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<b>To / Pour :</b> Minister of Democratic Institutions, Karina Gould	<b>Date :</b> Sep 5, 2019
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**Subject / Objet :**  
**2019 OSCE NEEDS ASSESSMENT MISSION AND FINAL REPORT**

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UNCLASSIFIEDMEMORANDUM FOR THE MINISTER OF DEMOCRATIC INSTITUTIONSvia: Ian McCowan *M*

c.c.:

2019 OSCE NEEDS ASSESSMENT MISSION AND FINAL REPORT

(Information Only)

**SUMMARY**

- o Representatives of the Organization of Security and Cooperation in Europe (OSCE) undertook a needs assessment mission for federal election observation from July 2 to 5, 2019. The OSCE representatives met with the Chief Electoral Officer, the Commissioner of Canada Elections, the Leaders' Debates Commissioner, representatives from media, political parties, academia and civil society, as well as officials from PCO's Democratic Institutions Secretariat and staff from your Office.
- o The OSCE representatives assessed Canada's pre-election environment and preparations, and noted that interlocutors expressed full confidence in the overall integrity of Canada's electoral process, including election-day procedures. The final report lauds Canada's implementation of many previous OSCE recommendations, including the expansion of the remit of the Commissioner of Canada Elections, the implementation of additional measures facilitating women's political participation, the restoration of the use of Voter Information Cards and vouching, the additional regulation of third party campaigning, and the establishment of new rules for online political advertising. The report also reflects the concerns raised by various interlocutors about disinformation campaigns in traditional and online media, as well as on social media.
- o The report recommends the deployment of an Election Assessment Mission, and encourages Canada to consider implementing recommendations by the OSCE that remain unaddressed, including setting election-specific timelines for the adjudication of prosecutions and appeals by the Commissioner of Canada Elections, and enshrining citizen and international election observation in Canadian law.

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- o Global Affairs Canada assesses that the OSCE will send a small team (six to eight people, similar to the size of their Elections Assessment Mission in 2015) to observe Canada's federal election, but a final decision has not yet been communicated to Canada. Once the election is called, Canada's Permanent Representative to the OSCE will issue the organization a formal invitation to observe the election. This is the right thing to do and demonstrates Canada's support for the organization. It also sets an example for others to follow. In accepting the invitation, OSCE will share additional information about its observation plans. In general, however, OSCE will be looking at how the process unfolds, and may request follow-up meetings with officials from Elections Canada and other interlocutors.
- o A copy of the final report is attached for your information (**TAB A**).



Allen Sutherland

Attachment

 /Stinson/

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A

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Office for Democratic Institutions and Human Rights

# CANADA

## FEDERAL ELECTIONS

21 October 2019

### ODIHR NEEDS ASSESSMENT MISSION REPORT

2-5 July 2019



Warsaw  
29 August 2019

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**CANADA  
FEDERAL ELECTIONS  
21 October 2019**

**ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

In anticipation of an official invitation to observe the forthcoming federal elections in Canada, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 2 to 5 July 2019. The NAM included Lusine Badalyan, ODIHR Senior Election Adviser, and Keara Castaldo, ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and preparations for the parliamentary elections. Based on this assessment, the NAM should recommend whether to deploy an ODIHR election-related activity for the forthcoming elections and, if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions as well as with representatives of political parties, media and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Department of Global Affairs for its assistance and co-operation in organizing the NAM. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and for sharing their views.

**II. EXECUTIVE SUMMARY**

Canada is a constitutional monarchy with a federal system of parliamentary government. In the upcoming federal elections, voters will elect 338 members of the House of Commons.

The parliament adopted substantial amendments to the electoral legal framework since the previous parliamentary elections. Several provisions addressed prior ODIHR recommendations, such as expanding competencies of the Commissioner of Canada Elections, introducing additional measures to facilitate women's political participation, repealing restrictions on prisoner voting, and refining recruitment practices for polling station staff. Other notable provisions restore the use of voter information cards and vouching for identification, extend opportunities for early voting, introduce additional regulations on third party campaigning, and establish new rules for disclosure of online political advertisements. Still, some prior ODIHR recommendations remain unaddressed. Although many stakeholders supported the amendments, others described a politically polarized reform process which lacked genuine consultation.

Elections Canada is an independent, non-partisan body responsible for the conduct and oversight of federal elections. Elections Canada publishes a number of strategic, monitoring and evaluation reports, and many recommendations of the Chief Electoral Officer were adopted in the recent legislative changes. ODIHR NAM interlocutors generally expressed a high level of confidence in the professionalism and impartiality of the election management bodies at all levels, including in the conduct of election day procedures. Although the law does not foresee citizen or international observation of elections, the authorities assured that a potential ODIHR observation activity would be enabled.

