



Remarks of the Acting Chief Electoral Officer
before the
Standing Committee on Procedure and House Affairs
on the study of
Bill C-76, *An Act to amend the Canada Elections Act and other Acts*
and to make certain consequential amendments

May 28, 2018

CHECK AGAINST DELIVERY

Thank you, Mr. Chair.

I am pleased to appear before the Committee today regarding Bill C-76, the *Elections Modernization Act*.

I want to begin by indicating my support for this bill. The changes it contains will improve access for Canadians to the voting process and further promote the core values of transparency and creating a level playing field when it comes to political financing. If enacted, the bill will also allow for the modernization and improvement of the administration of federal elections in order to meet the needs of electors into the future.

I am pleased to see that well over 100 of the 132 recommendations made by the former Chief Electoral Officer in his 2016 report entitled *An Electoral Framework for the 21st Century* are reflected in the bill. I hope that the fact that many of these recommendations were also supported unanimously in this Committee should allow members to

focus their study on those elements that are new, or that have not been endorsed by the Committee.

In my remarks today I intend to focus on three areas. First, I will make some comments on the following substantive matters raised in the bill that I think could be improved: privacy, integrity and third parties. Second, I will outline the approach Elections Canada is taking to implement this bill prior to the next general election. Finally, I will recommend a small number of technical changes that could be made to the bill by this Committee, to assist in its effective implementation.

Voter Identification

Before I deal with substantive issues, I would like to address voter identification, which is an area of the bill where there continues to be confusion among political parties, the public and the media. The fact is that since 2007, all electors have been required to provide proof of who they are and where they live prior to voting.

Most Canadians can do this by simply showing their driver's licence. But approximately 14% of Canadians do not have a driver's licence and need other options.

Bill C-76 proposes to return to a mechanism similar to the previous vouching regime, allowing voters to rely on another to vouch for their identity and address where they have no identification documents. This will be of assistance particularly to groups of electors who face barriers to the electoral process, such as the homeless, Indigenous electors or seniors in long-term care. It may also be useful for rural voters who need to register on polling day and who may have difficulty proving their address. Vouching does not remove the obligation to prove identity and address. It simply provides an alternative mechanism for doing so, with both the voucher and the voter taking a solemn declaration that is recorded.

Bill C-76 also permits the Chief Electoral Officer to authorize the voter information card as a piece of identification that can be used at the

polls. Here also there is a certain amount of confusion. In order for someone to use their voter information card at the polls, the card must contain their address, and must be supported with another piece of identification containing their name.

Electors who are able to use their voter information card to prove their address when they vote in a provincial election are surprised when they arrive at the polls with their voter information card to learn that it cannot be used to prove their address at the federal level. The voter information card is one of the few documents issued by a federal institution that includes address information. Permitting electors to use it to prove their address, alongside another document confirming their identity, will improve access to voting for a significant number of Canadians.

Privacy

The first substantive issue I would like to address is privacy. Bill C-76 contains a new requirement that, in order to become registered,

political parties must publish on their Internet site a policy for the protection of personal information. Unfortunately there is no requirement for the posted policy to reflect the basic privacy protection principles that are recognized internationally and that apply to other federal institutions. Members may wish to consider a more rigorous set of standards for the bill.

In addition, I am concerned about the lack of independent oversight the bill provides. The mere existence of a privacy policy on a website cannot guarantee that it is being observed. Ideally, oversight in this area would be granted to the Privacy Commissioner, who is Parliament's designated expert. In the alternative, another form of independent oversight could be explored. Either way, Canadians should be assured that political parties are actively abiding by the same privacy protection principles that apply to other organizations.

Integrity

Another area where the bill could be improved is with respect to electoral integrity. A new offence has been added, based on the *Criminal Code*, respecting the unauthorized use of a computer system with the intention of affecting the results of an election. This is a welcome development, as it will give the Commissioner of Canada Elections jurisdiction over this important area for the next general election. I urge the Committee to expand the wording of the provision, however.

