2008 RECOMMENDATIONS FOR AMENDMENTS TO THE *ELECTION ACT (THE ACT)*—SUBSTANTIVE

1. "Anywhere Voting" in the returning office and at advance polls

Background

Currently, *the Act* provides 3 basic voting options: a single day for general voting, 3 days of advance voting and special ballot voting anytime during the election period. On general voting day, the law requires that electors vote at a designated polling station within the electoral division in which they reside. During advance voting, electors who are eligible for this voting option are similarly required to attend an advance polling station within their electoral division. In urban electoral divisions this is usually the returning office, whereas in rural electoral divisions there can be multiple advance polling stations. Once again, in the case of special ballot voting, an application must be made to the returning office that is located within one's home electoral division and the completed special ballot must be returned to the same returning office before the close of polls on general voting day in order to be counted.

The rationale for restricting voting to an elector's home electoral division has been administrative ease, efficiency and control over the voting process. A list of electors for each electoral division is prepared and managed by the Returning Officer. The Returning Officer can expect to deal only with electors within their electoral division and this makes the administrative processes more manageable for the Returning Officer and his or her staff.

The Returning Officer and most other election officers must be resident electors within the electoral division where they are appointed to work. They determine the eligibility of electors, create or update the List of Electors for the electoral division, decide upon the polling place locations, determine who votes at which polling station based on where they live, and they can challenge a person's right to vote based upon, among other things, where they live. Historically, it was quite likely that an elector would be greeted by one of their neighbours when they went to vote – someone who could distinguish between those who lived in the neighbourhood and those who did not. This offered some element of control. Along with other controls such as a voters list and the requirement for those not on the list to show identification, it created a powerful deterrent to those who may attempt to vote in an electoral division in which they are not eligible to vote and to those who might otherwise be inclined to attempt to vote more than once. With the high mobility in the province, this personal knowledge of community residents may not be as commonplace as it once was.

The need for controls over the voting process will always exist. These controls give the public confidence in the integrity of the democratic system and afford legitimacy to election results. However, it is possible to change the form that these controls take on. With computerization of the Lists of Electors, it is technically possible to permit electors

to vote anywhere in the province they happen to be at a given time with little risk to the integrity of the voting process. Electors who choose to vote outside their home electoral division would have to produce identification showing the address where they are ordinarily resident. When electors receive a ballot they could be marked on the computerized voters list as having voted. This would mitigate any attempt at multiple voting in a similar way to the current procedure of manually crossing names off the list of electors.

There are cost and many other logistical factors that would make such a change impractical at 7,000 regular polls on general voting day. However, a computerized data base containing the entire List of Electors for the province can be made available within each returning office to permit electors to vote at any returning office regardless of where they are ordinarily resident. For example, a student ordinarily resident in Ponoka attending school in Calgary could vote at any returning office in Calgary for a candidate running in the electoral division of Lacombe-Ponoka. A welder ordinarily resident in Edmonton-Rutherford working in High Prairie could vote for an Edmonton-Rutherford candidate in the returning office in High Prairie. Currently, the only 2 voting options available to the student and the worker in the above examples would be for them to either travel to their home electoral division during a day of advance or regular voting or to apply for a Special Ballot from the Returning Officer in their home electoral division. The travel option is often not practical unless it happens to coincide with a visit home. The Special Ballot option, while practical, is often left too late by the voter to permit timely delivery of a Special Ballot package and return of the completed ballot.

With the increased mobility of the population within the province for business, education and leisure, it is time to adapt the traditional voting system to the needs of the voter. Such a change would also allow Elections Alberta to set up advance “super polls” in shopping malls, at airports, in work camps and on college campuses where we typically find large numbers of voters who are ordinarily resident in different electoral divisions. According to the existing voting rules, it has not been advisable to set up polling stations in such locations precisely because electors in those areas are likely to be from different electoral divisions.

The votes cast by electors outside their electoral divisions would need to be redistributed by Elections Alberta to the electors’ home electoral divisions for counting. It would not be possible for these votes to be physically received by the home electoral divisions in time for counting by the close of polls on general voting day. Therefore, they would need to be counted a day or two later and added in to the official count.

Recommendations Relevant Sections: 43, 52(1), 86(1), 95(1), 98, 99, 104, 113, 116, 118, 119, 137.

a. Permit electors to vote in any electoral division within the province during the days of advance voting and by Special Ballot, at any returning office, throughout the election period.

b. Permit the establishment of additional advance voting stations in high traffic areas and places where large numbers of electors are located such as large shopping malls, airports, work camps, and college campuses.

2. Extending the hours of voting

Background

The Act currently prescribes the hours of voting for advance and general voting days to be from 9 a.m. to 8 p.m. This provides 11 continuous hours throughout these days for electors to vote. *The Act* also requires that election officers arrive at their designated polling station 30 minutes prior to the opening of the poll to permit candidates and scrutineers to examine election documents and materials. At the close of polls, the unofficial vote counting begins. It typically takes an additional hour to complete all of the required paper work and relay the results to the returning office. This makes for a 12 ½ hour day for election officers.

The hours of voting are not standardized across Canadian jurisdictions. Most jurisdictions have 11 hours of continuous voting, like Alberta, and some have 12. Prince Edward Island, which has consistently delivered the highest voter turnouts in the country, has only 10 hours of voting. In Prince Edward Island, the polls are open from 9 a.m. to 7 p.m.

Extending the hours of voting in Alberta provincial elections is unlikely to have a significant impact on voter participation, however, it would be convenient for some voters to have an additional hour to vote in the morning. The heaviest volume of voters attending the polls will still be between the hours of 5 p.m. and 7 p.m.

Recommendation Relevant Section: 88(1)

a. Extend the hours of voting for advance and regular polls by one hour by opening the polls at 8 a.m.

3. Additional days of advance voting

Background

The Act currently prescribes 3 days of advance voting on the Thursday, Friday, and Saturday of the week preceding general voting day. In electoral divisions that are primarily urban, there is typically one advance poll held in the returning office. In rural electoral divisions, there are multiple advance polls set up in different locations throughout the electoral division to accommodate the distances voters must travel. Turnout at advance polls has been increasing over time and, in the 2008 general election, several urban electoral divisions needed to establish additional advance polls to accommodate voters. Some campaigns are also becoming very active in organizing their supporters to vote at advance voting stations. With the adoption of an earlier recommendation to remove the eligibility criteria associated with advance voting, it can be expected that the option of voting in advance of general voting day will increase in the future. Also, permitting electors to vote at any advance polling station is expected to increase the use of the advance voting option.

Increasing the number of days of advance voting will have an impact on the returning officers' ability to have printed ballots available for use at the advance polls. Depending on the day of the week an election is called, there is currently anywhere between 4 and 9 days after the close of nominations to have the ballots printed and distributed to the advance polls. Even with the most generous printing and distribution period of 9 days, it is sometimes difficult to get the ballots distributed to advance polls in rural electoral divisions. Each day of advance poll voting that is added within the current election calendar will reduce the time available for printing and distributing ballots. For example, 3 additional days of advance voting added to the week preceding general voting day, would reduce the time available for printing and distribution of the ballots to between 1 and 6 days. It would clearly not be possible to supply advance polls with pre-printed ballots within such a reduced time frame. Two possible solutions to this timing issue would be to extend the election period by the number of additional days of advance poll voting and the other would be to authorize the use of special (blank) ballots at the advance polls. If the recommendation to permit voting at any advance poll is accepted, electors ordinarily resident outside the division in which they are voting would need to vote by special ballot because it would not be possible to supply every returning office and advance voting location with pre-printed ballots for every electoral division.

