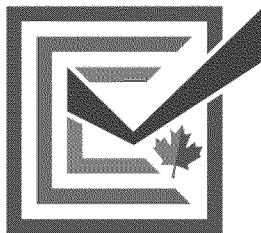


**PUBLIC INQUIRY INTO FOREIGN INTERFERENCE IN  
FEDERAL ELECTORAL PROCESSES AND DEMOCRATIC INSTITUTIONS  
INSTITUTIONAL REPORT  
THE OFFICE OF THE COMMISSIONER OF CANADA ELECTIONS (OCCE)**



**COMMISSIONER OF  
CANADA ELECTIONS**

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## 1. ORGANIZATIONAL OVERVIEW

### A. The Commissioner of Canada Elections and Her Mandate Under the *Canada Elections Act*

- 1.01 The Commissioner of Canada Elections (CCE) is the independent officer whose duty is to ensure that the *Canada Elections Act*<sup>1</sup> (CEA) and the *Referendum Act*<sup>2</sup> are complied with and enforced.<sup>3</sup>
- 1.02 Caroline Simard is the current Commissioner of Canada Elections, appointed in August 2022. The CCE is appointed for a ten-year non-renewable term, by the Chief Electoral Officer of Canada (CEO), after consultation with the Director of Public Prosecutions (DPP).
- 1.03 The CCE retains the status of Deputy Head for the purposes of human resources.<sup>4</sup>
- 1.04 The position of Commissioner of Election Expenses (as it was known at the time) was originally created in 1974. Its powers were limited to ensuring compliance with, and enforcement of, rules relating to election expenses. In 1977, its powers were significantly expanded to include all provisions of the CEA, and the position formally became known as the Commissioner of Canada Elections.
- 1.05 The CCE plays an important role in safeguarding Canadians' trust in the democratic process. The compliance and enforcement work carried out by the OCCE is done with the aim of protecting and promoting the integrity of the electoral process.
- 1.06 Generally speaking, the CCE's role involves ensuring the CEA is respected. Anyone who believes that there may have been a contravention of the CEA can submit a complaint to the OCCE. When circumstances warrant, the CCE may also conduct a review or an investigation on her own initiative. Additionally, the OCCE receives referrals from Elections Canada or other Government of Canada (GC) organizations or agencies. The OCCE then determines whether the issue falls within its mandate. If it does, the CCE may decide to initiate an investigation to determine the facts of the case.

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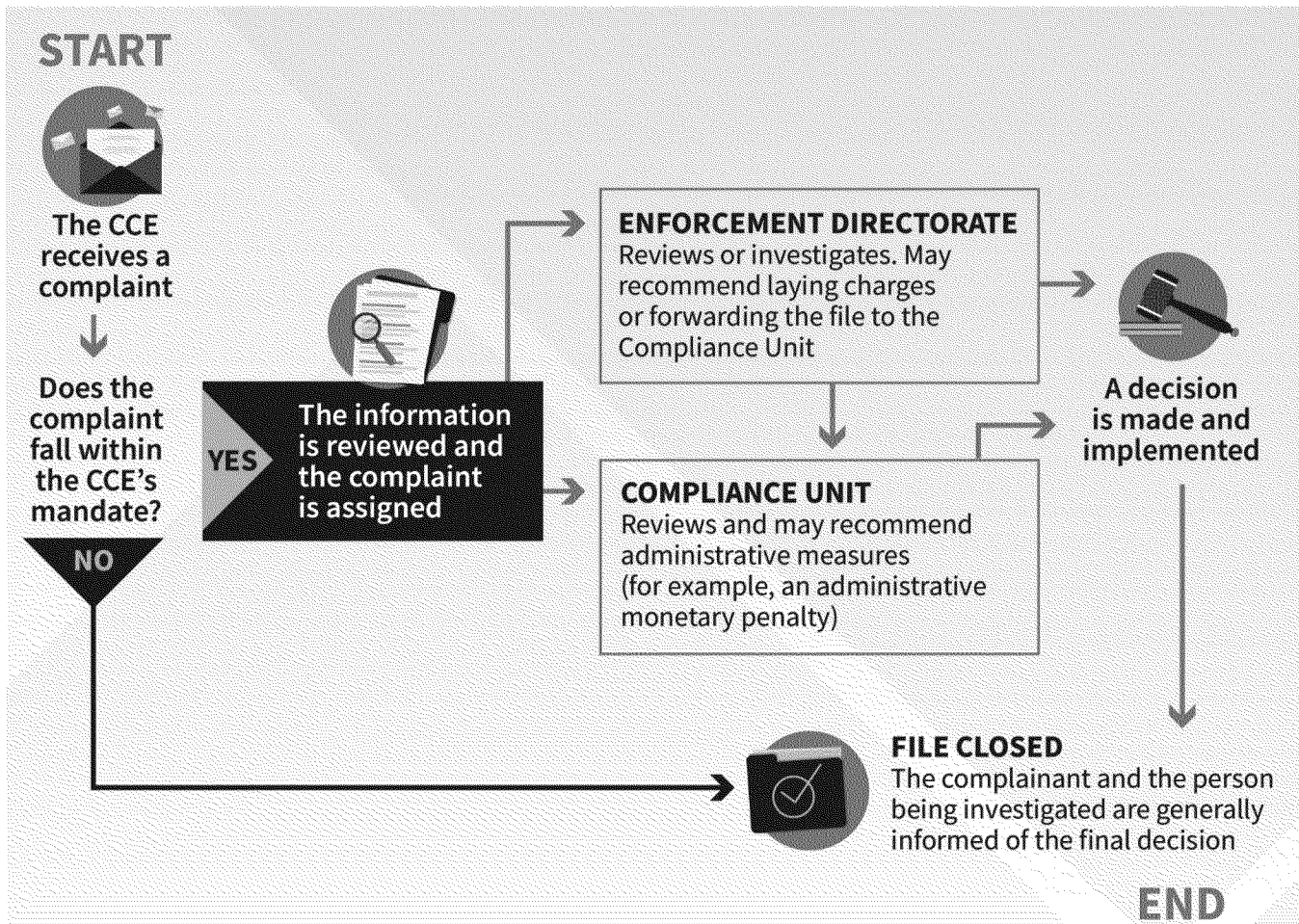
<sup>1</sup> S.C. 2000, c. 9.

<sup>2</sup> S.C. 1992, c. 30.

<sup>3</sup> Section 509.2 of the CEA.

<sup>4</sup> Subsection 509.3(1) of the CEA, *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 and sections 11 to 13 of the *Financial Administration Act*, R.S.C., 1985, c. F-11.

