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Proposed Amendments to Bill C-23 Presented by the Chief Electoral Officer to the Standing Committee on Procedure and House Affairs on March 6, 2014

1- Key Amendments to Bill C-23 Recommended by the CEO				
C-23 Clause	**CEA[1] Provision**	**C-23 Proposal**	**Analysis**	**Proposed Amendments**
5 Guidelines, interpretation notes and written opinions	16.1–16.4	A new process is created for the issuance by the CEO of guidelines, interpretation notes and written opinions on the application of the CEA. The Advisory Committee of Political Parties (ACPP) is required to review and comment on these documents before they are finalized and published on Elections Canada's website. The CEO is obligated to issue guidelines, interpretation notes and/or written opinions upon request within 45 days of an application by a chief agent of a registered party, including a 30-day (bilingual) consultation period with the ACPP.	Having to issue guidelines, interpretation notes and written opinions within 45 days of an application will be virtually impossible for the CEO to do in practice, especially when 30 of these days must involve (bilingual) consultation with the ACPP. Most existing schemes permitting requests for an advance ruling involve a requirement for the applicant to submit all relevant information before any time period for issuing a ruling is counted. They also permit the decision maker to refuse to issue an advance ruling in specified circumstances. By contrast, the open-ended nature of the C-23 provisions may allow them to be misused, and runs the risk of seriously overwhelming the CEO with multiple, conflicting and possibly trivial requests.	These provisions should be amended as follows: • The timeline should be extended, allowing a minimum of 45 working days *excluding* the 30-day ACPP consultation. • The timeline should begin only once the CEO is satisfied that he has all the information necessary to write the opinion or issue the guidelines or interpretation notes. • The CEO should have the discretion to decline to issue a written opinion or interpretation in certain circumstances (e.g. when a matter is already before the Commissioner or a court, or where the matter is frivolous). • The written opinions, guidelines and interpretation notes issued by the CEO should bind external auditors.
7 Information	18	Information provided by the CEO to the public is to be limited to the following	The new s. 18 imposes a severe limit on the ability of the CEO to communicate	This new provision should not be included in the bill. Instead, the current

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

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provided to public by CEO		subjects: how to become a candidate; how to have your name added to the list of electors or to have your information corrected; how, where and when to vote; how to establish your identity at the polling place; and measures to assist electors with disabilities to access the polling station and mark their ballot.	with the public. This will have an impact on a range of Elections Canada's activities, including: civic engagement programs; publication of research in areas not listed in C-23; online recruitment of election officers; publication of reports to Parliament; publication of political financing information and returning officer manuals; issuance of news releases.	one – which allows the CEO to implement public information programs, reach out to the public to ensure all are aware of the democratic right to vote and how to be a candidate, and make the electoral process better known – should be retained.
10 CEO authority to hire technical experts	20(1)	The CEO's power to hire technical experts or specialists is explicitly recognized but is subject to Treasury Board approval for remuneration.	It is unclear why the authority of the CEO to hire technical experts or specialists pursuant to this section should require Treasury Board approval for remuneration, when an equivalent provision for the Commissioner does not include such approval.	The requirement for Treasury Board approval should be removed to reflect the same degree of independence from the government as is recognized for the Commissioner in clause 108 (proposed s. 509.4).
18 19 20 21 44 Appointment of election officers	34(1) 35(1) 36, 37 39(3), (4) 124	Registered electoral district associations (or the party, in the absence of an association) will be allowed to recommend names for the appointment of two key poll workers: deputy returning officers and poll clerks. Previously, only the candidate could make recommendations. Appointments will also be made earlier in the election calendar. In addition, the party whose candidate received the most votes in the previous election will be able to make recommendations to the returning officer for individuals to occupy the position of central poll supervisor.	All election officers should be appointed based on merit and not be nominated by candidates, electoral district associations or parties. There is no operational benefit to receiving partisan recommendations of names. If the returning officer did not have to wait for recommendations from candidates and parties, he or she could start recruiting, appointing and training election officers much earlier in the election process. Appointment on the basis of merit is particularly important for the position of central poll supervisor. Central poll supervisors are the ones in charge of a	Remove from the Act all provisions allowing political entities to recommend names for election officers.