Recommendations Relevant Sections: 39, 98

a. Increase the number of days of advance voting by 3 days to permit voting Monday to Saturday of the week preceding general voting day.

b. Extend the length of the election period by 3 days following the close of nominations.

4. Voter identification

Background

The Act does not require electors to provide identification to election officers in order to vote if their name appears on the List of Electors for their electoral division. An elector who attends a regular or advance poll and whose name is not on the List of Electors is required by law to produce identification in order to vote. Voters who apply for Special Ballots are not required to provide identification whether or not their name appears on the List of Electors. Electors required to provide identification must show two pieces consisting of an Alberta driver's licence, an Alberta health insurance card, a senior citizen's identification card, or any other piece of identification acceptable to the election officer. If neither piece of identification provided is one of the specific forms named above, then any 2 pieces of identification acceptable to the election officer may be provided. In addition, all electors whose names do not appear on the List must take and sign a prescribed oath stating the elector is qualified and ordinarily resident in that polling subdivision. In circumstances where identification is required, electors are not required to provide identification that establishes citizenship, age, address or length of residence and there is no need for the identification to contain a photograph.

There are different views on the issue of identification required to vote. We heard these views from electors and political campaigns during the 2008 general election. Some believe that there should be no need to produce identification since there are many individuals who may not possess the necessary identification documents to qualify. These individuals are often those who are already marginalized by society and the requirement for satisfactory identification would further disenfranchise them. Seniors and other long-time citizens and residents also expressed annoyance with having to provide identification.

Others believe that all electors should be required to produce identification to establish their eligibility to vote. This latter view was expressed by some electors but came primarily from political campaigns. Strictly speaking, it would be very difficult to establish eligibility through identification at the polling station, since very few people in our society are in the habit of carrying with them proof of citizenship. Length of residence in the province would also be difficult to prove through identification documents.

The Act tries to strike a balance between these opposing points of view. Generally speaking, electors whose names are on the List of Electors were, at one time or another, either enumerated at their place of residence or required to provide identification at the polling station. *The Act* accords to voters who are enumerated, the trust that they are who they say they are, that they reside where they answer the door, and that they are otherwise eligible to be an elector. The same holds true for the information provided about other eligible electors residing at the same address. On the other hand, there is the implicit assumption in *the Act* that individuals who have not been enumerated and whose names do not appear on the List of Electors require greater scrutiny as to their eligibility to vote – hence the need to provide identification and to swear an oath of elector eligibility. It is important to reiterate, that the minimal

identification requirements in *the Act* do nothing to establish one's eligibility to be an elector. We are relying upon the declared word of the elector as to their eligibility.

During provincial elections, the issue becomes further complicated by the different rules applied during federal and local elections. For example, the City of Edmonton in the most recent municipal election introduced the requirement for photo identification of all voters. Some local authorities do not require any identification. Also, the identification requirements for federal elections are very different than for provincial elections. The inconsistency in these basic rules causes confusion on the part of voters, scrutineers and election officers who often work in provincial, federal and municipal elections.

Recommendations Relevant Section: 95(1)

a. A person who is required to establish his or her identity should be required to do so by providing one official document issued by a federal, provincial or municipal government that contains the person's name and photograph or at least 2 documents that provide evidence of the person's identity satisfactory to the election officer.

b. If none of the documents provided to establish a person's identity contains a current address, the person must make a signed declaration as to his or her current address.

5. Rules of residence

Background

For the purpose of determining where an elector resides and, hence, where they are entitled to vote, *the Act* uses the term "ordinary residence". Ordinary residence is determined according to the following rules:

a. a person can have only one place of ordinary residence;

b. a person's ordinary residence is the place where the person lives and sleeps and to which, when the person is absent from it, the person intends to return;

c. a student who
   i. is in attendance at an educational institution within or outside Alberta,
   ii. temporarily rents accommodation for the purpose of attending an educational institution, and
   iii. has family members who are ordinarily resident in Alberta and with whom the student ordinarily resides when not in attendance at an educational institution

   is deemed to reside with those family members;

d. when a person leaves Alberta with the intention of becoming ordinarily resident outside Alberta, the person's ordinary residence in Alberta ceases.

Application of the rules of ordinary residence causes confusion for a good number of electors and election officers, but particularly for students, workers who reside in camps, and persons with summer residences. For example, students will often leave home to attend school in large urban centres within and outside Alberta, sometimes for several years. The intent of the student to return to their family home when their studies are complete is not always clear, or could change while they are away. Also, there is a large contingent of workers in Alberta who live in work camps while they are employed. They may or may not have other residences to which they intend to return when they leave the work camp accommodations. Many of these workers spend more of their time living at the work camps than they do at other residences. Still others have "summer" residences where they can spend roughly equal amounts of time. Some electors in these situations feel they should be entitled to vote wherever they choose.

Following the 2007 civic elections, the County of St. Paul applied to the Court of Queen's Bench for an order determining whether the election in its Division 4 was substantially conducted in accordance with the requirements of the *Local Authorities Election Act*. At issue was the interpretation of *the Act*'s rules of residency. In this case, Madam Justice Bielby ruled that voters with two residences could vote in the municipality where the home to which they feel "the greatest sense of personal attachment" is located. While the judge pointed out that this did not mean that an elector with two residences was free to simply vote where they chose, the task of proving otherwise would be considerable.

While there will always be unique circumstances, the rules of residence must be made clearer for the sake of the elector and election officers who have a duty to determine an elector's eligibility to vote in a particular electoral division.

Recommendation Relevant Section: 1(2)

a. **If an Alberta resident temporarily resides in a place in Alberta to allow him or her to attend an educational institution for 6 months or longer or to pursue his or her ordinary occupation in a job that is expected to last for 6 months or longer, that temporary residence should be deemed to be his or her residence from the date the person begins to reside there.**

6. Persons with no fixed address

Background

From time to time election officers are called upon to assist voters with no fixed address to determine their ordinary residence for purposes of voting. This situation applies to the homeless and would likely assist in determining the residency of some inmates prior to their imprisonment. The guidance given to election officers has been to deem ordinary residence for persons in such circumstances to be the shelter, hostel or similar facility most commonly frequented.

Recommendation Relevant Section: No reference in *the Act*

a. A person who does not have an ordinary residence should be deemed to reside at the shelter, hostel or similar facility that most frequently provides food, lodging or other social services to the person.

7. Nomination deposits

Background

Candidates must file nomination papers with the returning officer in the electoral division in which they intend to run. Among other requirements, a nomination paper is not valid unless it is accompanied with a deposit of $500. Alberta is not unique in requiring a deposit before a candidate can seek election. Only Manitoba and Quebec do not require deposits. However, at $500, Alberta's nomination deposit is the highest. Half of the nomination deposit is refunded to the candidate's campaign if the candidate is elected or if they receive at least half as many votes as the winning candidate. The other half of the nomination deposit is refunded if the candidate's campaign financial statement is filed on time.

