joint address of the Senate and House of Commons. Provision is made in clause 14 for a substitute Chief Electoral Officer to be appointed by the Chief Justice of Canada in the case of the death, incapacity or negligence of the Chief Electoral Officer. Clause 15(1) provides that the Chief Electoral Officer has the rank, powers and duties of a deputy minister, and is to carry out the office on a full-time basis; he or she is paid the equivalent of a salary of a judge of the Federal Court, and is deemed to be employed in the Public Service for purposes of superannuation and compensation (clauses 15(2) and (3)). The Chief Electoral Officer communicates with the Governor in Council through the Minister appointed for the purposes of the Act (clause 14(4)) (which is currently the Leader of the Government in the House of Commons).

Clause 16 sets out the powers and duties of the Chief Electoral Officer: he or she exercises the general direction and supervision over the conduct of elections; ensures that all elections officers act with fairness and impartiality and in compliance with the electoral legislation; issues to election officers the instructions that the Chief Electoral Officer considers necessary for the administration of the legislation; and exercises the powers and perform the duties and functions necessary for such administration.

If an emergency, unusual or unforeseen circumstance or error makes it necessary to do so during an electoral period, clause 17 empowers the Chief Electoral Officer to adapt the legislation by, for example, extending time or increasing the number of election officers or polling stations. There are certain limitations on this power: it does not include extension of the time for nominations, advance polls, or voting hours on polling day except to the extent set out in clause 17(3). During the 1997 federal general election, floods in southern Manitoba resulted in calls for the Chief Electoral

Officer to use his powers under section 9 of the existing Act – which are essentially the same as those under clause 17 of Bill C-2.

Clause 18 allows the Chief Electoral Officer to implement public education and information programs to make the electoral process better known to the public, particularly those persons and groups most likely to experience difficulties in exercising their democratic rights. It also allows the use of the media and other means of communication to 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. Such programs are particularly important in light of the development of the permanent voters' list, and in order to reach marginalized groups. The clause allows flexibility in accessing modern communications and media such as the Internet.

**In the House committee, a new clause 18.1 was added to authorize the Chief Electoral Officer to carry out studies and tests on alternative voting means, including electronic voting processes. Any such system would have to be approved by a Commons committee before it could be used for an official vote.**

Clause 19 provides that the staff of the Chief Electoral Officer shall consist of the Assistant Chief Electoral Officer (who will continue to be appointed by the Governor in Council) and such other staff as shall be appointed in accordance with the *Public Service Employment Act*. The permanent staff of Elections Canada is relatively small, but provision is made in clause 20 for the hiring of casual and temporary staff during an election.

In *Strengthening the Foundation*, the Chief Electoral Officer recommended that the *Public Service Staff Relations Act* should be amended to remove the right to strike for employees of the Office of the Chief Electoral Officer. The rationale was that such employees perform an essential role under electoral legislation. In response to the suggestion that the right to strike be removed only during an electoral event, it was pointed out that Elections Canada must always be ready; elections and referendums are not predictable and much of the preparation for elections, including readjustment of electoral boundaries and the implementation of new legislation is carried out between events. Concerns were expressed about the implications under the *Charter of Rights and Freedoms* of the removal of the right to strike, and alternatives such as binding arbitration were suggested. The members of the Standing Committee were divided on this proposal and it has not been implemented in the bill.

The provisions of Part 2 are essentially the same as those in the existing Act, although the wording and organization of the clauses have been modernized and are clearer.

### Part 3: Election Officers (clauses 22 – 43)

Part 3 deals with election officers; these sections are not grouped together in the existing legislation.

Clause 22 sets out the persons who are election officers; there are 15 separate categories. It is specifically provided that candidates' representatives at polling stations are not election officers; this is consistent with a recommendation of the Chief Electoral Officer in his 1996 report *Strengthening the Foundation*. Certain persons are prohibited from being appointed as election officers under clause 22(3):

these include judges and federal and provincial legislators, as well as persons convicted of electoral offences in the preceding seven years. All election officers must be qualified as an elector under clause 3, and certain of them must reside in the electoral district in which they are to perform their duties, although provision is made for exceptions in clause 22(5).

Clause 23 would require election officers to swear an oath in writing that they will perform the duties of the office in an impartial manner. Moreover, information they obtain in the course of their duties is not to be disclosed except in accordance with the legislation (clause 23(2)).

Clause 24 provides for the appointment of returning officers by the Governor in Council. The Chief Electoral Officer has recommended on various occasions in recent years that returning officers should instead be appointed by the Chief Electoral Officer for 10-year terms on the basis of formal, objective competitions, open to all Canadians and held in any electoral district where there is a vacancy. The argument is that the current appointment procedure is an anachronism and inconsistent with the non-partisan nature of Canada's electoral system. Returning officers should be ? and should be perceived as being ? neutral, rather than being appointed by the party in power. Problems have arisen in recent years with appointees who lack experience with electoral administration or are not fully aware of the nature of the job they have been asked to undertake. In the Standing Committee, the opposition parties agreed to the proposal that returning officers be appointed on the basis of open competitions. The Liberal Party, however, took the position that the competence level of returning officers appointed under the existing system is generally high; moreover it maintained that it is vitally important that those appointed as returning officers, rather than being technocrats, should be familiar with the political process at the constituency level.

Clause 24(2) provides that a returning officer is responsible, under the general direction of the Chief Electoral Officer, for the preparation for and conduct of an election in his or her electoral district. Provision is also made for vacancies and resignations. Clause 24(6) provides that no returning officer shall, while in office, knowingly engage in politically partisan conduct, including by making political donations. Clause 24(7) sets out the grounds whereby the Governor in Council can remove any returning officer from office. These grounds are essentially the same as those under the existing Act. The requirement for a returning officer to live in the electoral district for which he or she is appointed is now found in clause 22(4); however, ceasing to be a resident of the electoral district is no longer grounds for removal, as is currently the case under section 14(3)(a).

The Chief Electoral Officer recommended in his 1996 and 1997 reports that the Chief Electoral Officer be empowered to remove returning officers (and other election officials) for incompetence or unsatisfactory performance. This proposal, closely related to that dealing with the appointment procedure for returning officers, has been rejected in favour of the continuation of removal by the Governor in Council.

Clause 25 provides that the name, address and occupation of all returning officers shall be communicated to the Chief Electoral Officer as soon as practicable, and that a list of returning officers shall be published each January in the *Canada Gazette*. This is the same provision as is in section 14(4) of the existing Act.

Provision is made in clause 26 for returning officers to appoint an assistant returning officer. The persons appointed are required to be qualified as electors and residents of the electoral district for which they are appointed (pursuant to clause 22(4)); they cannot be certain close relatives or "a person who lives with" the returning officer (rather than "spouse," as is the wording in the existing Act) (clause 26(2)).

Clause 27, similarly to the existing section 15(4) and (5), would allow the returning officer to delegate certain functions in writing. Clause 28 provides that it is the duty of the returning officer or an assistant returning officer to notify the Chief Electoral Officer without delay if the returning officer at any time becomes unable to act; the Chief Electoral Officer, in turn, shall notify the Minister. The assistant returning officer acts in the place of the returning officer; if a replacement is to be appointed, it must be done within 60 days.

Clause 29 provides for the death, resignation or removal from office of assistant returning officers. In certain areas, the Chief Electoral Officer may authorize the appointment of an additional assistant returning officer (clause 30); this provision is similar to that in section 18 of the Act. Returning officers and assistant returning officers may not act in any other capacities under the legislation, pursuant to clause 31.

Clause 32 provides for the appointment of certain election officers by the returning officer after the issue of a writ: revising agents, deputy returning officers and poll clerks for each advance poll and polling station, and registration officers. The procedures for making these appointments are set out in clauses 33 to 39. Included are provisions for soliciting names of suitable candidates from the parties that finished first and second in the previous election; clauses 40 to 42 deal with specific situations that can arise, such as a tie in votes, transposing election results to new constituency boundaries, and the merger of parties.

Clause 43 would make it an offence to obstruct an election officer, to use election officer identification without authority, or to fail to return election materials.

### Part 4: Register of Electors (clauses 44 – 56)

The Register of Electors, which is the subject of Part 4, is a permanent voters' list. It was introduced in 1997, and replaces the old door-to-door enumeration that used to take place during each election or by-election.(1)

The maintenance of the Register of Electors, which is to contain electors' surnames, given names, sex, date of birth, civic address, mailing address and any other information specified under the legislation, is provided for in clause 44. **In the House Committee, amendments were adopted to clauses 44(2), 45(2) and 93(2) to include also the telephone numbers, unless confidential, of electors. These amendments were removed at report stage in the House. The Privacy Commissioner, among others, had expressed opposition to the inclusion of non-essential information. Concerns were also expressed by Elections Canada about the practical implications of such a requirement**. Voters would continue to have the right to not be included in the Register.

Clause 45 provides that by 15 October of each year (unless an election is under way or one has taken place within the preceding three months) an electronic copy of the

Register for each electoral district shall be sent to the MP for the constituency and, upon request, to each registered party that had a candidate running in that constituency in the last election.

Clause 46 deals with updating the Register. Information can come from a variety of sources, including electors, federal departments that have been specifically authorized (for example through the box on the federal income tax returns), and other sources considered reliable, as listed in Schedule 2, which can be amended by the Chief Electoral Officer at any time. Elections Canada has entered into agreements with various provincial governments and agencies to obtain relevant information, such as vital statistics (deaths), driving licences, and so forth. Generally, before electors are added to the Register, they are to be contacted by the Chief Electoral Officer and asked whether they wish to be included and to confirm the information (clause 48). Voters can be asked to provide certain optional information that may be required by provincial authorities with which Elections Canada enters into agreements (clause 49). The bill also makes provision for electors to make corrections (clause 50), and for the Chief Electoral Officer to verify information (clause 51) or delete names (clause 52). Clause 53 allows electors to request that the information concerning them be used only for federal purposes, while clause 54 allows electors to receive a copy, upon request, of all the information regarding them that is in the Chief Electoral Officer's possession.

The Chief Electoral Officer is empowered by clause 55 to enter into agreements with provincial bodies responsible for establishing voters' lists, which can involve payment. This is designed to ensure that information on voters can be exchanged between electoral authorities at the federal, provincial and municipal levels, thereby minimizing duplication and increasing accuracy.

Clause 56 sets out prohibitions with respect to the Register of Electors, including the provision of false information by electors. Clause 56(e) restricts the use that can be made of the information recorded in the Register: it can be used only to enable registered parties, Members of the House of Commons, and candidates to communicate with their constituents, for a federal election or referendum, or a provincial election or referendum. A similar restriction on the use that can be made of the information is imposed on the provincial bodies by clause 55(3).

### Part 5: Conduct of an Election (clauses 57 – 60)

Clause 57 sets out the procedure for the issue of a writ of election. The Governor in Council issues a proclamation directing the Chief Electoral Officer to issue a writ for each electoral district, fixing the date of issue of the writ and the date for voting. An election campaign must last at least 36 days. (Bill C-63, which was enacted in 1996, reduced the minimum campaign period from 47 days to 36.) As under the existing Act, polling day shall be on a Monday, unless that is a holiday. Clause 59 provides for the withdrawal of a writ where the Chief Electoral Officer determines that a disaster has rendered it impractical to carry out the election.

Pursuant to clause 60, each returning officer shall open and maintain an office during the election. The hours during which the office must be open may be specified by the Chief Electoral Officer (clause 60). The appointment and employment of staff are dealt with in clause 61. Clause 62 provides that, within four days after the issue of the writ, each returning officer shall issue a notice of election stating the deadline for the

receipt of nominations, the polling date, the date for the validation of results, and the address of the returning officer's office.

Clause 63 provides for acclamations, where only one candidate has been nominated by the close of nominations. Clause 64 deals with the more usual situation, where an election is held as a result of the nomination of more than one candidate. A notice of grant of a poll is to be posted and forwarded to each deputy returning officer and candidate.

### Part 6: Candidates (clauses 65 – 92)

Part 6 deals with the qualifications, nomination, rights and obligations of candidates in an election.

Clause 65 sets out the persons not eligible to be candidates for election to the House of Commons. The list includes persons not entitled to vote, members of provincial and territorial assemblies, judges, inmates, election officers, and others. Most of the provisions of this clause are currently contained in the comparable provision of the existing Act, section 77, although persons who have been found guilty of electoral offences are not included in the bill.

The procedure for the nomination of candidates is set out in clause 66, which sets out the contents of the nomination papers, and particulars of candidates, such as nicknames. As under the present Act, a prospective candidate must be nominated by at least 100 electors resident in the constituency, unless the constituency is mentioned in Schedule 3 (which lists particularly large or sparsely populated electoral districts), in which case only 50 nominators are required. (The Standing Committee had suggested that the number of nominators should be same for all constituencies.) Provision is made in clause 68 for a registered or eligible party to endorse one candidate per constituency, unless the candidate dies or withdraws prior to the closing date for nominations.

Clause 68 provides that the closing date for nominations is to be Monday, the 21st day before polling day. Nominations must be received before 2:00 p.m. on that date, but, pursuant to a recommendation made by the Chief Electoral Officer in *Strengthening the Foundation*, a change has been made so that all persons in the office of the returning officer at 2:00 p.m. would be allowed to file their nomination papers. Clause 71 also introduces procedures for confirming nomination and for verifying nomination papers; these had also been recommended by the Chief Electoral Officer. Clause 73 contains revised provisions for the nomination papers to be filed electronically, provided that the original documents are received no later than 48 hours after the close of nominations; this removes a discrepancy in the existing legislation whereby only candidates in rural ridings can file their nomination papers electronically. The original proposal had been for the documents to be submitted within ten days, while the Standing Committee thought that it should be five days.