## The OCCE's Complaint Process

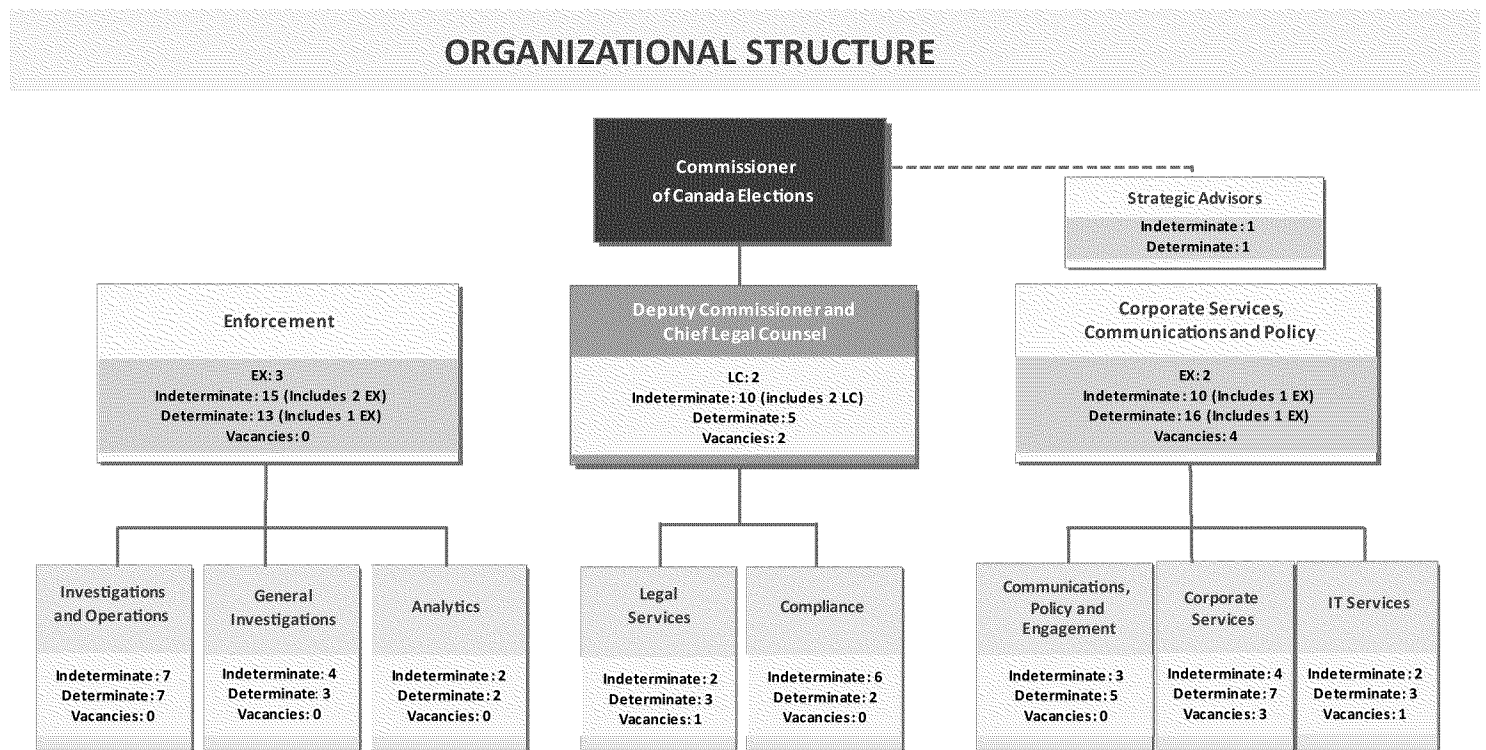


- 1.07 In the exercise of her mandate, the CCE and her staff are always guided by the principles of independence, impartiality and fairness. Furthermore, and in particular when selecting the appropriate measure of compliance or enforcement, the CCE always chooses the measure that best serves the public interest in light of the specific circumstances of each case.
- 1.08 The CCE may only address complaints relating to the CEA or the *Referendum Act*. She cannot investigate complaints falling under statutes that do not fall within her mandate or those relating to election laws at other levels of government. In certain cases, the CCE may deal with an offence under the *Criminal Code* if it is committed in conjunction with offences under the CEA or the *Referendum Act*.
- 1.09 Enforcement of the offence provisions of the CEA devolves to the CCE and the DPP, who are charged, respectively, with the investigation of and the laying of charges for offences under the CEA, on one hand, and with prosecuting these offences, on the other. The CCE reviews allegations of non-compliance and investigates them, where appropriate. Where she decides that it is in the public interest to institute a prosecution to address a case of non-compliance, the CCE lays a charge, following which the DPP takes carriage and may conduct the prosecution of the offences. In keeping with the Memorandum of Understanding (MOU) the OCCE maintains with the Public Prosecution Service of Canada (PPSC), the CCE may also choose to consult with the PPSC before laying a charge.

1.10 Any decision to proceed with a review of complaints, to conclude them, to investigate them or not, to use one or another means of ensuring compliance with or enforcing the CEA—including by laying charges—is taken independently by the CCE or by her staff duly authorized to do so.<sup>5</sup>

**B. Organizational Structure**

1.11 The CCE is supported by approximately 70 people, including federal public servants, casual employees and contractors. Under the current structure, the work of the OCCE is carried out by personnel working in one of three sectors: Deputy Commissioner (which includes Legal Services and Compliance), Enforcement, and Corporate Services.<sup>6</sup> The CCE also benefits from support and guidance provided by strategic advisors and administrative personnel within her office.



1.12 Enforcement, Compliance and Legal Services are directly involved in reviews and investigations into allegations of foreign interference as they relate to federal general elections. The Intake unit – which is part of the Corporate Services Branch – while not directly involved in the OCCE’s compliance and enforcement work, receives and performs the initial assessment and triage of complaints.

<sup>5</sup> Subsection 510(3) of the CEA.

<sup>6</sup> Corporate Services includes Administration, Complaint Intake, IT, and Communications and Policy units.

## **Enforcement Division**

- 1.13 The Enforcement Division is composed of three teams: Investigations and Operations, General Investigations, and Analytics.

### *Investigations and Operations*

- 1.14 The Investigations and Operations team supports the CCE in her compliance and enforcement mandate by conducting administrative and criminal investigations. Investigators frequently interact with complainants, witnesses, persons of interest, enforcement partners and stakeholders. The Investigations and Operations team also refers files to the Compliance Unit and makes recommendations to the CCE for the laying of charges.
- 1.15 A Paralegal team also provides services in support of investigations, including preparing disclosure, and identifying and performing activities related to the management of evidence.

### *General Investigations*

- 1.16 Investigators within the General Investigations team conduct less complex preliminary examinations or investigations, ensuring the appropriate application of the OCCE's established practices, methods and procedures. They provide recommendations on suggested and appropriate enforcement actions and strategies to address non-complex complaints or allegations of contraventions of the CEA.

### *Analytics*

- 1.17 The Analytics team supports the investigative functions of the OCCE. Analysts work in a multi-disciplinary team to respond to requests from investigators by providing research and reports, multi-faceted analysis, and the creation of analytical products, both visual and otherwise. The OCCE analysts have a variety of open and closed source tools at their disposal. Current internal procedures limit OCCE open source intelligence techniques to passive collection of publicly available information; this does not involve active interaction or the accessing of closed or private information.
- 1.18 Open source information collected by the Analytics team is only done within the context of a review or investigation or for the purpose of ensuring compliance of, or enforcement with, the CEA. Any operational collection of personal information found on social media must always be directly related to mandated activities. The OCCE does not have a mandate of prevention and as such its analytics team does not conduct online surveillance or monitoring.

## **Compliance Unit**

- 1.19 The OCCE's Compliance Unit consists of officers who work on compliance initiatives, including information and caution letters, to address situations of non-compliance with the requirements of the CEA. The team also negotiates compliance agreements and undertakings with persons or entities that have contravened the CEA and offers support to the CCE with respect to the Administrative Monetary Penalty (AMP) regime. The Compliance Unit also serves as a Secretariat for the AMP regime and review processes.
- 1.20 Following an investigation or review of a file, if the recommendation is made to pursue administrative measures, the Enforcement Branch refers the file to the Compliance Unit for their assessment of the most

appropriate compliance measure. The Compliance Unit makes a recommendation on the best course of action to the Manager, Compliance Unit or the CCE, as appropriate.

## **Legal Services**

1.21 The OCCE has its own independent legal services, which offers legal advisory services to the CCE and her staff on all legal matters, including support to litigation. Legal Services supports the CCE in her responsibilities with respect to her mandate under the CEA, and as Deputy Head of the OCCE. It is composed primarily of lawyers with experience in electoral, administrative and criminal law. The Legal Services group also provides CCE comments on Elections Canada's proposed guidelines, interpretation notes and written opinions on the application of the CEA. The Legal Services group also plays a central role in the development of recommendations for legislative changes to the CEA and works collaboratively with Elections Canada's Legal Services group to ensure coherent interpretation of the CEA.

## **C. OCCE's Budget and Source of Funding**

1.22 The OCCE derives its financing from two sources: an annual parliamentary appropriation and a statutory authority. Its annual appropriation, also known as its voted authority, covers only the base salaries of its indeterminate positions and is not affected by the electoral cycle. The current voted authority for the OCCE is \$3.3 million annually.<sup>7</sup> This appropriation can be increased only with the approval of the Treasury Board.

1.23 The CCE may make use of unappropriated funds from the Consolidated Revenue Fund for all other expenses. This important authority is intended to guarantee that the CCE has access to temporary funding required to conduct compliance and enforcement activities while maintaining full independence from the government. Salaries for term employees, the payment of contractors and expenses associated with travel and training, are also paid using unappropriated funds.

1.24 The OCCE's average annual spending from statutory funds is approximately \$3 million, largely composed of salaries for term and casual employees and contracted resources engaged to support its work.

1.25 Although the length of the electoral cycle is set out in the CEA,<sup>8</sup> the financial reporting requirements of the CEA are such the OCCE may receive information on potential non-compliance more than 36 months after an election. Minority parliaments, which often lead to more frequent elections, have a direct and substantial impact on the workload of the OCCE.

## **D. The OCCE and Elections Canada: Two Distinct Organizations**

1.26 The CEA provides for the appointment of both the CEO and the CCE and establishes their distinct powers, duties and functions in relation to federal elections.

1.27 The CEO is responsible for the conduct of elections, the administration of the third-party and political financing regimes, and the overall administration of the CEA.

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<sup>7</sup> 2018-19 to present

<sup>8</sup> Subsection 56.1(2) of the CEA.

- 1.28 The CCE is responsible for ensuring that the CEA is complied with and enforced. She may launch an investigation of her own initiative or following a complaint from the public or a referral made by the CEO<sup>9</sup> or from another GC department or agency. In keeping with the CEA, the CCE makes decisions falling under her mandate independently.
- 1.29 Since April 1, 2019, the CEA provides that the position of CCE is within the Office of the CEO (OCEO)<sup>10</sup>. The CEO is accountable to Parliament for the operations of the OCEO, which include both Elections Canada and the OCCE.