Nomination deposits have been put in place to serve several purposes. Ostensibly they deter the proliferation of frivolous candidates from entering the race, which could impair the ability of serious candidates from communicating with voters and, thus, undermine the electoral process. They were designed to ensure that a candidate was committed to the electoral process. Also, they provide a financial inducement for candidates to file their financial statement on time.

In *Figueroa v. Attorney General of Canada* (1999), the judge struck down as contrary to section 3 of the *Charter* federal legislation that required a candidate for election to Parliament to pay a $500 deposit that was refundable if the candidate received 15% of the vote. Ontario's election law requiring a $200 deposit which is refundable for candidates who receive at least 10% of the vote, was successfully challenged on *Charter* grounds earlier this year in *de Jong v. Ontario (Attorney General), 2007.* In that case, the Ontario Superior Court Justice stated that the deposit interfered with a citizen's capacity to play a meaningful role in the electoral process and that the effect of

deposits is that “those having access to the most financial resources may be able to monopolize the election discourse.”

Whether or not nomination deposits serve the purpose of restricting candidacy to only serious contenders is subject to debate. It could well be argued that a truly serious candidate who expects to lose his or her deposit could be deterred by the financial threshold for participation and that $250 is hardly a financial deterrent for a truly determined frivolous candidate. It should be noted that, similar to all other provinces, Alberta has a requirement for candidates to obtain the signatures of electors who endorse their candidacy. This prerequisite of public endorsement for a nomination may be sufficient to restrict participation to serious candidates.

There may be less disagreement on the connection between timely filing of financial returns and the deposit refund for doing so. This portion of the deposit is designed to ensure compliance with financial reporting requirements. The $250 loss for failing to file a financial statement is not an insignificant amount to some candidates. However, all candidates have an opportunity to receive the refund by complying with the law. This is not to say that the refundable deposit is the only motivation for timely filing. Most candidates have a strong desire to play by the election rules requiring full disclosure of their election financial activities. Nevertheless, following the 2008 election there were 35 registered candidates who failed to file their financial return by the reporting deadline. There are legal sanctions for failure to file but they are not entirely effective in encouraging compliance with filing deadlines.

Recommendations Relevant Sections: 61(1), 62 of the *Election Act*; 42, 43 and 44 of the *EFCD Act*

a. If challenged in court, the portion of the nomination deposit that is contingent upon the election outcome would likely be found to violate *Charter* rights and should be eliminated.

b. An administrative penalty should be assessed for each day a candidate’s election return is filed after the filing deadline.

c. An administrative penalty should be assessed for each day a registered party’s election return and annual return are filed after the filing deadline.

8. Secrecy

Background

The Act requires all persons permitted to remain in a polling place during polling hours to take a prescribed oath of secrecy before performing their duties and to aid in maintaining the secrecy of voting. Suspected contraventions of the law governing secrecy are required to be reported to the Chief Electoral Officer. The duty of the Chief Electoral Officer to notify the Minister of Justice and Attorney General of suspected secrecy contraventions is superfluous. No other suspected contravention of election law is required to be reported to the Minister of Justice and Attorney General in this fashion. Section 166 of *the Act* already stipulates the offence for violating the law governing secrecy of voting and section 177(1) outlines the applicable penalty for this offence. As a matter of course, all suspected contraventions of *the Act* are investigated by the Chief Electoral Officer and, where a breach has been found, they are referred to Alberta Justice for prosecution. The Minister of Justice and Attorney General cannot institute a prosecution under *the Act* without the consent of the Chief Electoral Officer.

Recommendation Relevant Section: 93(3)

a. Repeal the provision requiring the Chief Electoral Officer to notify the Minister of Justice and Attorney General of a suspected contravention of the law governing secrecy of voting.

9. Election void if candidate is found guilty of corrupt practice

Background

The Act outlines a specific class of offences called corrupt practices. For the most part they are considered to be the more serious violations of *the Act* with some of the stiffest penalties. A corrupt practice committed by a candidate or an official agent of a candidate carries additional penalties. When a candidate is found guilty of a corrupt practice and, under certain conditions, when an official agent is found guilty of a corrupt practice, the election is considered void. This would appear to be appropriate if it was the elected candidate or his or her official agent that committed the corrupt practice. *The Act*, however, merely refers to a "candidate" and an "official agent". It does not seem appropriate for an elected candidate to be automatically deprived of victory because an unsuccessful candidate has breached the law.

Recommendation Relevant Sections: 178(1), 179(1)

a. An election should be declared void if it is the elected candidate or his or her official agent that is found guilty of a corrupt practice.

b. In the case of a corrupt practice by a candidate who was not elected or official agent of a candidate who was not elected, the judge should have the discretion to declare the election void if the result was unfair or the integrity of the electoral process was undermined because of the corrupt practice.

10. Safeguarding the Lists of Electors

Background

The Act outlines who may have access to the Lists of Electors and restricts how this information may be used. *The Act* also imposes one of the stiffest financial penalties for contravention of these restrictions. The penalty is a fine of not more than $100,000 or imprisonment for a term of not more than one year or both. There is currently no method of monitoring or controlling the misuse of the voters lists. In other Canadian jurisdictions, the restricted use of this information is monitored by the Chief Electoral Officer by selectively adding control entries to the lists. By "salting" the lists, the Chief Electoral Officer would have the ability to trace misused lists to the offender. For example, if non election-related correspondence or advertising addressed to these fictitious entries arrives at the designated address, then it may constitute grounds for an investigation into a possible election offence.

Recommendation Relevant Sections: 13, 20, 163

a. Include authority for the addition of control entries to the Lists of Electors in order to safeguard their use.

11. Inspection of poll books

Background

Candidates or their official agents may request copies of Poll Books for their own electoral divisions during a 30 day period following an election. Technically speaking, poll books cannot be ordered until the names of the candidates declared elected are published in the Alberta Gazette. Elections Alberta is not in control of the timing of this publication, but it usually takes as many as 6 weeks following the election for results to be published. Practically speaking, Elections Alberta receives requests for poll books immediately following the election but cannot begin to supply them until the 30 day period begins. For expediency and to reduce the cost of producing these poll books, Elections Alberta waits until all requests are received before copying the poll books so that multiple copies of books for a particular electoral division can be made at the same time. Poll book requests could be supplied faster if there was a two week window to request the books.

Recommendations Relevant Section: 152(1)

a. **Reduce the period for requesting poll books from 30 days to 15.**

b. **The cross-reference in section 152(4) is incorrect and should refer to (3) not (2).**

12. Testing new technologies and alternative methods

Background

The Act is very prescriptive in terms of the approved methods, procedures and rules for conducting elections. This is as it should be so that the rules are clear to election officers, understood by voters and easily scrutinized by the political participants. However, from time to time, new methods, procedures or technologies are developed or introduced in other jurisdictions which could serve to improve efficiency, lower cost or improve service to the voter. It would be desirable to have specific authority to be able to test such innovations during by-elections where small scale application can be properly monitored and controlled.

