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Memorandum of Understanding

THIS ARRANGEMENT, made in duplicate as of the ____ day of _____ 2019

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(HEREINAFTER REFERRED TO AS "RCMP")

AND

THE COMMISSIONER OF CANADA ELECTIONS
(HEREINAFTER REFERRED TO AS "Commissioner")

Collectively referred to as the "Participants"

BACKGROUND

WHEREAS pursuant to section 509.2 of the *Canada Elections Act*, the Commissioner has the duty to ensure that the provisions of that Act are complied with and enforced;

WHEREAS pursuant to section 509 of the Schedule to the *Regulation Adapting the Canada Elections Act for the Purposes of a Referendum* (SOR/2010-20), the Commissioner has the duty to ensure that the provisions of the *Referendum Act* are complied with and enforced;

WHEREAS the primary mandate of the Commissioner is the fair and effective resolution of Complaints involving alleged violation of the *Canada Elections Act*, and among other things, to lay charges or impose Administrative Monetary Penalties. This includes also the assessment and the Investigation of suspected Offences under the Acts.

WHEREAS the Commissioner, in support of his compliance and enforcement mandate, employs or engages Investigators who conduct Preliminary Assessments and Investigations under the Acts;

WHEREAS pursuant to subsection 5(1) of the *Royal Canadian Mounted Police Act*, the Commissioner of the RCMP, under the direction of the

Protected A

Minister, has control and management of the Force and all matters connected therewith;

WHEREAS pursuant to section 18 of the *Royal Canadian Mounted Police Act*, it is the duty of members of the RCMP who are peace officers, acting on behalf of the Commissioner of the RCMP, to perform all duties that are assigned to peace officers in relation to the prevention of crime, the investigation of offences against the laws of Canada, and the laws in force in any province in which they may be employed and to enforce all Acts made by the Parliament of Canada and Regulations made thereunder and to provide other assistance to departments of the Government of Canada;

WHEREAS it is the desire of both Participants to mutually provide for effective cooperation in securing compliance with and enforcement of the *Canada Elections Act* and the *Referendum Act* within their respective spheres of responsibility;

WHEREAS the RCMP and the Commissioner recognize that they may have complementary roles in regards to situations that constitute offences under the Acts that may also involve offences under other laws of Canada or a province that fall under the investigative jurisdiction of the RCMP, and recognize the importance of each of the Participants exercising their roles independently but co-operatively;

WHEREAS the investigative division of the office of the Commissioner has recently been designated as an investigative body for the purposes of paragraph 8(2) (e) of the *Privacy Act*; and

WHEREAS the RCMP and the Commissioner recognize that it has become opportune to update the MOU signed on December 21, 2015.

NOW THEREFORE THE PARTICIPANTS INTEND AS FOLLOWS:

1. DEFINITIONS

In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

“Acts” means the *Canada Elections Act* and the *Referendum Act*;

“Commissioner” in this MOU refers to the Commissioner of Canada Elections and includes all persons who, by delegation or otherwise, may lawfully exercise the powers or functions and perform the duties assigned, to the Commissioner;

Protected A

“Complaint” means information about a potential Offence under the Acts, or a written account of such information if it was not provided in writing;

“Investigation” means the activities conducted to determine whether Complaints and other allegations are founded and whether there are reasonable grounds for the Commissioner to believe that an offence under either one of the Acts has been committed;

“Investigation Expenses” means overtime hours for RCMP officers, normal travel and per diem expenses in accordance with Treasury Board guidelines, and reasonable and necessary purchases made by the RCMP for the purposes of assisting in Investigations. It does not include the basic salaries of RCMP personnel or allocations of capital expenditures;

“Investigator” means an Investigator employed or engaged by the Commissioner to conduct Preliminary Assessments and Investigations of matters relating to the Acts.

“Joint Investigation” means an Investigation by the Commissioner and by the RCMP of potential or alleged offences under the Acts that may also involve offences under other laws of Canada or a province that fall under the investigative jurisdiction of the RCMP, with each of the Participants exercising its own authority in a manner that is coordinated with the other;

“Offences” means Offences under the Acts and under the Criminal Code insofar as it relate to electoral matters;

“Preliminary Assessment” means the activities conducted to assess information to determine whether there are reasons to suspect non-compliance with either of the Acts; and

“RCMP” means the Commissioner of the RCMP and includes all persons who, by delegation or otherwise, may lawfully exercise the powers or functions and perform the duties assigned to the Commissioner of the RCMP under this MOU.

2. PURPOSE AND SCOPE

This MOU sets out the roles and responsibilities of the Participants with respect to Investigations pursuant to the Acts.