## **E. Independence**

- 1.30 Although the OCCE is located within the OCEO, the CEA provides that the CCE carries out her compliance and enforcement work independently from the CEO and Elections Canada. This separation prevents any perception that the CEO may exert influence over the CCE's work and decision-making. It also serves to protect both the parts of the organization on those rare occasions where the OCCE's compliance and enforcement activities may directly involve Elections Canada (ex. investigations involving election workers). The CCE's independence also serves to ensure that the CEO does not have access to investigative information to preserve his neutrality in the administration of elections.
- 1.31 The CEO may not interfere with the conduct of any investigation or decisions made by the CCE as they relate to the exercise of her mandate. However, this does not preclude the CCE from consulting with the CEO on any matter she deems appropriate<sup>11</sup>, and the CCE may disclose matters relating to an investigation or review should she be of the view that disclosure is in the public interest.
- 1.32 Consultation between the CEO and the CCE ensures a consistent approach in the exercise of their respective mandates and ensures that the CEA has a consistent interpretation in the evolving electoral ecosystem.
- 1.33 To further ensure consistency, the CEA stipulates that the CCE must provide comments on draft written opinions, guidelines and interpretation notes proposed by the CEO.
- 1.34 When Elections Canada becomes aware of potential contraventions to the CEA, the agency refers that information to the CCE for consideration of investigative, compliance or enforcement action. These are mainly files from both its electoral integrity and political financing divisions and make up the majority of files received by the OCCE. This referral process is distinct from the process used to redirect complaints submitted by the public to Elections Canada that properly fall under the CCE's mandate. A summary table of complaints and referrals received or transferred to the OCCE in relation to the 43rd and 44th general elections is attached to this Report as Annex A.
- 1.35 By its very nature, the electoral process involves competition between opposing political parties and other participants. Maintaining public confidence in the integrity of this process requires that no participant be able to exert influence over the organization responsible for ensuring compliance with and enforcement of the rules, including but not limited to an attempt to gain an advantage or harm an opponent.

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<sup>9</sup> Section 509.21 of the CEA.

<sup>10</sup> The OCCE was part of the Office of the DPP from October 1, 2014, until March 31, 2019. During that period, it was the DPP and not the CEO who was responsible for selecting the CCE. In practice, there were no CCE appointments by the DPP.

<sup>11</sup> Section 509.21(2) of the CEA.



- 1.36 Consequently, in addition to her independence from the CEO, the CCE carries out her duties independently of any political, ministerial or government interference or influence. This independence was reinforced through the amendments made to the CEA in 2014 and 2018.<sup>12</sup>
- 1.37 The CCE treats all parties involved in a matter under review or investigation equally and fairly. Once a complaint has been reviewed, the complainant may be asked to provide further evidence or information pertaining to the allegations. As per the requirements of the CEA, as soon as feasible after an investigation has been initiated, a written notice of the investigation is given to the person whose conduct is being investigated, unless the CCE is of the opinion that to do so might compromise or hinder the investigation or any other investigation.<sup>13</sup> As well, before instituting a prosecution, the CCE makes reasonable efforts to ensure the person or entity who is the subject of an investigation has the opportunity to offer their account of the facts and to provide any other relevant information they may wish to submit. They are also advised of their rights under the *Canadian Charter of Rights and Freedoms*<sup>14</sup>

#### **F. The CCE's Compliance and Enforcement Mandate<sup>15</sup>**

- 1.38 The CCE's role involves taking corrective action when the CEA or the *Referendum Act* is breached. The scope of the CCE's compliance and enforcement work is therefore limited to the provisions of the CEA as they are written.
- 1.39 In order to carry out its work, the OCCE primarily relies on the public to submit complaints when they believe there is wrongdoing under the CEA. All complaints or allegations of wrongdoing related to a federal general election, by-election or referendum are reviewed to determine whether there is a basis for the allegation. If the complaint falls within the CCE's mandate, a review or an investigation may be carried out.

#### **G. Criminal vs. Administrative Process**

- 1.40 The tools that the CCE has at her disposal to ensure compliance with, and enforcement of, the CEA fall within one of two regimes: administrative or criminal.
- 1.41 The decision to proceed under one or the other of these two regimes may be made at various steps in the OCCE's operational cycle, including upon intake, during a review, upon initiation of an investigation, upon conclusion of an investigation, or following the recommendation or implementation of a compliance

<sup>12</sup> See *An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts (Fair Elections Act)*, received royal assent June 14, 2014 (for instance, before the coming into force of Bill C-23, the CEO could instruct the CCE to investigate an offence committed under the CEA. C-23 also entrusted the CCE with the status of deputy head for the purpose of human resources with respect OCCE employees); Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments (Elections Modernization Act)*, received royal assent on December 13, 2018 (C-76 sets out clearly that CCE carries out her mandate of ensure compliance with and enforcement of the CEA independently of the CEO).

<sup>13</sup> Section 510(2) of the CEA.

<sup>14</sup> Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11.

<sup>15</sup> The formal compliance and enforcement scheme under the CEA ranges from administrative incentives to prosecutions. Administrative incentives are automatic administrative measures provided for in the CEA for certain instances of non-compliance (such as the forfeiture of the reimbursement of election expenses for failure to provide an electoral campaign return in a timely manner, and the progressive reduction in the amount of election expenses reimbursed in cases of over-spending). The OCCE is not involved in the administration of these incentives; they are applied by Elections Canada.

measure. For contraventions that are both offences and violations, the CCE may decide, according to the circumstances of each case, to address the contravention as an offence or a violation, depending on the severity and the circumstances of the case.

- 1.42 A person who contravenes the CEA cannot be subject to both an administrative measure and criminal charges for the same contravention.<sup>16</sup>

## H. Administrative Investigations

- 1.43 A violation is a contravention of the CEA that may be subject to an administrative investigation but does not carry the risk of criminal prosecution in court. It aims at ensuring the compliance with the CEA. However, an official notice of violation issuing an AMP may be served to anyone who has committed a violation of the CEA.
- 1.44 The administrative regime can be applied to violations committed under 1) Parts 16 (Communications), 17 (Third Parties) or 18 (Political Financing) of the CEA, 2) violations for breach of prohibitions against voting illegally, 3) violations for failure to comply with a requirement of the CEO under Parts 16, 17 and 18 of the CEA, or 4) violations involving failure to comply with a term or condition of compliance agreement with the CCE or an undertaking accepted by the CCE.<sup>17</sup>
- 1.45 The administrative regime generally offers considerable agility and potential for the CCE to achieve swift results.
- 1.46 Administrative investigations may result in measures that aim to promote compliance, such as the signing of an undertaking or the payment of an AMP.

## I. Criminal Investigations

- 1.47 A criminal investigation may be carried out for offences<sup>18</sup> committed under any part of the CEA. Investigations carried out under this regime may result in charges being laid against the person or entity that committed the offence.<sup>19</sup> A criminal prosecution may result in an acquittal or in a conviction and imprisonment, payment of a fine, or both. A conviction for an offence may lead to a criminal record unless the defendant is acquitted.
- 1.48 The option of laying charges can only be entertained if the investigation has yielded reliable evidence that would allow the CCE to believe on reasonable grounds that an offence under the CEA has been committed. This requires that there is evidence to substantiate all the essential elements constituting the offence under the CEA. In the absence of such evidence, the laying of charges is not an option. On the other hand, the Crown, not the OCCE, has the ongoing obligation to determine if there is a reasonable prospect of conviction when it is referred a file.

<sup>16</sup> Section 508.3 of the CEA.

<sup>17</sup> Subsection 508.1 of the CEA.

<sup>18</sup> An offence is a contravention of the CEA that may be subject to a criminal investigation and for which the person or entity that committed the offence may be charged.

<sup>19</sup> In such a situation, the Public Prosecution Service of Canada would then be responsible for the prosecution on behalf of the Crown.

- 1.49 The CCE may also apply to a court to issue an order to compel testimony or the production of a written return. This tool enables the OCCE to have access to the information they need, in particular in cases where someone is reluctant to voluntarily cooperate. No such order could be sought against an individual who is alleged to have committed or is about to commit a contravention under the CEA.
- 1.50 In some cases, the CCE may also investigate offences under the *Criminal Code*, if they are committed in conjunction with offences under the CEA. In other cases, joint work may be carried out with the RCMP or the police of local jurisdiction when the same allegations could constitute contraventions of both the *Criminal Code* and the CEA.
- 1.51 Formal measures available to the CCE at the conclusion of a criminal investigation include compliance agreements<sup>20</sup> and the laying of criminal charges.<sup>21</sup>

## **J. Means of Enforcing the CEA**

- 1.52 In carrying out her functions, the CCE has a number of different tools at her disposal to ensure compliance with the CEA. In certain circumstances, she may favour the use of informal means of ensuring compliance with the CEA. In other cases, the choice of formal measures is more appropriate.

### **Informal Means**

- 1.53 Informal means include caution or information letters and other forms of communication (ex. telephone or e-mail) addressed to persons or entities that are the subject of a complaint. These serve mainly to inform the persons or entities involved about the alleged contravention and the statutory requirements with a view to rectifying the situation and encouraging voluntary compliance in the future.
- 1.54 While caution letters are not provided for in statute and do not have the same legal force as formal enforcement responses, they do form part of the person or entity's compliance record. A person or entity receiving a caution letter should expect any recurrent non-compliance to be addressed using a formal response.