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			polling place; they have important and sometime difficult decisions to make that may affect voters or poll workers. There is no system of "checks and balances" such as may exist with respect to other poll workers who are appointed from opposing political parties. If central poll supervisors are not appointed strictly on the basis of merit, the perception may be that some of their decisions are not impartial but are in fact partisan – whether this is actually the case or not.	
48(3) VIC as proof of identity or residence	143(2.1)	The voter information card (VIC) is not to be used as proof of identity or residence.	Some groups of electors (e.g. seniors in seniors' residences, individuals in long-term care facilities, students on campus, First Nations electors on reserve, and individuals who have recently moved) face difficulties proving their residence. One way to alleviate this problem is to add the VIC to the list of authorized pieces of identification. Since 2010, Elections Canada has been testing the VIC as proof of residence in certain specific locations (e.g. in long-term care facilities, on reserves and on campuses). The initiative was successful and well received by electors, institutions and reserve administrators. Allowing voters to use a VIC to prove their residence will reduce reliance on vouching.	The VIC should be allowed to be used to prove residence in combination with one other piece of identification.

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48(4) 53(1) 56(1) Vouching	143(3) 161(1) 169(2)	The bill repeals the provisions on vouching.	Currently, an elector who does not have the necessary proof of identity or residence may prove that identity and residence by taking an oath if he or she is accompanied by an elector of the same polling division who provides the poll official his or her own proof of identity and residence and vouches for the elector under oath. Vouching or taking an oath is permitted in all Canadian provinces where proof of identity and residence is required. Removing the possibility of vouching at the federal level takes away the last safety net for those electors who do not have the necessary documents to prove identity and residence.	Leave vouching in the Act.
48(5) Candidate's representatives to examine ID	143(3.3)	Candidates' representatives are granted the authority to examine (but not handle) any piece of identification presented by an elector.	This authority may upset or delay voters. Voters who do not wish to show their identification to the candidate's representative must still be permitted to vote.	An amendment should be added to clarify that no elector will be prevented from voting as a result of not wanting to show his or her ID to a candidate's representative.
62 Special voting rules in the office of a returning officer	237.1	The bill proposes that many of the features of the voting process on advance polling days and on polling day apply to voting taking place under the special voting rules in the office of a returning officer, including voter identification requirements. Certain rules are to be imported from the polling day voting process into the process for voting in the office of a	The wording of this provision limits the application of these features to electors who present themselves at the office of the returning officer for the electoral district in which they reside. However, other electors not residing in that electoral district may present themselves at the same office to register for special voting and to vote by special ballot. This means that two different sets of rules will be applicable	Amend the proposed provision by striking out the words "for the electoral district in which the elector ordinarily resides" so that the new process be used by all electors voting by special ballot in the office of a returning officer. The introductory words of the subsection should also be clarified by specifying that the provisions referred

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		returning officer. These rules are referred to by their section number.	to electors who vote in the office of a returning officer, which is likely to create confusion. Some of the rules imported from the polling day voting process cannot apply to voting in the office of a returning officer. For example, s. 136(3) refers to the right of a candidate's representative to examine the list of electors (to determine who has voted or not voted yet). But unlike the deputy returning officer on polling day, the election officer who administers voting in the office of the returning officer does not have such a list.	to in the following paragraphs apply "with the necessary modifications" for the purposes of voting in the office of a returning officer.
67 Bingo cards	291(*b*)	The bill provides that a copy of all statements of electors who have voted ("bingo cards") should be given upon request, after polling day, to the candidate, his or her representative or a representative of the party. Bingo cards are produced during advance polling days and polling day. They allow candidates and their representatives who pick up the statements periodically to follow up with their supporters who have not yet voted.	The bill proposes expanding the use of bingo cards from their original purpose (to get out the vote on polling day). Now, parties will be able to methodically collect and document for all Canadians, after the vote, who has voted and who has not voted. Collecting fundamental personal information in this way about whether or not people have voted goes beyond the operational purpose related to voting on polling day. Information on who has voted should not be shared with parties further than it already is. Complying with this provision may in some circumstances require the returning officer to unseal the ballot	This provision should not be included in the bill. If the provision is included, an amendment should be added, similar to the existing provision in s. 295 for statements of the vote, to allow a returning officer to open ballot boxes if they cannot find the bingo cards from a particular poll after polling day.