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A number of assistive tools and services facilitate the participation of persons with disabilities. Information for voters and prospective candidates is currently provided in multiple accessible formats including large print, Braille, audio files, full transcription, open captioning, and videos with sign language interpretation. In the upcoming elections, a new ballot design features larger and higher contrast text to assist voters with visual impairments or other disabilities, in addition to the established practice of tactile ballot guides. Positively, persons with psychosocial or intellectual disabilities are now eligible to request certain accommodations in polling stations.

The government has undertaken extensive efforts in recent years to fortify its cybersecurity practices, including several new inter-agency initiatives. Most ODIHR NAM interlocutors expressed a high level of confidence in the electoral infrastructure and in the efforts of authorities to mitigate cybersecurity risks, but acknowledged concerns related to public perceptions of electoral security.

Citizens aged 18 years or older by election day are entitled to vote, except the Chief Electoral Officer. There are no restrictions based on disability or criminal conviction. A new database was established in 2018 which allows citizens aged 14 to 17 to pre-register to vote, in an attempt to increase registration rates of young adults. Political parties and other stakeholders expressed contrasting views on new voter identification rules, and some noted lower registration rates among aboriginal groups. Notwithstanding, ODIHR NAM interlocutors were generally confident in the accuracy of voter lists.

Candidates may be nominated by political parties or groups of voters. Although women remain underrepresented in parliament, no requirements exist for gender representation on party lists, and no official gender-disaggregated data on candidate lists is produced prior to the election. ODIHR NAM interlocutors were generally satisfied with the administration of the candidate registration process.

Recent reforms introduced a pre-election period, beginning on 30 June, during which certain prohibitions and guidelines apply. No interlocutors raised concerns about the ability to campaign freely, but many cited concerns related to disinformation campaigns in traditional and online media, as well as social media.

Both public and private financing of campaigns is permitted. Recent amendments to the legislation introduced new spending limits and imposed additional regulations on third parties. ODIHR NAM interlocutors generally supported the current system of campaign financing and welcomed the efforts to further regulate third party activities, but pointed to potential loopholes in the revised legal framework.

The media landscape is pluralistic and the Constitution guarantees freedoms of expression and the press. ODIHR NAM interlocutors generally expressed satisfaction with media access and coverage during elections, including the impartiality of the public broadcaster. Stakeholders welcomed efforts to regulate online media and to educate the public in identifying false information.

The Commissioner of Canada Elections oversees compliance with, and the enforcement of, the electoral legal framework. All complaints are reviewed to determine whether there is a basis to conduct an investigation. Recent amendments returned the Office of the Commissioner to the Office of the Chief Electoral Officer from the public prosecutor's office and expanded the authority of the



Commissioner in conducting investigations and issuing sanctions. Most stakeholders expressed full confidence in the impartiality and effectiveness of the Office.

Interlocutors welcomed a potential ODIHR activity for the upcoming elections, underlining the value of an external review and pointing to the substantial changes in the electoral legal framework. The ODIHR NAM noted full stakeholder confidence in the overall integrity of the electoral process, including election day procedures. Some ODIHR NAM interlocutors identified specific areas that would benefit from further review, including the implementation of new cybersecurity practices, the role of traditional and online media, as well as social networks, in the campaign, and the effectiveness of oversight of campaign and campaign finance rules. The ODIHR NAM sees benefit in undertaking a more in-depth assessment of the revised legal framework, cybersecurity measures, campaign and campaign finance rules including for online and social media, and the participation of women, aboriginal groups and persons with disabilities in the electoral process.

On this basis, the ODIHR NAM recommends deploying an Election Assessment Mission (EAM) for the upcoming parliamentary elections, subject to the availability of resources. ODIHR also encourages the authorities to consider previous recommendations that remain unaddressed.

### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

Canada is a constitutional monarchy with a federal system of parliamentary government. The Crown is the head of state and legislative powers are vested in the bicameral parliament. Members of the lower chamber, the House of Commons, are elected by popular vote, while members of the upper chamber, the Senate, are appointed by the governor general on the advice of the prime minister, and serve until the age of 75. While the Crown formally holds executive authority, in practical terms, the executive powers of government are exercised by the prime minister and cabinet. As a federal state, a number of regional competencies and powers are exercised by ten provincial and three territorial governments.

In the previous federal elections in October 2015, five parties were elected to the House of Commons.<sup>1</sup> The Liberal Party obtained 184 of the 338 seats to secure a parliamentary majority. The prior incumbent Conservative Party became the primary opposition party with 99 seats.