### **Formal Means**

#### *Undertakings*

- 1.55 An undertaking is a formal pledge voluntarily signed by a person or entity and accepted by the CCE, which may include the terms and conditions that she considers appropriate, including the payment of an amount by the person or entity. Prior to accepting an undertaking, the CCE must inform the person or entity concerned that a notice of the undertaking will be published as required by the CEA.

#### *Notices of Violation and AMPs*

- 1.56 The CEA identifies some contraventions that are violations subject to an AMP.
- 1.57 The purpose of an AMP is to promote compliance with the CEA, and not to punish.

<sup>20</sup> Subsection 517(1) of the CEA.

<sup>21</sup> Subsection 511(1) of the CEA.

- 1.58 The maximum AMP for a violation by an individual is \$1,500. The maximum for a violation in the case of a corporation or an entity is \$5,000. In addition to these maximums, in the case of an excessive political contribution—or of a political contribution made by a person or entity that is not eligible to make a contribution—the maximum penalty mentioned above may be supplemented by an additional amount of no more than twice the amount of the illegal portion of the contribution.
- 1.59 The amount of an AMP is determined by taking into account the criteria set out at section 508.6 of the CEA:
- (a) the degree of intention or negligence on the part of the person or entity that committed the violation;
  - (b) the harm done by the violation;
  - (c) whether the person or entity derived any advantage from the violation;
  - (d) whether the person or entity made reasonable efforts to mitigate or reverse the violation’s effects;
  - (e) whether the person or entity has taken steps to avoid committing the violation in the future;
  - (f) whether the person or entity has provided all reasonable assistance to the Commissioner with respect to the violation, including reporting it and providing any relevant information;
  - (g) the person’s or entity’s history of compliance with the provisions of the CEA;
  - (h) the person’s or entity’s ability to pay the penalty;
  - (i) any aggravating and mitigating circumstances; and
  - (j) any other factor that, in the opinion of the Commissioner, is relevant.
- 1.60 The person or entity in receipt of a Notice of Violation may request a review of the CCE’s decision. If the amount of the penalty assessed against an individual is \$500 or less, or \$1,500 or less for an entity or a corporation, the CCE will review the alleged violation or penalty. Penalties above these thresholds are reviewed by the CEO.
- 1.61 The current AMP regime may extend to some foreign interference-related contraventions under the CEA. Annex B outlines those foreign interference-related provisions that may be subject to the AMP regime.

### *Compliance Agreements*

- 1.62 The CEA allows the CCE to conclude a compliance agreement with a person or entity that she believes on reasonable grounds has committed, is about to commit or is likely to commit an act or omission that could constitute an offence under the CEA.
- 1.63 A compliance agreement is a formal agreement voluntarily signed by the CCE and the person or entity and may include a statement whereby the individual or entity in question admits responsibility for the act or omission that constitutes the offence mentioned in the agreement. It is accompanied by any terms or conditions that the CCE considers necessary, which may include a requirement that the contracting party pay a specified amount.
- 1.64 As long as the person or entity complies with the terms and conditions of the agreement, no prosecution can be instituted or continued against them for the act or omission constituting the offence that is the subject of the compliance agreement. If there is non-compliance with the terms or conditions, then a prosecution can be instituted or resumed. Failure to comply with a term or condition of a compliance agreement may also constitute a violation, for which the CCE may issue a Notice of Violation and impose an AMP.

### *Prosecutions*

- 1.65 A decision to institute a prosecution can only be made if there exists sufficient evidence meeting the criminal evidentiary standard.
- 1.66 If the CCE believes on reasonable grounds that an offence under the CEA has been committed, she may institute a prosecution or cause one to be instituted. If she decides to institute a prosecution, she asks an investigator from her Enforcement Division to swear information before a justice to lay charges under the CEA.
- 1.67 After the charges have been laid, the DPP is responsible for all aspects of the prosecution (including appeals). Prosecutions are conducted in accordance with well-established principles. The DPP may decide to stay the charges, or to remit the matter back to the CCE if the DPP is of the view that the public interest would be better served by having the matter dealt with by a compliance agreement.

### **K. Investigations: Information and Evidence Gathering**

- 1.68 In carrying out investigations, the OCCE will usually collect information from multiple sources including the complainant and the individual or entity against whom a complaint has been made.
- 1.69 The OCCE's investigators can receive and use information provided to them voluntarily by complainants or any other person. The persons or entities that are the subject of a review or an investigation can also voluntarily provide information to the investigators. Information provided to the OCCE must be in good faith, as under the CEA, it is an offence for anyone to obstruct or hinder the CCE's investigations, or to knowingly make a false or misleading statement to her investigators.
- 1.70 In the course of a review or an investigation, the OCCE may also make use of other means to gain legal access to information needed to carry out the CCE's mandate without the need to obtain a judge's prior authorization.

#### **a) Public Documents**

- 1.71 The following are public documents to which the CCE, the investigators and any member of the public have access:
- the returns and other documents that registered political parties and their registered electoral district associations, as well as candidates, leadership and nomination contestants, and third parties, are required to file with the CEO;
  - the CEO's instructions and decisions under the CEA; and
  - any exchange of correspondence between the CEO and election officers or with other persons regarding an election.

#### **b) Election Documents and Information Collected by Elections Canada during an Audit**

- 1.72 The CEA authorizes the CCE to examine election documents in the custody of the CEO. These documents, obtained through a request for information, include the writs of election, nomination papers filed by the candidates, undistributed blank ballots, documents relating to the revision of the lists of electors, the statements of the vote from which the validation of results was made, the returns from the polling stations

enclosed in sealed envelopes and containing such items as a packet of unused ballots, packets of ballots cast for the various candidates, lists of electors and elector registration certificates.

### **c) Information under the Control of a Government Institution**

- 1.73 The “Enforcement Directorate, Office of the Commissioner of Canada Elections” is an investigative body for the purposes of paragraph 8(2)(e) of the *Privacy Act*.<sup>22</sup> This designation allows another federal government institution to disclose personal information under its control to the investigator, on the investigator's written request, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation.

## **L. Extrajudicial Means**

### **Request for documents evidencing a party's election expenses**

- 1.74 In the course of an investigation in response to a complaint, the CEA<sup>23</sup> allows the CCE to require the chief agent of a registered party to provide, by a specified date, documents evidencing any expense set out in the party's election expenses return. This includes, inter alia, invoices, bank statements, deposit slips and cancelled cheques. It is an offence for the chief agent to fail to comply with such a request by the CCE.

## **M. Judicial Means**

### **a) Production Orders and Search Warrants**

- 1.75 The OCCE requires prior judicial authorization in order to access relevant information for which a person is entitled to a reasonable expectation of privacy. Such information is protected under section 8 of the *Canadian Charter of Rights and Freedoms*, which guarantees the right to be secure against unreasonable search or seizure.
- 1.76 OCCE investigators are “public officers” for the purposes of the *Criminal Code*, and having that status, may ask a judge to issue a search warrant or a production order. If an investigator can satisfy the judge, through affidavit evidence, that there are reasonable grounds to believe, among other things, that there is evidence of an offence in a particular place, a search warrant may be issued. This allows investigators to enter the premises and seize the documents or other items described in the warrant.
- 1.77 Production orders may serve to compel a third party (in the general sense and not as understood under the CEA), i.e., a person other than the subject of the investigation, to provide the CCE or one of her investigators with information or documents in the possession of the third party as described in the order. The court may issue a production order if the issuing justice or judge is satisfied that there are reasonable grounds to believe, among other things, that a document or data in the possession of the third party will provide evidence respecting the commission of an offence.
- 1.78 The CEA does not contain specific and adapted tools for gathering evidence under the administrative regime. Thus, the only formal means that could be used to gather evidence in the context of an administrative investigation is to seek an order, under section 510.01 of the CEA, requiring an individual to testify or to

<sup>22</sup> The *Privacy Regulations*, section 5, Schedule II, 10.2.

<sup>23</sup> Section 510.001 of the CEA.

make and produce a written return. The criminal tools (search warrant, production and preservation orders) are not available in a situation where the contravention is only a violation or, with respect to a hybrid contravention (a contravention that is an offence and a violation), once a decision is made to pursue the matter under the administrative regime. On the other hand, the standard to be met for obtaining a court order under the CEA to compel a witness, i.e. the existence of reasonable grounds to believe that an offence or a contravention has been committed, is very similar to the standard for issuing a notice of violation (existence of reasonable grounds to believe that a violation has been committed).