Recommendations Relevant Section: No reference in the *Act*

a. **At a by-election, permit the Chief Electoral Officer to direct the use of new technologies, voting equipment or alternative voting methods that are different from what *the Act* requires.**

b. **Require the Chief Electoral Officer to describe the new technologies, voting equipment or alternative voting methods in detail and refer to the provisions of *the Act* that will be implemented differently or will not be complied with.**

c. **Require the Chief Electoral Officer to provide notification of procedural amendments to all registered political parties.**

13. Use of schools as voting places

Background

According to *the Act*, it is the responsibility of the Returning Officer to provide polling places at which polling stations will be located. Polling places are to be conveniently located for the voter and handicapped accessible, where practicable. *The Act* states that a Returning Officer may utilize as a polling place any public building or any school that is the property of any school district or school division if the building or school is suitable for the purpose. Schools are ideal locations as polling places. With the exception of very new areas, most communities have one or more schools that are conveniently located for the majority of residents. Most residents know where a particular school is situated in their community, the gymnasiums can accommodate

several polls, they usually have sufficient parking, and they typically have the necessary chairs and tables available to equip a polling place. There would seem to be clear authority for a Returning Officer to locate polling stations in schools. Unfortunately, school boards are increasingly refusing to rent space in their schools for election day. They most often cite conflicts with school programming, the administrative inconvenience of contacting schools, increased janitorial costs, security concerns with the public entering the schools while their students are attending classes, and safety concerns related to increased vehicular traffic. They are also increasingly reluctant to let the Returning Officers use or rent tables and chairs forcing officials to rent from costly commercial providers and having furniture delivered to the schools. In the 2008 general election, some school boards would not approve the use of any schools until they had received the requests from every Returning Officer. This makes it very difficult to advertise the location of polling places on a timely basis, particularly if the requests are subsequently refused.

An earlier recommendation regarding fixed election dates stated*, "A fixed election date would allow more time for advance planning by the school boards and enable them to make arrangements they felt were necessary for student safety, possibly including designating the date as a non-instructional day."*

Recommendations Relevant Section: 52(4)

a. **Strengthen the existing provision regarding the use of schools as polling places to say that if requested by a Returning Officer, space and furniture in a school or public building must be made available to operate a polling station.**
b. **When a polling station is located in a school, no classes or other school activities (other than educational visits by students currently authorized under section 92(1.1)) may take place in the space occupied by the polling station.**
c. **When a polling station is located in a school, the principal of the school may order that no classes or other school activities may take place in the entire school, or any part of the school the principal specifies.**

14. Employment leave for Returning Officers

Background

If an earlier recommendation concerning merit-based, open competitions for filling the Returning Officer and Election Clerk positions is adopted, it would be desirable to require employers to grant a leave without pay to an employee who has been appointed to the position of Returning Officer or Election Clerk. Considering the importance of these positions to ensuring fair and professionally-run elections, and the short-term nature of the appointment, such a provision would open the competitions to otherwise employed persons. Without such a provision the competition for these positions is effectively limited to those who are without employment.

Recommendation Relevant Section: No reference in the *Act*

a. Require a period of leave without pay to be granted by employers for persons appointed to the position of Returning Officer or Election Clerk.

15. Candidate contributions to candidate's campaign

Background

According to section 209 of *the Act*, a candidate can "lawfully" contribute to his or her own campaign from personal funds an amount up to the contribution limit prescribed for a contributor. However, the section also explicitly contemplates excess contributions by a candidate, which it requires to be reimbursed from the candidate's campaign account. These provisions are ambiguous as they leave in question the lawfulness of the excess contributions if they are reimbursed from the campaign account.

A candidate may over-contribute to his or her campaign, and then find the campaign fund is too small to reimburse the excess amount. A candidate in over-contributing may even have an expectation that the campaign account will be too small to reimburse the excess amount. The ambiguity in this section essentially allows candidates the opportunity to exceed the limits in section 17(1)(b)(ii) of the *Election Finances and Contributions Disclosure (EFCD) Act* and claim that they anticipated being reimbursed from the campaign account, but that the campaign account came up short.

Recommendations Relevant Sections: 209 of the *Election Act;* 17 of the *EFCD Act*

a. Clarify that any amount contributed by a candidate over that allowed under section 17(b)(ii) of the *EFCD Act* is an unlawful excess contribution and subject to an administrative penalty under section 51 regardless of whether the amount of the excess contribution is repaid from the campaign account.

b. Remove section 209 from the *Election Act* and include it in the *EFCD Act.*

16. Protection of elector information—process for swearing in at the polls

Background

An eligible elector whose name is not on the List of Electors may have his or her name added during the advance polls or on election day, after completing an Oath of Elector. Completion of the Oath requires the production of two pieces of identification, administration of the Oath by the election officer, and inclusion of signatures by the elector and the election officer. In addition, the election officer must inquire and record whether the elector intends to swear or affirm the Oath.

The process would be streamlined and expedited by the elector making a declaration rather than completing an Oath (as is done to obtain a ballot at an advance poll). While a declaration has the same force and effect, it does not demand the same process of inquiry and response by the election officer and elector, respectively.

Expediting the process would provide better service to all electors, while maintaining the integrity of the process. In addition, eliminating the need to swear or affirm an oath, and to have this information retained in the Poll Book for examination by and distribution to candidates and official agents, would be less intrusive to electors and more respectful of their right to privacy.

Recommendation Relevant Sections: 95, 99

a. **Replace the Oath of Elector with a declaration, maintaining the overall content. This will effectively remove the requirement for the determination and retention of whether the Oath was sworn or affirmed.**

17. Protection of elector information—Lists of Electors

Background

Currently, the Chief Electoral Officer is authorized to provide a replacement copy of the List of Electors to Members of the Legislative Assembly, and registered political parties, upon request. The Member or party that requests a copy may be required to pay an amount for replacement of the data. There is no requirement for Members or parties to provide any kind of accounting of what happened to the original copy of the List or explanation as to why a replacement copy is required.

Given the confidentiality appropriately accorded to elector data, Members and parties should provide specifics to the Chief Electoral Officer concerning the whereabouts of the previous List, specifics regarding loss or destruction and efforts made to retrieve the elector data, if it is not readily available.

That would provide the Chief Electoral Officer with the necessary information to determine whether investigative or recovery efforts are appropriate.

In addition, application of an administrative penalty for loss of confidential elector data would encourage Members and parties to exercise the utmost caution in the management of the data entrusted to them. Commitment to security of elector data evidenced by strict statutory consequences for lost or misplaced data would serve to reinforce the importance of safeguarding the confidential information contained on Lists of Electors.

Recommendations Relevant Section: 18

a. **Authorize the Chief Electoral Officer to ascertain, through inquiry, the reasons for a request for a copy of a List of Electors.**
b. **Require members and parties to fully disclose all details, in writing, with respect to the reasons for requesting a copy of the List of Electors.**
c. **Authorize the Chief Electoral Officer to apply an administrative penalty of up to $5,000 for the loss of confidential elector information.**

18. Protection of elector information—scrutineers' access

Background

Current provisions in *the Act* authorize scrutineers to represent candidates and to observe election procedures on a candidate's behalf. Meaningful observation of election procedures includes access to election documentation which is essential to ensure fairness and transparency within the voting process.

There is no specific direction regarding scrutineers' access rights and this ambiguity has led to confrontational exchanges between scrutineers and election officers. Clarity surrounding the role and rights of scrutineers would remedy this situation and remove the need for ad hoc resolution on election days, when time is scarce, other priorities exist and emotions are high. Specific legislative authority would be particularly useful within this context, given the large number of scrutineers, all of whom are volunteers who receive little or no training in their responsibilities and who often have no experience to draw upon.

