



Elections Canada's Supplementary Institutional Report

August 2024

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Introduction

This Supplementary Institutional Report is being submitted in response to the Commission's request to address three topics: (1) an update on Election Canada's (EC) social media monitoring work; (2) the political financing regime; and (3) recent legislative reforms to the *Canada Elections Act* (the Act).

The information is presented in three parts:

- Part 1 provides general information about EC's plans for environmental monitoring of the 45th general election (GE);
- Part 2 provides an overview of the political financing regime set out in the Act, nomination contests and EC's role in political financing. Where appropriate, the document includes links to relevant information on the EC website or further information in the reference material; and
- Part 3 includes information on Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments* and the expansion of third-party provisions of the Act, as well as information about the proposed changes in Bill C-65, *An Act to amend the Canada Elections Act* that would address aspects of potential foreign interference.

Part 1: Environmental Monitoring

EC monitors publicly available content related to federal electoral matters both in traditional media and on digital platforms on an ongoing basis. The agency did so during the 43rd and 44th GEs and has been preparing to do the same for the 45th GE. Further detail about EC's environmental monitoring function can be found in EC's institutional report¹ submitted in the spring of 2024.

Since the 44th GE, the focus of EC's monitoring function has been to report on the 2021 election, improve its internal processes, continue to produce regular internal reports (shared every Monday with all EC employees) on the main narratives related to the federal electoral process, support EC's delivery of by-elections, as well as onboard and train staff for the 45th GE. The monitoring function has also been learning about changes in the information environment from elections that have occurred in other jurisdictions.

During the 45th GE, EC will produce daily monitoring reports which help inform the agency's proactive and reactive communications with Canadians, as well as the agency's overall operations. Those reports, which contain no personal information or individual posts, will continue to be shared with internal

¹ *Elections Canada Institutional Report – Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions*, **ELC.IR.000001.EN**.

<https://www.elections.ca/content.aspx?section=res&dir=rep/oth/foin&document=index&lang=e>



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partners across EC, including with EC's Enterprise Security team, which has its own information analysis and sharing protocols with external security partners.

1.1 Platforms

During the 44th GE, EC monitored content about the electoral process on 67 digital platforms in 15 languages to be aware of when inaccurate or misleading information was being shared and to correct it.

Ahead of the 45th GE, the monitoring function has been re-evaluating its methodologies as well as the platforms it monitors on an ongoing basis based on Canadians' information consumption habits, relevant content observed on platforms, and availability of open-source search functions on platforms.

1.2 Languages

The list of languages monitored is based on most commonly used languages in Canada according to Statistics Canada and the availability of staff fluent in those languages. While the monitoring function at EC is ongoing, all monitoring agents are temporary staff hired for an election or election readiness activities. At the time of this document, EC aims to monitor content in the following languages for the 45th GE:

- English
- French
- Sinophone languages: Mandarin and Yue (Cantonese)
- Indian subcontinent languages: Hindi, Urdu and Punjabi
- Arabic
- Russian
- Spanish
- Korean
- Vietnamese
- Portuguese
- Indigenous languages: Inuktitut, Cree, Obijwe (Anishnaabe Mowin), Innu-Aimun
- Tagalog
- German, ideally High German spoken in Mennonite communities
- Iranian Persian (Farsi)

1.3 Resources

Based on the increase in volumes from the 43rd GE to the 44th GE and on changes in the environment, the monitoring function is considering increasing its number of resources for the 45th GE. An assessment is currently underway. For the 44th GE, 27 staff were part of the monitoring function.



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1.4 Monitoring Considerations

When it comes to its monitoring function, it should also be noted that EC does not look into the source of the information it observes on digital platforms or the intent behind it.

Regarding content observed online, in instances of inaccurate information being shared about the federal electoral process, EC has processes in place for emergencies and to notify platforms that inaccurate information is being shared on their platforms, but EC does not request any specific actions on the part of platforms as it has no legal authority to do so, nor does it share individual posts with platforms as they are considered personal information under EC's Privacy Impact Assessment and would allow individuals to be identified. Platforms may take subsequent actions based on their terms of use. In parallel, EC's focus is on actions the agency can take, including reaching out to the source of the information, or proactively sharing accurate information through one of its channels or remain silent when appropriate².