#### **b) Order for Examination of Witness or for Written Return under Oath**

- 1.79 Although requests for voluntary information from witnesses are standard, the CEA provides for a judicial order for compelled testimony or written return upon meeting certain conditions. An order compels witnesses to testify under oath rather than providing information on a voluntary basis.
- 1.80 The CCE or an authorized representative may apply to a court for an order<sup>24</sup> requiring a witness to be examined under oath on any matter that is relevant to a contravention that is under investigation by the CCE, or to make and deliver a written return under oath showing in detail the information required by the order.
- 1.81 The judge grants such an order if he or she is satisfied by information provided under oath that:
- there are reasonable grounds to believe that the CEA has been or is about to be contravened, and
  - the individual has or is likely to have information that will provide evidence of the contravention.
- 1.82 On receipt of such an application, the judge may direct that notice of the application be given to the person against whom the order is sought. Alternatively, the judge may proceed *ex parte* (i.e., without informing the person against whom the order is sought) if disclosure of the information in the application would, among other things, compromise the identity of a confidential informant, compromise the nature and extent of an ongoing investigation, provide information about investigative techniques that would prejudice future investigations, or prejudice the interests of an innocent person. Where the judge grants an order *ex parte*, the documents relating to the application are sealed and an order prohibiting the witness from disclosing any information will be issued. The subject of the investigation and their counsel are allowed to attend the examination, unless the order was obtained *ex parte*, or the CCE satisfies the presiding officer before which the examination is to take place that their attendance would be prejudicial to the effective conduct of the examination or of the investigation.
- 1.83 Testimony, evidence and the written return obtained through such an order cannot be used against the person who gave the compelled testimony, even in the context of an administrative investigation (should a subsequent decision be made to pursue the matter under the administrative regime), unless in cases of prosecution for perjury or for obstruction of a CCE's investigation. Nevertheless, information so obtained can be used to obtain judicial authorization for a search warrant or production order under the *Criminal Code*.

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<sup>24</sup> Section 510.01 of the CEA.

## **N. Duty to Maintain Confidentiality**

- 1.84 The CEA prohibits the CCE and persons acting under her direction from disclosing any information relating to an investigation, including the identity of the complainant, the person whose conduct is being investigated or any witness.<sup>25</sup>
- 1.85 However, the CEA contains specific exceptions to this duty to maintain confidentiality, a duty that extends beyond the closing of the file. The CCE may disclose:
- with the consent of the person in question, the name of the complainant, the person whose conduct is being investigated and any witness;
  - information that, in the CCE's opinion, is necessary to carry out an investigation;
  - when a prosecution has been instituted, information that the DPP requires or that is required for the prosecution;
  - information that is required to be disclosed in the course of an application for judicial review;
  - information that is required to be disclosed under any other Act of Parliament;
  - information that, in the CCE's opinion, is necessary in order to enter into or renegotiate a compliance agreement;
  - information that the CEO requires when a review of a decision by the CCE to impose an AMP has been made to the CEO;
  - information that, in the CCE's opinion, is necessary in order for a person or entity to provide an undertaking; and
  - information the disclosure of which is, in the CCE's opinion, in the public interest.

## **O. Disclosure of Information**

- 1.86 The electoral ecosystem is a highly partisan environment. This particularity must be taken into consideration given that any information concerning allegations of wrongdoing that is communicated to the public can have an impact on a candidate or even the results of a particular election. The review or investigation of a potential contravention under the CEA and laying of criminal charges (in case of an offence) can have significant negative consequences (reputational damage, compromised political career or future) for the subject of the review or investigation, regardless of the outcome. Ensuring fairness is therefore paramount.
- 1.87 Moreover, reviews or investigations must be protected from factors that could negatively affect their integrity, and the OCCE must be able to conduct its efforts in a non-partisan manner, free from any political pressure, overt or implied.
- 1.88 Consequently, and like most law enforcement agencies, police forces or investigative bodies, the CCE will not generally comment on an ongoing review or investigation.

## **P. Disclosure in the Public Interest**

- 1.89 One of the exceptions to the confidentiality requirement applicable to the OCCE and persons acting under her direction is the disclosure of information that the CCE considers to be in the public interest. The CEA

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<sup>25</sup> Subsection 510.1(1) of the CEA.



specifies<sup>26</sup> three factors that the CCE must take into consideration before deciding that a disclosure is in the public interest:

- the need to protect privacy;
- the presumption of innocence that applies to the person whose conduct is under investigation; and
- the need to maintain public confidence in the fairness of the electoral process.

## **Q. Releasing Information to the Public**

- 1.90 In some cases, it may be important to release information concerning a complaint, review or investigation to the public. Such disclosure may be necessary when, for example, partial information, inaccurate information or unfounded rumours have been made public and, for that reason, releasing information may be warranted by the need to maintain public confidence in the fairness of the electoral process. Some information will also be made public by the CCE when formal actions are taken to resolve a matter, for instance, when charges are laid, an AMP is issued and the violation is deemed to have been committed, an Undertaking is offered and accepted by the CCE, or a Compliance Agreement is entered into. Where an investigation or review has not been formally resolved, the confidentiality requirements continue to apply.
- 1.91 In these limited cases, and particularly given the partisan environment in which the OCCE conducts its work, careful consideration would also be given to weighing the risks associated with disclosure, including but not limited to, the effect that it may have on the outcome of current or future elections.

## **2. COMPLIANCE AND ENFORCEMENT ACTIVITIES RELATED TO FOREIGN INTERFERENCE IN THE 43RD & 44TH GENERAL ELECTIONS**

### **A. Foreign Interference Under the CEA**

- 2.01 The term “foreign interference” is not defined in the CEA. As such, the general understanding of what may constitute interference may be at odds with what is contained in the legislation. Certain activities that may be perceived as foreign interference may be authorized, or may not be regulated, by the CEA. Further, while there are a number of prohibitions that specifically apply to foreign individuals or entities – including prohibitions on foreign broadcasts, undue influence by foreigners and spending by foreign third parties – there are none that expressly refer to foreign interference.
- 2.02 Other prohibitions – which may also apply to Canadians – may constitute foreign interference if committed by a foreign person or entity. A list of these prohibitions is attached as Annex B.
- 2.03 The absence of a definition poses a challenge for the OCCE, and a significant portion of complaints it receives, identified by complainants as foreign interference, do not fall within its mandate. Further, these may or may not fall within the mandate of other GC organizations. This gives rise to subjectivity and a disconnect between the mandate of the OCCE, that of its partners, and the expectations of complainants.
- 2.04 Beyond informing the complainant, complaints containing allegations that are not covered by the CEA are generally closed without further action. In select circumstances, the OCCE may either refer the complainant

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<sup>26</sup> Subsection 510.1(3) of the CEA.

or disclose information to a partner agency, pursuant to the disclosure criteria outlined in the CEA.<sup>27</sup> No foreign-interference complaints or information were redirected to partner agencies for either the 43rd or 44th general elections.

## **B. Election Preparation and Work During an Election Period**

- 2.05 The OCCE must always be prepared to address the influx of complaints and issues that arise during an election period. As a result, the OCCE devotes a significant amount of time and resources preparing for a possible general election.
- 2.06 This work includes an evaluation of lessons learned from previous elections to determine those areas where adjustments may be required. Some of these lessons learned include further building the OCCE's capacity to respond to the volume and complexity of complaints, navigating the challenges with conducting analysis on certain digital platforms, the tracing of funds and artificial intelligence. Additional preparatory work is also undertaken based on a strategic risk analysis, to better understand, and respond to arising issues in the public environment.
- 2.07 During an election period, the OCCE shifts focus from ongoing compliance and enforcement work to the more urgent work generated by the influx of complaints. Throughout the general election, OCCE personnel prioritize the reception, triage and review of thousands of complaints, with the main objective of achieving compliance. Indeed, wherever possible, OCCE personnel work with individuals or entities to achieve compliance before election day. Detecting and resolving an issue as early as possible is the best way to ensure that electoral participants follow the rules established by Parliament to ensure free and fair elections.
- 2.08 In preparation for the 43rd general election, the OCCE worked to build collaborative relationships with the research community and with other experts both inside and outside of government. In that context, academics and other experts were invited to share their knowledge with OCCE personnel on a variety of topics of interest, including on foreign interference.
- 2.09 In 2018-2019, OCCE also met with visiting foreign delegations and representatives from the Organization for Security and Co-operation in Europe (OSCE), and proactively reached out to several other government representatives from like-minded countries. These meetings resulted in constructive discussions on enforcement issues of common interest. Employees from the OCCE also met with representatives of provincial, territorial and foreign electoral management bodies who were taking part in Elections Canada's Visitors Program. These collaborative efforts were, and are still, important to ensure the OCCE remains aware of the latest trends, tools and best practices so that it can better anticipate risks, bolster its preparedness and fulfill its overall mandate.
- 2.10 In the lead up to both GEs, the use of manipulated imagery or videos in ways that would contravene the CEA was also a specific concern, particularly in light of the rapid circulation that technology can generate and the potential impact that all types of manipulated imagery or videos can have on a campaign. The OCCE took steps to mitigate risks by engaging with experts in the field at the RCMP to increase its understanding of the

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<sup>27</sup> Subsection 510.1(2) of the CEA.

technology and the tools available. The OCCE also secured the on-call services of the RCMP to provide immediate assistance, including after hours, particularly in the critical end phase of the election. This support fell within the parameters of the OCCE/RCMP MOU and given their existing expertise, the small number of files requiring the service and the investment required to develop and maintain the same expertise internally, the office determined it was more effective to leverage the support of the RCMP.