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			box and open the poll bag to retrieve the bingo cards. This is presently only permitted in one circumstance (to find a missing statement of the vote). Given the integrity issues at play, the returning officer should be specifically authorized to open the box and poll bag if necessary to retrieve the bingo cards.	
75–77 Voter Contact Calling Services	New Part 16.1	The bill adds a new part to the Act called "Voter Contact Calling Services", partly enforced by the Canadian Radio-television and Telecommunications Commission (CRTC). It details certain registration and filing requirements with the CRTC and requires providers of voter contact calling services to keep scripts or message recordings for a period of one year after the election.	While this new part of the Act responds in part to the CEO's recommendations, important elements are missing. For example, there is no requirement to keep or provide to anyone the telephone numbers that were called, which is key information in the investigation of any offence.	The provisions in the bill should be amended as follows: • There should be a requirement to retain and file with the CRTC lists of the telephone numbers that were called. • There should be a mechanism, not involving a court order, for the Commissioner to obtain access to call scripts or recordings, or to request that they be preserved beyond one year if a court order is anticipated.
86 Fundraising exemption	New Part 18, 376(3)	Election expenses will no longer include the cost of soliciting monetary contributions from individuals who have made at least one contribution of $20 or more to a party or one of its registered associations, candidates or nomination contestants in the last five years.	This fundraising exemption creates a potential loophole in the election expenses regime. As there is a large grey area between promotion and fundraising, the exemption could be used to avoid having to claim something as an election expense. Parties with a larger established contributor base will have a greater advantage. Verification that only	This exemption should not be included.

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			existing contributors were contacted would be impossible for Elections Canada and difficult for the party's external auditor.	
86 Pro-rated increase in spending limit based on length of election	New Part 18, 430(2)	The bill includes a pro-rated increase in the spending limit for parties and candidates if the election period is longer than 36 days.	This provision would affect the level playing field by increasing party spending limits up to $650,000 per day / per party, and does not appear necessary, especially in the case of fixed election dates. In addition, "election period" is defined under s. 2 of the Act to begin with the issue of the writ and end on polling day, which is actually 37 days. This means that even the minimum election period required by law would require a pro-rated increase in the spending limit.	This provision should be removed from the bill. If left in, 36 days should be changed to 37 days to reflect the true length of an election period.
86 Compliance audit of party returns	New Part 18, 438, 444(1)(*a*)	An external "compliance audit" function in the review of financial returns is added to the duties of the party's appointed auditor. At the same time, the CEO's independent audit function is maintained and he continues to be required to certify whether or not a party's return on election expenses complies with the requirements of the Act.	While external compliance audits may reassure chief agents, the CEO still needs to certify financial returns to allow for the reimbursement of election expenses via public funds. The CEO still does not have any power to require a party to produce documents evidencing its compliance with the Act, including its claimed expenses or its claimed reimbursement.	The bill should be amended to authorize the CEO to ask a party to produce the documents and provide the information that he considers necessary in order to verify that the party and its chief agent are compliant with the Act's requirements with regard to election expenses returns.
108 Confidentiality of investigations	510.1	The new confidentiality provisions respecting the Commissioner restrict his ability to provide the public with information about investigations, except in very narrow circumstances.	The new confidentiality provisions would prevent the Commissioner from issuing even de-personalized public reports (such as to reassure Canadians in the case of an	This provision should not be included in the bill. For the Commissioner to operate effectively, it is sufficient that the confidentiality of his or her investigations be affirmed, subject to

