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Submission on Bill C-23 (the so-called "Fair Elections Act") to the House of Commons Committee on Procedure and House Affairs

(Democracy Watch : April 8, 2014)

A. Summary of Submission

The federal Conservatives' Bill C-23, the so-called "Fair Elections Act", takes many giant leaps backwards that will make federal elections much less fair, and also fails to correct many unfair flaws that already exist in the federal election system. The Conservatives fully deserve the many criticisms Bill C-23 has faced because it has many more bad than good measures, is another omnibus-type bill full of technical changes they are trying to slip through unnoticed, and they have made many misleading statements about the bill.

The few fairly good measures in Bill C-23 include measures requiring the registration of robocalls, limiting loans from individuals, and increasing fines for violations. However, even in those areas the bill needs strengthening to be effective at preventing fraud robocalls, to limit all loans, and to impose penalties strong enough to discourage violations.

A couple of measures in Bill C-23 that have been criticized by many commentators are, in Democracy Watch's opinion, not areas of concern. First, although the measure should be clarified, the Chief Electoral Officer (CEO) is not gagged by Bill C-23, and will still be allowed to provide information to voters in imaginative ways and places – including through ads that have a headline encouraging voting, and including through high school mock-votes or other voter turnout public education programs. The CEO will also still be allowed to conduct surveys, report on those surveys, and file reports with Parliament containing a wide variety of information, including information about complaints Elections Canada receives alleging violations of the *Canada Elections Act* (*CEA*).

Secondly, the changing the Commissioner of Canada Elections from being a CEO appointee to being a Director of Public Prosecutions (DPP) appointee will not reduce the Commissioner's independence from the government, nor his enforcement effectiveness. The DPP is no more or less independent from the Prime Minister and Cabinet than the CEO, and the Commissioner already submits evidence to the DPP after each investigation, and the DPP already decides whether to prosecute in each case.

The real problems are that the Director, CEO and Commissioner (and all good government watchdogs) all need to be made much more independent from the government, and that the government has been misleading the public about their independence.

The 10 really unfair measures in Bill C-23 are as follows, each with a summary about how they should be changed:

1. The prohibition on one voter "vouching" for the identity of one other voter, and on using the voter registration card (VIC) as ID -- together these changes will make it more difficult for hundreds of thousands of voters to vote, and so they should be removed from Bill C-23. Instead, add the VIC to the current list of valid ID, and empower Elections Canada, and provide it with adequate funding, to hire and fully train all election workers for elections well before each election, and to make the voter registration list and ID checking even more accurate.
2. The failure to democratize the federal political finance system by reducing the annual donation and loan limits to an amount an average voter can afford, continuing the annual per-vote funding for parties, and requiring disclosure of all gifts and donations to all types of candidates. In contrast, Bill C-23 hikes the annual donation limit for individuals from $2,400 to $3,000 (and during an election year from $3,600 to $4,500); hikes the amount candidates can donate to their own campaign from $1,200 to $5,000 (and to $25,000 for leadership candidates), and; allows banks to make unlimited loans to parties and candidates. All these are hugely undemocratic changes that will only benefit wealthy donors and candidates, and facilitate corruption as occurred in Quebec. Bill C-23 also fails to require disclosure of donations of volunteer labour, and fails to prohibit secret gifts to nomination race and party leadership candidates.
3. The change to not count the amount spent on communications for "fundraising" purposes in the total amount parties are allowed to spend during election campaigns (a loophole that should be eliminated because it will be abused to hide millions of dollars of unaccountable spending that secretly violates campaign spending limits).
4. The failure to empower Elections Canada to appoint all election workers – in contrast the bill extends the dangerously unethical power of political parties and candidates who won or came second in the previous election to force returning officers to appoint the deputy returning officers, poll clerks, registration officers and central poll supervisors that they choose.