- 2.11 Prior to the 43rd general election, the OCCE also met with the Canadian Department of Justice to ensure it had current information on Mutual Legal Assistance Treaties (MLATs) in the event that collaboration with a foreign authority was required.
- 2.12 For both the 43rd and 44th GE, OCCE staff also actively participated in Deputy Minister, Assistant Deputy Minister and Director General-level committees on election security. The committees meet during and, as required, between election periods, with a view to ensuring ongoing collaboration, coordination and information sharing.
- 2.13 During both election periods, the OCCE also engaged with political parties, which, at its request, designated a person to act as a point of contact to facilitate exchanges on urgent matters during the election period. These points of contact also had access to legal counsel from the OCCE's Legal Services 7 days a week to allow for discussion on urgent matters.
- 2.14 All of these measures are reviewed, adapted and expanded as required in preparation for future general elections. *Continual Development and Evolution of the OCCE* in Section 3 of this report contains further information on how the OCCE has, and continues to, adapt its processes in preparation for general elections.

### **C. Post-Election Work at the OCCE**

- 2.15 Whether from the public or other sources, the OCCE continues to receive complaints even after the election period has drawn to a close. Additionally, legislative timelines — particularly those related to political financing — mean that referrals from Elections Canada may be received years after the election period. This presents particular challenges, where files from a previous general election may not have been received before the next general election is held and can result in investigative work being carried out for months or years following an election.
- 2.16 For example, in early 2019, the OCCE received a significant volume of referrals from Political Financing and Audit Directorate at Elections Canada, involving potential contraventions of the CEA related to unpaid claims and loans for candidates stemming from the 42nd general election held in 2015. The 36-month period to repay unpaid claims and loans for the 42nd general election came to an end on November 19, 2018. However, the legislated 36-month timeframe for repayment — and subsequent referral to the OCCE — means that, in some instances, files for one election may not be completed before a new election period begins.

## D. Complaints Received During General Elections

- 2.17 In 2019, the OCCE observed a significant increase in the overall number of complaints it received during the election period. This phenomenon has, in large part, been attributed to the use of technology — and social media in particular — to amplify the issues that arose during the campaign. Unlike in previous years, where a particular allegation may have generated one or only a few complaints, in several separate instances during the 43rd general election, the OCCE received multiple complaints in relation to the same potential contravention. Examples of these are described in the sections pertaining to the 43rd and 44th general elections.
- 2.18 When submitting a complaint via the OCCE’s online form, complainants may flag their submissions as falling under foreign interference in the categories of undue influence by a foreigner, foreign funding, or foreign broadcasting. However, as the CEA does not refer to, nor define, foreign interference, the OCCE must conduct further analysis to identify complaints that could fall under this category or those that may contain foreign interference elements. This work is carried out at various stages of a complaint or investigative process, to ensure the files are afforded appropriate priority.
- 2.19 To date, the work conducted by the OCCE has not resulted in any formal measures being taken, or charges laid, in relation to foreign persons or entities having influenced or attempted to influence an election. However, as a direct result of a review process,<sup>28</sup> some complaints that were submitted have uncovered contraventions of the CEA – unrelated to foreign interference – that have subsequently been addressed by the CCE.

### 43rd General Election

- 2.20 During the 43rd general election, 201 complaints alleging foreign interference were made to the OCCE – including 52 re-directed by Elections Canada – which were grouped into 15 separate allegations. In comparison, the OCCE received more than 8,000 complaints regarding the 43rd general election. Of significance, the overwhelming majority of those 201 complaints were related to American individuals or entities. 100 of them involved an article in an American publication; following a review of this publication, the OCCE concluded that there was no contravention of the CEA, as since the content was of an editorial nature. One complaint was related to allegations of foreign broadcasting, but upon review it was determined to be a Canadian entity and therefore not in contravention of the CEA.
- 2.21 More specifically, three of these 15 allegations resulted in an investigation, including two files that were closed after exhausting the available investigative steps. The third investigation resulted in an undertaking for a contravention of a financial nature, with no link to a foreign person or entity. In relation to the 43rd general election, no criminal charges were laid. All reviews and investigations for these 201 files are closed.

### 44th General Election

- 2.22 During the 44th general election, the OCCE received 22 complaints alleging foreign interference – including 6 re-directed from Elections Canada – which were grouped into 16 separate allegations. In comparison, the

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<sup>28</sup> See the subsequent sections, especially para 2.26, for further detail.

OCCE received almost 4,000 complaints in 2021. Of these complaints, five contained allegations of an element related to American individuals or entities. The remaining eight had allegations of an element related to the People’s Republic of China or Russia, one was related to an international organization linked to close allied nations, and two had no specific foreign nation identified. The majority of the files were closed following a review.

- 2.23 Three of these 16 allegations resulted in an investigation. In all three cases the investigation determined that there was a contravention of the CEA unrelated to foreign interference and the OCCE issued a compliance measure. All reviews and investigations of these 16 files are closed.
- 2.24 As of January 2024, the CCE has not laid any charges or taken any other formal measures in connection with provisions, which if applied to foreign persons or entities could be considered foreign interference for the purposes of the CEA, in relation to the 43rd or 44th general elections.

### **E. Complaints after the General Election**

- 2.25 In the fall of 2022, in response to media reports alleging foreign interference in the 43rd and 44th general elections, the OCCE received complaints alleging interference in both elections.
- 2.26 In response to these complaints, the CCE declared her commitment to conduct a review of every complaint brought to her attention. The review remains ongoing and is being carried out with a view to determining whether there is any tangible evidence of a contravention of the CEA. This work is comprised of both an examination of new complaints and a reassessment of complaints previously received to ensure all relevant information has been considered. This reassessment has identified 49 prior complaints which are linked to the existing allegations. The work related to the reassessment of complaints is complete and these files are now closed.
- 2.27 Regardless of whether the review identifies contraventions to the CEA, the OCCE will ensure that the review is utilized to better inform future efforts, and to make and implement recommendations to improve its ability to respond to allegations of foreign interference in future federal electoral processes.
- 2.28 In addition to complaints, the OCCE also received more than 5,628 letters from concerned citizens<sup>29</sup> requesting that the OCCE take action on foreign interference. The letters – all of which followed the same format – did not contain specific allegations of foreign interference.

### **3. FOREIGN INTERFERENCE AND THE ELECTORAL ECOSYSTEM**

- 3.01 The OCCE is one of many organizations that play a role in the electoral ecosystem. To that end, the OCCE has established relationships with several partners and collaborates with other stakeholders, some of whom have complementary mandates, who play a key role in preserving the integrity of elections.

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<sup>29</sup> From 4,689 individuals (some individuals submitted more than one letter.)

## A. Partnerships

- 3.02 In the lead up to both the 43rd and 44th federal general elections, and specifically in response to the allegations of foreign interference in other countries, the OCCE implemented strategies to mitigate risks and ensure it had the information and the tools to deliver on its compliance and enforcement mandate and as a means of increasing its knowledge of threats and keeping abreast of the evolution of investigative techniques.
- 3.03 Part of this strategy involved working with partners in the electoral ecosystem, including national security and enforcement partners, to clarify mandates and identify areas of possible, but complementary, overlap. This work established avenues for potential collaboration with a view to ensuring an efficient and robust whole of government approach to protecting Canada's democratic processes. It also served to increase OCCE knowledge of threats identified by law enforcement, the intelligence community, election management bodies at home and abroad.
- 3.04 Over the years, the OCCE has also formalized some of these partnerships through the development of MOU with several key partners. Among these, the OCCE maintains MOU with the RCMP and CSIS to facilitate information-sharing or assistance should it be required.
- 3.05 In addition to information sharing and assistance, the OCCE's MOU with the RCMP may extend to things like the conduct of joint investigations or the provision of specialized services during the course of one of the OCCE's reviews or investigations.
- 3.06 The OCCE also works with CSIS and has received intelligence briefings and access to classified material. To date, this has included proactive invitations from CSIS for OCCE to participate in classified briefings as well as tailored reading sessions of relevant intelligence reporting and assessments. To facilitate their identification of issues that may be of interest, the OCCE has provided information to CSIS surrounding our mandate, including key provisions related to foreign interference.
- 3.07 In addition to its work with the RCMP and CSIS, the OCCE communicated with members of the Security and Intelligence Threats to Elections (SITE) Task Force, prior to both the 43rd and 44th general elections, to relay information about its mandate and key provisions that may constitute foreign interference under the CEA. The OCCE was not at the time, and is not currently, part of the SITE Task Force. However, OCCE personnel did meet with representatives from each of the member organizations of SITE and delivered workshops to their staff, prior to the 43rd general election. The OCCE subsequently had bilateral meetings with each organization and maintains working relationships with all GC departments and agencies that are members. The OCCE also participates in meetings on election security with key departments and agencies in preparation for the election.
- 3.08 The OCCE does not maintain a formal agreement or MOU with Global Affairs Canada (or its Rapid Response Mechanism), Public Safety Canada, the Communications Security Establishment or the Department of Justice (excluding the Public Prosecution Service of Canada (PPSC)). The lack of a formal agreement or MOU does not, however, preclude cooperation with these GC departments or any others.