As it relates to potential violations of the Act, EC has a process in place to escalate instances of impersonation (section 480.1 of the Act) to the Office of the Commissioner of Canada Elections (the Commissioner). While EC does not conduct monitoring activities on behalf of the Commissioner, EC monitoring reports are shared with the Commissioner for situational awareness.

² Elections Canada does not take action with respect to posts expressing political views.



Part 2: Overview of Political Financing and Nomination Contests

2.1 Introduction to Political Financing

2.1.1 Political financing regime

The political financing regime regulates the way in which political entities at the federal level obtain resources, spend money, and report their transactions.

The Act includes hundreds of financial restrictions, obligations, integrity checks, and offences. The regime protects the three core values of fairness, transparency, and preventing the undue influence of money.

Six political entities are covered by the regime: political parties, electoral district associations (EDAs), candidates, nomination contestants, leadership contestants, and third parties.

2.1.2 Regulated political entities

Political parties

As defined by the Act, a political party must have as one of its fundamental purposes to 'participate in public affairs by endorsing one or more of its members as candidates and supporting their election'.

In order to be eligible for registration, a party must also have a minimum of at least 250 members (who are electors), three officers and a leader. An eligible party may become registered if it supports at least one candidate in a by-election or general election.

A party that registers with EC receives these key benefits, among others:

- has its name appear on the ballot with its candidates
- can issue tax receipts for contributions
- can access voter lists for electoral districts (EDs) where it runs candidates
- may be eligible for a partial reimbursement of its election expenses and accessibility expenses

As of August 2024, there are 18 registered parties. However, the number of registered parties fluctuates over the electoral cycle. There are usually over 20 registered parties during elections.

Electoral district associations (EDA)

An EDA is a group of party members in a particular electoral district. An EDA must register with EC to perform these key activities, among others:

- accept contributions and issue tax receipts
- transfer resources to the registered party and affiliated candidates



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A registered party can have only one registered EDA in each ED. Not all parties have EDAs and some parties have a limited number. As of July 2024, 12 of the 17 registered parties had a total of some 1,400 registered EDAs across Canada's 338 electoral districts.

Nomination contestants

A nomination contestant is someone who runs in a registered party's or registered EDA's nomination contest in an ED to be selected as a candidate for the next election.

Nomination contests are not mandatory, and the results are non-binding on the party or EDA under the Act. It is ultimately up to parties to decide who their candidates are and how they are selected.

More information on nomination contestants and nomination contests is provided below.

Candidates

Most Canadian citizens aged 18 and over are eligible to run for election to the House of Commons. There are a few exceptions, such as people convicted of serious election offences or who failed to file a mandatory document (e.g. financial return and related documents) for a previous federal election.

A candidate can run for election in only one ED per election. They do not have to live in that ED. They can run for a party that endorses them in writing to EC or as an independent or non-affiliated candidate.³

Candidates must have their candidacy confirmed by the EC returning officer (RO) in the ED where they plan to run. This can be done from the day the election is called until the Monday three weeks before election day. At the 2021 GE, there were 2,010 confirmed candidates.⁴

Leadership contestants

A leadership contestant is someone who runs in a registered party's leadership contest to select the party leader.

Leadership contests are not mandatory, and the results are non-binding on the party under the Act. It is ultimately up to parties to decide who their leader is and how they are selected.

³ A candidate who indicates "independent" in the political affiliation section of their nomination paper will have "Independent" appear under their name on the ballot. If they leave the section blank, they will simply have dashes under their name.

⁴ In total, 2,011 candidates were confirmed by returning officers. However, one candidate withdrew before the close of nominations (deadline to provide mandatory documents to run as a candidate), so only 2,010 candidate names were on the ballots.