5. The failure to empower Elections Canada to appoint the auditors for all the parties, riding associations and candidates – instead, the bill continues to allow these entities to choose their own auditors (which is a recipe for corruption).
6. The failure to require (finally) that the Commissioner of Canada Elections (CCE) disclose the results of investigations and his rulings on all complaints, and the failure to require the Director of Public Prosecutions (DPP) to publish their reasons whenever they decide not to prosecute or agree to a plea deal. In contrast, the bill includes a dangerously secretive new rule that requires the Commissioner and the DPP to keep the evidence and rulings for all investigations secret (unless a prosecution or compliance agreement happens). This excessive secrecy will make it impossible to hold the CCE and the DPP accountable if they make unfair, biased or improper rulings or enforcement decisions.
7. The restriction on some pre-election campaign advertising spending by interest groups (which means the costs of an ad run just before an election and into the election period could count as part of the total amount an interest group is legally allowed to spend on ads during an election campaign) – and the failure to also restrict pre-election ad spending by parties and candidates (including via their riding association).
8. The failure to require anyone or any entity that uses robocalls to file a copy of each robocall script and recording, and a list of the numbers called, with the CRTC for the CRTC to keep for 5 years, and the failure to require political parties to keep a record of who accesses their voter database, and to make it a violation for political parties to allow their database to be misused. In contrast, Bill C-23 only requires people or entities that make robocalls to register and keep just the script and recording of the call for only 1 year.
9. The failure to increase the amount of all proposed fines to a level that will actually discourage violations (all the fines proposed in Bill C-23 should be 10 times higher) and the failure to require courts to impose the maximum fine unless extraordinary circumstances mean it would be unjust to do so.
10. The failure to give voters up to one year to challenge a fraudulent election result (voters only have 30 days now), and the requirement in Bill C-23 that a voter must give written notice to the returning officer when the voter applies to a judge for a recount (which will make it more difficult to challenge election results).

The 10 missing measures that must be added to Bill C-23 or implemented through another bill or bills to make federal elections actually fair are as follows, generally in order of priority:

1. Prohibit parties and candidates from baiting voters with false election promises or advertising, and from breaking election promises (unless truly unforeseen circumstances require them to be broken).
2. Change the federal election voting system to provide a more accurate representation of the popular vote results in each election in the seats held by each party in the federal House of Commons (as in many other countries) while ensuring that all elected officials are supported by, and are accountable to, voters in each riding/constituency (with a safeguard to ensure that a party with a low-

level, narrow-base of support does not have a disproportionately high level of power in Parliament), and to allow voters to vote "none of the above" and also to actually fix election dates for late fall every four years (unless an actual vote on non-confidence occurs earlier).

3. Regulate nomination races to ensure party leaders can't appoint candidates or stop candidates from running (other than on grounds of "good character" such as no criminal convictions) and to ensure nomination races "are conducted in a fair, transparent, and democratic manner" (quotation is from the Conservatives' 2006 election platform that promised to make changes) give Elections Canada the power to run nomination races and enforce the rules.
4. Have Elections Canada determine the date and number of election debates, and oversee them, with the leader of every party that won at least 5% of the popular vote in the last election or that has at least one MP in the House of Commons allowed to participate, and require all broadcasters to broadcast the debates.
5. Give the Commissioner of Canada Elections (CCE), and the CRTC, the clear power to apply for a court order that compels a person to testify, or a person or entity to disclose records, needed to investigate alleged violations of the *CEA* (as Elections Canada recommended in its 2012 report, and as election watchdogs in New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Alberta and Yukon, and Australia and the U.S. can do, and as the Competition Bureau of Canada can do).
6. Require political parties, riding associations, candidates and third parties to provide any document requested by Elections Canada or the CCE to confirm compliance with the *CEA*, as recommended by Elections Canada.
7. Create a right to refuse to cast a ballot (as Ontario and Alberta voters have) or to vote "none of the above" and require election commissions to report how many Canadians do so (so voters can, if they want to, send a clear message that they do not support any of the candidates or political parties).
8. Allow independent candidates to raise money in-between elections (currently only party-backed candidates are allowed to do this, through their local riding association or their party that then transfer money to them once their election campaign begins).
9. Give whistleblowers a financial reward if they disclose evidence to Elections Canada, the CCE, or the CRTC that leads to a conviction.
10. Extend the federal *Privacy Act* and *Personal Information Protection and Electronic Documents Act* to cover political parties, riding associations and political candidates, as Elections Canada recommended in its 2012 report.

B. The two measures in Bill C-23 (the so-called "Fair Elections Act") that are not what some critics have claimed they are

1. The Chief Electoral Officer will not be muzzled or gagged

Section 7 of the Bill C-23, the proposed *Fair Elections Act* (which changes section 18 of the *Canada Elections Act* (*CEA*)) has been much criticized. The section could be clarified but it doesn't "muzzle" or "gag" the Chief Electoral Officer (CEO) as some have claimed. It does say the CEO can only "provide" the public with information about how, when and where to become a candidate and to vote.