- 3.09 The OCCE has not engaged with the Panel of the Critical Election Incident Public Protocol.
- 3.10 Finally, the OCCE maintains MOU with the CRTC and the PPSC. The former was established to provide a framework for information and complaint transfer under Part 16.1 of the CEA between the two organizations. The latter establishes the roles and responsibilities of the CCE and the DPP for the purposes of investigations and prosecutions conducted under the CEA.

## **B. Digital Platforms**

- 3.11 The OCCE liaises with digital platforms to ensure a clear line of communication and a rapid response when dealing with online activities that contravene provisions of the CEA. Given the perishability of information online, these communications greatly help to facilitate the work of the OCCE, particularly as it relates to the gathering of evidence.
- 3.12 In the lead up to the 43rd and 44th federal general elections, the OCCE met with some of the platforms that supported the Canada Declaration on Electoral Integrity Online. By endorsing this declaration, these companies introduced new policies to help safeguard Canada's federal general elections. For example, companies established or expanded their reporting mechanisms for members of the public to submit incidents of noncompliance that violated the platform's community guidelines that also coincided with certain contraventions of the CEA such as misleading electors.
- 3.13 For both the 43rd and 44th federal general elections, the OCCE also put in place (or renewed) mechanisms with certain platforms to ensure their timely response in the event of a contravention to the CEA.
- 3.14 A number of these digital platforms recognized the OCCE as an authorized law enforcement agent and provided it with direct access to submit requests to takedown or preserve information, either via a secure portal or a designated contact for the platform. These platforms included Facebook, Google, LinkedIn, Microsoft, Reddit, Snapchat, TikTok, X (formerly Twitter) and YouTube.
- 3.15 The OCCE also coordinated with the Environmental Monitoring Centre (EMC), under the Public Affairs and Civic Education (PACE) branch at Elections Canada during the 43rd and 44th federal general elections to ensure a coherent approach regarding social media activity of concern, including deconfliction. The OCCE may also work with other GC partners, including the RCMP and CSIS, regarding social media activity of concern.

## **C. Continual Development and Evolution of the OCCE**

### **Complexities of foreign interference files**

- 3.16 From an investigative perspective, a foreign interference case can present significant operational and legal challenges. As with any law enforcement agency in Canada, the presence of foreign components in an investigation – such as activities, individuals or entities abroad – can significantly increase the degree of complexity of the investigation.

- 3.17 Obtaining evidence outside of Canada can take a lot of time and can be resource intensive, even when a MLAT has been concluded with the country in question. This causes delays that can cause significant harm to the investigation. Among other things, with these delays, the memories of witnesses may be less accurate, and evidence, including digital material, may no longer be available. In some cases, when the evidence is under the jurisdiction of a country with which Canada does not have cooperation agreements, it may simply be impossible to acquire the necessary evidence. If agents of a foreign state were involved in the subject matter of the investigations, then the investigative work would become more onerous and could run up against major obstacles that could seriously compromise the outcome of the judicial process.
- 3.18 This challenge is not unique to the OCCE: it is a modern reality of law enforcement common to most investigative bodies, and investigating contraventions under the CEA when foreign actors and evidence are involved will always pose challenges.

### **Enhanced Partnerships**

- 3.19 Maintaining and strengthening relationships with existing partners and stakeholders and establishing new relationships with others is a key priority for the OCCE going forward. As part of this exercise, the OCCE will be exploring ways that it can be included in legislation governing other agencies (this would create for the OCCE additional avenues for collecting financial information, for example, by becoming a direct recipient of FINTRAC disclosures) and review or develop MOU and service agreements with partner GC departments or other stakeholders. These new and evolving relationships will facilitate greater information sharing and will further strengthen the OCCE's posture in the electoral ecosystem.
- 3.20 The OCCE has recently begun to increase its partner engagements and has taken a more proactive approach to accessing the security community, including in the classified realm. Primary objectives include increasing mutual visibility and understanding roles in the electoral ecosystem, including via the various engagement efforts outlined above. These engagements increased requests for joint efforts on matters at the core of the protection of the electoral process. This also includes new and increased access to training, tools and tradecraft for OCCE personnel, as well as opportunities to educate and inform OCCE partners and the public about its mandate. The size of the organization makes leveraging partner abilities especially key in areas of high complexity, or where developing internal expertise is not feasible or the investment to do so would not be justifiable.

### **Access to Intelligence**

- 3.21 Since late 2021, increased engagement with CSIS has focussed on improving the understanding of intelligence and where and when it can be used to inform OCCE staff and inform strategic and operational decisions. The OCCE is developing its ability to receive classified information in a timely manner leading up to and during the next election. This is a multistep process to implement a technical solution, ensure sound internal protocols for the receipt, processing and retention of classified material, and ensuring OCCE partners are confident in its ability to protect the information disclosed. The OCCE has identified viable avenues for independent, timely access to a secure electronic infrastructure, which will reduce the weight of the process to provide and receive this information, both for the OCCE and its security partners. This is an investment



in the roles and responsibilities in the electoral ecosystem and demonstrates the OCCE's commitment to efficient use of government resources within the OCCE and its partner agencies.

- 3.22 However, even with these systems in place, the OCCE will continue to face the same intelligence to evidence challenges as other investigative bodies in Canada. The use of intelligence in investigations is limited. Even where intelligence may be sufficiently detailed and convincing to meet the legal threshold to initiate a review or investigation, the original collection avenue may not meet evidentiary requirements and any request to the originating body for declassification will be considered taking into account the potential impact on intelligence sources and methodologies.
- 3.23 Increased access to intelligence also requires the development and implementation of robust internal procedures, and established deconfliction methodologies to ensure each organization's mandate is respected without compromising each other's operational efforts and outcomes. Two excellent examples would be coordination of contact with social media companies for request for takedown of publications, or coordination of tiplines during a federal election. The OCCE has deconflicted on these items in the past but recognizes that its role needs to be better understood by partners in order for this to be effectively executed.

#### **Improved Training and Personnel Development**

- 3.24 The OCCE is focused on increasing its internal expertise and autonomy and has placed significant emphasis on identifying potential training opportunities and leveraging partner expertise for cost effective solutions in this regard. Through engagement with CSIS and the Privy Council Office, the OCCE is provided with networking, training and workshop opportunities from other experts within the electoral ecosystem. Police partners also provide training on investigative techniques and help to inform and develop the OCCE's understanding of responsible intelligence to evidence frameworks.
- 3.25 These efforts allow for a more robust posture by the OCCE for future federal elections and reinforce its ability to execute its enforcement role to the fullest extent possible.

## ANNEX A

**Summary Table of Complaints and Referrals Received by the OCCE from Elections Canada Related to the 43rd and 44th Federal General Elections**

Year of Receipt of Complaint or Referral	General Election	Total Number of Complaints or Referrals Received (all categories)**
2019	43rd*	792
	44th	0
2020	43rd*	393
	44th	0
2021	43rd	909
	44th	358
2022	43rd	422
	44th	543
2023	43rd	159
	44th	1092

\* Includes complaints related to the pre-electoral period.

\*\* Totals include all complaints re-directed to OCCE by EC, and referrals from EC's Integrity, Regulatory Policy and Parliamentary Affairs, and Political Financing and Audit Divisions.

## ANNEX B

**Provisions of the *Canada Elections Act* (Act) that could apply to foreign interference and that fall under the compliance and enforcement mandate of the Office of the Commissioner of Canada Elections (OCCE)**

Tables 1 and 2 are being provided for information purposes regarding the provisions of the Act that could cover or relate to, depending on the circumstances, instances of foreign interference. The tables below are not exhaustive and are provided in summary form as reference. Contravention of other provisions of the Act may also apply in the context of foreign interference, if committed by or at the instigation of foreigners or foreign entities.