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Most leadership contest rules are set by the party, such as who can run, who can vote, entrance fees and spending limits. Some rules are set by the Act, such as contribution limits and financial reporting obligations.

The party must inform EC that a leadership contest is happening. Leadership contestants have to register with EC, and they can do so only with the party's approval.

Third parties

A third party is a person or a group that wants to influence an election, other than a registered party, an EDA or a candidate. They do not seek to be elected themselves but may support certain political parties or candidates.

Third parties must register with EC immediately after conducting regulated activities with combined expenses of \$500 or more in a pre-election period, starting on June 30 in the year of a fixed-date GE and ending the day before the election is called, or \$500 or more in an election period. Regulated activities are partisan advertising, election advertising, partisan activities and election surveys, as defined by the Act.

Only the following are eligible to register as a third party:

- an individual who is a Canadian citizen or permanent resident or someone who lives in Canada
- a corporation carrying on business in Canada, as long as it is not a foreign third party as defined in the Act
- a group, if a person responsible for the group is a Canadian citizen or permanent resident or lives in Canada

Foreign third parties cannot register and cannot incur expenses for regulated activities.

At the 2021 GE, there were 105 registered third parties.

2.1.3 Contributions

Who can contribute?

Only individuals who are Canadian citizens or permanent residents can make contributions to registered parties, EDAs, candidates, leadership contestants and nomination contestants.



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By contrast, there are no rules limiting contributions to third parties. However, third parties cannot use funds received from foreign sources for regulated activities.⁵

There is no age restriction on contributors, but political entities are advised to consider whether a minor is contributing willingly and using their own property or money. It is illegal to contribute using funds or property that were provided by another person or entity for that purpose.

Contribution limits

There is a limit on contributions to registered parties, EDAs, candidates, leadership contestants and nomination contestants.

Contributors can give up to the limit in several categories each calendar year or per election, as shown below.

Limits on contributions, loans and loan guarantees		
Political entity	2024 annual limit	Limit per election called between Jan. 1 and Dec. 31, 2024
To each registered party	\$1,725*	n/a
In total to all the registered associations, nomination contestants and candidates of each registered party	\$1,725*	n/a
In total to all leadership contestants in a particular contest	\$1,725*	n/a
To each independent or non-affiliated candidate	n/a	\$1,725*

*The limits increase by \$25 on January 1 in each subsequent year.

The limits apply to more than just contributions. They include the sum of contributions, the unpaid balance of loans made during the contribution period, and the amount of any loan guarantees made during the contribution period that the individual is still liable for.

There is no limit on contributions to third parties.

⁵ Bill C-65, currently before Parliament, would restrict the ability of third parties to use their own funds to individuals and entities that receive no more than 10% of their revenue from contributions (*Electoral Participation Act*, Second Reading and Referral to Committee, June 19, 2024).



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Recordkeeping

Cash contributions cannot exceed \$20. Such contributions can be anonymous, but the total amount collected, and number of contributors must be reported.

A receipt must be issued for any monetary contribution over \$20 and for any non-monetary contribution over \$20 that is not deemed nil.⁶ Over \$20 but under \$200, the contributor's name must be recorded but not reported to EC. Over \$200, their name and address must be recorded and reported to EC.

When total contributions from an individual are over \$200, EC publishes the contributor's name, city, province, postal code and contribution amounts on its website.

The only exception to these disclosure requirements is for contributions made to a registered party that the contributor requests be transferred to a leadership contestant. In this case the names and addresses of all contributors, regardless of the contribution amount, must be recorded and reported to EC. EC publishes the contributor's name, city, province, postal code and contribution amounts on its website.

There is no requirement for third parties to issue receipts.

2.1.4 Spending limits

Most political entities are subject to a spending limit under the Act for an election or contest (i.e. parties, candidates, third parties and nomination contestants). The exception is leadership contestants, who only have a spending limit if the party sets one. EDAs cannot incur election expenses unless there is written authorization from the registered party or candidate to incur such expenses on their behalf.