However, that rule does not in any way prevent Elections Canada from providing this information in imaginative ways and places – including high school mock-votes or other voter turnout public education programs.

The CEO should do an ad campaign during the next election with the headline "Voting is so dangerous we are not allowed to encourage you to do it!" and information about how to vote below. That would likely be much more effective at increasing voting by youth than any ad Elections Canada has run in the past. If the Conservatives actually try to stop Elections Canada from doing such ads or programs it would cause a public backlash that will seriously hurt their re-election chances.

The changes in section 7 of Bill C-23 to section 18 of the *CEA* also do not, in any way, prohibit Elections Canada from doing surveys -- he has the clear power under clause 16(d) of the *CEA* to do those surveys or anything else he feels he needs to do to "exercise the powers and perform the duties and functions that are necessary for the administration of this Act." Section 8 of Bill C-23 (which amends section 18.1 of the *CEA*) also makes it clear that the CEO can undertake "studies on voting".

The changes also do not, in any way, prohibit Elections Canada from reporting on those surveys, or talking to reporters about what measures in the *CEA* mean. In fact, section 5 of Bill C-23 (which adds a new section 16.1 to the *CEA*) will expand the Chief Electoral Officer's (CEO) powers, and give the CEO a clear mandate, to disclose public Elections Canada's interpretations of the *CEA*.

And Bill C-23 does not, in any way, prohibit the CEO from reporting on any other investigations or findings of Elections Canada -- the CEO has the clear power to do that under section 16, and under the reporting sections 533 to 537 of the *CEA* (for example, clause 533(b) allows the CEO to include in his require post-election or by-election report "any other information that the Chief Electoral Officer considers relevant" and clause 534(1)(a) allows the CEO to include in any post-election report "any matter or event that has arisen or occurred in connection with the administration of the Chief Electoral Officer's office since the last report under this section and that he or she considers should be brought to the attention of the House of Commons" and clause 534(2)(a) gives him the same power for post-by-election reports).

However, to be clear, some people have missed the point that, currently, Elections Canada does not investigate violations of the *CEA* -- the Commissioner of Canada Elections does.

Bill C-23 adds some very bad restrictions on what the Commissioner can disclose about investigations under section 108 of Bill C-23 which adds a new confidentiality section 510.1 to the *CEA* that prohibits the Commissioner essentially from disclosing the results of investigations unless the Commissioner does a compliance agreement, or the Director of Public Prosecutions prosecutes.

However, that section doesn't apply to the CEO or Elections Canada -- so if someone sent Elections Canada information alleging a violation of the *CEA*, Elections Canada could disclose that information in its annual estimates report to Parliament, or in its post-election or post by-election reports (filed under sections 533 to 537 of the *CEA*), or just through testimony before a parliamentary committee (as all testimony is protected by privilege and immunity) or in an interview with the media (in addition, there are no restrictions at all in Bill C-23 on the CEO sharing that information with the Commissioner of Canada Elections).

2. The Commissioner of Canada Elections will not be less independent (but the independence of him, the CEO and the DPP must be strengthened, along with their public accountability)

(a) The Commissioner of Canada Elections will not be less independent (but should be made more independent)

Changing the Commissioner of Canada Elections from a Chief Electoral Officer (CEO) appointee to a Director of Public Prosecutions (DPP) appointee will not reduce the Commissioner's independence from the government, and his effectiveness. The DPP is no more or less independent from Cabinet than the CEO, and the Commissioner already submits evidence to the DPP after each investigation, and the DPP already decides whether to prosecute.

A real problem with Bill C-23 is that the DPP is chosen by Cabinet just like the CEO is, and so both lack independence from the government. The solution is to strengthen the appointment process for the DPP, and all the officers of Parliament including the CEO (and the Commissioner), and all Cabinet appointees, by establishing the Public Appointments Commission that the Conservatives promised in 2006, and by requiring that a majority of opposition party leaders approve the appointment of all of these key democratic good government watchdogs.

Some may claim that the CEO is more independent than the DPP because he is supposedly chosen by Parliament. However, there is no real difference in their independence, especially when there is a majority government. The CEO is actually chosen by the Prime Minister and Cabinet (through some secret process that is not specified in the *CEA*) with his appointment only confirmed by a resolution passed in the

House of Commons (which the ruling party can easily pass whenever they have a majority).

Both the CEO and the DPP have fixed terms of office; can only be dismissed for cause (again with a resolution passed by the House of Commons (and also the Senate for the CEO); both have to submit their annual budget to the government, and; both submit an annual report to Parliament.

