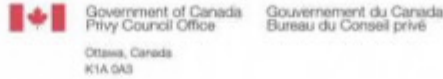


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MEMORANDUM FOR THE PRESIDENT OF THE QUEEN'S PRIVY COUNCIL FOR CANADA

via: Ian McCowan

c.c.:

CANADA ELECTIONS ACT: QUESTIONS AND ANSWERS

(Information Only)

SUMMARY

- o As requested by your office, attached please find a series of questions and answers related to the *Canada Elections Act* (CEA) to support potential discussions with stakeholders, including opposition critics.
- o Themes were selected based on issues raised by opposition parties during Committee meetings and the consideration of C-76. They are grouped according to different areas of the CEA.

Allen Sutherland

Attachment

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Annex A – Qs and As: Canada Elections Act

Elections during a pandemic

1) Is the government planning to force an election on Canadians during or immediately after the COVID-19 pandemic?

The ongoing COVID-19 pandemic presents unique challenges not only to the administration of federal elections, but also to the administration of provincial, territorial, and municipal elections.

Electoral management bodies across the country, including Elections Canada, are actively seized with this issue. Should Elections Canada be required to administer an election during this difficult time, we are confident that it would take all possible measures to protect the health of Canadian electors and election officials.

We also understand that the Chief Electoral Officer (CEO) has proactively taken measures to ensure readiness, including establishing a working group and actively engaging with his counterparts at the provincial/territorial level. We look forward to supporting this work in any way that we can, while respecting Elections Canada's independence.

Discussion papers

1) Elections Canada three discussion papers all highlight apparent issues and challenges associated with political communications provisions in the *Canada Elections Act* (CEA). Does this mean that the government intends on amending the CEA to address these issues?

We recognize that the ongoing rise of social media platforms and digital communications has led to significant changes in the operating environment of elections in Canada. To that end, we welcome Elections Canada's discussion papers on political communications, the impact of social media, and the personal information of electors within the context of an increasingly digital world.

We are confident in the CEO's ability to effectively engage with key stakeholders, and we look forward to his recommendations report, which will be closely examined as we consider ways to further strengthen the federal electoral framework.

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UNCLASSIFIED**Privacy protection and the personal information of electors**

- 1) Why is the government refusing to take action in an area where there is near unanimity from stakeholders, the CEO, the Commissioner of Canada Elections (CCE), and both the federal and B.C. privacy commissioners?**

I would be remiss if I did not mention the work our government has done in this particular area. To help ensure that political parties do their part to protect Canadians' personal information, measures were introduced in the *Elections Modernization Act*. Political parties are now required to have a publicly available, easily understandable, policy for the protection of personal information, which must be submitted to Elections Canada as a condition of registration.

These measures serve as an important first step to ensuring greater transparency about the ways political parties collect, secure and use data. At the same time, the Government is continuing its reflection as to what more should be done with respect to political parties' privacy responsibilities.

Social media platforms

- 1) When will the government take firm action to address issues prevalent on many existing social media platforms (SMPs)?**

This government has taken some steps to address the impact of SMPs, including through the CEA requirement for an online advertising registry, and through past discussions with SMPs, which culminated in the Canada Declaration on Electoral Integrity Online, endorsed by Microsoft, Facebook, Google, and Twitter.

The ad registry requirement increases openness and transparency by requiring social media platforms to maintain a record of all the partisan and election advertising sold on their platform in a publicly-accessible and searchable database.

More recently, we announced that the Government of Canada would be one of three leaders – alongside Microsoft and the Alliance for Securing Democracy – on the Countering Election Interference principle of the Paris Call for Trust and Security in Cyberspace. Even still, in recognition of this rapidly evolving area, we will consider all responsible options – including regulation – to ensure that we continue to have free and fair elections.

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Foreign interference

- 1) **During the last general election, a foreign-based website, the Buffalo Chronicle, published a number of outright falsehoods related to federal candidates. However, the government couldn't take action to deter them from publishing such reports. Why won't the government simply take down these types of websites, among others, that peddle lies and disinformation?**

We are confident in the ability of law enforcement officials to use their resources and existing powers – including those of the Commissioner of Canada Elections – to ensure that actors comply with federal election law, among other applicable legislation.

I should note that in 2018, we made changes to existing CEA provisions to clarify the provisions related to false statements and foreign influence.

- 2) **Why does the government claim to be combatting foreign interference while also allowing international politicians and activists to meddle in our election?**

Our government has taken action in this area, including recent CEA changes that made it illegal for third parties to use foreign funds to support partisan activities at any time, including outside of the election period. In addition, our government updated the prohibition on undue foreign influence to ensure it remained relevant in the current context.