ODIHR previously observed two federal elections in Canada.<sup>2</sup> The Election Assessment Mission in 2015 concluded that the parliamentary elections “demonstrated the credibility of the election process in Canada. Legislation comprehensively provides for electoral rights, although recent changes, passed without cross-party support, were controversial and reduced some of the election administration’s powers. Elections Canada, headed by the Chief Electoral Officer (CEO), warrants the high level of public confidence. The campaign was highly competitive, taking place in an open atmosphere, and results were swiftly announced and accepted. However, additional measures could

<sup>1</sup> Liberal Party (184 seats), Conservative Party (99 seats), New Democratic Party (44 seats), Bloc Québécois (10) and Green Party (1). Seven deputies have since become independent. Of this outgoing chamber, 88 members are women, 38 identify as belonging to a national minority, and 10 as from aboriginal groups. Paragraph 5 of the [2017 CERD concluding observations](#) notes that “the lack of detailed data and information on the representation of minority groups in public and political life in the State party, prevent [the Committee] from evaluating the enjoyment of civil, political, economic, social and cultural rights in the State party by these groups”.

<sup>2</sup> See [prior ODIHR election-related reports on Canada](#).

be considered to strengthen the equality of the vote among constituencies, legally provide for citizen and international election observation, further increase the participation of women, aboriginal peoples and minorities and to improve the efficiency of the polling process”.

## B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Parliamentary elections are primarily regulated by the Constitution Act, the Charter of Rights and Freedoms, the Canada Elections Act (“Elections Act”, last amended in 2018), the Electoral Boundaries Readjustment Act, and opinions, guidelines and interpretation notes issued by Elections Canada. Other relevant legislation includes the Canada Human Rights Act, the Telecommunications Act, and the Criminal Code. Canada is party to major international and regional instruments related to the holding of democratic elections.<sup>3</sup>

In December 2018, the parliament adopted the Elections Modernization Act, which substantially amended the Elections Act. The bill, an initiative of the Liberal Party, reversed several major provisions of the Fair Elections Act of 2014, which had been adopted under the previous Conservative government. Several provisions of the Elections Modernization Act address prior ODIHR recommendations, such as those expanding certain competencies of the Commissioner of Canada Elections, introducing additional measures to facilitate women’s political participation, repealing restrictions on prisoner voting, and adjusting recruitment practices for polling station staff. Other notable provisions restore the previously discontinued use of voter information cards and vouching for identification, extend opportunities for early voting, introduce a fixed pre-election period and additional regulations on third party campaigning, and establish new rules for disclosure of online political advertisements. Still, some prior ODIHR recommendations remain unaddressed, including those related to provisions on citizen and international observation and a lack of timelines for election dispute resolution. While many ODIHR NAM interlocutors, including representatives of the election administration, supported the new legislation, others were critical of certain changes and described insufficient consultation in the legislative process.

Members of the House of Commons are elected by a simple majority vote in single-member ridings (constituencies). Vacancies arising between elections are filled through by-elections. The Constitution requires that the number of seats in the House be recalculated after each decennial census to reflect changes in population; the next census will take place in 2021.<sup>4</sup> While constituencies should be divided equally among the population, the law permits deviations of up to 25 per cent from the average, with additional exceptions in cases of minority populations, sparsely populated areas, and to protect historical boundaries.<sup>5</sup> Prior ODIHR reports remarked on significant disparities in size between electoral constituencies, affecting the equality of the vote.<sup>6</sup>

<sup>3</sup> Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), 2003 Convention Against Corruption, the 2006 Convention on the Rights of Persons with Disabilities (CRPD), and the 2007 Declaration on the Rights of Indigenous Peoples.

<sup>4</sup> The Constitution stipulates that the number of constituencies cannot be fewer than (1) the number of seats allocated to the province or territory in the Senate, or (2) the number of seats it held in the House either in 1976 or during the 33<sup>rd</sup> parliament elected in 1984.

<sup>5</sup> Section 2.2.iv of the Council of Europe’s Venice Commission’s 2002 Code of Good Practice in Electoral Matters recommends that “the permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)”.

<sup>6</sup> Constituencies range in population from approximately 27,197 to 158,749, with a calculated average of 103,999.

### C. ELECTION ADMINISTRATION

The upcoming elections will be administered at three levels, with Elections Canada led by the Chief Electoral Officer (CEO) responsible for national preparations and oversight, 338 Returning Officers (ROs) in each of the constituencies, and Deputy Returning Officers (DROs) and Poll Clerks (PCs) in some 65,000 polling stations. ODIHR NAM interlocutors generally expressed a high level of confidence in the professionalism and impartiality of the election management bodies at all levels, including in the conduct of election day procedures.