At least the DPP's selection process is known as it is set out in the law that governs the DPP. Minister of Democratic Reform Pierre Poilievre claimed on February 10, 2014 that "the Director of Public Prosecutions is appointed on the recommendation of an independent panel that is chosen members by all political parties as well as the law society."

This is not fully true. Under subsection 4(2) of the *Director of Public Prosecutions Act* the Attorney General (AG) submits a list of up to 10 nominees to the panel. As a result, the AG actually chooses the DPP because the panel can only recommend from people from among the AG's nominees.

As well, if you add it up, the panel members are four people chosen by the ruling party (one chosen by the party, the two Deputy ministers, and the person chosen by the Attorney General), and three people chosen by others (one each chosen by Liberals and NDP, and one chosen by the Federation of Law Societies of Canada). That gives the ruling party a majority on the panel currently (if another party wins enough seats in the next election to become a recognized party in the House, then the ruling party will choose four out of eight members of the committee).

To ensure an actually fully independent Commissioner, the law should be changed in the following ways:

- the Public Appointments Commission (PAC) that the Conservatives promised in the 2006 election should be established (with the approval of all parties in the House required for the appointment of all the members of the PAC);
- the PAC should be required to conduct a merit-based, open, public search for candidates for the DPP, and for candidates for the Commissioner position;
- the PAC should submit a short list of candidates for DPP, and for Commissioner, and the approval of all party leaders in the House should be required for the people appointed as DPP and Commissioner.

Every officer of Parliament, including the CEO, as well as all other good government watchdogs such as the Parliamentary Budget Officer (PBO, who should be made into an officer of Parliament), should be appointed the same way.

(b) Require disclosure of rulings and decisions to increase public accountability

A second real problem is that no one would even be able to tell if the Commissioner's enforcement record worsened because the Commissioner is currently not required to disclose details about his record (and doesn't do so voluntarily). In refusing to disclose

his rulings on more than 3,000 complaints he received since 1997 when Democracy Watch requested them in April 2012, the Commissioner gave the unjustifiable reason that the rulings might make him look bad.

One of the past rulings that points to why the accountability of the Commissioner needs to be increased is the ruling on complaints about fraud robocalls in the 2008 federal election in the B.C. riding of Saanich-Gulf Islands. Essentially, the Commissioner gave up on that investigation, laying the basis for the much greater fraud robocall scam in the 2011 federal election. The Commissioner's weak enforcement actions only became public because the complainants disclosed the letters they received from the Commissioner.

Bill C-23 gags the Commissioner (under section 108 of Bill C-23 which adds a new confidentiality section 510.1 to the *CEA*, and under section 146 which adds new section 16.31 to the *Access to Information Act*, and under section 152 which changes subsection (16(1) of the *Director of Public Prosecutions Act*) by adding a new measure that prohibits the Commissioner and the Director of Public Prosecutions (DPP) from disclosing the results of investigations and the Commissioner's rulings on complaints unless, essentially, the Commissioner does a compliance agreement with the violator, or if the DPP prosecutes the violator.

It is important to note that this measure does not apply to the CEO – he would still be able to disclose information complainants submit to him alleging violations of the *CEA* through his annual and post-election reports to Parliament, and in testimony before parliamentary committees or interviews with the media.

The DPP is also not required to publish their reasons whenever they decide not to prosecute, and whenever they decide to agree to a plea deal (as they did, very questionably, when they had clear evidence that Doug Finley and Irving Gerstein deliberately executed the in-and-out advertising funding scheme that the Conservatives used in the 2006 federal election).

So to ensure actually fair and proper election law enforcement, Bill C-23 must be changed to require the Commissioner to disclose his rulings on all complaints (after he has completed his investigation). As well, Bill C-23 must be changed to require the DPP to explain publicly whenever he decides not to prosecute.

Every officer of Parliament, including the CEO, as well as all other good government watchdogs such as the Parliamentary Budget Officer (PBO, who should be made into an officer of Parliament), should also be required to disclose all their rulings and decisions. As long as they are not required to do this, no one will be able to tell whether they are making unfair, biased and improper rulings.

C. How the 10 Really Unfair Measures in Bill C-23 (the so-called "Fair Elections Act") Should be Changed

Set out below are details about the 10 really unfair measures in Bill C-23, and how they should be changed to make the so-called "Fair Elections Act" actually fair:

1. Requiring more ID to vote and eliminating vouching

Not only is the elimination of "vouching" for the identity of a voter unfair, but even more so is the prohibition on using the voter registration card (known as the "voter identification card" or "VIC") as one of the pieces of ID that voters can use to prove their identity and residence. Why do we have a voter registration system if the registration card sent to voters under the system won't be allowed to be considered valid ID?