**Table 1 – “Disinformation/misinformation”, Intimidation and other Illegal Influence Provisions**

<b>Description</b>	<b>Prohibition</b>	<b>Offence*</b>	<b>Potential Penalties</b>
Knowingly making or publishing, during an election period, specified <b>false statements</b> about a candidate, prospective candidate, leader of a political party or a public figure associated with a political party.	91	486(3)(c) or 486(4)(a) – intent	500(5)— SC**: ≤\$20,000 fine, ≤1 year, or both; IN: ≤\$50,000 fine, ≤5 years, or both
Knowingly publishing <b>false statement of candidate’s withdrawal</b> .	92	491.2(1)(p) or 491.2(2)(a) – intent	500(5)—Ibid.
<b>Unduly influence</b> an elector, during an election period, by foreigners to vote or refrain from voting or to vote or refrain from voting a certain way.	282.4(1)	491.2(1)(p) or 491.2(2)(a) – intent	500(5)—Ibid.
Acting in <b>collusion</b> with a person or entity for whom subsection 282.4(1) applies (foreigners).	282.4(4)	491.2(1)(q) or 491.2(2)(b) – intent	500(5)—Ibid.
<b>Selling advertising space</b> to person or entity to whom sub.282.4(1) applies to allow them to transmit or cause to be transmitted election advertising.	282.4(5)	491.2(1)(r) or 491.2(2)(c) – intent	500(5)—Ibid.
<b>Preventing an elector</b> , by whatever means, including disinformation, from voting at an election.	282.6	491.2(1)(s) - intent	500(5)—Ibid.
<b>Offering a bribe</b> , during an election period, to influence an elector to vote or refrain from voting, or vote or refrain from voting a certain way	282.7(1)	491.2(1)(t) – intent	500(5)—Ibid.
		502(2)(h) – corrupt practice for a candidate or their official agent	502(3): For the next 7 years, cannot: a) be elected to or sit in the House of Commons; and b) hold any office under the appointment of the Crown or Governor in Council.
During an election period, <b>accepting a bribe</b> , or agreeing to accept a bribe to vote or refrain from voting, or vote or refrain from voting in a certain way	282.7(2)	491.2(1)(u) – intent	500(5)—Ibid.

By <b>intimidation or duress</b> , or by any <b>pretence or contrivance</b> , compel/influence or attempt to compel/influence a person to vote or refrain from voting, or vote or refrain from voting a certain way.	282.8	491.2(1)(v) – intent	500(5)—Ibid.
<b>Falsely represent</b> themselves, with intent to mislead, to be the <b>Chief Electoral Officer, an election officer</b> , a person authorized to act on the <b>Office of the CEO’s</b> behalf, a <b>person authorized to act on behalf of a registered party or registered association</b> , or a <b>candidate or person authorized to act on their behalf, etc.</b>	480.1(1)	480.1(1)	500(5)—Ibid.
		502(2)(h.1) – corrupt practice for a candidate or their official agent	502(3): For the next 7 years, cannot: a) be elected to or sit in the House of Commons; and b) hold any office under the appointment of the Crown or Governor in Council.
Distributes, transmits or publishes, during an election period, any material, with intent to mislead the public, that the material purports to be made, distributed, transmitted or published by or under the authority of the Chief Electoral Officer, or a returning officer, political party, candidate or prospective candidate ( <b>misleading publication</b> ).		481(1)	500(5)—Ibid.
<b>Unauthorized use of computer</b> with intent to affect the results of an election.	482(1)	482(1)	500(5)—Ibid.
Candidate signing knowingly a written document requiring them to follow a course of action that <b>will prevent them from exercising their freedom of action in Parliament, if elected, or to resign as a Member of Parliament if required to do so.</b>	550	499(2)(b)	500(5)—Ibid.

\*Provisions in Table 1 are not subject to the Administrative Monetary Penalty (AMP) regime. An AMP is a compliance measure available to the Commissioner that sets out an amount to be paid by a person or entity. An undertaking can be offered in instances where an AMP could be imposed. A person or entity cannot be subject to both an AMP and a prosecution for the same contravention. (\*\*SC: on summary conviction; IN: on indictment.)

**Table 2 – Illegal Voting & Financing Provisions**

<b>Description</b>	<b>Prohibition</b>	<b>Offence*</b>	<b>Potential Penalties</b>
<b>Voting or attempting to vote</b> knowing that he or she is not a Canadian citizen	281.3(a)(i)	491.2(1)(c)	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both
<b>Induce or attempt to induce</b> another person to vote knowing that the other person is not a Canadian citizen – or will not be a Canadian citizen – when he or she votes	281.3(b)(i)	491.2(1)(d)	500(5)— Ibid.
Third party <b>using funds from a foreign entity.</b>	349.02	495.21(1)(a) – strict liability offence	500(1)—≤\$2,000 fine, ≤3 months, or both; *500(5.1) <b>Plus</b> fine, ≤ 5 times the amount of foreign funds used
		495.21(2) – intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both; *500(5.1) <b>Plus</b> fine, ≤ 5 times the amount of foreign funds used
Third party <b>circumventing and colluding</b> to circumvent prohibition on use of foreign funds.	349.03	495.21(1)(b) – strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both; *500(5.1) <b>Plus</b> fine, ≤ 5 times the amount of foreign funds used to circumvent
		495.21(2) – intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both; *500(5.1) <b>Plus</b> fine, ≤ 5 times the amount of foreign funds used to circumvent
Foreign third party incurring <b>regulated expenses</b> during the pre-election period.	349.4	495.3(1)(b) – strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		495.3(2)(e) – intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both; *505(4): if group or corporation, ≤\$100,000 fine
Foreign third party incurring <b>regulated expenses during the election period.</b>	351.1	496(1)(a.1) – strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		496(2)(e) – intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both; *505(4): if a group or corporation, ≤\$100,000 fine
Contributing while being an <b>ineligible contributor.</b>	363(1)	497(1)(a)— strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497(2)(a)— intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both
<b>Failing to return</b> or pay amount of ineligible contribution.	363(2)	497(1)(b)— strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
Person authorized to accept contributions <b>failing to issue receipt.</b>	366	497(1)(d)— strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497(2)(c)— intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both

<b>Description</b>	<b>Prohibition</b>	<b>Offence*</b>	<b>Potential Penalties</b>
Individual <b>exceeding contribution limit.</b>	367(1)	497(2)(d)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Person or entity <b>circumventing contributor eligibility rules or contribution limit</b> , or colluding for that purpose.	368(1)	497(1)(e)— strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497(2)(e)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Person or entity <b>concealing source of contribution</b> , or colluding for that purpose.	368(2)	497(1)(f)—strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497(2)(f)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Accepting <b>excessive contribution.</b>	368(3)	497(2)(g)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Person or entity <b>entering into prohibited agreements.</b>	368(4)	497(2)(h)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both 501(2) and (3)(a)— Court may order party deregistration
<b>Soliciting or accepting a contribution</b> on behalf of a political entity where there is a rep. that the <b>contribution would be transferred to a person/entity other than the political entity.</b>	369(1)	497(2)(i) — intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both; 501(2) and (3)(b)— Court may order party deregistration
Person or entity <b>colluding to circumvent</b> 369(1.)	369(2)	497(2)(j)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both; 501(2) and (3)(c)— Court may order party deregistration
Individual making <b>indirect contribution</b> as an individual.	370	497(1)(g)— strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497(2)(k)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Individual <b>exceeding \$20 cash contribution</b> limit.	371	497(2)(l)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
<b>Failing to return contribution or pay amount of contribution</b> made in contravention of specific provisions.	372	497(1)(h)— strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497(2)(m)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Person or entity <b>making an ineligible loan</b> , guaranteeing a loan, or <b>borrowing</b> money.	373(1)	497(1)(i)—strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
	373(2)	497(2)(n)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Individual <b>making indirect loans.</b>	374	497(1)(j)—strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497(2)(o)— intent	500(5)— <b>SC:</b> ≤\$20,000 fine, ≤1 year, or both; <b>IN:</b> ≤\$50,000 fine, ≤5 years, or both
Candidate <b>accepting a gift or advantage</b> that might	477.9(1)	497.4(1)(t) — strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both

Description	Prohibition	Offence*	Potential Penalties
reasonably be seen to have been given to influence them.		497.4(2)(u) - intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both
		502(2)(h.01) – corrupt practice	502(3): For the next 7 years, cannot: a) be elected to or sit in the House of Commons; and b) hold any office under the appointment of the Crown or Governor in Council.
<b>Failure of candidate</b> to provide the CEO, within 4 months of polling day, with a <b>statement that discloses gifts..</b>	477.9(5)	497.4(1)(u) – strict liability	500(1)—≤\$2,000 fine, ≤3 months, or both
		497.4(2)(v) – intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both
Candidate providing CEO a statement of gifts that is <b>substantially incomplete</b> or <b>false or misleading.</b>	477.95	497.4(1)(w) – strict liability (for (b))	500(1)—≤\$2,000 fine, ≤3 months, or both
		497.4(2)(x) – intent	500(5)— <b>SC</b> : ≤\$20,000 fine, ≤1 year, or both; <b>IN</b> : ≤\$50,000 fine, ≤5 years, or both

\*All of the prohibitions in Table 2 are also subject to the AMP regime. Under section 508.5, the maximum penalty is: \$1,500 for an individual, and \$5,000 for a corporation or entity.

However, if an ineligible donor makes a contribution to a party, association, candidate, etc. (section 363) or an individual makes a contribution in excess of the limits imposed by the Act (section 367), the maximum amount of the AMP is an amount equal to twice the amount that was contributed in contravention of that section, plus a maximum of: \$1,500, in the case of an individual; and \$5,000, in the case of a corporation or an entity.