Clause 72 provides for the issue of a receipt for the deposit and the forwarding of the deposit to the Receiver General. The deposit is to be refunded if the nomination is refused.

Under clause 74, candidates are allowed to withdraw up to 5:00 p.m. on the closing date for nominations. Clause 75 allows the candidate to make minor corrections to his or her nomination papers.

Clause 76 provides any votes given for a person other than a candidate are void; this rule prevents "write-in" candidates.

Where a candidate who has been endorsed by a registered party dies between the fifth day before the closing date for nominations and the close of voting on polling day, clause 77 provides for the postponement of the closing date for nominations and for a new polling day. Clause 78 ensures that the postponement of an election does not invalidate the nomination of other candidates; however, any ballots cast before the postponement are void and shall be destroyed.

Clause 80 provides that any employer who is subject to the *Canada Labour Code* shall grant any employee leave of absence, with or without pay, to seek a nomination or to be the candidate for the period during the election. At present, section 87 of the *Canada Elections Act* requires every employer to grant an employee a leave of absence, with or without pay, to seek nomination as a candidate and to be a candidate for election. This section does not extend to those working outside federal jurisdiction. In 1996, the Chief Electoral Officer recommended that the right to a leave of absence without pay for the purpose of being a candidate at a federal election be extended to all employees, whether or not the individual is employed pursuant to a federal, provincial or territorial law, and that it not exclude an employer from authorizing paid leave. It was argued that such an extension would be in accordance with section 3 of the *Charter of Rights and Freedoms*, and would be consistent with section 148 of the *Canada Elections Act*, which requires every employer to give employees three consecutive hours for the purpose of voting. In the Standing Committee, concerns were expressed about the effect that such a provision would have on small employers, and, as a result, opinions were divided on this proposal.

Clause 81 would empower candidates and their representatives to enter apartment buildings or other multiple residences between 9:00 a.m. and 9:00 p.m. for purposes of canvassing at apartment doors or campaigning in a common area in a multiple residence. **During committee consideration of the bill in the House, this clause was clarified to ensure that it would not apply to women's shelters and similar residences.** The Chief Electoral Officer, in both his 1996 and 1997 reports, proposed that the *Canada Elections Act* should explicitly state that there is no exception to the right of a candidate or representative to enter apartment buildings and other multiple residences – including condominiums, university residences, nursing homes, and public housing – where electors reside, between the hours of 9:00 a.m. and 9:00 p.m., for the purpose of conducting the campaign. The Standing Committee supported this recommendation.

It should be noted that, in its brief to and appearance before the Committee, the Liberal Party of Canada argued that clarification is required with respect to access by candidates and their representatives to commercial or educational sites, and places of business, including government buildings. It was pointed out that this would not authorize any interruption or interference with people who were working. Concerns were expressed, however, about campaigning on private property that is not primarily residential. No such provision has been included in Bill C-2.

The obligations of candidates are set out in clauses 82 to 88. For the purposes of these clauses, and clause 90, a candidate would be deemed a candidate from the time he or she accepted a contribution or incurred electoral campaign expenses referred to in clause 406.

Clause 83 would require that an official agent and an auditor be appointed prior to the incurring of any electoral campaign expenses. Certain persons are not eligible for appointment or to serve as an official agent or auditor (clauses 84 and 85(2)), while only certain persons (generally professional accountants) are eligible to serve as auditors (clause 85(1)). The persons appointed as official agent and auditor must consent in writing to act (clause 86). If an official agent or auditor dies, becomes incapable, resigns or has the appointment revoked, the candidate must appoint a replacement without delay (clause 87); there may be only one official agent and one auditor at a time.

Clause 89 would make it an offence to sign a nomination paper consenting to be a candidate when aware that one is not eligible to be a candidate. Clause 90 would prohibit ineligible persons from acting as official agents or auditors. Clause 91 would prohibit any person from making or publishing any false statement of fact in relation to the personal character or conduct of a candidate or prospective candidate with the intention of affecting the results of an election. Clause 92 would make it an offence to knowingly publish a false statement that a

## Part 7: Revision of Lists of Electors (clauses 93 – 111)

Part 7 deals with the revision of the lists of electors. This facet of the electoral system has assumed a new importance with the establishment of the permanent voters' list.

Clause 93(1) would require the Chief Electoral Officer to prepare a preliminary list of electors for each polling division in a constituency as soon as possible after the issue of the writ, and to send it to the returning officer. The form of the preliminary list is set out in clause 93(2): only the names and addresses of electors are to be given; these are to be arranged according to civic address or, if that is not appropriate, in alphabetical order. The number of names on the preliminary lists of each constituency is to be published in the *Canada Gazette* by the 31st day before polling (clause 93(3)). Upon receipt of the preliminary list, the returning officer is to provide a copy of it (in printed and electronic form) to each candidate who requests one (clause 94), **and a maximum of four printed copies, upon request**.

As soon as possible after the issue of a writ, but no later than the 24th day before polling day, clause 95 requires returning officers to send a notice of confirmation of registration to every elector whose name appears on the preliminary list of electors. (There are certain exceptions: incarcerated electors, Canadian Forces electors who have completed statements of ordinary residence, and non-resident electors.) The form of the notice, as established by the Chief Electoral Officer, shall include the address of the elector's polling station and whether it has level access, voting hours, telephone number for further information, and information regarding the advance polls; the notice should invite the elector to contact the returning office in the case of special needs (such as language or sign language interpretation, level access, inability to attend because of disability). In the absence of door-to-door enumeration at the

beginning of a campaign, the notice of confirmation of registration cards assumes a new importance.

Clauses 96 to 102 deal with the revision process. Clause 96 requires the Chief Electoral Officer to fix the commencement date for revision of the preliminary list of electors as soon as possible after the issue of a writ. The revision period is to terminate at 6:00 p.m. on the sixth day before polling day.

Clause 97 designates the returning officer, assistant returning officer, and revising agents of an electoral district as the persons who may receive applications for additions or corrections to, or deletions from, the preliminary list of collectors. Clause 100 requires the revising agents to act jointly; in cases of disagreement, the matter is to be referred to the returning officer or assistant returning officer for a decision. Completed applications are presented to the returning officer or assistant returning officer for approval (clause 97(2)), while clause 99 authorizes those officers to revise the preliminary lists of electors accordingly. Clause 101 authorizes the returning officer or assistant returning officer to add the names of electors to the preliminary list in certain cases. Provision is made for electors who have changed their address to be deleted from the Register of Electors in relation to their previous addresses. Clause 101(4) authorizes the deletion of names from the preliminary list of electors, while clause 101(5) provides for corrections. Address changes within a constituency are dealt with by clause 101(6). Clause 102 requires that electors whose names have been added to be preliminary list of electors during the revision are to be sent a notice of confirmation of registration.

Clauses 103 and 104 set out the procedure for making objections to the inclusion of electors on the voting lists. Pursuant to clause 103(1), no later than the 14th day before polling day, an elector may make an objection, by means of an affidavit before the returning officer for the constituency, to the inclusion of the name of another person on the list of electors. Notice of the objection is to be sent to the person objected to, who shall have opportunity to give evidence to show that he or she is entitled to vote in the electoral district; notice is also to be given to each candidate. If the person objected to decides to appear before the returning officer, a representative of each candidate is allowed to be present but does not have the right to intervene.

When an objection is made, the returning officer may examine **on oath** the elector who made the objection, the person against whom it was made, and any other witness, and is to make a decision on the basis of this information. The onus is on the person who made the objection; even if the person objected to does not appear before the returning officer or fails to provide evidence that he or she is entitled to vote, the elector who made the objection must still prove to the returning officer **on a balance of probabilities** that the person should not appear on the list of electors.

Clauses 105 to 107 deal with the revised lists of electors and official lists of electors. The revised lists of electors for each polling division are required on the 11th day before polling day (clause 105); these lists are used for the advance polls. On the third day before polling day, the official lists of electors for each polling division are required (clause 106): these are the lists used on polling day. Clause 107(1) provides that the revised lists of electors and official lists of electors are to be in the form established by the Chief Electoral Officer. Under clause 107(2), each deputy returning officer must be provided with the appropriate revised lists of electors, on

which the sex of each elector must be stated. Clause 107(3) requires that each candidate be provided with a printed and electronic version of all lists.

Clause 108 provides for the merger of adjacent polling divisions in certain circumstances.

The final lists of electors for each constituency are prepared by the Chief Electoral Officer after polling day (clause 109). Printed and electronic copies of these are provided to each registered party that endorsed a candidate in the constituency and to the Member who was elected; **four additional printed copies** are to be provided on request.

Clause 110(1) provides that a registered party that receives a copy of the final lists of electors may use them for communicating with electors, including for soliciting contributions and recruiting members. A candidate who receives a copy of the preliminary list of electors, or of the revised or official list of electors, may use it for similar purposes during the election period (clause 110(3)), while an MP may use the lists for communication with his or her constituents **and, in the case of a member of a registered party, for solicitation of contributions and party members** (clause 110(2)). Clause 111 sets out prohibitions in relation to lists of electors, which include providing false information, applying to be listed when not authorized, or knowingly using personal information for unauthorized purposes.

### Part 8: Preparation for the Vote (clauses 112 – 126)

Clause 112 provides that each returning officer shall post a list of the deputy returning officers at least three days prior to polling day. Copies of these lists are also to be provided to each candidate and to be open to public inspection. Election materials and instructions and ballot boxes are to be provided to the returning officers by the Chief Electoral Officer (clauses 113 and 114). Similarly, the paper on which ballots are to be printed and printing material are to be provided to the returning officers (clause 115). As soon as possible after the close of nominations, clause 116 requires each returning officer to authorize the printing of a sufficient number of ballots; the form of the ballots is set out as Form 3 in Schedule 1, and ballots are to be numbered and in books. The printer's name must appear on the ballots and the printer is required to complete an affidavit with respect to the ballots.

Clause 117(1) provides that the ballots shall contain the names of candidates, arranged alphabetically, taken from their nomination papers. Where a candidate is endorsed by a registered party, and the nomination paper has been signed by the leader of the party, the party name shall be listed on the ballot under the name of the candidate. If requested, the word "independent" may appear under the name of a candidate. Where more than one candidate has the same name, and both candidates are running without political affiliation, the address or occupation of the candidate shall be listed under the candidate's name if requested (clause 117(5)). (Private Member's Bill C-405, which was before the House of Commons in the First Session of the 36th Parliament, would allow the photographs of candidates with similar names to be shown on the ballot.) Clause 118 provides that the ballot boxes, ballots, envelopes and marking instruments are the property of the government.

Pursuant to clause 119, before voting begins each deputy returning officer is to be provided with certain materials, including ballots, marking instruments, templates,

the official list of electors, a ballot box, and the text of the oaths. These are to be kept safely until the opening of the poll.

Clause 120(1) requires that there be one polling station for each polling division (although several polling stations can be established if the number of electors is high (clause 120(2)). Clause 121 requires that a polling station be in premises with level access, unless suitable premises cannot be obtained. Each polling station is to contain one or two voting compartments with a table or desk so that the elector is screened from observation and may mark a ballot without interference or interruption (clauses 121(3) and (4)). A polling station can be established in an adjacent polling division if suitable premises are unavailable (clause 122(1)). Clause 122(2) provides that, whenever possible, polling stations are to be located in a school, or other suitable public building, and in a central polling place that will provide ease of access to electors. Buildings owned by the Government of Canada can be requisitioned, pursuant to clause 122(3). Several polling stations can be combined in a central polling place, but, unless special permission is obtained, no more than 15 stations can be combined (clause 123). When a central polling place is established, clause 124 provides for the appointment of an information officer and a person responsible for maintaining order, and, where there are four or more polling stations, a central poll supervisor. Mobile polling stations for institutions are dealt with in clause 125, which includes provisions for setting the voting hours and providing notice to the candidates.

Clause 126 creates offences for forging ballots, printing ballots without authorization, or making or possessing ballot boxes.

### Part 9: Voting (clauses 127 – 167)

Clause 127 sets out the different methods of voting and opportunities for doing so on polling day, at advance polls, or by means of the special ballots (as provided for in Part 11).

The hours of voting are set out in clause 128 and reflect the changes made by Bill C-63, passed in 1996, **with special provision now made for Saskatchewan in clause 128(2)**. Voting hours are staggered across the country to accommodate the different time zones and to ensure the results will be available at roughly the same time across the country. It appears that the introduction of staggered voting hours has been successful and that the desired results have been achieved. Clause 129 has been added, however, to give the Chief Electoral Officer discretion to adjust the voting hours in keeping with daylight saving time. In 1997 in Saskatchewan, which remains on standard time in summer, a problem arose whereby the polls were required to stay open later in some parts of the province than in others. Bill S-28, which was tabled in the Senate in 1999, would have ensured that voting in Saskatchewan was contemporaneous with voting in the neighbouring provinces of Manitoba and Alberta, whether or not daylight savings time was in effect. Clause 130 deals with the situation where more than one local time is observed in a constituency and makes provision for one local time to be observed and announced.

Clause 131 deals with the voting hours for by-elections: if there is only one by-election on a particular day, or if all the by-elections are in the same time zone, the hours for voting are 8:30 a.m. to 8:30 p.m. This amendment addresses the fact that the need for staggered voting hours (which include some late and early hours on the

east and west coasts) does not arise unless elections are being held in different parts of the country.

Clauses 132 to 134 deal with giving time to employees for voting. Every employee who is an elector is entitled to have three consecutive hours for voting, such time to be at the convenience of the employer (clause 132). (Until amendments in 1996, the time off for voting was four hours.) This provision does not apply to transportation companies whose employees are working outside their polling division and whose time off would interfere with the transportation service. Clause 133 provides that no employer may make a pay deduction or impose a penalty for the time off; and there is a deeming provision for employees who are paid on a hourly, piece-work or other basis. Clause 134 would make it an offence for an employer to interfere with the time off, by intimidation, undue influence, or otherwise.