The Conservatives are citing estimates from one study that don't prove vouching fraud occurred (only "irregularities"), and are ignoring the fact that large scale fraud using vouching would be very difficult (given that under subsection 143(3) and (5) of the *Canada Elections Act* (*CEA*) each voter is only allowed to vouch for one other voter and only in their riding).

Even though 39 types of ID are accepted at the ballot box, and the *CEA* (under section 143(2.1) allows the CEO to add as many more as he likes, and even if only 0.8 percent of voters used vouching in the last federal election, there really is no justifiable reason to prohibit vouching.

So the measures increasing the ID required to vote should be removed from Bill C-23 (ie. delete subsections 48(1) to (4), and sections 53-54, and subsections 56(1) and (4), and sections 57, 59 and 62 of the bill) so the current voter identification system maintained that voters will be allowed to vote if vouched for by another registered voter (with the limit maintained that a registered voter can vouch for only one other voter), or if they present one piece of government ID, or one piece of ID showing their name along with another showing their name and address.

As well, the voter registration card (VIC) that Elections Canada sends out should be added to the current list of valid ID that can be presented along with another piece of ID.

Finally, Elections Canada should be empowered, and provided with adequate funding, to hire and fully train all election workers well before each election, and to make the voter registration list even more accurate (which will help prevent difficult ID situations, and also ensure that all election workers are properly checking and accepting ID).

As well, Bill C-23 should require Elections Canada to work proactively with all the 39 institutions on its list that issue ID (and other new institutions) to ensure they all include addresses on the ID they issue.

2. Hiking donation limits instead of democratizing the federal political finance system

Concerning political donations, some commentators have claimed it is a big problem that Bill C-23 increases the election year donation limit for individuals from $3,600 to $4,500 (currently anyone can give $1,200 annually to each party, and another $1,200 as a combined total to the riding associations of each party, and another $1,200 combined total to the election candidates of each party, and all three limits will be increased to $1,500 and then by $25 each year (under subsection 80(1) of Bill C-23 which changes clauses 405(1)(a) to (c) of the *CEA* temporarily, and then section 87 of Bill C-23 which adds new subsection 367(1) of the *CEA*)).

However, the real problems are:

- that the current donation limit is 10 times higher than an average voter can afford;
- that the high donation limits make it easier for businesses and other organizations to funnel large donations through their executives and employees, and;
- that the Conservatives are eliminating the most democratic part of the federal political finance system – namely the per-vote annual funding that parties receive.

As well, most commentators (and most media) have ignored the even more undemocratic political finance change in Bill C-23 – the increase in the donation a candidate can make to their own campaign from $1,200 to $5,000, and for party leadership candidates from $1,200 to $25,000 (under subsection 80(3) of Bill C-23, which adds new clauses 405(4)(4.1) to (4.3) the *CEA* temporarily, and then section 86 which replaces those clauses with new subsections 367(6) to (8) to the *CEA*).

These are huge, and hugely undemocratic, increases that will only benefit wealthy candidates.

As Elections Canada has pointed out, Bill C-23 also fails to close loopholes in the rules for campaign spending by nomination race and party leadership candidates. Unlike election candidates, nomination and leadership candidates do not have to count goods or services as campaign expenses

In addition, while Bill C-23 contains measures to limit loans to candidates at the same levels as donations, it allows unlimited bank loans to candidates and parties (under section 83 of Bill C-23, which changes section 405.3 of the *CEA* temporarily (and then under section 86 of the Bill C-23 which replaces section 405.3 with new section 370(2) of the *CEA*)). Banks are regulated by the federal government, and this measure will allow them to pick and choose candidates and parties to support (likely only sure winners) and buy influence with them through loans.

So to have a fair, and democratic political donations system, the donation and loan limits must all be decreased to $200 (Quebec recently lowered its limit to $100). And the per-vote funding must be reinstated (although it should be reduced to 75 cents annually

because the past amount of $1.95 annually allowed some parties to prosper financially without having to reach out and maintain the support of voters in between elections).