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			investigation into fraud that uncovered no illegality) and would subsume these into reports from the Director of Public Prosecutions. This compromises the independence of both offices. The Commissioner should be allowed to communicate with the CEO in order to share his experience, for the benefit of improving the administration of the Act.	such disclosure as the Commissioner finds necessary for carrying out his or her duties under this Act.
108 Information-sharing between CEO and Commissioner	N/A	The bill removes the Commissioner of Canada Elections from Elections Canada and places the position within the office of the Director of Public Prosecutions. However, information-sharing between the CEO and the Commissioner under the new structure is not expressly addressed.	Clear mechanisms both for the CEO to transfer information to the Commissioner, and for the Commissioner to request information from the CEO – such as occurs currently while both reside in Elections Canada – are required. While getting the necessary information from the CEO into the hands of the Commissioner may be manageable through a generous interpretation of discretionary powers, this is not desirable if the Commissioner is to operate effectively.	Express provisions should be added to cover three points: the CEO should have the power to refer to the Commissioner a matter that the CEO believes could constitute an offence; the CEO should be obligated to include with the referral any relevant information, including personal information; and the CEO should have an obligation to provide, at the request of the Commissioner, any information or document obtained by the CEO in the exercise of his or her functions that the Commissioner considers necessary to the exercise of his or her functions (see s. 348.15 for a parallel provision with respect to the CRTC).
108 Commissioner power to compel testimony	N/A	The bill does not expressly grant the Commissioner the power to seek a court order to compel a witness to provide information for purposes of enforcing the Act.	The power to compel witnesses to provide information has been identified by both the CEO and the Commissioner as a critical operational tool to assist in effectively investigating elections offences. This power exists in	A power for the Commissioner to compel testimony upon court order should be added to the bill, as currently exists for the Commissioner of Competition under s. 11 of the *Competition Act*.

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			several provincial regimes. Compelling witnesses should only be possible on court order, when the Commissioner satisfies a judge that an investigation is taking place and that the person to be examined has directly relevant information. Any information obtained should not be used against the person required to provide it.	
N/A Definition of leadership and nomination campaign expenses	2(1)	The definitions of leadership and nomination campaign expenses are not amended in the bill. At the moment, these definitions include only expenses incurred during the contest proper, and none of those incurred before the formal start of the contest or after its conclusion. As well, they do not include the use of non-monetary contributions – that is, gifts of goods or services.	Strictly applied, these definitions mean that contestants cannot use contributions received under the Act for expenses outside the contest period, even where the goods or services were used during the contest. Furthermore, spending and funds received outside the contest period are similarly not subject to the rules regarding disclosure and limits or claims. Elections Canada has not been applying these definitions strictly, as it has been thought that this cannot have been what Parliament intended when it adopted these definitions in 2003. However, the fact that the definitions have not been amended in C-23 – despite the CEO's specific recommendation on the matter – means that Elections Canada will now be required to reconsider its interpretation, with the results described above.	The definitions of leadership and nomination campaign expenses in s. 2(1) should be amended to remove the phrase "during the contest" and add a reference to the use of non-monetary contributions and transfers, as is the case for candidates at elections. Furthermore, to have a spending limit regime comparable to that of candidates, the nomination campaign expenses limit provision (at s. 476.67) should be amended to reflect the wording of the definition of election expenses under s. 376(1). This would have the effect of excluding pre- and post-contest expenses from the limit.

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N/A Privacy protection principles for political parties	N/A	The bill does not extend the application of generally recognized privacy protection principles to political parties, nor does it impose an obligation on parties to demonstrate due diligence when giving access to their databases.	In order to preserve the confidence of Canadians in the political entities with whom they deal, and in order to better protect the privacy of Canadian electors dealing with political entities, the Act should provide a mechanism by which the application of privacy protection principles governing most Canadian institutions and organizations would be extended to political parties.	The bill should include a provision extending commonly accepted privacy protection principles to political entities and requiring that parties exercise due diligence when giving out personal information contained in their databases.