As currently drafted, the offence requires proof of intent to influence election results. This seems a very high standard. We know from the international context that malevolent actors may wish to undermine trust in the integrity of the electoral process, without necessarily specifically intending to influence the results. I have suggested some alternative wording for this offence in the table of proposed amendments, which I believe would be more effective.

Third party regime

Finally, insofar as the substance of Bill C-76 is concerned, I would like to make some comments about the proposed new third party regime. These changes are a major improvement on the existing third party provisions in the *Canada Elections Act*, which are limited in their scope and effect. Regulating the spending of third parties in areas such as canvassing and get-out-the-vote calling, as well as election advertising, will help to ensure a level playing field between third parties and other political entities. Expanding the authority of the Chief Electoral Officer to review and audit third party spending reports is also important for transparency.

I would like to draw the Committee's attention to a few points, however. The first is with respect to the difference in the treatment of third parties and political parties in the new "pre-writ" period. While political parties are limited only in their partisan advertising during this period, third parties are limited in virtually everything they do. I question whether this approach achieves the right balance.

In addition, third parties who have received or spent, or intend to spend, over \$10,000 are required to submit two interim reports during the pre-writ period: one within five days of registration and the other by September 15—basically at the issue of the writ. By contrast, parties have no reporting requirements over the pre-writ period, and need only submit their pre-writ spending information as part of their general election return. Again, this seems to be an uneven approach.

The new third party regime does make significant strides in limiting the impact of foreign funding during election campaigns. It does this most clearly by broadening the scope of regulated activities, ensuring that third parties cannot obtain foreign funds exclusively for things like get-out-the-vote calls, which are not covered by the current regime.

The bill does not completely eliminate the possibility of foreign funding, however. This is because third parties continue to be allowed to

spend from their general revenues, which may contain money from any number of sources, including foreign ones. A third party could potentially use its foreign sources to fund its ongoing activity so as to permit its other, non-foreign revenues to be used for election activities.

Eliminating this possibility would require going further than Bill C-76, and developing a more comprehensive regime. There are various ways Parliament could consider to achieve this, either through contribution limits or further restrictions on entities that collect money from foreign sources. A proper balance would need to be struck between restricting the political activities of third parties and protecting freedom of expression under the *Canadian Charter of Rights and Freedoms*. The overall regulatory burden imposed on third parties should also be considered.

Implementation of Bill C-76

When I appeared before this Committee last month for the Main Estimates, I indicated that time was quickly running out for the

implementation of major legislative changes before the next election. I indicated that there might need to be compromises. I want to take this opportunity to explain our approach in order to be sure that the bill's essential provisions can be implemented in time for October 2019.

First, a number of items contained in the bill are discretionary for the Chief Electoral Officer and provide opportunity for improved services in the future. We will review these aspects carefully and in many cases we will leave their implementation until after the 2019 general election. For 2019, we will concentrate instead on the non-discretionary changes that are contained in the bill.

Second, and this will not surprise Committee members given my previous remarks, we will keep IT system changes to a minimum. There will undoubtedly need to be some system changes to implement a bill of this magnitude, but we will be exercising tight control in our decision-making to limit the impact on systems wherever possible.

Finally, depending on the pace at which the bill proceeds through the legislative process, we may well have to look at developing two tracks of materials to be used at the next election, in order to be ready to deliver the election under either the current or the amended legislation. This approach, and the development of any new systems needed, will require additional expenditures as we prepare for the election.

Canadians depend on Elections Canada to be ready to deliver a robust and effectively administered election, where the integrity of systems and processes has been tested, and the nearly 300,000 election officers have been effectively trained.

Table of amendments

Lastly, Mr. Chair, I have provided the Committee with a table of amendments. This table also covers a number of technical matters that, as indicated at the outset, I believe could be addressed by this Committee to improve the contents of this bill. I will not go through

them here in my remarks, but would be happy to answer any questions from Committee members.

Mr. Chair, that concludes my introductory statement.