Clause 135 lists those persons who may be present at a polling station on polling day; these include the deputy returning officer, poll clerk, returning officer and his or her representatives, the candidates and his or her representatives, and representatives of Elections Canada. Candidates' representatives are to provide written authorization in the prescribed form, and are required to take an oath of secrecy. The candidate or candidate's official agent may authorize representatives, but under clause 136 only two such representatives may be present at any one time. Candidates' representatives may examine the list of electors during voting hours and convey this information to outside representatives of the candidate. Clause 136(4) prohibits the use of a communications device in a polling station during voting hours. Clause 137 would clarify that the candidate may act as a representative, and that the non-attendance of candidates' representatives does not in any way invalidate anything done in their absence.

Clause 138 provides for the initialling of ballots by the deputy returning officer prior to the opening of a polling station. In the same period, the ballots are to be counted in the presence of the candidates or their representatives, who may inspect the ballots and other documents (clause 139). When the polling station opens, the deputy returning officer shall open the ballot box to determine that it is empty before sealing it and placing it in full view (clause 140).

Clause 141 provides that, immediately after the ballot box is sealed, voters can be admitted and are not to be impeded (clause 142(1)), although the deputy returning officer, may direct that only one voter enter the room at a time (clause 142(2)). Cause 143 provides that each voter shall provide his or her name and address, which, if confirmed on the list of electors, shall be crossed off and the person allowed to vote. If there are any doubts about a person's identity or right to vote, satisfactory proof of identity and residence may be requested or the prescribed oath administered. Clause 144 provides, however, that no proof of identity or oath can be required after a ballot has been given to the voter. Voters who refuse to provide satisfactory proof of identity, to take the oath, or to reply to questions shall be refused a ballot and shall not be re-admitted, although an elector who refuses an oath may appeal to the returning officer (clause 145). Clause 146 deals with the situation where a name and address on the list of electors correspond very closely to the name and address of a person who requests a ballot. Under clause 147, a person who arrives and discovers that someone has voted under his or her name is allowed to vote. Clause 148 deals with names that are crossed off in error.

Clause 149 provides that voters whose names do not appear on the official list of electors shall not be allowed to vote unless they provide transfer certificates, satisfactory proof of identity or evidence that their names are on other lists, or a registration certificate.

Clauses 150 to153 deal with the voting procedure. Clause 151 sets out the manner of voting, while clause 152 deals with spoiled ballots. Clause 153 provides that voters shall vote without delay and leave the polling station as soon as their ballots have been deposited in the ballot box. Voters who are present at the polling station or in line at the close of voting hours are allowed to vote (clause 153(2)).

The bill sets out special voting procedures in clauses 154 to 157. A voter who cannot read or has a physical disability can request the assistance of the deputy returning officer; a template will be provided to a visually impaired voter who requests it (clause 154). Voters can be assisted by a friend or relative, provided that person assists only one voter, takes an oath in the prescribed form, and does not disclose for whom the voter voted (clause 155). Clause 156 provides for the appointment and swearing in of a language or sign interpreter to assist the deputy returning officer. Clause 157 deals with electors confined to bed, where a polling station has been established at a home for the aged or a chronic care facility. Concerns have been expressed by some about the problems inherent in such situations, including the potential for influencing the voter.

Transfer certificates are dealt with in clauses 158 to 160. Candidates and election officers are entitled to receive transfer certificates allowing them to vote at another polling station in the same electoral district (clause 158), while voters who are disabled can apply for transfer certificates if their polling station does not have level access (clause 159). Transfer certificates are to be signed, numbered and recorded when used (clause 160).

Clause 161 provides that a voter whose name is not on the list of electors may, on provision of satisfactory proof of identity and residence, register in person on polling day. Registration can take place before registration officer at a registration office or deputy returning officer, as determined by the Chief Electoral Officer. **In the House committee, a provision was added whereby such an elector could also take a prescribed oath if accompanied by an elector whose name was on the list and who vouched for him or her. At present, vouching in this way is permitted only in the rural constituencies.** A representative of each candidate is entitled to be present. (Prior to 1993, polling day registration was permitted only for rural ridings; Bill C-114 amended the *Canada Elections Act* to allow polling day registration in all cases.) It has been suggested that, with the development of the permanent voters' list, registration on polling day should no longer be required or permitted; however, it is likely that a significant number of people will be unaware that their names are not on the voters' list until election day.

The duties of poll clerks are set out in clause 162.

Clause 163 states the obvious: the vote is secret. Clause 164 requires every candidate, election officer, or candidate's representative present at a polling station or at the counting of votes to maintain this secrecy. Voters are prohibited from openly declaring for whom they intend to vote, or to show their marked ballots.

Clause 165 prohibits the use of loudspeaking devices within hearing distance of a polling station on polling day in order to promote or oppose the election of a registered party or candidate. Campaign literature and buttons (other than approved identification) or other materials supporting or opposing parties or candidates may not be posted or worn in or around the polling place. Attempting to influence voters in a polling station is also prohibited. Clause 167 prohibits applying for a ballot in another person's name, using a forged ballot, or knowingly providing or processing ballots; it also prohibits the altering, or defacing of ballots, putting other materials in the ballot box, taking ballots out of a polling station, or interfering with a ballot box or book or packet of ballots. Clause 167(3) imposes certain prohibitions on deputy returning officers.

## Part 10: Advance Polling (clauses 168 – 176)

Clause 168 requires returning officers to establish advance polling districts that group polling divisions in each constituency. An advance polling station must have level access. Clause 169 makes provision for voters whose names are not on the revised list of electors to register at an advance polling station. The voting procedures are set out in clauses 171 to 176; except as provided in this Part, an advance poll is to be conducted in the same manner as voting at polling stations on polling day. Advance polls are open between the hours of 12:00 p.m. and 8:00 p.m. on Friday, Saturday, and Monday, the tenth, ninth, and seventh days before polling day (clause 171(2)). Notices of advance polls are to be given no later than Saturday, the 16th day before polling day (clause 172).

Clause 173 provides that voters whose names are on the revised list of electors for a polling division in an advance polling district may vote at the advance polling station. Voters whose names are not on the list can do so only if they have been on the preliminary list of electors, have registered during the revision period, or have received a registration certificate. Clause 174(2) requires that a record be kept of votes cast at the advance polling station. Clause 175 deals with the examination and sealing of ballot boxes at the opening and closing of the advance polls; provision is made for custody of the ballot box in the intervals between voting hours. The names of persons who voted at the advance polls are to be collected and crossed off the official list of electors for polling day (clause 176).

## Part 11: Special Voting Rules (clauses 177 - 282)

Part 11 sets out special voting rules; these are currently contained in Schedule II to the existing Act.

Clause 177 defines various words and terms. Clause 178 provides that the voting procedures in Part 11 apply to general elections only, although the Chief Electoral Officer may, by instructions, adapt any or all of the provisions so that they apply to a by-election. The Chief Electoral Officer is empowered to issue instructions by clause 179.

Division I (clauses 180 to 189) deals with administration and general procedures. Clause 180 provides for establishment of a voting territory with headquarters in Ottawa with a special voting rules administrator (clause 181), whose duties are set out in clause 182. Provision is made in clause 183 for the appointment of at least six special ballot officers – three on the recommendation of the Prime Minister, two on

the recommendation of the Leader of the Opposition, and one on the recommendation of the leader of the third largest party in the House of Commons. Additional special ballot officers can be appointed in accordance with clause 184, using a similar procedure, although the Chief Electoral Officer can make appointments if nominations are not received within 24 hours. (Provision is made in the event of the merger of parties in clause 185.)

Special ballots are in to be in accordance with Form 4 of Schedule 1 to the bill (clause 186), and a list of candidates for each constituency is to be established (clause 187) and provided to the liaison officers (clause 188). Clause 189 provides that election materials and lists of candidates are to be provided to commanding officers and other persons as determined by the special voting rules administrator.

Division 2 (clauses 190 to 219) deals with Canadian Forces electors. There are definitions in clause 190, while clause 191 sets out who is to be considered a Canadian Forces elector. Voting is limited to the constituency of ordinary residence of the elector (clause 192). Clause 194 provides for completion of a statement of ordinary residence by Canadian Forces electors, while reserve members not on active service can complete such a statement pursuant to clause 195. The original of the statement is to be sent to the Chief Electoral Officer for validation and then retained in the unit in which the elector is serving. (Statements completed by reserve members under clause 195 are filed with the unit in which the elector is on full-time training or service or active service.) Statements must be retained for one year after the person ceases to be entitled to vote under Division 2 and may then be destroyed (clause 198).

Clause 199 provides that a coordinating officer is to be appointed by the Minister of National Defence to work with the Chief Electoral Officer during and between elections in carrying out the purposes and provisions of Division 2. Clause 200 provides that, immediately after the issue of the writs, the Chief Electoral Officer is to communicate with the Minister and the coordinating officer, each of whom has certain duties under clauses 201, 202 and 203. Commanding officers, on being informed of the issue of the writs, are required by clause 204 to issue a notice of the election and to prepare a list of electors in the unit. Within seven days, the commanding officer is required to establish polling stations and designate deputy returning officers for each polling station, among other things (clause 205). Provision is made for mobile polling stations in appropriate situations (clause 206) and joint polling stations (clause 207). Notice of the polling stations and voting times must be given, pursuant to clause 208.

Clauses 210 to 219 deal with voting by Canadian Forces electors. Clause 211 requires that voting instructions are to be posted and certain information to be made available. Registered parties may appoint representatives at a polling station (clause 211), and a statement of ordinary residence can be required if none is on file (clause 212). The special ballots, together with inner and outer envelopes, are provided for in clause 213. In order to be counted, the outer envelope must be received by the special voting rules administrator in Ottawa no later than 6:00 p.m. on polling day. Ballots can be mailed or delivered through services provided by the Canadian Forces. Provisions are made for deputy returning officers to vote (clause 215); for voters with physical disabilities to be assisted (clause 216); for hospitalized or convalescing voters (clause 217); and for voters who will be absent from their unit during voting times because of duty, leave or furlough (clause 218). At the end of the voting period, clause 219

requires the deputy returning officer to deliver certain materials to the unit's commanding officer.

Division 3, which includes clauses 220 to 230, applies to voters, other than Canadian Forces voters, who reside temporarily outside Canada. Since 1993, Canadian citizens resident outside Canada have been permitted to vote in federal elections, provided that they have been absent for five consecutive years or less and plan to return to Canada; previously, only certain non-resident citizens, such as Armed Forces personnel and civil servants posted abroad, were permitted to vote.

Clause 221 provides that electors may vote under this division if their applications for registration and special ballots are received in Ottawa by 6:00 p.m. on the sixth day before voting day and their names are entered on the register. This register of electors who are temporarily resident outside Canada is to be maintained by the Chief Electoral Officer, and must include details of voters who have filed applications for registration. In addition to persons resident outside Canada for less than five consecutive years, the register is to include the names of electors who are employed outside Canada in the public service of Canada or the provinces, by an international organization of which Canada is a member and to which Canada contributes, a person living with such an elector, or a person living with a member of the Canadian Forces or a Canadian Forces employee.

Clause 223 sets out the requirements for an application for registration and special ballot. This is to include the address of the voter's last place of ordinary residence before he or she left Canada or the place of ordinary residence in Canada of a person with whom the voter would live if not residing temporarily abroad. Clause 224 provides that this address cannot be changed after the elector's name is entered on the register. The Chief Electoral Officer can require voters whose names appear on the register to give the information necessary to update the register (clause 225).

The Chief Electoral Officer is empowered by clause 226 to delete from the register the names of certain voters: those who do not provide information requested; those who make a written request to have their names deleted; those who have died; those who have returned to Canada; those who cannot be contacted; or those who have resided outside Canada for more than five years (except those employed by the public service or international organization, their dependants and the dependants of Canadian Forces personnel).

Clause 227 provides that, after the issue of the writs, the Chief Electoral Officer shall send a special ballot, an inner envelope, and an outer envelope to every voter whose name is listed in the register. A person votes by special ballot by writing the name of the candidate of his or her choice on the ballot; placing the ballot in the inner envelope and sealing it; placing the inner envelope in the outer envelope; and signing the declaration on the outer envelope and sealing it (clause 227(2)). On a special ballot, the candidate's given name or initials and surname is written; if two or more candidates have the same name their political affiliation is to be indicated. The outer envelope is then sent to the Chief Electoral Officer by mail or other means, or delivered to a Canadian Embassy, High Commission, or Consular Office, a Canadian Forces base, or other designated place. The special ballot must arrive at the Ottawa office of the Chief Electoral Officer not later than 6:00 p.m. on polling day in order to be counted. Clause 230 provides that it is the sole responsibility of voters to ensure that their applications for registration and special ballots are made within the period

specified and that, to be counted, their special ballots are received within the period specified.

Division 4, which includes clauses 231 to 243, applies to electors residing in Canada, but who expect to be away from their homes on election day. It does not apply to Canadian Forces electors or incarcerated electors residing in Canada. In order to vote under this Division, clause 232 requires voters to make sure their applications for registration and special ballots are received by a returning officer, or the special voting rules administrator, after the issue of the writs and before 6:00 p.m. on the sixth day before polling day. The information required for the application is set out in clause 233. **Voters who reasonably feared that to cite their mailing and living addresses might lead to their bodily harm would be able to apply or to use another address (clause 233(1.1).)** Voters are to state whether their names are already on lists of electors and, if so, in which electoral districts. Provision is made for the special voting rules administrator to inform the appropriate returning officers (clause 234).