2- Technical corrections to Bill C-23				
C-23 Clause	**CEA provision**	**C-23 Proposal**	**Analysis**	**Proposed amendments**
79 97 Non-Canadian third parties	353(2) 496(1)(*a*)	Third parties who wish to register in order to spend funds over the $500 threshold must provide certification as to their residence in Canada.	These changes may have an unintended consequence as foreign corporations, groups and individuals may now be permitted to spend to the limit without registering, since the only offences are (1) for overspending, and (2) for not registering. Since foreigners are not permitted to register, they cannot be subject to the second offence.	Fix related offence (or add a new one) so that non-Canadian third parties who cannot register due to a lack of ties to Canada are still not allowed to spend over $500.
86 Leadership contest reports	New Part 18, 478.81(3)	This provision obliges the financial agent of a leadership contestant who has collected more than $10,000 in contributions or incurred more than $10,000 in expenses after the 4th week before the end of the leadership contest to produce a report on contributions and loans. This report is to cover the period from the beginning of the leadership contest to one week before the end of the contest and is to be provided to the CEO no later than two days before the end of the contest.	The English and French versions of this provision are not consistent. The French version appears to be correct.	The English version should more clearly reflect the French version, so that it makes it clear that the person who needs to report under s. 478.81(3) is a person who "attains the threshold for contributions or expenses" after the period referred to in subsection (1).
89 Obstruction offence	482.1	An offence is created for a person who "obstructs or hinders […] the Commissioner of Canada Elections or any person acting under his or her direction" while this person or the Commissioner is "conducting an inquiry […]".	The bill should clarify the circumstances in which the prohibition applies. The term "inquiry" in English creates confusion because it is outdated, and it is also too narrow. The application of the prohibition should not be restricted to only during the conduct of an investigation.	The prohibited activity should apply to the Commissioner and persons acting on his or her behalf in the exercise of their functions.
108	510(1)	The bill proposes that the Commissioner	The threshold of believing on reasonable	Omit any mention of a threshold in the

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Threshold for investigation by Commissioner		may conduct an investigation "if he or she believes on reasonable grounds" that an offence has been committed under the Act.	grounds that an offence has been committed is the standard for a search warrant, and should not be the standard for an investigation by the Commissioner. Describing a threshold is not necessary; the current Act does not include one for the Commissioner's work.	Act or revise it to read "suspects that an offence under this Act *may* have been committed" (without reference to "reasonable grounds").
117 Commissioner access to election documents	540(4)	The bill states that the CEO and his or her staff, as well as the Commissioner, may inspect election documents in the custody of the CEO "and any of those documents may be produced by the Commissioner for the purpose of an inquiry made under subsection 510(1) or provided to the Director of Public Prosecutions […]".	The Commissioner will not be in a position to "produc[e]" documents for "an inquiry" under this section; rather, the Commissioner will need access to the documents from the CEO.	The wording of the provision should be amended: the sentence referred to in the bill should read "and any of those documents may be provided to the Commissioner for the purpose of the exercise of the Commissioner's functions under section 510 or provided to the Director of Public Prosecutions […]."
109 Limitation period for summary conviction offences	514	Currently, prosecution proceedings for offences under the Act must start within five years after the Commissioner became aware of the facts and no later than 10 years after the day the offence was committed. The bill provides no limitation period for the more serious offences (those that are prosecuted by a procedure known as "indictment"). It also changes the period before which prosecution proceedings must start for some summary conviction offences (those referred to in subsection 500(1)) to six years from the day the offence was committed. For the	Barring a change to this provision, the default limitation period of six months (after the facts giving rise to the offence have occurred) would mean that prosecution would not be a viable option for many summary conviction offences.	In addition to specifying a limitation period of six years for summary conviction offences referred to in subsection 500(1), a limitation period should also be provided for the summary conviction offences referred to in subsections 500(2) to (5).

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		summary conviction offences set out in subsections 500(2) to (5), there is no specific limitation period provided – which means that the limitation period of six months (from the date of the event) for summary conviction offences under s. 786 of the *Criminal Code* would apply.		
155(*b*) to (*e*) Incurring expenses on behalf of a political entity	426(2) 475(2) 476.66(5) 477.47(5)	The provisions of the Act to be modified by the bill refer to the individuals within a political entity (other than leadership contestants) who have the exclusive right to incur expenses on behalf of the political entity. The bill proposes to make these provisions subject to the proposed s. 348.1, which establishes that the CRTC is responsible for the administration and enforcement of the division of the Act on the provision of voter contact calling services.	This reference to s. 348.1 in this provision does not appear to make sense.	The cross-reference in this provision should be corrected (perhaps to ss. 348.01 or 348.02).