OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

CHECK AGAINST DELIVERY

SPEECH TO THE
STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS, SENATE OF CANADA
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Good afternoon, members of the committee.

Thank you for the invitation to appear as part of your deliberations on Bill C-4, and the proposed amendments to the *Canada Elections Act*. I appreciate the opportunity to provide my perspective, as Information and Privacy Commissioner for British Columbia, and what adopting this Bill, as written, would have on the privacy rights of people living in British Columbia.

British Columbia has a long history of robust privacy protections enshrined in law. This includes the *Personal Information Protection Act,* which I will refer to as PIPA and which is of interest for this committee's work as it applies to any private sector organization that collects, uses, and discloses the personal information of individuals in BC, and which has been in force for 22 years.

By enacting PIPA, the people of British Columbia have determined that they desire a certain level of legal protection from all organizations. The BC experience concerning privacy does not sit in isolation from the federal sphere of powers. The protection of personal information is an area of concurrent jurisdiction, forming an interlocking regulatory framework without gaps. The many joint investigations between my office and my federal, territorial, and provincial counterparts are a testament to the success that a multi-jurisdictional regulatory regime can achieve when supported by robust, comprehensive privacy laws.

When it comes to federal political parties, this protection is not provided by any federal statute, including the amendments before us today.

If federal legislation properly established a complete regime for the protection of personal information in the hands of federal political parties and their affiliates, then it would be unnecessary for provincial legislation to apply. But for this to work, a certain minimum level of protection would be required. So today I will identify the minimum elements of a privacy regime that, in my view, would satisfy that requirement.

The purpose clause of the draft amendments indicate that the Bill aspires to provide for a national, uniform, exclusive, and complete regime for the protection of personal information. To achieve this, I will raise for your consideration some of the elements that should be included to ensure a minimum level of effective protection of personal information.

First, an effective privacy protection regime requires rules as to what personal information an entity may collect, use, or disclose, and under what circumstances those activities may occur, as well as requirements relating to security, including breaches, and accountability. As drafted, the proposed amendments do not contain any prohibitions or consent requirements, nor do they distinguish between different types of personal information. Whether an activity is permissible – or even in line with common privacy protection principles – would be entirely subject to a political party's self-written policy.

The second element is a codification of individual data subjects' rights. These rights are critical as our personal information can be used to make decisions about us and influence our behaviour. Among established data protection regimes, these rights commonly include a right to notice, a right of access, a right to rectification, a right to be forgotten, and a right to withdraw consent to use of personal information. These rights are absent from the proposed amendments and, here again, these rights could only be exercised to the extent that they exist within a party's own self-written policy.

A third critical element to privacy laws is that there must be independent oversight. This may take the form of an independent officer, such as a privacy commissioner or a chief electoral officer. However, oversight is not only a question of who oversees compliance but also what is overseen and how the oversight takes place. As I have outlined earlier, there are serious deficiencies with respect to oversight given the self-regulatory nature of the provisions.

One final concern I would like to address is that, as drafted, Bill C-4 will purportedly pre-empt provincial privacy legislation with retroactive effect to the year 2000. This is tantamount to recognition that Bill C-4 does not meet the threshold of protection offered by BC's PIPA. Thus, if the proposed amendments are effective, in the space where BC's PIPA would ordinarily apply, the amendments in Bill C-4 would oust PIPA by brute force, leaving a privacy lacuna. I will not comment on whether the amendments are valid or effective, but would merely observe that if they are, it would frustrate the democratic will of the people of British Columbia and their decision to enshrine their constitutionally grounded privacy rights in law 22 years ago.

Thank you, and I look forward to your questions.