Pursuant to clause 235, once a voter's application for registration and special ballot has been accepted, the voter may only vote under Division 4. Clause 237 provides that, upon acceptance of a voter's application for registration and special ballot, a voter shall be given a special ballot and envelopes; a voter who applies to vote in person at the office of the returning officer after ballots have been printed will be given a regular ballot (clause 241). The procedure for voting by special ballot is the same as that set out for non-resident voters (clauses are to 227(2) and (3)). If the elector votes outside his or her electoral district, the envelope is to be sent to the special voting rules administrator by mail or other means, or delivered to a designated place (clause 239(1)). Clause 239 (2) requires that, in order for special ballots to be counted, they must be received in the office of the returning officer before the close of polling stations on polling day, or in the office of the special voting rules administrator in Ottawa not later than 6:00 p.m. on the same day. It is the voter's responsibility to ensure that applications for registration and special ballot are made and that the special ballots are received within the specified time periods. Provision is made for spoiled ballots in clause 242, and for assistance to voters with physical disabilities who wish to vote in the office of the returning officer in clause 243. **Provision is made in clause 243.1 for voters with physical disabilities to vote at home.**

Division 5 deals with incarcerated electors. It includes clauses 244 to 262. Clause 245 provides that every person who is incarcerated and is otherwise qualified to vote is entitled to vote under this Division on the 10th day before polling day. (As noted above, clause 4 of the bill disqualifies inmates serving sentences of two years or more from voting.) Voters, however, must complete an application for registration and special ballot and a declaration. It is further specified that voters are entitled to vote only for candidates in the electoral district in which their place of ordinary residence is situated. Clause 246 requires the designation of provincial coordinating officers to work with the Chief Electoral Officer. After the issue of the writs, the Chief Electoral Officer is to inform the appropriate provincial ministers, and they, in turn, are to inform the coordinating officers and designate the liaison officers. Clause 250 requires liaison officers to post notices in the correctional institutions informing voters of the date on which they are entitled to vote. Polling stations are to be open on

the 10th day before polling day from 9:00 a.m. until every voter who is registered has voted, or 8:00 p.m., whichever is earlier (clause 250(2)).

Clause 251 provides that applications for registration and special ballots be completed for every eligible voter of the correctional institution who wishes to vote. The ordinary residence of inmates is determined by rules set out in clause 251(2). It is the first of the following places for which the voter knows the civic and mailing address: his or her residence before being incarcerated; the residence of a person with whom the elector would live but for being incarcerated, or of his or her next of kin; the place of his or her arrest; or the last court where the voter was convicted and sentenced. The application for registration and special ballot is validated by the liaison officer. Clause 251(5) provides that disputes as to the electoral district in which an inmate may vote are to be determined by the returning officer for the electoral district where the correctional institution is located.

Provision is made in clause 253 for the establishment of polling stations and appointment of deputy returning officers and poll clerks for each correctional institution. Copies of the voting instructions and other materials are to be made available during voting (clause 254.) Clause 255 provides for the establishment of mobile polling stations to take the votes of electors who are confined to their cells or in an infirmary, and for common mobile polling stations for correctional institutions of fewer than 50 voters within a constituency. Provision is made for representatives of registered parties to be present during the taking of the votes at a correctional institution.

Clause 257 provides that, before delivering a special ballot to a voter, the deputy returning officer shall require the voter to complete an application for registration and special ballots, if the voter has not already done so. After the voter has signed a declaration on the outer envelope, the deputy returning officer is to sign the envelope and give the voter a special ballot, together with the inner and outer envelopes. The procedure for voting by special ballot is set out in clause 258: the voter writes the name of the candidate of his or her choice, folds the special ballot, and, in the presence of the deputy turning officer, places it in the inner envelope and the outer envelope, sealing them afterwards. Provision is made for spoiled special ballots, and assistance to disabled voters. Clause 260 requires that, after the votes have been cast at a correctional institution, the deputy returning officer is to deliver the completed ballots and other election materials to the liaison officer. The liaison officers are responsible for ensuring that these materials are received by the special voting rules administrator in Ottawa no later than 6:00 p.m. on polling day (clause 261).

Division 6, comprising clauses 263 to 272, provides for the counting in Ottawa of all special ballots cast in accordance with Part 11. Clause 264 provides that the counting of the special ballots is to be conducted by special ballot officers under the supervision of the special voting rules administrator. Special ballot officers are to work in pairs representing different registered parties. Clause 265 empowers the Chief Electoral Officer to prescribe instructions for the safekeeping of special ballots and other materials and for the receiving, sorting, and counting of special ballots. Clause 266 provides that the counting of votes is to commence on the fifth day before polling day or such other date fixed by the Chief Electoral Officer.

Clause 267 sets out the circumstances in which the outer envelope is to be set aside unopened, and therefore not counted. The deputy returning officer and poll clerks

count all valid outer envelopes, before opening them and depositing the inner envelopes in a ballot box. After the close of the polling stations, the ballot box is to be opened by the deputy returning officer; the inner envelopes are then opened and the votes counted. Clause 269 makes provision for the rejection of certain ballots; the incorrect writing of the name of the candidate or inclusion of the candidate's political affiliation are not grounds for rejecting the special ballot so long as the voter's intent is clear.

Clause 270 requires each pair of special ballot officers to prepare a statement of the vote and deliver it to the special voting rules administrator, who is to keep the statements in safe custody until the day after the communication of the results. Clause 271 provides that, after the counting of the votes for every electoral district has been completed, the special voting rules administrator is to inform the Chief Electoral Officer of the number of votes counted for each candidate for every electoral district, the total number of votes counted for each electoral district, and the number of rejected ballots for each electoral district.

Division 7, which comprises clauses 273 to 279, deals with the counting of the votes in the office of the returning officer. A deputy returning officer and poll clerk are appointed to deal with the special ballots received in the office of the each returning officer. Clause 274 allows candidates or their representatives to be present during the verification and counting of the special ballots. The returning officer shall ensure that the ballots received are sealed until they are given to the deputy returning officer; all outer envelopes received after the prescribed deadline are to be kept separate and sealed. Clause 276 requires that a deputy returning officer and poll clerk verify the outer envelopes at the time fixed by the Chief Electoral Officer. Outer envelopes are to be set aside unopened in the cases set out in clause 277; generally, the situations listed are those where there are defects.

Clause 278 provides that the returning officer and poll clerk are to count all valid outer envelopes, open the envelopes, and put all the inner envelopes in a ballot box. After the close of the polling stations, the deputy returning officer is required to open the ballot box and then open the inner envelopes and count the votes. Ballots are to be rejected if they were not supplied for the election, are not marked, are marked with a name other than the name of the candidate, are marked for more than one candidate, or have any writing or mark by which the elector could be identified; however, the incorrect writing of the name of the candidate or inclusion of the candidate's political affiliation are not grounds for rejecting the special ballot as long as the voter's intent is clear.

Division 8 (clauses 280 to 282) deals with communication of the results of the vote. After the closing of the polling stations, the Chief Electoral Officer is to inform each returning officer of the results of the count of special ballots received in Ottawa for the electoral district. The returning officer is to add these results to the results of the count of special ballots received in his or her office, and the totals are to be released as being the results of the vote under the special voting rules for that constituency.

Clause 281 prohibits any one, inside or outside Canada, from disclosing information on how ballots have been marked, from interfering with an elector, from making false statements or applications, or from preventing an elector from voting. Clause 282

prohibits persons outside Canada from attempting to influence or induce a voter to vote for or refrain from voting for a particular candidate.

## Part 12: Counting Votes (clauses 283 – 292)

The counting of votes is the subject of Part 12 of the bill.

Clause 283 provides that, immediately after the close of the polling station, the deputy returning officer is to count the votes in the presence of the poll clerk and any candidates or their representatives who are present. If no candidates or representatives are present, at least two voters are to be in attendance. Tally sheets are to be provided to the poll clerk and to at least three of the other persons present.

The steps to be followed in counting votes are set out in clause 283(3): the deputy returning officer counts the number of electors who voted at the polling station, the numbers of spoiled and unused ballots are counted, the number of ballots given to voters is determined. The ballot box is then opened and emptied on to a table, after which individual ballots are examined and counted. Clause 284 provides that the deputy turning officer shall reject any ballots that he or she did not supply, where the mark is not recorded in the circle, that contain a vote for a person other than a candidate, that contain votes for more than one candidate, or on which there is any writing or mark by which the elector could be identified; however, no ballot shall be rejected by reason only that the deputy returning officer put any writing number or mark on it, or failed to remove the counterfoil. Clause 285 provides that ballots that have not been initialled by the deputy returning officer may be initialled during the counting if the deputy returning officer is satisfied that he or she supplied the ballot and that all ballots are accounted for.

Pursuant to clause 286(1), a record shall be kept of all objections to ballots made by candidates or their representatives. Clause 286(2) provides that the deputy returning officer shall decide every question raised by an objection and this decision can be reversed only on a recount or judicial application. Following the counting, a statement of the vote is prepared by the deputy returning officer. The ballots for each candidate are placed in separate envelopes, which are sealed and signed, and show the name of the candidate and the number of votes he or she received. The various documents are placed in the ballot box and sealed. Provision is made in clause 289 for the counting of votes from the advance polls.

Clause 290 provides that the ballot boxes and statements are to be sent to the returning officer by the deputy returning officers or are to be collected by a person appointed by the returning officer. Upon request, the returning officer shall provide each candidate with a copy of each statement of the vote. Provision is made clause 292 for safekeeping of the ballot boxes.

## Part 13: Validation of Results by the Returning Officer (clauses 293 – 298)

Part 13 deals with validation of the results by the returning officer.

Clause 293 provides that the returning officers, after receiving the ballot boxes, are to validate the results of the vote from the original statements of the vote. Pursuant to clause 62, validation of results must be not later than seven days after polling day. If all the ballot boxes have not been received by then, the returning officer may adjourn

the proceedings for not more than seven days; there is provision for further adjournments if necessary, but the further adjournments are not to exceed a total of two weeks. Candidates or their representatives are entitled to be in attendance at the validation; in their absence, at least two voters must be present. Clause 295 provides that, if the original statement of votes is missing, or appears to contain an error, to be incomplete or to have been altered, or is disputed by a candidate or his or her representative, the returning officer may open the ballot box and the envelope containing a copy of the statement of the vote. The returning officers are not to open an envelope that contains ballots. Clause 296 deals with the loss or destruction of ballot boxes. Clause 297 requires that, after the validation of results, the returning officer is to prepare a certificate setting up the number of votes cast for each candidate; the original certificate is sent to the Chief Electoral Officer and a copy to each candidate. The returning officers then dispose of the ballot boxes as instructed: clause 298.

## Part 14: Judicial Recount (clauses 299 – 312)

Part 14 deals with judicial recounts. Clause 299 sets out the definition and powers of a judge.

The recount procedures are set out in clauses 300 to 310. If the difference between the number of votes cast for the candidate with the most votes and the number cast for any other candidate is less than 1/1000 of the votes cast, the returning officer shall request a judge for a recount within four days after votes are validated (clause 300(1)). The candidates are notified and the judge fixes the date for the recount to be conducted within four days after the request is received. Clause 301 allows a voter to apply to a judge for a recount within four days of the validation of results, upon making a deposit of $250. If, on the basis of the affidavit of a credible witness, it appears that ballots have been incorrectly counted or rejected or numbers incorrectly written or added, the judge shall fix a date for a recount, which must be within four days of the judge's receipt of the application; the returning officer and candidates shall be notified. If more than one application for recount is received, they shall be conducted in the order in which they are received: clause 302. Clause 303 allows each candidate and up to three of his or her representatives to attend a recount. No other persons may be present except with the permission of the judge.

Clause 304 sets out the recount procedure: the judge adds the number of votes reported in the statements of the vote or counts the valid ballots or all the ballots returned by the deputy returning officers or the Chief Electoral Officer. If a recount of the ballots is required, the judge may open the sealed envelopes that contain the used and counted, unused, and rejected and spoiled ballots, but shall not open any other envelopes or refer to any other election documents. The judge shall count the ballots in the manner prescribed for a deputy returning officer or a special ballot officer, verify or correct if necessary each statement of the vote, and review the decision of the returning officer with respect to the number of votes cast for a candidate, in the case of missing or destroyed ballot boxes or statements of the vote. With respect to missing ballot boxes or statements, the judge has the powers set out in clause 304(4). Clause 304(5) provides that, in conducting a recount, a judge has the power to summon any deputy officer or poll clerk as a witness and require him or her to give evidence on oath and, for that purpose, has the same power that is vested in any court of record. Judges are authorized to retain clerical and support assistance.

Clause 305 requires that the judge, as far is practicable, proceed continuously with a recount, except for necessary breaks, and between 6:00 p.m. and 9:00 a.m. During breaks, the documents are to be sealed and kept secure. Except in the case of a recount requested by the returning officer, the recount may be terminated upon the written request of the person who made the application (clause 307).

Clause 308 provides that, at the conclusion of the recount, the judge shall seal the ballots in separate envelopes for each polling station and prepare a certificate setting out the number of votes cast for each candidate. If the recount does not alter the result of the vote, clause 309 provides that the judge shall order the costs of the candidate for whom the largest number of votes have been cast to be paid by the person who applied for the recount. Clause 310 provides that, after a recount, a candidate may make an application to the Chief Electoral Officer for reimbursement of his or her costs in connection with the recount; the Chief Electoral Officer can authorize a reimbursement, up to a maximum $500 per day.