Specific role definition would ensure that scrutineers and election officers cooperate in serving the electorate through the performance of their discreet but complementary roles.

Recommendations Relevant Section: 79

a. **Scrutineers' access to election documentation should be limited to a time that is convenient for election officers.**
b. **Specify that election documentation may be examined, but may not be removed from the polling station or registration officer's station, nor mechanically reproduced in any way.**
c. **Specify that scrutineers may communicate with the election officers and not directly with electors.**
d. **Require scrutineers to discuss perceived irregularities with their candidate or official agent, to allow for resolution between one of those individuals and the Returning Officer. This will allow individuals with a broader understanding of election legislation to resolve perceptions of irregularities.**
e. **Require scrutineers to contact the Returning Officer if he or she is unable to discuss the perceived irregularity with the candidate or official agent.**

19. Publication of polling place information

Background

Currently, Returning Officers publish maps of the electoral division, along with polling place locations, on two separate occasions. Publication of the first advertisement within the tight time constraints of having to advertise the hours, date and place fixed for nominations has, historically, resulted in subsequent changes due to the fact that many locations will not make the necessary commitments before the publication deadline. Lessors have, in past, reneged on the verbal commitments that are most often obtained in order to meet newspaper publication deadlines, resulting in advertising errors.

Revisions to polling place information result in a significant expense to republish information, as required by legislation. It also places an additional requirement on Returning Officers, who are expected to direct electors from the initially advertised polling place to the new location. In addition, where-to-vote cards identifying the correct polling place would contain conflicting information, adding to the confusion.

Most importantly, electors may disregard subsequent advertisements and rely on information provided in the first advertisement. Some may not learn of the revision until election day and may be disenfranchised if their attendance at the location that was originally advertised does not permit the necessary time to travel to the correct location.

Publication of one set of maps and polling place locations, in the seven days prior to polling day, would ensure adequate time to confirm lease arrangements in writing prior to advertising. Advertisements would still appear in newspapers before the opening of the advance polls.

As in recent elections, polling place locations would continue to be made available via Elections Alberta's call centre and website earlier in the election period. Accuracy of information provided through these media is much easier to ensure, given internal control over timelines and data integrity.

Recommendation Relevant Sections: 55, 70

a. Remove the requirement for publication of maps and polling place locations from the proclamation advertisement in the newspaper.

20. Returning Officer availability

Background

In the past, Returning Officers have vacated their offices within a few days or a week after polling day. However, there are several important functions performed by Returning Officers in the weeks following the election which would benefit from their continued occupation of office space. Returning Officers are required to conduct an official count of the votes, update the Register of Electors, and transmit election documents to the Chief Electoral Officer within ten days following the official count. They are required to pack up and return their election materials to Elections Alberta and to prepare a report on how the election was administered in their electoral division. There is no requirement for Returning Officers to be accessible in their offices following the official count. Leasing arrangements are typically such that returning office space is rented for a two-month period. Therefore, there would be no additional lease costs if the Returning Officer was to remain in the office for a longer period.

After an election, candidates, official agents and the public are left without a local presence to respond to their questions and to provide assistance or information, if needed.

A requirement for Returning Officers to maintain regular office hours for the two weeks following the election would allow ample time for the professional completion of their responsibilities to the Chief Electoral Officer, the candidates, and the public in their respective electoral divisions. The expanded window of opportunity would also facilitate their immediate review and identification of outstanding election issues for timely review and action by the Chief Electoral Officer.

Recommendation Relevant Sections: 9, 138, 141, 142

a. Specify that Returning Officers must maintain regular office hours and be available for two weeks post-polling day.

2008 RECOMMENDATIONS FOR AMENDMENTS TO THE *ELECTION ACT (THE ACT)*—HOUSEKEEPING

21. Time for voting

Background

All employees who are qualified electors are entitled to 3 consecutive hours while the polls are open on polling day for the purpose of casting their vote. This provision does not apply to employees engaged in the operation of dispatching railway trains or scheduled commercial aircraft and to whom the 3 consecutive hours cannot be allowed without interference with the operation or dispatching of the trains or aircraft. It would appear that this provision is quite limited in singling out commercial aircraft and train transportation. If there is a need to exempt employers based upon the type of the work performed by certain employees, it would be more appropriate to refer to the urgent and critical nature of the employment that would make it inadvisable for leave to be granted, rather than to list specific positions.

Election officers are encouraged to vote at the advance poll, but there is no requirement for them to do so. It would not be possible to provide 3 consecutive hours of leave to election officers for the purpose of voting without seriously disrupting the whole voting process.

Recommendation Relevant Section: 132

a. Extend the exemption for employers from having to provide time off for voting to employees who provide emergency or essential services and to election officers.

22. Reference to financial statement filing

Background

Section 62(2.1) of *the Act* refers to the filing of the election financial statement by the candidate. Section 43(2) of the *Election Finances and Contributions Disclosure (EFCD) Act* places the responsibility for filing a candidate's election financial statement with the candidate's chief financial officer. The former provision should be changed to clarify that it is the chief financial officer of the registered candidate that files the election financial statement.

Recommendation Relevant Sections: 62(2.1) of the *Election Act*; 43(2) of the *EFCD Act*.

a. Direct the chief financial officer of the registered candidate, rather than the candidate, to file the election financial statement.

23. Candidate seals

Background

At the conclusion of each day of advance voting and at the conclusion of the unofficial count of ballots at the voting station on election night, the deputy returning officer is required to seal the ballot box. *The Act* also permits the ballot box to be sealed by any candidate, official agent or scrutineer so desiring. In practical terms, this does not happen. Candidates' campaigns do not have seals to prevent the ballot box from being opened nor do they have seals to cover the slot in the ballot box. Specially numbered lock tags and controlled paper seals are provided to the election officers for this purpose. It is not necessary, nor advisable, to permit candidates' campaigns to seal ballot boxes without specifying or providing the materials to be used for this purpose in case election officers are later unable to break those seals to perform their official duties in a timely fashion.

Recommendations Relevant Sections: 98(6)(b), 112

a. Delete reference to candidates, official agents and scrutineers sealing the ballot box.

b. Permit candidates, official agents or scrutineers to sign across the flap of all sealed envelopes into which ballots have been placed before being deposited into the ballot box.

24. Inspection of election documents

Background

The Act permits the inspection of election documents, with the exception of ballots, by candidates and official agents within a 30-day period following the publication of election results in the Alberta Gazette. While *the Act* does not specify where these documents may be inspected, they are securely stored at the Office of the Chief Electoral Officer. Depending on the number of requests received, there is the potential for considerable public expense to be incurred in having to transport these documents to various other locations and to retain staff to supervise their inspection. It is suggested that *the Act* specify the Elections Alberta office as the location where election documents may be inspected. There is no additional public expense involved in having election documents

inspected at this location. This is consistent with the location specified in the *EFCD Act* for the public inspection of financial documents.

Recommendation Relevant Section: 152(1)

a. Specify that election documents available for inspection may be inspected at the office of the Chief Electoral Officer.

25. Election terminology

Background

Some of the more important and frequently used terminology in *the Act* and the *EFCD Act* is antiquated and should be updated. The following is a list of the current terminology used in the legislation and the proposed terms:

Recommendations Relevant Sections: Various sections of *the Election Act* and the *EFCD Act*.