3. SCOPE OF RESPONSIBILITIES

3.1 Where the RCMP receives a Complaint alleging an Offence in respect of the Acts, it will send it to the Commissioner.

Protected A

3.2 Where the RCMP receives information in respect of the Acts which discloses alleged non-compliance or the commission of an Offence, it will send it to the Commissioner.

4. JOINT INVESTIGATIONS

4.1 The Commissioner may request that the RCMP participate in a Joint Investigation together with the Commissioner's staff and other persons designated by the Commissioner in relation to an alleged Offence under the Acts.

4.2 The RCMP recognizes the importance of Investigations of potential electoral and referendum Offences in maintaining public trust in the integrity of Canada's democratic institutions. The RCMP will, after examining the circumstances surrounding the request, respond in writing and in a timely manner to a request to participate in a Joint Investigation with respect to alleged Offences under the Acts. In light of the importance of ensuring the effective enforcement of the Acts, the RCMP will make best efforts to assist the Commissioner in his mandate and the response will set out the degree of participation by the RCMP in the Investigation.

4.3 In Joint Investigations, the Participants will consult and mutually decide on the proposed operational approach to the conduct of the Investigation. Any differences on the operation approach will be resolved in accordance with clause 13.

5. ASSISTANCE

5.1 In addition to Joint Investigations, the Commissioner may, from time to time, request assistance from the RCMP when peace officers may be required for security purpose, or the prevention of crime, or for the execution of warrants or for the performance of related duties and services in relation to enforcement of the Acts.

5.2 The Commissioner may request, from time to time, that the RCMP supply technical investigations services to assist in the execution of a search warrant and/or voluntary searches where evidence is stored on a computer system. The Commissioner may also request that the RCMP make seized data readable and acceptable for court purposes. In instances where legal proceedings are instituted further to, or in connection with the aforementioned, the RCMP will provide assistance as required for the prosecution of Offence(s) under the Acts.

5.3 The RCMP will, to the extent that the laws of Canada permit, release, upon request from the Commissioner, certain categories of information stored in the computerized data files of the Canadian Police Information Centre (CPIC), as

Protected A

may be required for the Commissioner to properly carry out his mandate. The RCMP will, to the extent that the laws of Canada permit, at the request of the Commissioner, enter person's data, acquired pursuant to the Commissioner's mandate, on CPIC regarding charges, judicial interim release conditions, convictions and other relevant judicial matters.

5.4 The RCMP will, to the extent that the laws of Canada permit, at the request of the Commissioner, conduct open source research and provide the results of that research to the Commissioner.

5.5 The RCMP will, to the extent that the laws of Canada permit disclose to the Commissioner any information the RCMP may have or which comes into their possession through their own independent Investigations into matters falling within their jurisdiction, insofar as this information relates to the Commissioner's mandate.

5.6 When requested by the Commissioner, the RCMP will provide the Commissioner with timely advice, recommendations and reports in relation to the Commissioner's Investigations.

5.7 The Commissioner and the RCMP may consult and mutually determine which additional forms of investigational assistance that they may wish to receive or provide.

6. MEDIA COMMUNICATION

Should either Participant decide to issue a press release concerning a specific Joint Investigation under the Acts, the release will be drafted in consultation with the other Participant to this MOU.

7. FINANCIAL ARRANGEMENTS

7.1 The Commissioner will pay such reasonable and ordinary Investigation expenses, arising out of requests for assistance, as may be agreed to by the Participants and in accordance with Treasury Board guidelines.

7.2 The RCMP will submit, on an every 90 days basis, an invoice representing the total costs for the services rendered to the Commissioner during the preceding month.

7.3 Any travel expenses to be invoiced will be pre-authorized by the Commissioner.

Protected A

7.4 Where it appears that there may be significant (more than 75 investigative hours) Investigation Expenses (based on anticipated hours or work or an anticipated lengthy period of time to provide the assistance), the RCMP will provide, in advance of incurring the said expenses, a written estimate to the Commissioner. Such expenses should not be incurred by the RCMP prior to obtaining the Commissioner's approval.

7.5 The invoices submitted by the RCMP will be supported by:

- a) information supporting overtime, if claimed;
- b) a copy of the invoices, receipts, vouchers for all other expenses, if any; and
- c) any estimate for significant Investigation Expenses provided in accordance with clause 7.4.

7.6 The Commissioner will pay the invoice within 30 calendar days measured from the date an invoice is submitted in accordance with this MOU.