Clauses 311 to 312 deal with the failure of a judge to conduct a recount. An aggrieved party may make an application to the appropriate court within eight days of such failure, and the court is to hold a hearing.

### Part 15: Return to the Writ (clauses 313 – 318)

The return to the writ is provided for in Part 15.

Clause 313 provides that, after the sixth day following the completion of the validation of results (or, in the case of a recount, after the certificate has been received), the returning officer is to declare elected the candidate who obtained the largest number of votes, by completing the return to the writ. Clause 314 requires the returning officer, on completing the return to the writ, to send all the election documents immediately to the Chief Electoral Officer. There is a deeming provision in clause 315(2) regarding a premature return to the writ. A copy of the return to the writ is to be provided to each candidate (clause 315(1)). Clause 316 deals with the return to the writ in cases where there is a recount. On receiving each return to the writ, clause 317 provides that the Chief Electoral Officer shall note its receipt and publish in the *Canada Gazette* the name of the candidate declared elected.

If the top two candidates have an equal number of votes, the returning officer shall indicate this on the return to the writ. Under the existing Act, returning officers have the right to vote only in the event of a tie; in his report on the 1997 federal general election, the Chief Electoral Officer proposed that, in the event of a tie, provision should be made for a second ballot to be held according to the rules for by-elections. Clause 318 provides that, in the event of a tie, the Chief Electoral Officer would be required to send a report stating that no candidate was elected in the constituency because of an equality of votes, and to place a notice in the *Canada Gazette* that a by-election will be conducted.

### Part 16: Communications (clauses 319 – 348)

Part 16 deals with communications. Certain terms are defined in clause 319, including "election advertising," "election survey," "network," and "prime time."

Election advertising is dealt with in clauses 320 to 325. Clause 320 requires all election advertising to indicate that it was authorized by the official agent of the candidate or the registered agent of the party. Clause 321 prohibits the transmission of election advertising in government publications.

Clause 322 prevents any landlord from prohibiting a tenant from displaying election advertising posters on leased premises, or a condominium corporation from prohibiting the display of election advertising posters on a condominium unit. The clause goes on to allow the imposition of reasonable conditions relating to the size or type of election advertising posters that may be displayed in common areas. During its study of the electoral system, the Standing Committee received a submission from Liberal Party of Canada that it should be made illegal for apartment leases or condominium declarations to prohibit or restrict the displaying of signs relating to a political campaign. While there was general support in the Committee for this proposition, concerns were expressed that it not be phrased too broadly; it was pointed out, for instance, that there are differences between prohibitions and restrictions, and some rules, such as restrictions on the size or placement of signs, might be reasonable.

Clause 323 deals with the blackout that prohibits the transmission of election advertising on polling day until the close of all polling stations. Clause 324 provides that the blockout does not apply to election advertising on the Internet that has been previously transmitted and that has not changed, or to the distribution of pamphlets or posting of billboards, posters and banners.

Clause 325 prohibits the removal, covering up, or altering of any printed election advertising without the consent of the person who authorized it. **Provision was added to permit its removal or prevention or transmission by authorized persons, where it might be a hazard or unlawful.**

Clauses 326 to 328 deal with election opinion surveys. Clause 326(1) requires the first person who transmits the results of an election survey to the public during an election period, and any other person who does so within 24 hours of their release, to provide certain information regarding the methodology of the survey: the name of the survey's sponsor, the name of the person or organization that conducted the survey, the date or period during which the survey was conducted, the population from which the respondents were drawn, the number of people who were contacted to participate, and, if applicable, the margin of error. Additional requirements are imposed upon persons who transmit surveys other than by broadcasting: the wording of the survey questions and the means by which a report can be obtained (clause 326(2)). Sponsors of election surveys are required to provide a report on the survey results, pursuant to clause 326(3); this report must contain certain specified information and a fee may be charged by the sponsor for providing it. Clause 327 provides an exception to these requirements for surveys that are not based on recognized statistical methods (presumably such things as "sandwich polls").

Clause 328 prohibits the transmission to the public of the results of new election surveys **during polling day**. In 1998, the Supreme Court of Canada, in a 5-to-3 decision, struck down a prohibition on a publication of opinion polls during the last 72 hours of an election campaign (*Thomson Newspapers*). The majority felt that the ban was a very serious invasion of freedom of expression; it amounted to a complete ban on political information at a crucial time in the electoral process, and interfered

with both the right of voters to have the most up-to-date information and the right of the media pollsters to provide it. The banning of information was perceived as being patronizing: while inaccurate polls are possible, voters must be presumed to have a certain degree of maturity and intelligence. The majority of the Court felt that less intrusive measures could be instituted. **Originally, Bill C-2 would have imposed a 48-hour blockout on election advertising and new opinion polls, but this was reduced, on a motion of amendment from the government during consideration of the bill in the House of Commons, to a prohibition on advertising and new opinion polls until the close of voting on election day itself.** This occasioned considerable criticism from the media and others. **The new provision is also designed to prohibit exit and entrance polls on election day.**

Clause 329 prohibits the premature transmission to the public of election results before the close of all the polls in an electoral district. With the establishment of staggered voting hours, the likelihood of premature release of results has been minimized. Nevertheless, there is still a period of time between the close of polls in the most easterly and most westerly time zones of the country. Clause 330 prohibits the use of broadcasting stations outside Canada to influence voters during an election. There is also a prohibition on the broadcasting of election advertising or a speech from outside Canada during the campaign. Clause 331 prevents non-residents of Canada from canvassing during an election campaign.

Clause 332 provides for the appointment of a Broadcasting Arbitrator, chosen by unanimous decision of representatives of the registered parties, or, if there is no unanimity, by the Chief Electoral Officer. The term of office of the Broadcasting Arbitrator expires six months after a general election; he or she may be removed from office only for cause, but is eligible for reappointment. Clause 333 sets out the procedure for convening meetings to consult on the appointment of a Broadcasting Arbitrator. Clause 333 refers to representatives of all registered parties represented in the House of Commons, while clause 332(1) refers to representatives of registered parties, without requiring that the parties be represented in the House. Clause 334 provides for the appointment of a new Broadcasting Arbitrator in the event of the death, incapacity, resignation or removal of the incumbent during a general election.

Clause 335 requires every broadcaster, subject to regulations made under the *Broadcasting Act* and any conditions of licence, to make available 6.5 hours of prime time broadcasting space for purchase by all registered parties. This time is to be provided between the issue of the writs for a general election and the second day before polling day. Provision is made for broadcasters who are affiliated with networks.

Clause 336 provides for the Broadcasting Arbitrator to convene meetings of representatives of all registered parties to consult on the allocation of broadcasting time. No allocation is to be made to a party in certain circumstances (clause 337). If there is unanimous agreement on the allocation of the time, the decision is binding on all registered parties; if there is no agreement, the Broadcasting Arbitrator shall allocate the time and that allocation is binding on all parties. The factors to be taken into account in making the allocation are set out in clause 338; they include the percentage of seats in the House of Commons held by each of the registered parties after the previous general election, and the percentage of the popular vote received by the party in the previous general election. Provision is made, for the first time, for the merger of parties in clause 338(2); there is also a limit of 50% of the available time

that any one party can receive, and the Arbitrator is given certain discretion. Clause 339 provides that new parties are entitled to broadcasting time, upon request, subject to a maximum amount of broadcasting time of 39 minutes. (This problem has been identified by the Broadcasting Arbitrator under the current legislation.) Provision is made for the re-allocation of broadcasting time in the event that a registered party is suspended or ceases to be an eligible party, unless this occurs during an election campaign (clause 340), and in the case of a merger of parties (clause 341).

Clause 342 requires the Broadcasting Arbitrator to notify the Canadian Radio-television and Telecommunications Commission (CRTC) of all allocations and entitlements under the bill, and it is the Commission's responsibility to notify broadcasters and network operators. Provision is made for an annual review of the allocation of broadcasting time (clause 343).

Clause 344 contains definitions of "commercial time," and "program time." Not later than 10 days after the issue of the writs for a general election, parties are entitled to purchase broadcasting time by sending written notice to the broadcasters and networks, setting out their preferences. There must be least five days after the receipt of the notice before broadcasting time is made available. Broadcasters and networks have two days after receipt of the notice to consult with the parties in an attempt to reach an agreement. Where no agreement is reached, the matter is referred to the Broadcasting Arbitrator, who is to take into account the factors set out in clause 344 (5). The decision of the Broadcasting Arbitrator is final and binding.

Clause 345 provides for free broadcasting time. Between the issue of the writs and the second day before polling day, network operators are to make broadcasting time available at no cost. The amount of time is set out in clause 345(2), and its value is not to be taken into consideration in calculating election expenses. Clause 346 requires the Broadcasting Arbitrator, within **two** days of the issue of the writs for a general election, **to prepare and send to the CRTC guidelines respecting the allocation of and entitlement to broadcasting time, the procedures for booking time, and other matters regarding the conduct of broadcasters and networks. Clause 347 requires the CRTC, within a further two days, to prepare and send to all broadcasters a set of guidelines respecting the applicability of the *Broadcasting Act*.** Clause 348 regulates the rates that may be charged for broadcasting time.

In the reports on the 1993 and 1997 general elections, the Broadcasting Arbitrator made recommendations for legislative amendments, including clarification of the rates to be charged to political parties; the allocation of paid time, especially with respect to new parties; and the obligation to provide free time, especially with respect to non-network television stations. The issues involved are quite technical and complex.

## Part 17: Third Party Election Advertising (clauses 349 – 362)

Part 17 of Bill C-2 deals with third party election advertising. This has been an on-going and highly contentious issue.

Third parties are individuals and groups who are neither candidates nor political parties. In recent years, they have played an increasing role in election campaigns, often incurring advertising and other expenditures to oppose or support individual

candidates or parties. The issue of third-party advertising in the federal electoral system has been problematic for a number of years. The argument is that, since spending by political parties and candidates is carefully regulated to ensure fairness and a level playing field, other groups and individuals should also be subject to certain limits and restrictions. At the other extreme is the position that any restrictions on third parties constitute an unwarranted infringement of freedom of expression and other rights under the *Canadian Charter of Rights and Freedoms*. Previous attempts to prohibit or restrict advertising by persons other than registered political parties and candidates have been struck down by the courts. There have been successful court challenges to the previous attempts to impose restrictions on third parties in the *Canada Elections Act*, although these cases were not appealed to the Supreme Court of Canada. In a 1998 ruling on Quebec's referendum legislation, however, the Supreme Court found that restrictions on third-party spending could be constitutionally justified. Assuming that a blanket prohibition on such spending is rejected, the difficulty is in determining what kinds of restrictions to impose, be they spending limits (and, if so, the reasonableness of the limits), registration requirements, or requirements for reporting and disclosure of contributions and/or expenses.

In his report on the 1997 federal general election, the Chief Electoral Officer proposed that consideration be given to including in the *Canada Elections Act* provisions governing third-party intervention during an election campaign, perhaps based on the *Referendum Act* example. He suggested the following restrictions:

- Any group or individual that expected to spend above a certain threshold (e.g. $5,000) would have to register with and receive authorization from the Chief Electoral Officer.
- Names of the groups and individuals registering as third parties would have to be disclosed.
- Legislated spending limits for advertising in support of or opposition to a political party or candidate could be established. (The limits might take into account the average amounts normally spent on advertising by the various parties and candidates, and lowered accordingly to create a level playing field.)
- Any third party that received authorization would have to submit a report of its income and expenditures, and disclose all contributions pledged or received for the period from one year prior to the registration date to six months following election day.
- Where a company or union was concerned, the report would have to include the date and resolution passed by the governing body authorizing it to intervene in the campaign.
- The Act would have to include provisions prohibiting collusion between candidates and third parties and among the third parties themselves.
- Penalties would be levied for any contravention of the Act.

The Chief Electoral Officer believed that all Canadians have the right to know, at a minimum, who is intervening in the political debate and who is doing so through financial support; moreover, spending limits should apply to all participants. In reviewing this proposal, many members of the Standing Committee felt that the restrictions were reasonable and agreed with them in principle. As the proposed system would be based on disclosure, third parties would not be prevented from participating in the electoral process, but would participate within an established

framework. There was also a perception that, if the regulation of political parties and candidates is to be effective and have any meaning, the activities of third parties needed to be regulated.

Clause 349 defines "election advertising," "election advertising expenses," "expenses," "group," and "third party."

Clause 350 sets out the spending limit for third parties: a third party would not be allowed to incur total election advertising expenses of more than $150,000 in relation to a general election (clause 350(1)), and of this amount, no more than $3,000 could be incurred to promote or oppose the election of one or more candidates in a individual constituency (clause 350(2)). (Clause 350(3) clarifies that the $3,000 spending limit applies to a party leader only as a candidate in a particular constituency.) In a by-election, the total advertising expenses of a third party would not be allowed to exceed $3,000 **per by-election** (clause 350(4)). Provision is made for these amounts to be adjusted for inflation. Clause 351 would prevent attempts to circumvent the limits by splitting into two or more groups or acting in collusion. Clause 352 would require the third party to identify itself in any election advertising, and to indicate that it has authorized the advertising.

The registration requirements for third parties are set out in clause 353. Immediately after incurring election advertising expenses totalling $500 and after the issue of the writ, the third party would be required to send an application for registration to the Chief Electoral Officer. As part of its application, the third party would have to appoint a financial agent; certain persons would be disqualified from acting as financial agents (clause 454). Upon receipt of the application, the Chief Electoral Officer would register the third party if the requirements in clause 353 were met; he or she would have to give reasons for any refusal to register the third party. Names of third parties could not be likely to be confused with existing names. Registration would be valid only for the election for which an application was made.

Third parties who incur election advertising expenses of $5,000 or more would be required to appoint an auditor, pursuant to clause 355; the clause sets out certain eligibility and ineligibility criteria for the auditor.