Bill C-23 also fails to correct the following other flaws with the current federal political finance system:

- donation limits and disclosure requirements are needed for "volunteer labour" donated to parties and candidates any time, including during nomination races, election and party leadership campaigns, and including disclosure of people who organize fundraising events or volunteer for riding associations, to close this existing secret donations loophole;
- as federal political party leadership campaign candidates are required to do, all candidates, politicians, parties and riding associations must be required to disclose publicly all donations, gifts, and the status of any loans, regularly and during the week before election day, so voters know who is bankrolling them;
- disclosure of the identity of each individual donor's employer must be required (as in the U.S.) and disclosure of each donor's direct organizational affiliations must also be required (to help ensure that corporations, unions and other organizations are not funneling donations through their employees or board members);
- riding associations and political parties must be prohibited from spending the money they raise in improper ways such as giving grants to community groups or individuals as a way of buying votes;
- riding associations and political parties must be prohibited (as federal election candidates and MPs have been) from having a secret trust fund and from taking secret, unlimited donations into the fund;
- secret, unlimited donations to all candidates in nomination race, election and political party leadership campaigns must be banned (as they have been banned for federal election candidates);
- as the UN Convention Against Corruption and other international standards require, the bank accounts of all public officials who have decision-making power must be monitored for suspicious transactions;
- the penalty for taking a secret donation of money, property or services, or having a secret trust fund, or violating spending rules, must be increased to minimum $100,000 fine and a multi-year jail term, and loss of any severance payment, and a partial clawback of any pension payments;
- a public funding system should be established that matches the donations made to any nomination race, election, and party leadership candidate who raises a specific minimum amount of money showing they have voter support;
- the system of per-vote public funding of federal political parties should be maintained, and similar systems established across the country, but the annul amount should be only be $0.75 per vote received (to ensure that in order to prosper parties need to have active, ongoing support of a broad base of individuals) and riding associations should be required to receive a fair share of this funding (to decrease the control of party headquarters over riding associations);

- spending limits must be established for political party leadership campaigns to ensure a level playing field for all candidates.
- wherever election dates are fixed every few years, spending by candidates, riding associations, political parties and third party interest groups must be limited for a few months before each election day, and;
- donations by political parties to riding associations and candidates must be limited to decrease the possibility of party headquarters influencing the selection of candidates by riding associations, and to make associations and candidates more independent from party headquarters.

3. Creation of a new secret election campaign spending loophole for political parties

Bill C-23 increases election spending limits for parties by exempting from expenses that have to be counted the costs of commercial services contracted to solicit money from contributors who have donated $20 or more in the previous five years (section 86 of Bill C-23 adds new subsection 376(3) to the *CEA*).

This change will create a secret hole of unreported party spending, in direct contrast to all the changes that have been made in the past 20 years to increase disclosure of election spending. As well, Bill C-23 increases the overall amount allowed to be spent by each party by five percent (section 86 also adds news subsection 430(2) to the *CEA*).

4. Allowing the ruling party to appoint more election workers, instead of empowering Elections Canada to appoint all election workers

Sections 18, 19, 21 and 44 of Bill C-23 (which change subsections 34(1), 35(1) and 39(3) and (4), and 124 of the *CEA*, respectively) should be changed to say that the returning officer may appoint as a deputy returning officer or poll clerk or registration officer or central poll supervisor any qualified person suggested by anyone.

Currently those subsections of Bill C-23 say that if the winning or second party from the previous election suggest people to fill these positions, the returning officer can only appoint those people, which essentially ensures that the people who fill these positions all have dangerous partisan conflicts of interest). NOTE: If this change is made, sections 36, 37 and 39-42 and 44 of the *CEA* should be deleted.

5. Allowing parties, riding association and candidates to choose their own auditors, instead of empowering Elections Canada to appoint all auditors

Sections 377 and 403.11 of the *CEA* should be changed to empower Elections Canada to appoint the auditors for all the parties, riding associations and candidates.

Allowing these entities to choose their own auditors is a recipe for corruption and violations of the election spending limits, and general donation and spending rules, in the *CEA*.

6. The failure to require (finally) that the Commissioner of Canada Elections (CCE) disclose the results of investigations and his rulings on all complaints, and the Director of Public Prosecutions (DPP) to disclose reasons for not prosecuting

Some commentators have expressed the concern that the Commissioner of Canada Elections (CCE) will not be as effective at enforcement when the CCE is shifted from being a Chief Electoral Officer (CEO) appointee to being a DPP appointee.