Elections Canada is an independent, non-partisan body that reports directly to parliament. It is mandated to prepare and oversee the conduct of federal elections, with specific responsibilities including the maintenance of the National Register of Electors, training and support of ROs, oversight of campaign finance, and dissemination of public information.<sup>7</sup> The CEO is appointed by a resolution of the House of Commons for a ten-year non-renewable term, and has statutory authority to draw directly from the Consolidated Revenue Fund to cover expenses for elections and referenda.<sup>8</sup> Elections Canada publishes a number of strategic, monitoring and evaluation reports, and the CEO produces recommendations to the parliament on potential legislative reforms following each electoral process; many of the CEO's recent recommendations were adopted in the Elections Modernization Act. Although the law does not foresee citizen or international observation of elections, the authorities assured that a potential ODIHR observation activity would be enabled.

The Elections Modernization Act reinstated the CEO's authority to conduct public education campaigns, in line with a prior ODIHR recommendation. Positively, information for voters and prospective candidates is currently provided in 38 languages, including 12 indigenous languages, as well as in multiple accessible formats including large print, Braille, audio files, full transcription, open captioning, and videos with sign language interpretation.

ROs administer the electoral process at the constituency level, including the establishment of polling locations, recruitment and training of polling staff, and validation of constituency results. ROs are appointed in a competitive procedure from among eligible electors for a fixed ten-year term, and are required to sign a code of conduct and abstain from activities of a politically partisan nature. In addition, Elections Canada deploys Field Liaison Officers (FLOs) to regions to provide operational support and guidance to ROs and to report on regional developments.

Election day procedures in polling stations are administered by DROs and PCs. All parliamentary parties may nominate candidates for these positions, in line with a prior ODIHR recommendation; previously, priority had been given to the two parties that received the most votes. New to these elections, ROs may appoint a portion of DROs and PCs as soon as the elections are called.

The law provides for several alternative methods of voting, including in-person at polling stations on election day; in-person at special locations in a four-day period in advance of election day; in-person at any of 500 local Elections Canada offices during the election period; or by mail from within or outside the country. Elections Canada informed the ODIHR NAM of refinement of polling station allocation using geospatial tools, and has indicated plans to increase the number of polling stations on reserves offering regular and advance voting.

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<sup>7</sup> The agency appoints some 350 permanent staff according to public service employment rules, which require equitable representation of women, persons with disabilities, aboriginal peoples, and national minorities.

<sup>8</sup> The position of Deputy Chief Electoral Officer was repealed under the 2018 Elections Modernization Act.

A number of assistive tools and services facilitate the participation of voters with disabilities, and the Elections Modernization Act mandates the CEO to study and test technologies for use by voters with disabilities. In the upcoming elections, a new ballot design features larger and higher contrast text to assist voters with visual impairments or other disabilities, in addition to the established practice of tactile ballot guides. ROs are tasked to establish polling stations meeting certain accessibility criteria, including safe ramp angles and adequate door width. Positively, persons with psychosocial or intellectual disabilities are now eligible to request certain accommodations in polling stations, previously reserved to persons with physical disabilities.<sup>9</sup>

#### D. CYBERSECURITY

The government has undertaken extensive efforts in recent years to fortify its cybersecurity practices, including several new inter-agency initiatives. Most ODIHR NAM interlocutors expressed a high level of confidence in the electoral infrastructure and in the efforts of authorities to mitigate cybersecurity risks, but acknowledged concerns related to public perceptions of electoral security.

Elections Canada informed the ODIHR NAM that a majority of ICT systems were rebuilt to address security concerns raised during the 2016 United States presidential election. A new Security and Intelligence Threats to Elections (SITE) Task Force was established in September 2018, comprising national intelligence agencies in addition to the Department of Global Affairs.<sup>10</sup> SITE is mandated to monitor and advise government response to potential foreign threats to the electoral process, and includes mechanisms to ensure information is exchanged between agencies. Political parties are routinely briefed by intelligence agencies on cybersecurity developments and receive guidance on information systems maintenance and security practices.

On 9 July the government adopted a directive that created a Critical Election Incident Public Protocol, which provides guidelines on release of information to the affected party and to the public in the event of a cyber or other incident during an election period. According to authorities met by the ODIHR NAM, the Protocol is intended to prevent misleading information in mass media related to electoral security that could undermine voter confidence or detract from the stability of the electoral process. A panel of five senior public servants is responsible for determining whether and when information related to any incident is to be released.<sup>11</sup> ODIHR NAM interlocutors generally supported the establishment of such a panel and its composition.

#### E. VOTER REGISTRATION

Citizens aged 18 years or older by election day are entitled to vote, except the Chief Electoral Officer. There are no restrictions based on disability or criminal conviction. In line with national case law and prior ODIHR recommendations, the Election Modernization Act repealed certain restrictions on the voting rights of prisoners and of citizens residing abroad.<sup>12</sup>

<sup>9</sup> See also paragraphs 51 and 52 of the [2017 CRPD concluding observations](#).