Provision is made in clause 356 for a registry of third parties.

Clause 357 provides that the financial agent would be required to accept all contributions to a registered third party during an election period for election advertising purposes and would have to authorize all election advertising expenses incurred on behalf of the third party. Anonymous contributions would be prohibited (clause 357(3)), and clause 358 would prohibit the use of contributions from non-residents of Canada. Third parties would be required by clause 359 to file within four months of the election an election advertising report containing a list of election advertising expenses, the time and place of the broadcast or publication of the advertisements, and details of contributions received in the period beginning six months before the issue of the writ and ending on polling day; the names and addresses of persons contributing more than $200 would have to be included. Contributors would be listed by class: individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital, and unincorporated organizations. It is further specified that, for these purposes, loans would constitute contributions, and the third party would be required to report

amounts that it paid out of its own funds for election advertising expenses. Provision is also made for situations where the third party could not identify contributions donated in the six months prior to the issue of the writs. The report would be required to contain signed declarations of the financial agent, and the third party would have to provide, upon request, the original bills, vouchers, or receipts of expenses more than $50. Under clause 360, a third party that incurs more than $5,000 in election advertising expenses must include an auditor's report. The Chief Electoral Officer would be required by clause 362 to publish the names and addresses of third parties as they were registered, together with the election advertising reports, within one year of the issue of the writ.

## Part 18: Financial Administration (clauses 363 – 478)

Part 18 deals with financial administration. The Part is divided into several divisions: Division 1 (clauses 366 to 403) deals with the registration of political parties; Division 2 (clauses 404 to 414) with general financial provisions; Division 3 (clauses 415 to 435) with financial administration of registered parties; and Division 4 (clauses 436 to 478) with financial administration of candidates. In turn, there are sub-headings under each Division.

Clause 363 defines "electoral district association" as a constituency association of a political party. Clause 364 provides that the fiscal period of a registered party is the calendar year, while clause 365 states that, for the purposes of this Part, a candidate is deemed to have been a candidate from the time he or she accepts a contribution or incurs an electoral campaign expense.

Division 1 of Part 18 deals the registration of political parties. Political parties are an integral part of the modern Canadian political and electoral process. Their registration is a relatively recent development: it was only in the early 1970s that parties were legally recognized as components of the electoral system.

Clause 366 provides that political parties may apply for registration under the legislation, and the contents of the application are set out in clause 366(2). Clause 368 sets out eligibility for registration: the requirements relate to possible confusion about the name, short-form name, abbreviation or logo; the appointment of a chief agent and auditor; and the provision of the required information in the application. The Chief Electoral Officer is to notify the leader of the party as soon as possible as to whether the party has satisfied the eligibility requirements (clause 369(1)), while clause 369(2) provides that a party can lose its eligibility if it contravenes certain provisions of the legislation.

A party that meets the eligibility requirements cannot actually be registered unless it has nominated 50 candidates for the next general election (clause 370). Assuming that the party has not withdrawn its application, and the application was made at least 60 days before the issue of the writs, registration takes effect upon confirmation that the requisite number of candidates have been nominated; the party is to be notified as soon as practicable after the 48-hour period following the close of nominations. A party that does not nominate 50 candidates loses its eligibility. Once the party is registered, clause 370(5) deems it have been registered from the issue of the writs for the general election.

Within 30 days of being informed of its eligibility, the party is to provide a written report regarding its agent (clause 371). Within six months of becoming a registered party, the party is to provide a statement of assets and liabilities, a auditor's report on the statement, and a declaration by the chief agent of the party (clause 372). Newly registered parties are to adjust their fiscal year to match the calendar year (clause 373). Clause 374 requires the Chief Electoral Officer to maintain a registry of parties.

Registered agents and auditors are covered by clauses 375 to 381.

Clause 375(1) allows a registered party to appoint persons to act as its registered agents, subject to any terms and conditions that it specifies, while clause 375(2) makes provision for electoral district agents, who are registered agents for the party in a particular constituency. A report of an appointment must be provided to the Chief Electoral Officer within 30 days (clause 375(3)). Clause 376(1) would allow a corporation to act as an agent, while certain persons (election officers, auditors appointed under the legislation, non-electors, and persons without the capacity to enter into contacts) are ineligible under clause 376(2). Clauses 377(1) and (2) respectively set out who is eligible and ineligible to serve as auditors for a party. An agent or auditor must sign a consent to act upon being appointed (clause 378). Clause 379 makes provision for what happens in the event of the death, incapacity, resignation or revocation of appointment of a chief agent or auditor. Clause 381 prohibits ineligible persons from acting as chief agents, registered agents or auditors.

Clauses 382 to 384 deals with changes of information in the registry of parties. Clause 382 provides that parties are to report any changes to the Chief Electoral Officer, in writing, within 30 days. Particular provisions are made for changes in the name, abbreviation or logo of the party in clause 382(2), in the leader of the party in clause 382(3), and in the auditor or chief agent in clause 382(4). Clause 383 states that, within nine days of the issue of the writs for a general election, registered and eligible parties are to confirm the validity of the information in the registry of parties, and indicate any designated representatives who will endorse candidates. Clause 384 provides for yearly confirmation of the information in the registry of parties on or before 30 June in each year.

The suspension and de-registration of parties is provided for in clauses 385 to 399. Clause 385 provides that the Chief Electoral Officer shall suspend the registration of a registered party that endorses fewer than 50 candidates. (This is consistent with the requirement for an eligible party to endorse at least 50 candidates in order to be registered. The requirement for at least 50 candidates was brought in by Bill C-114 in 1993 and resulted in the suspension of several parties. This provision has been successful in challenges in the courts, but is currently under appeal.)

Clause 386 provides for the suspension of registered parties for their failure to maintain valid registration. If the chief agent of a registered party fails to provide certain reports, the Chief Electoral Officer has the power to suspend the party, pursuant to clause 387. Clause 388 provides that a registered party may voluntarily apply to be de-registered (except during a general election). Clause 389 provides that, in the case of non-voluntary de-registration, the Chief Electoral Officer is to give written notice of an omission under clauses 386 or 387, and provision for it be rectified within certain time limits; if the Chief Electoral Officer is satisfied that the omission was not the result of negligence or a lack of good faith, an extension of the time for compliance or an exemption can be granted. If a registered party is

suspended, clause 390 provides that notice of the suspension is to be published in the *Canada Gazette* and sent to the leader, chief agent and any other officer of the party set out in the registry of parties. As of the publication of the notice, a suspended party is deemed to be no longer a registered party (clause 391). Within six months of the suspension, the chief agent of the suspended party is to provide certain fiscal returns (clause 392) and an audited statement of value of assets (clause 393). Clause 397 provides that the net balance of the suspended party's assets over liabilities is to be remitted to the Receiver General. Clause 398 provides for the de-registration of a suspended party. Special provision is made in clause 394 for registered parties who are suspended for having fewer than 50 candidates (clause 385): so long as they have a net balance of assets, the leader can apply for registration as a party under clause 366, thereby avoiding the remittance of assets. Clause 398(2) provides for the de-registration of such parties.

Clauses 400 to 403 deal with the merger of registered parties. In *Strengthening the Foundation*, the Chief Electoral Officer recommended that provisions for the merging of political parties be established, one of which would be that the new merged party should maintain the assets of the former parties. Currently, there is no such provision, with the result that, if two parties wanted to merge, one or both would have to apply to be de-registered; this would involve the liquidation of assets and remitting of the balance to the Chief Electoral Officer, after which the new party would have to apply for registration. The merging of parties is provided for in the electoral legislation of various provinces, and would be similar to that for businesses and non-profit corporations. Such a provision would remove the obstacles that currently exist and better ensure transparency of mergers. The Standing Committee supported this recommendation.

Clause 400 would allow two or more registered parties to apply to become a single registered party. This would be permitted at any time, except during the period beginning 30 days before the issue of a writ for an election and ending on polling day. An application for a merger would have to contain the information set out in clause 400(2). If the Chief Electoral Officer were satisfied that the merged party would be eligible for registration and that the merging parties had discharged their obligations under the bill, the registry of parties would be amended, the parties notified, and a notice published in the *Canada Gazette* (clause 401). Clause 402(1) provides that a merger of registered parties would be effective on the day on which the registry was amended. The consequences of merger are set out in clause 402(2). Certain returns would be required within six months of the merger (clause 403).

Division 2 of Part 18 contains general financial provisions. Clauses 404 and 405 deal with contributions. Clause 404(1) sets out ineligible contributors (essentially non-citizens). Where a contribution is received from an ineligible contributor, the chief agent of a party or the official agent of a candidate is to forward it to the Chief Electoral Officer within 30 days of becoming aware of it; if it is not practicable to return it, the contribution (or its monetary equivalent) is to be forwarded to the Receiver General (clause 404(2)). Clause 405 prohibits the making of indirect contributions – that is, those that come from another person – although constituency associations and candidates can transfer contributions to the party. Clause 405(3) prohibits anyone other than a chief agent or registered agent from accepting contributions on behalf of a registered party.

Expenses are dealt with in clauses 406 to 413. It has long been recognized that there are difficulties with the existing definition of election expenses. A number of important campaign-related expenditures, such as public opinion polling, are not caught by it. The exclusion of certain expenses has led to administrative confusion, and impeded the goal of transparency. To resolve the ambiguity that surrounds what constitutes an election expense, the Chief Electoral Officer proposed in *Strengthening the Foundation* a more comprehensive definition that would include all expenses incurred by political parties and candidates for goods and services for use in whole or in part during a campaign. It was suggested that election expenses should be defined as the value of any goods or services used during an election period by or on behalf of a candidate or registered political party to promote or oppose the election of a candidate or a registered political party. The proposal then went on to specify six types of expenditures that would be included in the definition, and eight types of expenditures that would not be included and that would therefore not be subject to the election expenses limits or to reimbursement.

Clause 406 provides that an electoral campaign expense of a candidate is an expense reasonably incurred as an incidence of the election, including an election expense, a personal expense, and any auditing or recount fees that are not reimbursed.
An election expense of a registered party or candidate is defined in clause 407(1) as a cost incurred or a non-monetary contribution made in relation to an electoral campaign, to the extent that the property or service for which the cost was incurred, or the non-monetary contribution, is used during an election period directly to promote or oppose a registered party, its leader or a candidate. Expenses for a fund-raising activity and expenses to directly promote the nomination of a person as a candidate or for the leadership of a party are excluded from the definition of election expenses, pursuant to clause 407(2). Certain costs or non-monetary contributions, however, are specifically included in the definition by virtue of clause 407(3): the production of advertising or promotional material and its distribution, broadcast or publication; the acquisition of the services of a person; the cost of meeting space and supply of light refreshments; and any product or service provided by a government, Crown corporation or any other public agency. "Cost incurred" is defined in clause 407(4) to mean an expense whether it is paid or not.

Clause 408 determines the amount of a monetary contribution in the case of a fund-raising event where tickets are sold.

Clause 409 deals with the personal expenses of candidates: these are the candidate's expenses in relation to an electoral campaign, other than election expenses, that are reasonably incurred for the candidate's travel, living and other related expenses, including any expenses relating to a candidate's disability. **The House committee added a provision to include child care expenses and expenses for the care of persons with incapacity who are normally cared for by the candidate.** Clause 409(2) allows the Chief Electoral Officer to establish categories of personal expenses and fix maximum amounts that may be incurred in relation to each. This category is intended to capture expenses over and above those that would ordinarily be incurred; in other words, they are additional expenses incurred as a result of being a candidate in an election campaign. These expenses are reimbursed, but are not at present included within the spending limits. Concerns have been expressed by various commentators that spending an excessive amount on personal expenses can give an unfair advantage to certain candidates. There was general agreement that the extra expenses relating to the disability of a candidate or those related to child care or care

of a dependant should be reimbursed, but should not be included in the spending limits of candidates. A need was seen for clarification and simplification as to exactly what is or is not included; it has also been suggested that perhaps there should also be a maximum limit on the reimbursement of such expenses for individual candidates. Specific concerns have also been voiced about the travel or transportation costs of candidates in large ridings.

Clause 410 deals with evidence of payments: clause 410(1) deals with payments of $50 or more, and clause 410(2) with payments of less than $50. Clause 411 deals with petty expenses for office supplies, postage, courier services and other incidental expenses; there must be written authorization (including the possibility of a maximum amount) and a statement and evidence of payment.

Clause 412(1) requires the Chief Electoral Officer to publish the electoral campaign returns and returns for general election expenses within one year of the issue of a writ. Clause 412(2) provides that the returns on financial transactions provided by registered parties are to be published as soon as practicable after their receipt. Clause 412(3) provides that a summary report of the candidates' electoral campaign returns is to be published. Clause 412(4) deals with the publication of returns on financial transactions from suspended parties.

Copies of the returns on electoral campaigns are to be provided to each returning officer, who shall make them available for public inspection for six months and shall retain the documents for three years (clause 413).

Clause 414 makes provision for an inflation adjustment factor, which is to be published in the *Canada Gazette* before 1 April in each year; the formula for calculating the formula is set out in the clause.

Division 3 – clauses 415 to 435 – deals with the financial administration of registered parties. Clause 415 provides that the chief agent of a party is responsible for administering its financial transactions and for reporting them in accordance with the provisions of the bill. Clause 416 prohibits anyone other than the chief agent or one of the registered agents from paying or incurring the party's expenses.