No one would even be able to tell if the CCE's enforcement record worsened because the CCE is currently not required to disclose details about his record (and doesn't do so voluntarily). In refusing to disclose his rulings on more than 3,000 complaints he received since 1997 when Democracy Watch requested them in April 2012, the CCE gave the unjustifiable reason that the rulings might make him look bad.

One of the past rulings that points to why the accountability of the CCE needs to be increased is the ruling on complaints about fraud robocalls in the 2008 federal election in the B.C. riding of Saanich-Gulf Islands. Essentially, the CCE gave up on that investigation, laying the basis for the much greater fraud robocall scam in the 2011 federal election. The CCE's weak enforcement actions only became public because the complainants disclosed the letters they received from the Commissioner.

Bill C-23 gags the CCE by adding a new measure that prohibits the Commissioner and the Director of Public Prosecutions (DPP) from disclosing the results of investigations and the Commissioner's rulings on complaints unless, essentially, the Commissioner does a compliance agreement with the violator, or if the DPP prosecutes the violator. These measures are in section 108 of Bill C-23 which adds a new confidentiality section 510.1 to the *CEA*, and under section 146 which adds new section 16.31 to the *Access to Information Act*, and under section 152 which changes subsection 16(1) of the *Director of Public Prosecutions Act*.

It is important to note that these measures do not apply to the CEO – he would still be able to disclose information complainants submit to him alleging violations of the *CEA* through his annual and post-election reports to Parliament, and in testimony before parliamentary committees or interviews with the media, as well as submitting the evidence he receives to the CCE for investigation.

The DPP is also not required to publish their reasons whenever they decide not to prosecute, and whenever they decide to agree to a plea deal (as they did, very questionably, when they had clear evidence that Doug Finley and Irving Gerstein deliberately executed the in-and-out advertising funding scheme that the Conservatives used in the 2006 federal election).

So to ensure actually fair and proper election law enforcement, Bill C-23 must be changed to require the Commissioner to disclose his rulings on all complaints (after he has completed his investigation), and Bill C-23 must be changed to require the DPP to explain publicly whenever he decides not to prosecute.

7. The restriction on pre-election campaign advertising spending by interest groups, but not on spending by political parties and candidates

While Bill C-23 increases the amounts parties can spend on elections, it sneakily decreases the advertising spending limit for interest groups and voters (so-called "third parties) by expanding the limit to cover all ads "in relation to" an election or by-election (section 78 of Bill C-23 makes this change to section 350 of the *CEA*).

Currently, only ads run during the election campaign period are counted, but this change means the full costs of an ad run just before an election and into the election period by an interest group or voter could be counted toward the total amount of paid advertising that an interest group or voter is allowed to run during the election period.

It makes sense to extend the limit on pre-election advertising given that federal election dates are now, sort of, fixed every four years. The fixed election date allows parties, candidates and third parties to spend strategically before the election campaign begins, as that spending is not restricted by current limits.

The Supreme Court of Canada upheld limits on paid advertising spending during election campaign periods in the 2004 ruling in the *Harper v. Canada* case. But the SCC made it clear in that ruling that the limit had to be reasonable. The calculation of reasonable takes into account the definition of advertising, the cost of advertising (how many ads could be run), and the period of time the limit applies. The B.C. Court of Appeal rejected a provincial limit on third party advertising spending in a 2011 ruling because the definition of advertising was too comprehensive.

The reasonable compromise that should be made is to limit pre-election paid advertising spending by third parties for the 90-day period leading up to the election campaign period, and to set the limit for that period at a reasonable amount. The current limit for the election campaign period of 35 days is $200,100, so by extension a reasonable limit for the 90-day pre-election period would be $515,000.

However, what is not taken into account by these limits is the actual cost of advertising, which does not necessarily go up or down by the rate of inflation (which is how the legal limit is currently changed each year). A better way to determine what both limits should be would be to take the original limit back in 2004 ($150,000) that was upheld by the Supreme Court of Canada, and to calculate how that amount should be changed annually based on a "market-basket" calculation of the actual cost of advertising.

As well, to be fair, political party and candidate ad pre-election ad spending should be limited during that 90-day period by extending the current election campaign period limitations. Liberal Senator Dennis Dawson has introduced a private member bill to cover paid advertising by parties and candidates for that three-month period but the bill simply extends the current election spending limit to cover that period, so it doesn't really address what the limit should be during the two periods (pre-election vs. election campaign) or whether the current limit should be increased.

8. The failure to monitor and prevent fraud robocalls fully

Bill C-23 only requires people or entities that make robocalls to register and keep just the script and recording of the call for only 1 year.