<sup>10</sup> Canadian Security Intelligence Service (CSIS), Royal Canadian Mounted Police (RCMP), and Communications Security Establishment (CSE). The Canadian Centre for Cyber Security (CCCS) is the national Computer Emergency Response Team (CERT) since October 2018.

<sup>11</sup> The clerk of the Privy Council, the federal national security and intelligence adviser, the deputy minister of justice, the deputy minister of public safety, and the deputy minister of foreign affairs are panel members.

<sup>12</sup> See [Saurvé v Canada](#), 2002 SCC 68 (2002) regarding prisoner voting rights and [Frank v Canada](#), 2019 SCC 1 (2019) regarding expatriate voting rights.

Voter lists are extracted from the permanent National Register of Electors, which is maintained by Elections Canada. The register includes eligible voters and is continually updated using federal, provincial and territorial data sources. Voters may register and update their records online or by mail throughout the year, as well as with their local Elections Canada office, and may request to be removed from voter lists. Additionally, election day registration is possible at polling stations with proof of identity and residence.<sup>13</sup> Approximately 25 million citizens are registered to vote.

ODIHR NAM interlocutors were generally confident in the accuracy of voter lists, although some stakeholders expressed concern that youth and members of indigenous groups are registered at lower rates than the general population. The Election Modernization Act also introduced a new database, implemented in April 2019, which allows citizens aged 14 to 17 to pre-register to vote, in an attempt to increase registration rates of young adults. A few polling stations on reserves experienced ballot shortages during the 2015 parliamentary elections due to minor deficiencies in voter list maintenance, including lack of updates in isolated areas and the incompatibility of online voter registration databases with some address formats.<sup>14</sup> Elections Canada indicated plans to extend services related to registration and voting in these areas. Stakeholders generally supported recent efforts to improve the inclusivity of the voter list.

Political parties and other stakeholders expressed contrasting views on voter identification rules. Many ODIHR NAM interlocutors welcomed the recent reinstatement of voter information cards as acceptable voter identification, noting that aboriginal, elderly, student, and low-income voters may be less likely to possess other valid forms of identification. Other stakeholders expressed preference for stricter identification rules in order to protect electoral integrity.

## F. CANDIDATE REGISTRATION

Citizens with the right to vote can stand for election to the House of Commons, except those serving a prison sentence, those convicted of electoral fraud, those who stood in previous elections but failed to submit campaign finance reports, as well as persons holding certain positions. The Elections Act lists categories of public officials who must resign from their position prior to registering as a candidate. A candidate may stand in only one constituency but does not need to be a registered voter or reside in that constituency.

Candidates may be nominated by political parties at least 21 days before election day, or stand independently. All prospective candidates must submit the names, addresses and notarized signatures of 100 registered voters (50 in sparsely populated constituencies) to their respective RO. Voters may support multiple contestants. The Elections Modernization Act repealed the CAD 1,000<sup>15</sup> candidate deposit, in line with an October 2017 decision of the Court of Queen's Bench of Alberta, which found the requirement unconstitutional.<sup>16</sup> By law, prospective candidates must be given leave by their employer, with or without pay, in order to campaign or seek nomination during the election period.<sup>17</sup> ODIHR NAM interlocutors were generally satisfied with the inclusiveness of the candidate registration process.

<sup>13</sup> The current system of election day registration is paper-based. Elections Canada informed the ODIHR NAM of possible plans to test electronic voter registries in future elections, pending adequate security.

<sup>14</sup> See [administrative review](#) by Elections Canada.

<sup>15</sup> 1 EUR is approximately 1.46 Canadian Dollars (CAD).

<sup>16</sup> The decision was not appealed to higher courts.

<sup>17</sup> Applies to federally-regulated enterprises under the Canada Labour Code.

Although approximately half of all government ministers are women, women are underrepresented in the parliament and local governments.<sup>18</sup> No requirements exist for gender representation on party lists, and no official gender-disaggregated data on candidate lists is produced prior to the election. Several ODIHR NAM interlocutors reported that party-nominated women candidates are less likely to contest winnable constituencies. In June 2019 the parliament adopted a 12-month parental leave policy for members of parliament, intended to attract more women to public office. Additionally, the Elections Modernization Act increased reimbursement rates for certain candidate expenses, including childcare costs.