Current Term	Proposed Term
Advance Poll	Advance Voting Advance Voting station Advance Voting place
Deputy Returning Officer	Voting Officer
Election Clerk	Assistant Returning Officer
Elector	Voter
List of Electors	Voters List
Mobile Poll	Mobile Voting Mobile Voting station Mobile Voting place
Poll Book	Voting Book
Poll Clerk	Voting Clerk
Polling Day	Voting Day
Polling Place	Voting Place
Polling Station	Voting Station
Polling Subdivision	Voting Area
Supervising Deputy Returning Officer	Senior Voting Officer

26. Candidate to run in only one electoral division

Background

While it is quite likely that *the Act* intends to restrict a person to run as a candidate in only one electoral division during an election, this is not explicit.

Recommendation Relevant Sections: 56, 57

a. Restrict a candidate from running in more than one electoral division in a general election or when more than one by-election is being held at the same time.

2008 RECOMMENDATIONS FOR AMENDMENTS TO THE *ELECTION FINANCES AND CONTRIBUTIONS DISCLOSURE (EFCD) ACT*—SUBSTANTIVE

1. Definition of "contribution"

Background

The term "contribution" is currently defined to mean money or real or personal property that is provided to or for the benefit of a political entity without compensation. The definition does not include "services". However, in section 23 of the *EFCD Act* "goods and services" are considered to be contributions.

Recommendation Relevant Section: 1(e)

a. The term contribution should be defined to include "services, other than volunteer labour".

2. Auditing requirements for financial statements

Background

The *EFCD Act* requires audited financial statements, including nil returns, to be filed with the Chief Electoral Officer by registered political parties covering annual activities and the campaign period. Smaller political parties sometimes have minimal or no spending to report. The requirement for parties with nil or minimal spending to have to incur the expense of having their financial statements audited seems unnecessary. If there are concerns regarding a particular financial return, the Chief Electoral Officer has the authority to conduct an examination under the *EFCD Act* and, if necessary, can enter the premises of a political party, examine or make copies of books or documents, and compel political parties to produce information.

The term "audit" is currently not defined in the *EFCD Act* and, from time to time, Elections Alberta is challenged by political parties who want to have financial statements "audited" by accountants or bookkeepers who are not qualified auditors.

Recommendations Relevant Sections: 5, 42, 43

a. Eliminate the requirement for an audit for political party annual or campaign period financial statements containing spending or fund raising below $500, unless otherwise directed by the Chief Electoral Officer.

b. Define the term "audited financial statement" as a financial statement which has been independently examined by a person authorized to perform such examinations under the *Regulated Accounting Professions Act* for the purpose of expressing an opinion as to whether financial information is presented fairly.

3. Reporting of candidate deficits and surpluses

Background

The chief financial officer of a registered candidate is required to file a financial statement within 4 months after polling day with the Chief Electoral Officer setting out the income and transfers and the amount of expenses in total, including expenses paid on behalf of the candidate by a registered party or a constituency association that relate to the campaign period. *The EFCD Act* refers to continuing use of funds held by a candidate at the end of a campaign period, but it should be made explicit that assets and liabilities of the candidate should be reported on the campaign period financial statement.

As noted above, *the EFCD Act* deals with situations where a candidate has surplus campaign funds, including contributions received for the purpose of the campaign. The *EFCD Act* requires that a candidate's surplus campaign funds be held in trust and section 12(2)(a) gives the trustee of the trust two options: (i) the trustee can deposit the funds in a financial institution, or (ii) the trustee can invest the funds in an authorized trustee investment. Until 2006, there was a schedule to the *Trustee Act* that defined "authorized trustee investments". That schedule was repealed in 2006 as the *Trustee Act* had moved away from a defined set of investments for trustees to a more flexible set of rules. Other statutes that referred to authorized trustee investments were amended but the *EFCD Act* was not. Candidates and their trustees are becoming confused about what constitutes an "authorized trustee investment".

Furthermore, section 12(1) stipulates clearly that surplus funds are to be expended for the candidate's candidacy at the next election. However, the section contains ambiguity in that it permits the trust funds to be transferred or paid, at the option of the candidate, to the registered party, the registered constituency association, or registered candidates of the registered party that proposed or supported the candidate's registration at the previous election. There is no mechanism for ever ensuring that these funds are, in fact, used for the candidate's benefit as required by the *EFCD Act*. Also, if the candidate does not run in the next election, he or she can transfer or pay the amount held in trust to the above entities or to the Crown if the funds cannot be transferred.

If surplus funds are to be expended for the candidate's candidacy at the next election, they should be held in trust by the Chief Electoral Officer and returned to the candidate with accumulated interest if the candidate contests the next election. If the candidate does not contest the next election, the funds should be paid to the candidate's supporting party or, in the case of an independent candidate, to the General Revenue Fund.

There is no reference in the *EFCD Act* to situations where candidates end up with a deficit at the end of their campaign. This raises a concern with how campaign deficits are eventually retired. Outstanding liabilities of candidates at the end of the campaign period must be paid, forgiven, or barred from payment as per section 210(1) of the *Election Act*. If the deficit is paid by the candidate or someone else, this amounts to a contribution to the candidate's campaign and is subject to contribution limits and other prohibitions. If an outstanding liability is forgiven, this amounts to an in-kind donation, again subject to contribution rules. If a claim for a debt is time-barred it should be deemed to be a contribution, as per an earlier recommendation. The point is that there is no mechanism for reporting on the elimination of deficits which means that all contributions to a candidate's campaign may not be reported and subsequently disclosed.

Recommendations Relevant Sections: 12, 43(2)

a. Specifically reference the reporting of assets and liabilities of the candidate at the end of the campaign period within the election reporting requirements for candidates.

b. Include the name of each supplier of goods or services to whom the candidate owes payment, and the amount owing to each, in the reporting of candidate liabilities.

c. Require the Chief Electoral Officer to hold surplus funds of a candidate in trust.

d. Return surplus funds of a candidate to the candidate, with accumulated interest, if the candidate contests the next election.

e. Transmit surplus funds and accumulated interest of a candidate who does not contest the next election to the candidate's supporting party or, in the case of an independent candidate, to the General Revenue Fund.

f. Within 30 days after the end of the calendar year, require every candidate with a campaign deficit to file a return with the Chief Electoral Officer setting out:
   i) the amount of the campaign deficit that remains outstanding
   ii) the total amounts of contributions, transfers or other funds used to reduce or eliminate the campaign deficit; and
   iii) the total amounts of all contributions received from a single contributor, including the contributor's name and address and the date the contribution was made.

g. Repeal sections 12(2) to (5).

4. Borrowing

Background

Section 40(1) of the *EFCD Act* restricts registered party, constituency association and candidate borrowing to a financial institution (other than Alberta Treasury Branches). The Office of the Chief Electoral Officer has discovered a circumstance of a party incurring significant "accounts payable" to a single party supporter with no terms of repayment. In our view, this amounts to "borrowing" from a person that is not a financial institution. This exposes a potential loophole in the contribution limits and transparency provisions of the *EFCD Act*.

If a registered party, constituency association or candidate enters into a contract or other arrangement in relation to real property, personal property, or services where the contract or arrangement is at less than a reasonable commercial value or does not otherwise reflect reasonable commercial terms, they should be required to report such an arrangement to the Chief Electoral Officer. The report should include a copy of the contract or agreement, or provide the details of the arrangement. It should disclose the difference between the reasonable commercial value and the value at which the real property, personal property or service was provided. This difference must be recognized by the *EFCD Act* as a contribution and reported as such by the registered party, registered constituency association or registered candidate.

