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COMMISSAIRE AUX ÉLECTIONS FÉDÉRALES



COMMISSIONER OF CANADA ELECTIONS

Protected A

VIA EMAIL

March 18, 2019

Security and Intelligence Threats to Elections (SITE) Task Force
 Communications Security Establishment
 Canadian Security Intelligence Service
 Global Affairs Canada
 Royal Canadian Mounted Police

Members of the SITE Task Force:

This correspondence stems from our March 15, 2019, meeting during which we indicated that we would provide additional information on the Office of the Commissioner of Canada Elections (OCCE). We also committed to identifying certain information pertaining to foreign influence, for the purposes of enforcing the *Canada Elections Act* (Act).

Office of the Commissioner of Canada Elections

With Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*, having received Royal Assent on December 13, 2018, I take advantage of this opportunity to communicate some background information on the OCCE, some of which stem from these amendments. The mandate of the Commissioner of Canada Elections (Commissioner) is to ensure that the Act is complied with and enforced. The Act contains more than 400 offences and our office receives approximately 2,500 complaints per regular four-year electoral cycle. Upon receipt of a complaint, or of his own initiative, the Commissioner can conduct an investigation. The Commissioner exercises his mandate independently from the government, the Director of Public Prosecutions (DPP) or the Chief Electoral Officer. Highly sensitive information on political actors can be included in our investigative files.

Investigators for the Commissioner are “public officers” for the purposes of obtaining search warrants or production orders under the *Criminal Code*, and the Investigations Directorate of the OCCE has investigative body status under the *Privacy Act*. Amendments to the Act stemming from the recent adoption of Bill C-76 allow the Commissioner to seek judicial authorization for an order to compel witness testimony. Compliance tools available to the Commissioner include caution letters, compliance agreements, undertakings and the powers to seek court injunctions and judicial authorization for party deregistration. Further, the recent amendments to the Act will also allow the Commissioner to impose administrative monetary penalties (AMPs) for certain violations under the Act, as well to lay charges for offences under the Act without DPP pre-approval, as currently required.

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All employees of the OCCE have, at minimum, a secret level clearance, while some hold a valid top secret clearance. The OCCE maintains a separate environment for secret and top secret operations. The Office hosts and maintains a distinct server for covert online operations.

Foreign Influence - Overview

Under the Act, a fixed date for a federal general election is set, with polling day for the next general election being October 21, 2019. With the recent amendments, the regular election period will be preceded by a statutory "pre-election period" beginning June 30, 2019, which will run until the writs of election are issued. Issuance of the writs begins the election period, which can run from 36 to 50 days, at the discretion of the Governor in Council. During these periods, significant statutory requirements, financial limitations and prohibitions come into effect, including strict dollar limits on spending. Some provisions under the Act prohibit influence by foreigners. Following is a brief outline of these provisions (changes made with Bill C-76—which will only come into force over the next few months—are reflected in what appears below).

Inducing Electors and Election Advertising

Section 282.4 of the Act contains provisions that prohibit foreigners from unduly influencing electors' vote. To prove such an offence under the Act, evidence would be required to demonstrate that the foreign person or entity incurred an expense to directly promote or oppose a candidate, party leader or registered party, or that one of the things that they did to influence an elector is an offence under the laws of Canada or of a provincial legislature. Merely expressing an opinion or desire that electors support or oppose a particular candidate or party is not "undue influence" for the purposes of the Act, nor is the transmission of normal editorial content through broadcasting and/or electronic or print media. It is an offence to sell advertising space to allow a foreign person or entity to transmit election advertising.

Section 349.02 of the Act also prohibits a third party¹ from using foreign funds for its regulated activities under the Act (i.e., to conduct partisan activities, transmit partisan advertising during the pre-writ period or election advertising during the election period, or to carry out an election survey).

Political Contributions

In accordance with subsection 363(1) of the Act, only individuals who are Canadian citizens or permanent residents can make political contributions to nomination contestants, candidates,

¹ A third party is a person or group that conducts election advertising and/or partisan advertising, other than a candidate, registered party or electoral district association. Upon reaching a certain spending threshold, third parties are required to register with Elections Canada.