### G. ELECTION CAMPAIGN

The recent reforms introduced a pre-election period, beginning on 30 June, during which certain prohibitions and guidelines apply. The official election period, with more extensive regulations on political activities, commences upon the dissolution of the outgoing parliament. ODIHR NAM interlocutors expected economic, environmental, and immigration issues to dominate the national campaign discourse, as well as topics related to electoral security, with other prominent issues varying by region. No interlocutors raised concerns about the ability to campaign freely, but many cited concerns related to disinformation campaigns in traditional and online media, as well as social networks.

Parties met by the ODIHR NAM intended to campaign using a variety of traditional means, including door-to-door canvassing, as well as social media platforms. In an established practice, the Canada Radio-Television Telecommunications Commission maintains the Voter Contact Registry, a registry of voter calling services and other entities which conduct outreach services. Additionally, the Elections Modernization Act requires political parties to develop publicly available internal privacy rules related to the collection and maintenance of voters' personal data. The CEO together with the privacy commissioner issued guidelines to political parties on the use of this data. Some ODIHR NAM interlocutors remarked that new data protection rules for political parties lack sufficient enforcement or oversight mechanisms to be effective.

For the upcoming elections, the government adopted an agreement with online platforms such as Facebook, Google and Microsoft, which calls on these platforms to take steps to mitigate interference in the upcoming election, such as identifying disinformation, labelling political advertising and identify sources of political communications, and to remove bots and other fake accounts and inauthentic content. Most stakeholders supported these efforts, although authorities met by the ODIHR NAM acknowledged jurisdictional limitations in regulating the activities of multinational companies in election campaigns.

The Privy Council Office provides guidelines, known as the Caretaker Convention, on the conduct of public agencies, officials and employees during an election. The Convention includes restrictions on government appointments, expenditures and advertising during the pre-election period, and prohibits the use of public resources for partisan advantage.

<sup>18</sup> Paragraph 34 of the [2016 CEDAW concluding observations](#) noted "low representation of women in the House of Commons (26 per cent) and the Senate (37.3 per cent), in provincial and territorial legislative assemblies (26 per cent on average) and in locally appointed positions, such as mayors (28 per cent) and councilors (18 per cent)" as well as "structural obstacles to the realization of women's political rights and engagement in public life". See also paragraph 7 of the [2015 CCPR concluding observations](#).

## H. CAMPAIGN FINANCE

Campaign finance is primarily regulated by the Elections Act, which provides for public and private financing. The Elections Modernization Act introduced new spending limits and imposed additional regulations on third parties. ODIHR NAM interlocutors generally supported the current system of campaign financing and approved efforts to further regulate third party activities, but pointed to potential loopholes in the revised legal framework.

Parties and candidates may fund campaigns through state subvention and donations from private citizens or permanent residents, and may take loans. Expenditure limits for parties and candidates are determined, respectively, according to the number of constituencies contested and the number of registered voters per constituency. In the upcoming elections, a new spending limit of CAD 2,046,800 applies to parties' advertising expenses in the pre-election period. Contestants are entitled to public reimbursement of campaign expenses based on votes received: candidates are entitled to up to 60 per cent of the district expenditure limit and parties up to 50 per cent of paid campaign expenses. Positively, the Elections Modernization Act increased reimbursements on certain candidate expenses such as 90 per cent of the costs of providing accessible campaign materials and events for persons with disabilities.

Elections Canada is authorized to monitor and enforce campaign finance rules. In addition to quarterly and annual reports, parties are obliged to submit an audited compliance report on campaign expenses within eight months of election day. Candidates are required to submit reports within four months. There is no obligation for contestants to report on spending before election day. Penalties for violations of campaign finance rules include fines, imprisonment, and possible deregistration and liquidation of assets.

Third parties must register with Elections Canada if they incur more than CAD 500 in election expenses related to partisan activities, advertising and surveys. Under the revised legal framework, third parties may not exceed CAD 1,023,400 in overall spending during the pre-election period, are subject to interim reporting requirements, and must report all contributions upon receipt. Further, political parties and third parties may not co-operate on campaign activities and expenditures. Some ODIHR NAM interlocutors expressed concerns that the new regulations might not capture income received prior to the election period which may lead to circumvention of rules related to income and collusion, despite an anti-circumvention clause in the law. Additionally, several stakeholders expected noncompliance with the collusion rule by regional political party offices with established practices of collaborating with third party groups, in part due to lack of awareness of the new provisions.

## I. MEDIA

The Constitution guarantees freedoms of expression and the press. Media coverage of the election campaign is regulated by the Canada Elections Act, the Broadcasting Act, and regulations of the Canadian Radio-Television and Telecommunications Commission. Defamation and libel are subject to criminal penalties including imprisonment, but these offenses are rarely prosecuted.

