

Proposed Amendments to Bill C-76 Presented by the Acting Chief Electoral Officer (CEO) to the Standing Committee on Procedure and House Affairs on May 28, 2018

Amendments to Bill C-76 Recommended by the Acting CEO						
No.	Topic	C-76 Clause(s)	CEA¹ Provision(s)	C-76 Proposal	Analysis	Proposed Amendments
1	Citizenship declaration	190 and 372	281.3 549.1(1)(c) and (2)(d)	Section 549.1 would prescribe standard language for various solemn declarations (e.g. vouching) now required under the Act. Part of the generic language prescribed would require a person to solemnly declare that he or she is a Canadian citizen or “will be one” on polling day.	While it is possible for someone to swear that they will be 18 years old on polling day, since this is simply a matter of time passing, it is a technical impossibility for an individual to declare with certainty ahead of time that he or she “will be” a Canadian citizen. Non-citizens should not be allowed to vote.	Paragraphs 549.1(1)(c) and (2)(d) should require that an individual declare that he or she “is” a Canadian citizen. The words “or will be a Canadian citizen on polling day” should be deleted from those paragraphs. A corresponding amendment to the offence in s. 281.3 should also be made to remove the words “– or will not be a Canadian citizen – on polling day” from subparagraphs (a)(i) and (b)(i).
2	Foreign Funds for Third Parties	223 and 232(1)	349.95 and 358	Sections 349.95 and 358 provide that third parties may not use funds for regulated purposes if the “source of the funds” is a foreign entity.	Despite these provisions, third parties may still be able to arrange their affairs to benefit from foreign funding to conduct regulated activities. For example, if foreign funds pass through a domestic entity and are sent to a second domestic entity, the second entity could use those funds on the basis that they are now “domestic”. Also, if foreign funds are specifically given to free up domestic resources of a third	Provisions should be added to ss. 349.95 and 358 to mirror the “anti-circumvention” provision found at s. 368(1) of the CEA. This would prohibit a person from circumventing or attempting to circumvent the bans on using foreign sources of funds for the regulated activities of third parties. The Commissioner of Canada Elections (Commissioner) agrees with this recommendation.

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

Amendments to Bill C-76 Recommended by the Acting CEO						
No.	Topic	C-76 Clause(s)	CEA ¹ Provision(s)	C-76 Proposal	Analysis	Proposed Amendments
					party so that it could conduct regulated activities, it is not clear that this would be prohibited.	
3	Convention fees	239(2)	364 (8), (9), and (10)	The CEA currently provides that amounts paid to attend party conventions constitute contributions. The bill would exclude from the amount of the contribution (a) the costs of goods and services received by the contributor (such as meals and promotional products) and (b) the contributor's share of the costs of holding the convention such as the rental of the room and equipment. In addition, the bill would allow one individual to pay another person's convention fees.	Allowing a party to deduct the costs described in s. 364(9)(b) from the amount of the contribution for a convention would permit a party to raise funds for a core party activity (i.e. a policy or leadership convention) without those funds counting against an individual's contribution limit. This problem is compounded by the fact that a single, wealthy individual may pay for tickets for multiple attendees, and could end up paying for all or most of the cost of the convention.	One of three possible amendments should be made. Paragraph 364(9)(b) could be repealed so that any share of general expenses related to the Convention cannot be excluded from the contribution. Alternatively, the exclusion set out in s. 364(9)(b) could be made to apply only to the first convention participation fee paid by an individual in respect of a particular convention (either for him or herself to attend or for another person to attend). Or, if the exclusion set out in s. 364(9)(b) is maintained, the CEA should be amended to provide at a minimum that a party, in its annual return, be obliged to report on those individuals who paid convention fees for another person or persons.
4	Privacy Principles	254(1)	385(2)(k)	The bill would require a party, when applying for registration, to provide its policy for the protection of personal information, including specifying certain elements such as what information it collects and how it protects that information.	The bill does not require parties to adhere to the privacy principles set out in the <i>Personal Information Protection and Electronic Documents Act</i> , S.C. 2000, c. 5 ("PIPEDA"). Nor does the bill provide for any external	At a minimum s. 385(2)(k) should require a party's privacy policy to be consistent with the privacy principles set out in Schedule 1 of PIPEDA. The Privacy Commissioner should be given the authority to oversee the

Amendments to Bill C-76 Recommended by the Acting CEO						
No.	Topic	C-76 Clause(s)	CEA ¹ Provision(s)	C-76 Proposal	Analysis	Proposed Amendments
					oversight of the party's compliance with its privacy policy.	party's compliance with its privacy policy.
5	Misleading publications	323	481	New s. 481 would prohibit the distribution, publication or transmission, during an election period, of material that is purported to be (but is not) made, distributed, transmitted or published by or under the authority of a political party, candidate or prospective candidate, with the intent to mislead the public.	It would also be useful to apply this prohibition to someone who intends to mislead the public by purportedly distributing, transmitting or publishing material by or under the authority of the Chief Electoral Officer (CEO) or a returning officer.	The words "the Chief Electoral Officer or a returning officer" should be added to the prohibition after "political party, candidate [ø] prospective candidate" in the chapeau of 481(1) and in paragraphs (a) and (b). Subsection (2) would also have to be amended to add the words "the Chief Electoral Officer or a returning officer" in paragraphs (a) and (b). The Commissioner agrees with this recommendation.
6	Unauthorized use of a computer	323	482	Section 482 is a slightly modified version of s. 342.1 of the <i>Criminal Code</i> (unauthorized use of a computer) that requires an intention to affect the results of an election.	The offence requires proof of intent to influence election results, which is a very high standard. The Commissioner should have jurisdiction over any attempt to interfere with a computer system related to an election or a leadership or nomination contest.	The provision should be amended to broaden its scope by removing the words "with the intention of affecting the results of an election" from the opening sentence. Instead, references to "a computer system" in both paragraphs (a) and (b) should be replaced with "a computer system used at or for an election or a leadership or nomination contest". The Commissioner agrees with this recommendation.

Amendments to Bill C-76 Recommended by the Acting CEO						
No.	Topic	C-76 Clause(s)	CEA ¹ Provision(s)	C-76 Proposal	Analysis	Proposed Amendments
7	Transitional provision on candidate financial obligations	384(1)-(3)	N/A	Clause 384 is understood to provide that, if the bill comes into force during or after an election period, the current CEA provisions apply with respect to candidates' reporting obligations and rights flowing from that election.	Although the clause is intended to ensure that the financial reporting rules applicable to a candidate in a particular election do not change if the bill comes into force during or after that election, the provision is drafted so broadly that its scope is unclear. Notably it does not specifically refer to candidates.	Clauses 384(1)-(3) should be amended to clearly set out their application to the obligations and rights of candidates under Part 18 of the CEA related to the election in question. Appropriate models exist for other entities in clauses 385-388 of the bill.