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registered parties, leadership contestants or electoral district associations. This applies to the making of monetary contributions as well as to non-monetary (in-kind) contributions.

Making a False Statement

Section 281.9 of the Act deals with publishing a false statement with a view to affecting the results of an election. Specifically, it makes it an offence for a person or entity, with the intention of affecting the results of an election, to make or publish, during the election period:

- a false statement that a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party has committed an offence, has been charged with an offence or is under investigation for such an offence; or
- a false statement about the citizenship, place of birth, education, professional qualifications or membership in a group or association of a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party.

Impersonation and misleading publications

Section 480.1 of the Act prohibits anyone who, with intent to mislead, falsely represents themselves to be: the Chief Electoral Officer or someone authorized to act on behalf of the Chief Electoral Officer; an election officer or someone authorized to act on behalf of the election officer; a candidate or a person authorized to act on behalf of the candidate; or, a person authorized to act on behalf of a registered party.

Section 481 further prohibits the distribution, transmission or publication during an election period of any material that falsely purports to have been made, distributed, transmitted or published under the authority of the Chief Electoral Officer or a returning officer, political party, or candidate or prospective candidate, if the intent is to mislead the public about the source of the communication. Use of a distinctive name, logo, social media account identifier, user-name or domain name, as well as the use of the name, voice, image or signature of an individual are all factors that a court may consider in determining whether the offence was committed.

Foreign Broadcasting

Section 330(1) of the Act outlines a prohibition on foreign broadcasting. Specifically, it provides that no person shall—with intent to influence persons to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party at an election—use, aid, abet, counsel or procure the use of a broadcasting station outside Canada, during an election period, for the broadcasting of any matter having reference to an election. There is, however, an exception provided at subsection (1.1) in respect of broadcasting signals that originated in Canada. Subsection 330(2) further prohibits the broadcasting of election advertising outside Canada.



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Unauthorized use of a computer

With the recent amendments, a new provision under the Act was created at section 482 for illegal use of a computer system. The new provision is modeled on section 342.1 of the *Criminal Code*, but requires proof of intention to affect the results of an election. This provides a mandate for the OCCE to deal with potential cases of (1) interceptions of any functions of a computer system, (2) use of or traffic in passwords to allow illegal access to computer data, or (3) use of a computer system to: destroy or alter computer data; render computer data meaningless or useless; obstruct, interrupt or interfere with the lawful use of computer data; or deny access to computer data to a person or entity that is entitled to access it.

Interference with an elector's vote

Section 282.7 prohibits a person from interfering with—or attempting to interfere with—an elector who is marking a ballot, including a special (i.e., mail-in) ballot.

Section 282.6 of the Act prohibits any person from preventing or endeavoring to prevent an elector from voting at an election. The predecessor to this provision was used to prosecute an individual who purposefully misdirected electors to wrong polling stations at the 2011 general election.

Further, section 282.8 of the Act prohibits:

- the use of intimidation or duress to compel a person to vote or refrain from voting, or vote or refrain from voting for a particular candidate or registered party at an election; and,
- the use of a pretence or contrivance to influence or attempt to influence an elector's vote.

Collaboration

Technology and international borders, among others, give rise to challenges that will limit what the OCCE is reasonably able to accomplish in certain situations. In an effort to mitigate those risks, we believe it is important for our Office to have good knowledge of threats identified by the security community that fall within our mandate. As such, we continue to encourage ongoing collaborative dialogue with various stakeholders, including SITE members, to ensure that our elections remain free and fair.

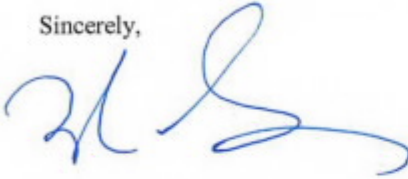
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We look forward to your continued collaboration and further discussion of a workshop delivered by the OCCE on key provisions of the *Canada Elections Act*.

Sincerely,



Mylène Gigou
Director of Investigations



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