Recommendations Relevant Sections: 23(5), 40

a. **Contracts or other arrangements in relation to real property, personal property or services (other than volunteer labour) entered into by registered parties, registered constituency associations and registered candidates that are at less than reasonable commercial value, or that do not reflect reasonable commercial terms, must be reported in detail within 30 days to the Chief Electoral Officer.**

b. **The difference between the reasonable commercial value and the value at which the real property, personal property or service was provided must be recognized by the *EFCD Act* to be a contribution.**

5. Administrative penalties

Background

There are 2 mechanisms for dealing with non-compliance with the *EFCD Act*:

a. prosecution under sections 45 to 50; and

b. in the case of 2 provisions of the *EFCD Act*, administrative penalties under section 51.

Prosecution is not an effective tool for ensuring compliance with the *EFCD Act* in all cases because it relies on the criminal justice system as its enforcement mechanism. Prosecutorial discretion has prevented a number of breaches of the *EFCD Act* from being dealt with through prosecution despite referrals and consents to prosecution which are required from the Chief Electoral Officer before violations of the *EFCD Act* can proceed to court.

However, the provisions in relation to administrative penalties are too narrow to assist in ensuring compliance with most sections of the *EFCD Act.* At a minimum, the powers of the Chief Electoral Officer under section 51 should be expanded to allow the Chief Electoral Officer the authority to impose penalties on a registered party, constituency association or registered candidate who receives an improper contribution (See recommendation 3.c. under the October 2006 Amendments to the *Election Finances and Contributions Disclosure (EFCD) Act*— Substantive).

The narrow scope of section 51 prevents the Chief Electoral Officer from enforcing compliance with other requirements and limits in the *EFCD Act*. The *EFCD Act* would provide a more effective regulatory regime if the Chief Electoral Officer was authorized to issue other sorts of orders (e.g. an order that money be repaid to the donor by the party where it is an excessive or prohibited contribution) and penalties (e.g. a daily fee for late filing of election and annual financial returns).

Ideally, a more fundamental restructuring of section 51 should take place. These sorts of regimes exist in securities legislation, professional legislation and environmental legislation.

Recommendations Relevant Sections: 45 to 53

a. Expand administrative penalties to cover any breach of the *EFCD Act*.

b. Authorize other forms of orders besides "penalties" including:
- **i. reprimands**
- **ii. formal and public warnings**
- **iii. orders to come into compliance**
- **iv. fines and costs**

6. Penalty amount imposed by Chief Electoral Officer

Background

When the Chief Electoral Officer is satisfied that a person, corporation, trade union or employee organization has made contributions in excess of an amount permitted under the *EFCD Act*, he may require payment of a penalty in the amount equivalent to the amount by which the contribution exceeded the permitted amount. Similarly, when the Chief Electoral Officer is satisfied that a prohibited corporation has made a contribution in contravention of section 16, he may require payment of a penalty equivalent to the

amount of the contribution. The requirement does not allow for discretion to impose a lesser penalty where circumstances may warrant.

Recommendation Relevant Section: 51

a. Permit the Chief Electoral Officer to exercise discretion in the penalty amount imposed.

7. Accumulation of assets by new parties

Background

Under section 6(1) of the *EFCD Act*, no contributions can be accepted by a political party until it is registered. However, there is an anomaly in the *EFCD Act* in that sections 6(3) to 6(5) contemplate that a party will have assets before registration. For example, section 6(3) requires that a non-profit corporation or trust be established as a foundation for receiving and managing the assets held by the political party prior to filing an application for registration. Similarly, section 7 also contemplates that a party will have assets before it is registered.

On a practical level, there is no way that a non-profit corporation can be formed and have assets unless someone gives assets to the non-profit corporation. As soon as someone gives something to a non-profit corporation formed for the purposes of operating a political party (including office materials, etc.) it is a "contribution" as defined in section 1(1) of the *EFCD Act*. Therefore, *the EFCD Act* contemplates that a party will have assets, but there is really no practical way for the party to get any assets under the *EFCD Act*. Membership fees permitted under section 25 are unlikely to be of real assistance because the fee paid must not exceed $50 to be considered a non-contribution.

In order to permit contributions to new parties before registration, the non-profit corporation established for the purpose of becoming registered as a political party should apply to the Chief Electoral Officer to accept contributions, despite section 6(1), These contributions would be used solely for the purposes of obtaining registration. The Chief Electoral Officer can establish rules that specify the information that must be provided in an application. Approved applications could impose any conditions to ensure the integrity of the control over election finances and disclosure under the *EFCD Act*. Conditions could include: who may hold the contributions, bonding requirements, contribution source and amount limits, record keeping and reporting requirements, and refund requirements if registration does not occur. A contribution made under these provisions would be deemed to be a contribution by the donor to the party on the date the party becomes registered.

Recommendation Relevant Sections: 1(1)(e), 6, 7, 17, 18, 25, 40

a. Add provisions to permit contributions to new parties before they are registered for the sole purpose of becoming registered.

8. Candidate spending before the issuance of the Writ

Background

In the period before elections and before the issuance of the Writ, it is reasonable to expect that candidates may wish to lease campaign office space and order signs, etc. in anticipation of an election call. However, according to section 9(1) there is a very broad prohibition on candidates, and others acting on behalf of a candidate, from "using" any funds and accepting contributions before the candidate is registered with the Office of the Chief Electoral Officer. Conceptually, candidates who are representatives of a registered party can register in the pre-writ period under section 9(2). The current practice has been for their party or constituency association to enter into commitments that they can take over once the Writ is issued. The law is unclear as to whether or not this practice is permissible before the candidate is registered or before the Writ is issued.

By contrast, under section 9(2)(a)(iv), an independent candidate cannot register in the pre-writ period (unless he or she is an MLA) and, therefore, cannot "use" any funds, including their own funds, to secure space and order signs, etc.

The *EFCD Act* should clearly state whether or not acceptance of contributions and spending campaign funds is permitted by candidates prior to the issuance of the Writ. If such activity is permitted before the Writ, a new term such as "candidacy period" will need to be introduced to the *EFCD Act* for the purpose of candidate financial reporting.

If candidate spending and acceptance of contributions is permitted before the Writ, the same rules for registration should apply to independent candidates as to candidates nominated by a constituency association. With a fixed date for the election, a fixed date could also be set after which registration could take place for all candidates.

Recommendations Relevant Section: 9

a. Delete the words "after the date of the issue of a Writ of Election in a named electoral division" in section 9(2)(iv).

b. Include similar amendments in the *Senatorial Selection Act*.

c. Clarify whether acceptance of contributions and campaign spending are permitted prior to the issuance of the Writ.

9. Regulation of third parties

Background

One of the main purposes of campaign finance legislation is to regulate the amount of money that is spent by political entities in their efforts to get candidates elected. This is typically done by setting limits on the amount that can be spent on election campaigns and/or the amount that can be contributed to election campaigns. In Alberta, only contributions are subject to limitations – by source and amount. Another feature of campaign finance legislation is transparency – public disclosure of where the money used in elections comes from and how it is being spent.