The media landscape is pluralistic. There are some 250 television stations, nearly 1,200 radio stations, and a diverse print media. The public broadcaster, Canadian Broadcasting Corporation (CBC), operates in English and French, and runs two national television channels and four radio networks. Regional channels of the CBC include content in eight indigenous languages, and provide

coverage in areas that lack access to commercial networks. The Internet, and particularly social media, is an important source of political information.

ODIHR NAM interlocutors generally expressed satisfaction with media access and coverage during elections, including the impartiality of CBC. Notwithstanding, a majority of interlocutors identified disinformation campaigns in traditional, online and social media as a primary concern in the upcoming election, and welcomed new efforts to regulate online and social media and to educate the public. Some stakeholders expressed concern related to the pre-election timing of the government's proposed CAD 600 million assistance plan for qualifying private media.<sup>19</sup>

The Broadcasting Arbitrator<sup>20</sup> allocates paid and free broadcasting time to political parties during the election period, according to criteria established in the Canada Elections Act, and arbitrates disputes between political parties and broadcasters.<sup>21</sup> All parties have the right to purchase additional airtime in private media, and political advertising must clearly indicate the sponsor. Broadcasters can refuse to air messages that include obscene content or are likely to incite hatred of certain social groups. Election-related broadcasts from outside of Canada are prohibited, although some ODIHR NAM interlocutors mentioned possible political influence of foreign-based broadcasters.

Third parties that register with Elections Canada may purchase airtime for political advertising. Additionally, the Election Modernization Act introduced requirement that electronic media platforms, as well as social media platforms, establish online registries for paid political advertising if visited by a certain volume of Internet users in Canada.<sup>22</sup> ODIHR NAM interlocutors anticipated an increase in the placement of third party "issue" advertisements in the upcoming elections, and expressed interest in an assessment of the effectiveness of the new online registries.

The Leaders' Debates Commission (LDC) is an independent body established in October 2018 to organize debates of party leaders during election periods.<sup>23</sup> Following a competitive bidding process, the LDC announced the broadcasting group Canadian Debate Production Partnership will be responsible for producing and airing debates in the upcoming elections. Broadcasters retain editorial independence in the format and content of the debate and to invite participants, but must meet minimum accessibility requirements, including sign language interpretation. To participate in a debate, parties must meet two of three criteria: 1) representation in the current parliament; 2) intention to nominate candidates in 90 per cent of constituencies; 3) receipt of at least 4 per cent of nationwide votes cast in prior elections, or a "legitimate chance" of the party's nominated candidates to be elected.<sup>24</sup> Stakeholders met by the ODIHR NAM generally supported efforts to regulate political debates, while others remained unsatisfied with the qualification criteria, which may exclude many small or newly established parties. The Conservative Party voted against the

<sup>19</sup> At the time of the ODIHR NAM, the details of the proposed assistance plan had yet to be elaborated, with a commission appointed to determine which media would qualify.

<sup>20</sup> The Broadcasting Arbitrator is appointed by the CEO prior to each election after consultations with parliamentary political parties; the current Arbitrator has held the post since 1992.

<sup>21</sup> Public television and radio are obliged to offer free airtime, in addition to two private television stations due to their established practice when the law was adopted. All broadcasters must reserve 390 minutes of air time for paid political advertising, which is allocated in practice among parties by the Broadcasting Arbitrator.

<sup>22</sup> According to the law, online platforms must register their political adverts if they are visited in a 12-month period prior to the election period by a minimum of 3 million users per month for English language platforms, 1 million for French language platforms, and 100,000 for platforms in other languages.

<sup>23</sup> The LDC must organize two debates, one in English and one in French.

<sup>24</sup> The three criteria are elaborated in the founding document of the Commission. The Commission [published its interpretation of the criteria](#) on 13 August 2019.



establishment of the LDC, claiming that the ensuing composition of debates would advantage the Liberal party.

#### J. COMPLAINTS AND APPEALS

The Commissioner of Canada Elections oversees compliance with, and the enforcement of, the Elections Act. The Commissioner is appointed by the CEO for a non-renewable ten-year term, and is mandated to conduct investigations. The Elections Modernization Act, reversing 2014 amendments, returned the Office of the Commissioner to the Office of the Chief Electoral Officer from the public prosecutor's office.<sup>25</sup> The election administration expressed support of the reinstated organizational structure to the ODIHR NAM.

Complaints may be submitted to the Commissioner in-person, by phone or mail, or electronically, and all complaints are reviewed to determine whether there is a basis to conduct an investigation. The Commissioner may also conduct investigations on his own initiative. The Elections Modernization Act granted additional authority to the Commissioner to impose administrative monetary penalties and to request a court order to compel testimony, in line with a prior ODIHR recommendation. In case of a serious offence, the Commissioner may institute a prosecution or initiate a prosecution procedure through the Director of Public Prosecutions, who is responsible for all aspects of the prosecution and any appeals. In such cases, no election-specific timelines exist for adjudication, contrary to a prior ODIHR recommendation. ODIHR NAM interlocutors generally expressed confidence in the effectiveness of the Office of the Commissioner.