The objectives of both these measures were not intended to curtail the overt expression of opinions. In particular, the prohibition related to undue foreign influence does not extend to the expression of an opinion about the outcome or desired outcome of the election.

Electors living abroad

- 1) **How does the government not see that providing Canadians living abroad with an unconditional right to vote increases the risk of foreign interference in our elections?**

The *Elections Modernization Act* sought to ensure that Canadians living abroad are able to exercise their right to vote, as long as they have previously resided in Canada.

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These changes are in line with the 2019 Supreme Court of Canada decision in *Frank v. Canada* in which the Court ruled that the CEA provisions that prevented Canadian citizens living abroad from voting in federal elections were unconstitutional. Specifically, the court struck down two conditions, that a person had to have only been absent for less than five consecutive years, and that they intended to return to Canada as a resident.

Issue advertising

- 1) **Why is the government silencing debate on particular issues? Why isn't the government instituting a truth in advertising regime?**

To be clear, the Government has no role in interpreting the CEA, including with respect to determining what qualifies as election advertising. Elections Canada, an independent agency of parliament, is responsible for administering the third party regime outlined in the CEA, which has long included spending limits and reporting obligations for third parties, mechanisms that are in place to increase transparency, and to foster a level playing field during an election campaign. While third parties must comply with these requirements, the rules do not prohibit third parties from discussing policy issues associated with a political party or candidate during the election campaign.

Third parties

- 1) **Why does the government insist that all third parties – regardless of their size, budget, and relative influence – be subject to the same strict regulations? How is that fair to smaller organizations that simply wish to advocate on a particular public policy issue?**

Federal elections are an important opportunity for all Canadians to be heard, and to express their opinions by casting a ballot. While we want to encourage as many Canadians as possible to participate, at the same time, we want to ensure that all Canadians have an opportunity to have their voice heard, and that those with lots of means do not have an unfair advantage.

That is why in 2018, we passed legislation amending the CEA's third party regime in a number of ways. This included, among other things, establishing a pre-election period, expanding the scope of activities covered under the regime, increasing reporting requirements for

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certain third parties, and prohibiting foreign entities from spending during an election, and the use of foreign funds by Canadian registered third parties. I should note that these new reporting requirements only apply to those third parties that receive contributions and/or incur expenses totaling \$10,000 or more for regulated activities.

2) Why has the \$500 threshold for third party registration not kept up with inflation?

Although the \$500 registration threshold has not kept pace with inflation, it remains an important measure that supports electors in identifying actors that may be seeking to influence their vote. Since the cost of advertising on social media is low relative to tradition advertising, it stands to reason that this threshold remains an effective transparency measure.

3) Why doesn't the government take the advice of many stakeholders and increase the length of the pre-election period?

In 2018, our government established a pre-election period, which begins on June 30 of a fixed date election year, and which ends the day before an election is called. During this period, political parties and third parties are subject to limits on expenses for regulated activities. This period reflects the practical reality that, with a fixed-date election, the runners start running before the official start of the race. This means that spending needs to be monitored earlier, a change that will ensure Canadians have the tools to know who is trying to influence their choices.

Choosing June 30th was a recognition that, while Parliament is sitting, organizations and advocacy groups should be encouraged to participate freely in public policy debates at the federal level without worrying that they may contravene regulations. Extending the pre-election period, together with its associated regulations, would likely increase the risk of the government being found to breach the freedom of expression rights of Canadians laid out in the *Canadian Charter of Rights and Freedoms* (the Charter).

4) Why is the government punishing small third parties (e.g., RightNow) for simply engaging with Canadians and participating in the electoral process?

As this question relates to an apparent ongoing investigation of the Commissioner of Canada Elections (CCE), we have no comment.

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At a general level, we are confident in the CCE's ability to use its compliance and enforcement powers to ensure that any potential transgressions are dealt with in a fair and timely manner. I should also highlight one particular change made through the *Elections Modernization Act*, the introduction of an Administrative Monetary Penalties (AMPs) regime.

The principle of the AMPs regime is to calibrate the severity of the infraction with the proposed penalty. This graduated approach is intended to avoid all or nothing litigation that can seem excessive especially when applied to volunteers. AMPs are seen as an increasingly popular tool to incent compliance, and their inclusion in the CEA was strongly recommended by the CCE. While the regime aims to promote compliance with the CEA, it does not replace the possibility of prosecution for serious offenses.

5) Why is there no contribution limit to third parties? Why does the government refuse to address the glaring issue?

The enhanced reporting requirements for certain third parties provide Canadians with information on the activities of third parties, including details related to contributions received. Third parties that meet the contribution and/or spending thresholds may be required to submit up to four interim reports to Elections Canada, along with its final election return. These interim financial reports are posted to Elections Canada's website, enabling Canadians, the media, and other interested stakeholders with a timely look at how these organizations are influencing the election.