7.7 The CCE's finance contact information and financial codes are as follows:

Finance Contact:	Office Manager
Phone number:	819-939-2061
Email Address:	Claire.courchesne@cef-ccce.ca
Dept. Code:	015
IS Reference Code:	as needed
IS Organization Code:	000105

8. CONFIDENTIALITY AND USE OF INFORMATION

Each Participant undertakes to:

8.1 use the information provided by the other Participant solely for the purpose of law enforcement in accordance with its mandate;

8.2 treat information received from the other Participant in confidence and take all reasonable measures to preserve its confidentiality and integrity and to safeguard the information against accidental or unauthorized access, use or disclosure according to the requirements of the Treasury Board *Policy on Government Security*;

8.3 mark the information provided with the appropriate security classification;

8.4 treat information received from the other Participant in accordance with the security markings on it and to undertake to provide equivalent protection to it while it is in the receiving Participant's possession;

Protected A

8.5 attach terms, conditions, or caveats to the information supplied, as the supplying Participant deems appropriate;

8.6 abide by all caveats, conditions or terms attached to the information;

8.7 maintain appropriate records concerning the transmission and receipt of information exchanged;

8.8 not disseminate the information to any third party without the prior written consent of the supplying Participant (or agency from which the information originated, as appropriate), except as required by law;

8.9 limit access to the information to those of its employees whose duties require such access, who are legally bound to keep confidences and who have the appropriate security clearance. 'Employees' include contractors and persons on secondment.

9. INFORMATION MANAGEMENT

9.1 The information disclosed under this arrangement will be administered, maintained, and disposed of in accordance with the law that applies to record retention and personal information and all applicable policies and guidelines. This includes *the Privacy Act*, the *Access to Information Act*, *the Library and Archives of Canada Act* and *Policy on Government Security*. Moreover, in the case of the Commissioner, section 510.1 of the *Canada Elections Act* requires that any information relating to an Investigation not be disclosed by the Commissioner or any person acting under his direction, unless the disclosure is authorized under subsection 510.1(2). The RCMP recognizes this statutory requirement and will administer, maintain and dispose of information relating to the Commissioner's Investigations in a manner that allows the Commissioner to comply with this statutory requirement.

9.2 Each Participant will:

9.2.1 Promptly notify the other of any unauthorized use or disclosure of the information exchanged under this MOU and will furnish the other Participant with details of such unauthorized use or disclosure. In the event of such an occurrence, the Participant responsible for the safeguarding of the information will take all reasonably necessary steps to prevent a re-occurrence;

9.2.2 Immediately notify the other if it receives a request under the *Privacy Act*, the *Access to Information Act* or other lawful authority, for information provided under this MOU;

Protected A

9.2.3 Return and not retain a copy of any information that should not have been provided to it by the other Participant; and

9.2.4 Ensure that no information shared pursuant to this MOU will be released to any third party without the express consent of the supplying Participant, except to the extent required by law, and solely for the specific purposes authorized by that law.

10. ACCURACY OF INFORMATION

10.1 Each Participant will:

10.1.1 Use its best efforts to verify the accuracy and completeness of the information provided to the other Participant; and

10.1.2 Promptly notify the other Participant if it learns that inaccurate or potentially unreliable information may have been provided or received and take all reasonable remedial steps.

11. DEPARTMENTAL REPRESENTATIVES:

The following officials are designated as the departmental representatives for purposes of this MOU and any notices required under this MOU will be delivered as follows:

<p>For the RCMP: IC Written Agreements 73 Leiken Drive Ottawa, Ontario K1A 0R2 Telephone: 613 843-5193</p>	<p>For the Commissioner: Director of Investigations 30 Victoria Gatineau Telephone: 819-939-2253</p>
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12. LIABILITY:

Each Participant will be responsible for any damages caused by the conduct of its employees, or agents, in carrying out the terms of this MOU.

Protected A

13. DISPUTE RESOLUTION:

In the event of a dispute arising from the interpretation or operation of this MOU, it will be referred to the Participants' representatives set out above, who will use their best efforts to resolve the matter amicably. If such negotiation fails, the Participants will refer the matter to the Commissioner and the Deputy Commissioner of the RCMP for resolution.

14. MONITORING:

The Participants will meet upon request of either Participant, or as needed, to review and assess the operation and effectiveness of this MOU. At a minimum, the Participants will meet once a year.

15. TERM:

This MOU replaces the Memorandum of Understanding between the Commissioner of Canada Elections and the RCMP which came into force on December, 21, 2015. This MOU will commence upon the date of the last signature of the Participants and will expire on May 30, 2024.

16. TERMINATION:

This Arrangement may be terminated by either Participant upon thirty (30) days written notice. Termination does not release a Participant from any obligations which accrued while the Arrangement was in force.

17. AMENDMENT TO THE ARRANGEMENT:

This Arrangement may only be amended by the written consent of the Participants.

Signed by the authorized officers of the Participants:

Royal Canadian Mounted Police

B Lucki 2019-09-03

Brenda Lucki
Commissioner

Commissioner of Canada Elections:

Yves Côté 6-8-19

Yves Côté
Commissioner of Canada Elections