It should be changed to require anyone or any entity that uses robocalls to file a copy of each robocall script and recording, and a list of the numbers called, with the CRTC for the CRTC to keep for 5 years (by changing all the sections of the *CEA* that are changed by section 77 of Bill C-23 to require all the entities covered by those sections.

As well, Bill C-23 should also require political parties to keep a record of who accesses their voter database, and to make it a violation for political parties to allow their database to be misused.

NOTE: Despite these new measures, it will always be difficult to stop someone doing anonymous fraud robocalls through an offshore or foreign provider as it will be difficult to effectively prosecute businesses located in other jurisdictions or in the "cloud".

9. The failure to establish effectively high fines

Bill C-23 fails to increase the amount of all proposed fines to a level that will actually discourage violations. All the fines proposed in Bill C-23 should be 10 times higher (by changing sections 100-107 of Bill C-23, which change sections 500-507 of the *CEA* -- -- for example increase the fine in subsection 500(1) of the *CEA* from $2,000 to $20,000).

As well, the failure to require courts to impose the maximum fine unless extraordinary circumstances mean it would be unjust to do so.

10. The failure to give voters adequate opportunity to challenge election results

Voters only have 30 days now to file a challenge to an election result for the reason that fraud changed the result – this should be changed to one year (under subsection 527(1) of the *CEA*). As well, they have to file an application (under section 524 of the *CEA*) and they should also be allowed to file an action that allows for disclosure of evidence.

As well, the requirement in Bill C-23 that a voter must give written notice to the returning officer when the voter applies to a judge for a recount should be removed because it will make it more difficult to challenge election results as it may be difficult for a voter to locate a returning officer after an election. (remove it by deleting section 68 of the bill (which changes subsection 301(1) of the *CEA*)).

D. The 10 Other Changes Needed to Make Federal Elections Actually Fair

The 10 missing measures that must be added to Bill C-23 or implemented through another bill or bills to make federal elections actually fair are as follows, generally in order of priority:

1. Prohibit parties and candidates from baiting voters with false election promises or advertising, and from breaking election promises (unless truly unforeseen circumstances require them to be broken).
2. Change the federal election voting system to provide a more accurate representation of the popular vote results in each election in the seats held by each party in the federal House of Commons (as in many other countries) while ensuring that all elected officials are supported by, and are accountable to, voters in each riding/constituency (with a safeguard to ensure that a party with a low-level, narrow-base of support does not have a disproportionately high level of power in Parliament), and to allow voters to vote "none of the above" and also to actually fix election dates for late fall every four years (unless an actual vote on non-confidence occurs earlier).
3. Regulate nomination races to ensure party leaders can't appoint candidates or stop candidates from running (other than on grounds of "good character" such as no criminal convictions) and to ensure nomination races "are conducted in a fair, transparent, and democratic manner" (quotation is from the Conservatives' 2006 election platform that promised to make changes) give Elections Canada the power to run nomination races and enforce the rules.
4. Have Elections Canada determine the date and number of election debates, and oversee them, with the leader of every party that won at least 5% of the popular vote in the last election or that has at least one MP in the House of Commons allowed to participate, and require all broadcasters to broadcast the debates.
5. Give the Commissioner of Canada Elections (CCE), and the CRTC, the clear power to apply for a court order that compels a person to testify, or a person or entity to disclose records, needed to investigate alleged violations of the *CEA* (as Elections Canada recommended in its 2012 report, and as election watchdogs in New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Alberta and Yukon, and Australia and the U.S. can do, and as the Competition Bureau of Canada can do).

6. Require political parties, riding associations, candidates and third parties to provide any document requested by Elections Canada or the CCE to confirm compliance with the *CEA*, as recommended by Elections Canada.
7. Create a right to refuse to cast a ballot (as Ontario and Alberta voters have) or to vote "none of the above" and require election commissions to report how many Canadians do so (so voters can, if they want to, send a clear message that they do not support any of the candidates or political parties).
8. Allow independent candidates to raise money in-between elections (currently only party-backed candidates are allowed to do this, through their local riding association or their party that then transfer money to them once their election campaign begins).
9. Give whistleblowers a financial reward if they disclose evidence to Elections Canada, the CCE, or the CRTC that leads to a conviction.
10. Extend the federal *Privacy Act* and *Personal Information Protection and Electronic Documents Act* to cover political parties, riding associations and political candidates, as Elections Canada recommended in its 2012 report.