Government advertising

1) Why does the government refuse to legislate limits on government advertising and announcements during pre-election and election period?

In advance of this past election, our government released two mechanisms aimed at addressing this issue, including the "Policy on Communications and Federal Identity", and the "Directive on the Management of Communications". Taken together, these directives modernize the Government of Canada's communications policy, subjects it to independent oversight of advertising to ensure non-partisanship, and suspends advertising activities on June 30 in a year in which there is a fixed general election date.

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UNCLASSIFIEDReligious holiday**1) Will the government commit to making sure a similar incident does not occur this time around?**

While Elections Canada made significant efforts to ensure those Jewish electors that observed Shemini Atzeret were provided with opportunities to exercise the right to vote, we also understand that the CEO may include recommendations specific to this particular issue in his fall 2020 report. To that end, we will closely examine any such recommendations as we consider additional ways to strengthen the accessibility of future federal elections.

Identification required to vote**1) Why did this government choose to allow electors to use error-filled voter information cards as a proof of identification?**

In Canada, there are strict rules on the types of identification and information that electors must provide before they can vote. An elector must be registered to vote, and an elector must provide ID that proves both their identity and address. To be clear, the voter information card (VIC) can only be used as a proof of address – an elector must also prove their identity using another piece of ID. Enabling electors to use the VIC in this way provides more options for those individuals that may not have the necessary identification.

2) How can the government claim, that on the one hand, it enacts policies to safeguard electoral integrity, while implementing an initiative like vouching, which is open to fraud?

If an elector does not have the required piece of ID, they can have a neighbor, or a friend that is assigned to the same polling station, vouch for them. The voucher must have proper ID that proves their identity and address, and both the elector and voucher must make written solemn declarations affirming their respective identity and address.

The decision to reinstate vouching during federal elections was made to ensure that more Canadians could cast a ballot, in particular those who may not have the required ID. This could include, for example, individuals that live in shelters or those without a permanent address.

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UNCLASSIFIED**Threshold for expense reimbursements****1) Will the government commit to re-examining the thresholds that both candidates and political parties must meet to be eligible for expense reimbursements?**

This regime, as laid out in the CEA, provides candidates and political parties with reimbursement of a certain percentage of their election expenses. The reimbursement is contingent on meeting a designated threshold with respect to the vote they received in the past election, and on filing their campaign returns within the prescribed timelines.

We understand that the CEO intends on publishing additional data on, among other topics, reimbursements provided to candidates and political parties. We will examine this data, together with any related CEO recommendations, to determine whether additional action is necessary.

Political contributions by minors**1) Why does the government allow for political contributions from minors? When will the government close this loophole?**

The rules governing contribution limits and sources during federal elections set out in the *Canada Elections Act* are strict and transparent. Only Canadian citizens and Permanent Residents—not corporations, third parties, or other entities—may contribute to political parties at the federal level. In 2020, these individuals are limited to a maximum of \$1,625 each across each of the following four categories:

- A registered party;
- All the registered associations, nomination contestants and candidates of a registered party;
- A leadership contestant; and
- An independent candidate.

In order to ensure that these contributions are transparent, there are strict rules in place. Political entities record the name and address of people who give over \$20 and issue receipts. For larger contributions, that is for amounts over \$200, the name and address of the person is published online by Elections Canada in a comprehensive and searchable database. This guarantees that Canadians are aware of what money is coming into the electoral system and from whom.

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The Chief Electoral Officer has not raised any significant concerns with this aspect of the federal regime, and recently stated that "donations can be a way for young people under the age of 18 to participate in the democratic process". Québec is the only province or territory that explicitly prohibits political contributions from minors.

The definition of a leadership contestant

- 1) In August 2019, it was reported that two former leadership contestants were required to reimburse political donations associated with events unrelated to the leadership race. Why is the government punishing former contestants long after a leadership race has concluded?**

The previous parliament made significant legislative amendments to the *Canada Elections Act* through *An Act to amend the Canada Elections Act (political financing)* (Bill C-50) and the *Elections Modernization Act* (Bill C-76). The former sought to make political fundraising more open and transparent through the establishment of an advertising and reporting regime for fundraising events attended by Ministers, party leaders or leadership contestants.

We are aware of the reports that fundraising events of two Members of Parliament that stood as contestants in a past leadership contest were deemed to be regulated events subject to Bill C-50's reporting regime. We also understand that the CEO has indicated he will be issuing a recommendation related to this issue, which we will closely examine as we consider further changes to the federal electoral process.