The Elections Act lists a range of electoral offences for which a court may impose fines, a period of imprisonment, or both. The Supreme Court is the final court of appeal and may review any case of public or juridical importance. Candidates and voters may challenge election results at a competent court and appeals may be lodged with the Supreme Court within eight days. The Supreme Court is required to hear such cases without delay.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

Interlocutors welcomed a potential ODIHR activity for the upcoming elections, underlining the value of an external review and pointing to the substantial changes in the electoral legal framework. The ODIHR NAM noted full stakeholder confidence in the overall integrity of the electoral process, including election day procedures. Some ODIHR NAM interlocutors identified specific areas that would benefit from further review, including the implementation of new cybersecurity practices, the role of traditional and online media, as well as social networks, in the campaign, and the effectiveness of oversight of campaign and campaign finance rules. The ODIHR NAM sees benefit in undertaking a more in-depth assessment of the revised legal framework, cybersecurity measures, campaign and campaign finance rules including for online and social media, and the participation of women, aboriginal groups and persons with disabilities in the electoral process.

On this basis, the ODIHR NAM recommends deploying an Election Assessment Mission (EAM) for the upcoming parliamentary elections, subject to the availability of resources. ODIHR also encourages the authorities to consider previous recommendations that remain unaddressed.

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<sup>25</sup> Following the 2014 amendments, the Office had been transferred from Elections Canada to the Office of the Director of Public Prosecutions.

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**ANNEX: LIST OF MEETINGS**

**Global Affairs Canada**

Cindy Termorshuizen, Director General, International Security Policy Bureau  
 Marketa Geislerova, Deputy Director, Centre for International Digital Policy  
 [REDACTED] Senior Policy Advisor  
 [REDACTED], Desk Officer

**Ministry of Democratic Institutions**

Allen Sutherland, Asst. Secretary to Cabinet, Machinery of Government and Democratic Institutions  
 [REDACTED] Director, Special Projects  
 [REDACTED] Director of Policy  
 [REDACTED] Senior Policy Analyst  
 [REDACTED] Policy Advisor  
 [REDACTED] Policy Advisor  
 [REDACTED], Departmental Assistant

**Office of the Chief Electoral Officer – Elections Canada**

Stéphane Perrault, Chief Electoral Officer  
 Stéphane Roberge, Senior Advisor and Acting Chief of Staff

**Office of the Chief Electoral Officer – Commissioner of Canada Elections**

Yves Côté, Commissioner  
 Marc Chénier, General Counsel  
 Mylène Gigou, Director of Investigations  
 Myriam Croussette, Senior Communications Advisor

**Supreme Court**

David Power, Deputy Registrar

**Security and Intelligence Threats to Elections (SITE) Task Force**

[REDACTED]  
 Eric Gordon, Director, National Intelligence Coordination Centre, Royal Corps Mounted Police  
 Lyall King, Representative of the Communications Security Establishment, SITE Task Force

**Media Representatives**

**Canada Radio-Television and Telecommunications Commission (CRTC)**

Peter Forster, Director General, Broadcasting  
 Scott Shortcliffe, Executive Director, Broadcasting  
 Alain Garneau, Director, Compliance and Enforcement  
 Christina Maheux, Legal Counsel  
 Soniya Mukhedkar, Strategic Policy and International Affairs  
 Cameron Warriner, Strategic Policy and International Affairs

**Broadcasting Arbitrator**

Peter S. Grant, Broadcasting Arbitrator

**Public Broadcaster (CBC)**

Shaun Poulter, Executive Director, Strategy and Public Affairs

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**Leaders Debate Commission**

David Johnston, Commissioner  
Michel Cormier, Executive Director  
Jess Milton, Director of Communications and Outreach

**Canadian Association of Journalists**

Abigail Bimman, Ottawa Chapter Director

**Political Parties**<sup>26</sup>

Sebastien Togneri, Office of Chief Opposition Whip, Conservative Party  
Nick Carter, Mobilizing Operations Manager, Green Party  
Steve Parkinson, Legislative Assistant, Green Party  
Azam Ishmael, National Director, Liberal Party

**Academia and Civil Society**

Dianne Wintermute, Counsel, ARCH Disability Law Center  
Lori Turnbull, Director, School of Public Administration, Dalhousie University  
Nasha Brownridge, Communications Manager, Equal Voice

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<sup>26</sup> ODIHR offered meetings to all parliamentary political parties.