Clauses 417 to 421 deal with the processing of expense claims. Claims for payment must be received within three months of the expenses' being incurred, pursuant to clause 417, unless the claimant dies. Clause 418 provides that a recoverable claim for an expense of a party must be paid within six months after payment is due. Under clause 419, the Chief Electoral Officer may authorize claims or payments not made in accordance with clauses 417 or 418; under clause 420, a judge may authorize the payment of such irregular claims or payments. Clause 421 allows court proceedings to recover claimed amounts.

Clauses 422 and 423 deal with maximum election expenses. The determination of maximum election expenses for a registered party is made using the formula set out in clause 422(1): the total number of names on the preliminary lists of electors in those ridings in which the party has endorsed a candidate **or by the number of names on the revised lists of electors, whichever is greater,** is multiplied by $0.62 (subject to the inflation adjustment fraction). Clause 423 prohibits election expenses that exceed this maximum amount. (Clause 422(2) provides that an election expense

of a party does not include contributions for the use of candidates or unauthorized amounts.)

Financial reporting is dealt with by clauses 424 to 427. Clause 424(1) requires returns on financial transactions for each fiscal period, the contents of which are set out in clause 424(2); the documents must be provided within six months of the end of the fiscal period. **In the House of Commons, clause 424(2) and other related clauses were amended to ensure disclosure of the identity of the chief executive officer of a numbered company that made a donation would be disclosed. Similarly, those donating of over $200 through a trust fund would have to be identified. It was also clarified, in this clause and elsewhere, that the returns would have to be prepared in accordance with generally accepted accounting principles.** Clause 425 provides for certain unknown contributions to be paid to the Receiver General. An auditor's report is required for each return (clause 426). Clause 427 prohibits false, misleading or incomplete returns.

Trust funds are dealt with in clause 428: reports are required if these are established, and must contain the information set out in clause 428(2).

Election expense reporting is dealt with in clauses 429 to 431. The chief agent is required by clause 429(1) to file a return on election expenses within six months of polling day. The auditor's report on this return is provided for in clause 430, while clause 431 makes it an offence to file a false, misleading or incomplete return.

The reimbursement of election expenses is provided for by clause 435. Upon receipt of the return on election expenses, the party is entitled to be reimbursed for 22½ % of its election expenses, provided certain conditions have been satisfied, including that its candidates received at least 2% of the votes cast at an election, or 5% of the votes cast in those constituencies in which it endorsed candidates.

Division 4 of Part 18 – which comprises clauses 436 to 478 – deals with the financial administration of candidates. Many of these provisions mirror those in Division 3 relating to parties' reporting of election expenses.

The powers, duties and functions, of candidates are set out in clauses 436 to 438. The official agent of a candidate is responsible for administering the candidate's financial transactions for the campaign and for reporting them in accordance with the provisions of the bill. Clause 437 provides for a separate election account to be opened at a Canadian financial institution, and requires that all financial transactions in relation to the electoral campaign be made through this account. Clause 438 restricts who is allowed to undertake various financial transactions related to the campaign: only constituency associations **and registered parties** may make contributions or loans to a candidate's electoral campaign on behalf of another person (clause 438(1)); only an official agent shall receive contributions (clause 438(2)); only official agents shall issue official receipts for contributions and pay expenses (clauses 438(3) and (4)); and only the candidate and official agent may incur expenses or pay the candidate's personal expenses; the registered agent of a party may pay the electoral expenses of the leader (clause 438(7)).

Clause 439 deals with the notice of a nomination meeting during an election period restricting the cost to 1% of the maximum election expenses in the last general

election or, if the boundaries have changed, the amount determined by the Chief Electoral Officer.

Limits on election expenses are dealt with by clauses 440 to 443. Clause 440 provides that the maximum amount allowed for a candidate's expenses in a constituency is the product of the base amount for an electoral district determined under clause 441 and the inflation adjustment fraction as of the day of the issue of the writ. The base amount of expenses set out in clause 441(1) is: $2.07 for the first 15,000 names on the preliminary lists or to revised lists, whichever is greater, of electors; $1.04 for the next 10,000 names; and $0.52 for the balance of the names. In constituencies with less than average population, the number of names is increased to halfway between the population and the average population of all constituencies (clause 441(2)). Provision is also made in clause 441(3) for constituencies with low population densities. Clause 441(4) deals with the situation where a candidate for a registered party dies during the campaign (provision is made in clause 77 for the election to be delayed in such circumstances). Clause 442 provides that on 15 October in each year the Chief Electoral Officer shall estimate the maximum electoral expenses in each constituency based on the lists of electors in the Register of Electors. Clause 443 prohibits the incurring of expenses in excess of the maximum allowed.

Clauses 444 to 450 deal with the recovery of claims. Claims are to made to the official agent or candidate within three months, unless the claimant dies (clause 444) and paid within four months (clause 445). Clause 446 provides that contracts are unenforceable unless entered into by the candidate personally, the official agent or an authorized person. Clause 447 allows the Chief Electoral Officer to authorize claims or payments not made in accordance with clauses 444 or 445; clause 448 allows a judge to authorize the payment of such irregular claims or payments. Clause 449 allows court proceedings to recover claimed amounts.

Clause 450 provides that claims that are unpaid after 18 months are deemed to be a contribution to the candidate. The Chief Electoral Officer recommended, in *Strengthening the Foundation*, that a campaign debt reported in the election expenses return as an unpaid claim, and that remains outstanding six months after the return was due, be considered a contribution, unless the creditor had taken legal action or made other arrangements for payment. Under the current provisions governing the financing of election campaigns, goods or services obtained during a campaign sometimes remain unpaid for a significant time following an election, and in a number of cases, are never paid. It was pointed out that this is problematic because goods or services provided at no cost are actually contributions and should be treated as such in terms of reporting and disclosure. The Reform Party, in its brief to the Standing Committee, made a similar point: it recommended that loans, trade accounts payable or other amounts over $100 that are forgiven or settled for a lower amount should be reported as a political contribution. Furthermore, any such amounts that are unpaid for one year should be declared a contribution. Members of the Committee supported the principle of this proposal. It was suggested, however, that provision be made for creditors to indicate that they are not waiving their claim, without having to commence legal action. Similarly, it was felt it should be clear that this provision would not apply to claims that are disputed by the campaign. Bill C-411, passed in the spring of 1998, contained a mechanism to facilitate the payment of claims after the deadlines in the existing Act.

Clauses 451 to 456 deal with returns on financing and expenses in an electoral campaign. Clause 451 provides that the agent of a candidate is to file the return on an electoral campaign within four months of polling day. Clause 452 provides that the amount of unknown contributions is to be sent to the Receiver General. Clause 453 deals with the auditor's report on the return of election expenses. Updated financial reporting documents are provided for in clause 455. Candidates are to provide their official agents with statements of personal expenses within three months of polling day,

Corrections and extended reporting periods are provided for in clauses 457 to 463. Minor corrections may be made by the Chief Electoral Officer (clause 457). The chief agent may apply to the Chief Electoral Officer (clause 458) or a judge (clause 459) for an extension of time for filing returns or for corrections to them. An official agent can be required to show cause for a refusal or failure to comply with the bill (clause 460). A candidate may apply to a judge for an order to relieve the candidate of any liability or consequence in relation to the act or omission of his or her official agent (clause 461). Clause 462 authorizes a judge to excuse an official agent from any obligation under these provisions. Clause 463(1) prohibits candidates and official agents from filing false, misleading or incomplete documents. Clause 463(2) goes on to provide that, in the case of elected candidates, their membership and right to vote in the House of Commons can be suspended until they comply with these provisions or correct certain documents.

The reimbursement of election and personal expenses of candidates is dealt with in clauses 464 to 470. Upon receipt of the return of the writ, candidates who received at least 15% of the votes cast are entitled to receive 15% of the maximum election expenses allowed as partial reimbursement (clause 464(2)). If this amount is more than 50% of the candidate's personal expenses and election expenses, the official agent is required to return the excess, pursuant to clause 464(3). After the necessary electoral campaign documents are filed, a candidate who has incurred more than 30% of the maximum election expenses is entitled to be reimbursed the balance of 50% of the election and personal expenses. Provision is made for candidates who are not eligible for reimbursement under clause 464(1) to provide confirmation that they have complied with these requirements (clause 466), and provision is made for the reimbursement of auditors' fees (clause 467).

Clause 468 provides for the reimbursement of the deposit of a candidate who fulfils the reporting requirements. This is a change from the existing legislation, whereby candidates are entitled to the return of half of the deposit if they comply with the reporting requirements and the other half only if they receive at least 15% of the votes cast. This provision was introduced in 1993, at which time the amount of the deposit was increased to its current $1,000; the provision has been criticized as being a barrier to independent candidates and smaller parties who are unlikely to receive many votes.

Clause 469 and 470 deal with the situation where a candidate dies before polling day and the writ is withdrawn.

Clauses 471 to 476 deal with surplus electoral funds. Clause 471 defines what constitutes such a surplus, and how the amount is calculated, including transfers. Clause 472 provides that the Chief Electoral Officer issues a notice of the estimated amount of the surplus, and the official agent then has 60 days for disposal of it under

clause 473: it can be remitted to a registered party or constituency association or to the Receiver General. Clause 474 requires a notice of disposal of surplus funds to be given within seven days to the Chief Electoral Officer. When surplus funds are paid to the Receiver General, and valid expenses subsequently arise, clause 475 makes provision for application for repayment. Clause 476 prohibits unauthorized transfers of the surplus.

Clause 477 deals with the prescribed forms for official receipts under the *Income Tax Act*; clause 478 requires the returning officer to provide a reasonable number of forms to candidates, and that unused forms be returned.

### Part 19: Enforcement (clauses 479 – 521)

Part 19 deals with enforcement issues. At present, the *Canada Elections Act* can be enforced only by employing the criminal justice system. The Act treats all violations as criminal offences, whether they are primarily administrative or regulatory in nature, and there is little room for flexibility or discretion. The Royal Commission on Electoral Reform and Party Financing and the Special Committee on Electoral Reform both believed that a new approach to election law enforcement was needed.

Clause 479 deals with peace and good order at elections: each returning officer is responsible for maintaining order in his or her office during voting. Deputy returning officers, central poll supervisors and others are responsible for maintaining order during voting at their places. In performing these duties, all these officers can order a person to leave or arrest the person without warrant and any person who disobeys is guilty of an offence. These officers are also given the power to deal with contraventions of clause 166, which prohibits campaign literature and buttons or other materials supporting or opposing candidates from being posted or worn in or around the polling place. Every election officer, while performing his or her duties, is entitled to the same legal protections as a peace officer.

General provisions regarding offences are set out in clauses 480 to 483. Clause 480(1) makes it an offence to contravene the bill with the intent to delay or obstruct the electoral process. Clause 480(2) makes it an offence to disrupt public meetings called for purposes of the election. Clause 481(1) prohibits the offering of a bribe during an election period to influence a voter, while clause 481(2) makes it an offence to accept such a bribe. Intimidation of voters is covered by clause 482.

The following clauses deal with offences under different Parts of the Act:

- Offences under Part 1 (Electoral Rights) – clause 483
- Offences under Part 3 (Election Officers) – clause 484
- Offences under Part 4 (Register of Electors) – clause 485
- Offences under Part 6 (Candidates) – clause 486
- Offences under Part 7 (Revision of List of Electors) – clause 487
- Offences under Part 8 (Preparation for the Vote) – clause 488
- Offences under Part 9 (Voting) – clauses 489 and 490
- Offences under Part 11 (Special Voting Rules) – clause 491
- Offences under Part 12 (Counting Votes) – clause 492
- Offences under Part 13 (Validation of Results by the Returning Officer) – clause 493
- Offences under Part 15 (Return of the Writ) – clause 494

- Offences under Part 16 (Communications) – clause 495
- Offences under Part 17 (Third Party Election Advertising) – clause 496
- Offences under Part 18 (Finance) – clause 497
- Offences under Part 19 (Enforcement) – clause 498
- Offences under Part 21 (General) – clause 499

Clause 500 provides for punishment. The maximum penalties range from a fine of not more than $1,000 or three months' imprisonment, or both, to a fine of $25,000 in one case, and a fine of $5,000 or five years' imprisonment in others. Clause 500(6) provides an additional penalty for third parties who are guilty of certain offences in the form of a fine up to five times the amount by which they exceeded their election advertising expense limit.

Clause 501 provides that a court may, having regard to the nature of the offence under the bill and the circumstances surrounding its commission, impose alternative or additional penalties, including community service, compensation of persons, and performance of an obligation.

Illegal and corrupt practices are covered by clause 502. Clause 502(1) sets out illegal practices, while clause 502(2) lists corrupt practices. A person who is convicted of any such practices shall, in addition to any other punishment, be banned for five years (illegal practices) or seven years (corrupt practices) from sitting in the House of Commons or holding any office appointed by the Crown or Cabinet, in accordance with clause 502(3).

The Standing Committee agreed with the recommendation of the Chief Electoral Officer in *Strengthening the Foundation* that the *Corrupt Practices Inquiries Act* and the *Disenfranchising Act* be repealed. The *Corrupt Practices Inquiries Act* was adopted in 1876 and provides for the establishment of a commission of inquiry to investigate the existence of corrupt or illegal practices. The *Disenfranchising Act*, which was enacted in 1894, provides for the presentation to the courts of a petition alleging bribery in an election and for the disenfranchisement of electors who have taken bribes. These two statutes are of more historical than practical importance: they are anachronistic and have fallen entirely into disuse. To the extent that the issues addressed by these two statutes remain relevant, they are better dealt with under the *Canada Elections Act* and other legislation.

Clauses 503 to 508 contain miscellaneous provisions. Clause 503 deals with suspended parties and eligible parties that do not become registered during an election campaign; clause 504 deals with the prosecution of registered or suspended parties; clause 505 deals with the prosecution of third parties; clauses 506 and 507 deal with offences committed by the chief agents of suspended parties and registered parties, respectively; and clause 508 provides for certificates of returning officers to be used as evidence.