The Royal Commission on Electoral Reform and Party Financing (1991), as a result of extensive hearings and research, proposed recommendations to restrict third party spending during a federal election. The Royal Commission concluded that unlimited third party spending is a threat to the effectiveness of campaign finance legislation. The Commission recommended that election expenses incurred independently from registered political parties and candidates not exceed $1,000; that there be no pooling of funds; and that the sponsor be identified on all advertisements and promotional material for such independent expenditures.

There have been several court challenges to third party restrictions beginning with the 1993 challenge of third party provisions in the *Canada Elections Act* by David Summerville of the National Citizens Coalition in the Alberta Court of Queen's Bench, and an appeal of that decision by the Attorney General in the Court of Appeal of Alberta in 1995 which was dismissed in 1996. Later the Supreme Court of Canada ruled in Libman v. Quebec (Attorney General) on the constitutionality of third party provisions in Quebec's Referendum law. In 2000, there was a challenge of BC's election advertising spending limits for third parties in the British Columbia Supreme Court involving Pacific Press v. British Columbia (Attorney General). Most recently in Harper v. Canada (Attorney General) the *Canada Elections Act's* third party provisions were challenged in the Alberta Court of Queen's bench and some components of the ruling were appealed in 2002.

The drafting of any third party regulations would need to pay particular attention to court rulings on this area of election law. Reasonable limits on third party expenditures during elections are in place in other Canadian jurisdictions and, depending on how they are structured, can withstand constitutional challenge. In Alberta where there are no campaign spending limits placed on political parties and candidates, it may be difficult to defend a decision to impose them on third parties. Nevertheless, in the interests of transparency, it would not seem unreasonable that third parties incurring election expenses above a certain threshold be required to register with the Chief Electoral Officer, be subject to contribution limitations, be required to identify themselves on advertising and promotional materials and be required to file a financial statement of their income and expenses.

Recommendations Relevant Section: No provisions exist

a. **Require individuals and groups incurring election expenses independently from political parties and candidates (third parties) to register with the Chief Electoral Officer.**

b. **Apply source and amount contribution restrictions to third parties.**

c. **Require third parties to identify themselves on all advertising and promotional materials.**

d. **Require third parties to report their election spending to the Chief Electoral Officer.**

2008 RECOMMENDATIONS FOR AMENDMENTS TO THE *ELECTION FINANCES AND CONTRIBUTIONS DISCLOSURE (EFCD) ACT*—HOUSEKEEPING

10. Disclosure of financial activity

Background

The Chief Electoral Officer is required to publish on Elections Alberta's website the financial statements filed by registered parties and candidates within 30 days of being approved. Records of contributions are required to be filed at the same time that other financial statements are filed. It should be made explicit that records of contributions over $375 are to be published on Elections Alberta's website along with other financial information.

Recommendation Relevant Section: 4(1)(d)

a. Clarify that the Chief Electoral Officer shall publish records of contributions over $375 on Elections Alberta's website along with financial statement information.

11. Annual financial disclosure by party foundations

Background

Foundations are formed by political parties for the purpose of managing the assets held by the party prior to filing its application for registration. They are required to file a report of their expenditures annually with the Chief Electoral Officer. Foundations should also be required to report on their income for the reporting period and the value of assets held at the end of the reporting period.

Recommendation Relevant Section: 6(6)

a. Section 6(6) of the *EFCD Act* should be expanded to require foundations to annually file a report with the Chief Electoral Officer which sets out the income, transfers and expenditures of the foundation and the balance of assets held at the beginning and end of the reporting period.

12. Price paid in excess of market value

Background

Section 23(3) provides a formula for determining how expenses and contributions are to be apportioned at a fundraising function for the convenience of the political entity hosting the event. Section 23(4) contradicts the approach taken in the previous section by specifying that the price paid at a fund-raising function in excess of the market value at that time for goods or services received is considered to be a contribution. Section 23(5) reiterates what is stated in section 23(4) but is more general in that it does not refer specifically to fundraising functions.

Recommendations Relevant Section: 23

a. **Repeal section 23(4).**

b. **Remove section 23(5) from the section dealing specifically with fund-raising functions and insert elsewhere in Part 3 of the *EFCD Act* which deals with contributions. This section will have to be expanded to clarify that the deeming provision applies to a gift of goods or services "to the registered candidate, constituency association or party that received the goods or services."**

13. Receipts for contributions

Background

Official receipts for contributions are numbered for control purposes and must contain certain information to aid in assessing compliance with the *EFCD Act*. Where receipts are required to be issued for contributions to a registered party, registered constituency association or registered candidate, the *EFCD Act* should clearly stipulate that the form of such receipts is to be prescribed by the Chief Electoral Officer and that the receipts themselves are to be obtained from the Chief Electoral Officer.

Recommendation Relevant Section: 33

a. **Official receipts for contributions should be prescribed by the Chief Electoral Officer and obtained from the Chief Electoral Officer.**

14. Consequence of not filing financial statements

Background

Section 44 describes the process for the Office of the Chief Electoral Officer and the Legislature to follow when a candidate does not file financial statements, but does not speak to the penalties that the candidate and his/her chief financial officer may face for breaching this requirement. Section 57 of *the Election Act* describes the penalties.

Recommendation Relevant Sections: 44 of the *EFCD Act*; 56 and 57 of the *Election Act*.

a. The consequence of failing to file financial statements outlined in section 57 of the *Election Act* should be added to section 44 of the *EFCD Act.* Adding this section may require some additional definitions to the *EFCD Act*.

15. Contact information for political entities

Background

The Chief Electoral Officer is required to maintain a register of political parties, constituency associations, and candidates which includes names of the various positions within the organizations or campaigns and the financial institution used. During the course of business, there are several occasions where the Chief Electoral Officer must contact these organizations or individuals to request information or remind individuals of reporting requirements. Constituency associations and candidates are only required to provide the name of the financial institution used to deposit contributions. The register information to be maintained should be expanded to include information such as addresses, phone numbers and other contact information, as well as information regarding all financial institutions used by these entities.

Recommendations Relevant Sections: 7(1), 8(2), 9(2)(c)

a. Authorize the Chief Electoral Officer to prescribe the type of contact information to be supplied by registered political parties, registered constituency associations, and registered candidates.

b. Considering the relatively short duration of the campaign period, require registered candidates to provide updated contact information to the Chief Electoral Officer within 14 days of any changes.

16. Access to documents

Background

Section 11(1) is an access provision which is intended to permit public inspection of all documents filed under the *EFCD Act*. Unfortunately, the section refers to, "All documents filed with the Chief Electoral Officer…" The section should be amended to avoid any suggestion that it applies to documents filed under the *Election Act*, which are not automatically public documents.

Recommendation Relevant Section: 11(1)

a. Delete the words "with the Chief Electoral Officer" and replace with "under this Act" in section 11(1).

17. Missing words

Recommendation Relevant Section: 42(2)

a. Section 42(2) needs the words "to be in" inserted before the word "compliance".

18. Section 48 heading

Background

The section heading of 48(1) reads "Failure to provide audited statements". The section refers to annual and election financial statements filed by political parties which must be accompanied by an audit report, but also to financial statements filed by candidates and constituency associations which are not required to be audited.

Recommendation Relevant Section: 48

a. Delete the word "audited" in section 48 heading.