The office of Commissioner of Canada Elections is provided for in clauses 509 to 515. This is the official appointed under the Act to conduct investigations and decide whether to institute legal proceedings in respect of any alleged infraction of the Act. The Commissioner is appointed by the Chief Electoral Officer and is responsible for ensuring that the bill is complied with and enforced (clause 509). The Chief Electoral Officer can direct the Commissioner to conduct an inquiry, pursuant to clause 510, and the Commissioner can initiate an inquiry and receive complaints within six

months, under clause 511. Clause 511 authorizes the Commissioner to institute a prosecution if he or she believes on reasonable grounds that an offence has been committed and "is of the view that the public interest justifies it." Clause 512 provides that (with a minor exception) no prosecution for an offence under the legislation can be initiated except by the Commissioner or with the Commissioner's consent, and clause 513 empowers the Commissioner to assist in the prosecution consented to. Clause 514 requires that proceedings in relation to offences under the bill must be commenced with 18 months, unless the offender has left the jurisdiction. Provisions are made in clause 515 for private prosecutions.

Applications for injunctions can be made pursuant to clause 516(2); a court can issue an injunction if it is satisfied that there reasonable grounds to do so and that the nature and seriousness of the act or omission, the need to ensure fairness in the electoral process, and the public interest justify issuing an injunction. At least 48 hours' notice must be given except in cases of great urgency.

Compliance agreements are provided for in clauses 517 to 521. In *Strengthening the Foundation*, the Chief Electoral Officer recommended that the Commissioner of Canada Elections be empowered to enter into compliance agreements and to issue compliance orders. The argument was that, while the criminal justice process may be necessary for violations that can influence the outcome of an election or undermine the integrity of the electoral process, it is inappropriate for dealing with offices of an administrative or regulatory nature. Moreover, because of the courts' apparent reluctance to treat all infringements of the Act as criminal offences, respondents found guilty are often merely fined or conditionally discharged. The solution is to investigate alternatives to criminal procedures to ensure compliance with the Act. The Office of the Chief Electoral Officer submitted a report on these to the Special Committee on Electoral Reform in 1992, and included an adaptation of this report in *Strengthening the Foundation*. Among the suggested alternatives are compliance agreements and compliance orders, which are non-criminal, non-judicial procedures. Responsibility for the administration of these would rest with the Commissioner of Canada Elections, who would apply them in accordance with certain criteria, including the nature and gravity of the contravention; the record, if any, of contravention; the confidence of the public in the electoral process; the desirability of achieving compliance through remedial, rather than punitive, measures; the cost of enforcement; fairness to the person in contravention; and any public interest that the Commission considers relevant. Compliance agreements would be public documents based on voluntary agreement to put procedures or other actions into place to ensure compliance with the Act. Compliance orders, on the other hand, would be issued unilaterally by the Commissioner and would allow a problem to be dealt with quickly and effectively as warranted by circumstances and within the bounds of fairness. Such a power would be similar to that existing in other regulatory regimes, and would allow an appeal to the courts by way of an appeal on the merits. Under such an arrangement, fines can be reduced or cancelled for those who agree to take appropriate steps to ensure future compliance.

As was said in *Strengthening the Foundation*, "These compliance procedures afford a flexible means of fairly achieving the objectives of the *Canada Elections Act* in a manner consistent with other administrative or regulatory schemes while reserving the full weight of the criminal process for those offences that might more

immediately affect the outcome of an election" (p. 73). Members of the Standing Committee agreed with this proposal.

Clause 517 would authorize the Commissioner to enter into compliance agreements while provision is made in clause 518 for notices of compliance, and in clause 519 for notices of default. Clause 520 would allow a court to dismiss proceedings in certain circumstances, while clause 521 provides for publication of notice of compliance agreements.

## Part 20: Contested Elections (clauses 522 – 532)

Part 20 deals with contested elections. The current process for challenging the results of an election – set out in the *Dominion Controverted Elections Act* – is cumbersome, costly and time-consuming. The Act originated in the nineteenth century, when it was common for the results in a number of constituencies to be challenged on the basis of fraud. Since 1949, however, there have been only 13 cases in which an election has been controverted, the most recent being that of York North (Ontario) following the 1988 general election. The Office of Chief Electoral Officer has stated that reform of this aspect of the electoral system is long overdue, both in the 1984 statutory report and, more recently, in *Strengthening the Foundation*. The Standing Committee agreed that the *Dominion Controverted Elections Act* should be repealed and provisions replacing that statute should be incorporated into the *Canada Elections Act*.

It has been argued that incorporating provisions for contesting elections in the *Canada Elections Act* would eliminate unnecessary complexity and complement the existing provisions of the Act that relate to the voiding of an election. A number of provinces and territories have incorporated procedures of this type into their electoral legislation. The proposed procedure, which is based on that contained in the Royal Commission's Report, would transfer jurisdiction for controverted elections from the superior courts of the province to the Federal Court, which would assist in the development of single judicial body of expertise in electoral matters. The Standing Committee was essentially in agreement with the principle behind this proposal, although it did not feel that it was in a position to pass judgment on the specific details.

Clause 522 provides that validity of the election of a candidate may not be contested otherwise than in accordance with this Part, and that the making of an application to contest an election does not affect any right or obligation of a candidate in that election. Clause 523 provides that the election of a person is "null and void" where the person was not eligible to be a candidate. Clause 524 would allow an elector or candidate to make an application to a court contesting an election on the grounds that the elected candidate was not eligible or that irregularities, fraud, or corrupt or illegal practices had affected the result of the election. An election cannot be contested on the same grounds as a recount can be requested. Clause 525 sets out the appropriate courts for an application, which shall be dealt with summarily and without delay, although oral testimony can be allowed. The application must be accompanied by $1,000 as security for costs or such greater amount as the court orders, and must be served on the Attorney General of Canada, the Chief Electoral Officer, the returning officer and all the candidates for the constituency (clause 526). The time limit for making an application is set out in clause 527; provision is made for the withdrawal of an application in clause 528; notice of appearance must be filed within 15 days,

pursuant to clause 529; and the returning officer's certificate is sufficient evidence under clause 530. Clause 531 allows a court to dismiss an application at any time if it is frivolous, vexatious or not made in good faith, or if the grounds are not established. If the grounds are established, the court can declare the election null and void or annul the election. Clause 532 provides for appeals from the decision of the court to the Supreme Court of Canada on any question of law or fact; the appeal must be filed within eight days, and is to be heard without delay and in a summary manner.

### Part 21: General (clauses 533 – 554)

Clauses 533 to 537 deal with reports of the Chief Electoral Officer. Polling division reports are to be published without delay after a general election and within 90 days of a by-election (clause 533). In the case of a general election, the Chief Electoral Officer is to provide a report to the Speaker of the House of Commons within 90 days of the date set for return of the writs (clause 534(1)); in the case of by-elections, a report would have to be made to the Speaker within 90 days of the end of the year in which one or more by-elections were held (clause 534(2)). This is a change from the existing legislation, which requires a report after each by-election. Clause 535 would require the Chief Electoral Officer to table a report on proposed legislative changes as soon as possible after a general election; at present, this is required as part of the report on the election, although this requirement has proved difficult to meet in the recent past. Clause 536 requires the Speaker of the House of Commons to submit without delay any report received from the Chief Electoral Officer.

Clause 537 would allow any candidate, official agent, leader or chief agent of a registered or eligible party to send written complaints or suggestions to the Chief Electoral Officer.

Clause 538 deals with polling divisions: each is to contain at least 250 electors; boundaries are to remain the same as in the last general election unless the Chief Electoral Officer decides to revise them; and the factors to be taken into account in revising polling divisions are set out.

Amendments to the list of constituencies in Schedule 3 are authorized by clause 539. As noted above, this Schedule is a list of particularly large or sparsely populated electoral districts. Clause 540 deals with custody of election documents and documents relating to the updating of the Register of Electors, while clause 541 provides for public inspection of instructions, correspondence and various documents and reports. The fees and expenses of election officials are provided for by clause 542: the Governor in Council makes a tariff on the recommendation of the Chief Electoral Officer, which is laid before the House of Commons. Clause 543 deals with payment of claims; clause 544 provides for accountable advances for election officers and accounts; clause 545 deals with increases of fees and allowances, while clause 546 provides for the taxation of accounts.

Clauses 547 and 548 deal with notices. Clause 549 provides for the administration of oaths. Clause 550 prohibits signed pledges by candidates: this provision was introduced after certain candidates had been required to sign pledges.

Clause 551 deals with the situation where a by-election is superseded by a general election. Clause 552 deals with prescribed forms, while clause 553 deals with payments out of the Consolidated Revenue Fund.

Clause 554 provides that no amendment to electoral legislation applies to an election for which the writ is issued within six months unless the Chief Electoral officer publishes a notice in the *Canada Gazette*. The Chief Electoral Officer is also given the responsibility to consolidate amendments.

### Part 22: Transition Provision, Consequential Amendments, Repeals, Conditional Amendments and Coming into Force (clauses 555 – 575)

Clauses 555 to 558 provide transitional provisions for registered parties to provide statements of assets and liabilities and financial reporting.

Consequential amendments would be made to the *Electoral Boundaries Readjustment Act* (clause 559), the *Income Tax Act* (clause 560), the *Parliament of Canada Act* (clauses 561 to 565); the *Referendum Act* (clauses 566 to 571); and the *Supreme Court Act* (clause 572).

The following statutes would be repealed by the bill: the *Dominion Controverted Elections Act* (clause 573); the *Corrupt Practices Inquiries Act* (clause 574); the *Disenfranchising Act* (clause 575); and the *Canada Elections Act* (clause 576).

Clause 577 provides that Bill C-2 would come into force six months after it received Royal Assent, or sooner if the Chief Electoral Officer published a notice in the *Canada Gazette*.

## COMMENTARY

Bill C-2 does not contain revolutionary or radical changes. Although individuals and groups have challenged some of its basic premises and principles, the Canadian electoral system as it has evolved over the years generally works well. As the Hon. Don Boudria, the Government House Leader, said in a press release when Bill C-83 was introduced, the elections legislation "provides the operating framework for our democratic system, which is a model of electoral democracy for other countries around the world."

Much of the bill is concerned with administrative procedures and issues. To a large extent, it represents a codification of existing practices and policies. Some administrative problems have developed since the law was introduced almost 30 years ago and certain developments, such as the introduction of a permanent voters' list, have necessitated consequential changes. In addition, developments in technology and other areas have led to a desire for greater flexibility and discretion to respond to new and emerging issues. Various proposed administrative changes have been recommended over the years, by the Chief Electoral Officer, parliamentary committees, the Royal Commission, and others. Overall, the bill represents a major clean-up and reorganization of the existing Act, which was amended in a piecemeal fashion over the years: Bill C-2 is a much better organized piece of legislation.

The bill is extremely lengthy. This is partly due to the fact that electoral legislation must be self-contained and comprehensive; unlike the case for other bills, details here cannot be left to be worked out in regulations as this could create the impression that the government was running the system. As a result, a great deal of the bill is relatively mundane and technical. Many of its provisions can be readily understood only by people who have been actively involved in the running of an election or campaign.

Two provisions that have already proved controversial are the ban on opinion polls in the final days of an election, and the regulation of advertising by third parties during elections. In both cases, similar provisions in the existing *Canada Elections Act* were struck down by the courts as contrary to the *Canadian Charter of Rights and Freedoms*. The question is whether the proposed new provisions strike a more reasonable balance of the conflicting interests involved, and can be justified constitutionally. **The blockout provisions with respect to advertising and new opinion polls would now apply only to election day.**

One issue not addressed in Bill C-2 is whether boards and agencies under federal jurisdiction should be prohibited from making political contributions and, if so, how this should be achieved. In March 1999, the government issued guidelines to Crown corporations forbidding any kind of financial contributions to political parties; however, this spring Elections Canada released information suggesting that federal boards and agencies had also made contributions. The Government House Leader, Mr. Boudria, requested that the Standing Committee on Procedure and House Affairs consider this matter during its study of Bill C-2, **but the issue did not arise.**

**The Minister also sought the advice of the Standing Committee on Procedure and House Affairs with respect to measures to enhance the election of more female candidates. As an example, he cited the Lortie Commission's recommendation that political parties that succeed in getting more women candidates elected should be rewarded by higher reimbursements. Members and witnesses were sharply divided on this issue. In the result, the Committee did not make any recommendations for legislative changes; however, it did approve amendments to enable candidates to claim as election expenses any costs associated with child and dependant care, and these amendments are expected to be of particular benefit to women.**

**Many provisions in Bill C-2 were criticized by witnesses before the House of Commons Standing Committee on Procedure and House Affairs, or by Members of the House. These include: the appointment of returning officers (and other election officials) on the basis of open competitions; removal of the 50-candidate requirement for registration as a party; elimination of the restrictions on third party advertising during election campaigns; regulation of the expenses of nomination campaigns and leadership campaigns; annual financial reporting by the constituency associations; lower candidate deposits; prohibitions on non-individual donations; and changes in the detail and time of the disclosure of political and government advertising. Some of these issues have been attracting attention for many years, while others are of relatively recent concern. There was also discussion about certain fundamental issues – such as proportional representation and fixed election dates – that, arguably, could require a complete overhaul of the electoral system. As the differing views on**

**these and other issues illustrate, electoral reform is an on-going and never-ending process.**

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(1) See James R. Robertson, *Bill C-63: An Act to amend the Canada Elections Act, the Parliament of Canada Act and the Referendum Act [permanent voters' register]*, Parliamentary Research Branch, Library of Parliament, LS-275.