Spending limits aim to level the playing field between competitors and to moderate the influence of third parties. Limits apply to a broad range of expenses that promote or oppose a political entity—from advertising and surveys to transportation and office space—during the election or contest period. For example, for the 44th GE, candidate spending by category of election expenses was distributed as follows:

Candidate election expense category	Total expenses per category	Percentage of all election expenses
Advertising	\$28,147,016.52	56%
Events	\$445,169.11	1%
Office	\$5,689,242.40	11%
Salaries	\$7,934,670.21	16%

⁶ A non-monetary contribution is deemed nil if its commercial value is \$200 or less, and it is from an individual who is not in the business of providing that property or service.



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Voter contact	\$5,038,772.31	10%
Other	\$3,047,417.78	6%
Total election expenses	\$50,302,288.33	100%

Some limits also apply to registered parties and third parties during a pre-election period, starting on June 30 in the year of a fixed-date GE and ending the day before the election is called. A fixed-date election is held in October, four years after the last GE, if a snap election is not called earlier.

EC calculates the limits using formulas in the Act, shares them directly with political entities subject to them, and publishes them on its website. During the 44th GE, candidate spending limits ranged from \$88,991.90 in Charlottetown to \$152,723.52 in Kootenay—Columbia. The spending limit for a party that endorsed candidates in all electoral districts was \$30,127,504.71.

Most political entities do not spend up to the limits. For example, during the 44th GE, only 4% of candidates spent 90% or more of their spending limit. This is also true for political parties. Only two parties spent 90% or more of their limit. For nomination contestants, based on the financial returns filed with EC, only 1 of 833 contestants spent 90% or more of their limit.

Registered parties and candidates are eligible to receive a partial reimbursement of their paid expenses if they reach certain vote thresholds (subject to several other conditions and limits). For parties, election expenses are reimbursed at 50%. For candidates, election expenses are reimbursed at 60%. Other candidate and party expenses may also be reimbursed at various rates, within limits, such as personal and accessibility expenses. A candidate's campaign that needs an auditor's report will receive a subsidy for audit fees. Entities have 36 months to pay their claims and loans.

2.1.5 Reporting

Almost all political entities must submit financial returns to EC. At a minimum, they are due:

- annually by registered parties and registered associations
- within four to eight months after an electoral event by registered parties, candidates, third parties, leadership contestants, and any nomination contestant who reaches \$1,000 in contributions or expenses

These returns present the political entity's inflows (contributions, loans, transfers) and outflows (various categories of expenses). Some returns must be accompanied by a report from an external auditor.



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The Act requires candidates, nomination contestants⁷ and leadership contestants to submit supporting documents with their return (e.g. bank statements, contribution receipts, invoices, proof of payment). The Act allows the Chief Electoral Officer (CEO) to request supporting documents from third parties.

The Act does not require parties and associations to provide supporting documents and the CEO cannot require their submission.

Failing to submit returns or submitting returns after the original or an extended filing deadline is an offence. More information on offences is provided in section 2.2.7. Candidates that fail to file or that file late lose their eligibility for expenses reimbursements and are not able to run as a candidate in future elections. These consequences can be remedied by obtaining a filing extension from a provincial superior court judge and submitting the return.

2.1.6 Volunteer labour

Many political entities rely heavily on volunteers to run their operations. Volunteer labour is defined as any service provided free of charge by a person outside of their working hours, excluding a service provided by a self-employed person who normally charges for that service.

Volunteer labour is not a contribution. Any person can volunteer for a political entity, even if they are not a Canadian citizen or permanent resident. But a self-employed person cannot volunteer a service they would normally charge for. That is a non-monetary contribution (subject to the individual's contribution limit) and not volunteer labour.

Volunteer labour cannot be provided by corporations, trade unions, associations or groups, though individual employees or members can independently choose to volunteer.

2.1.7 Failure to comply with a requirement

Political entities that do not comply with applicable provisions of the Act may be referred to the Commissioner. More information on offences and referrals to the Commissioner is provided below.

2.2 Understanding Nomination Contests

2.2.1 Organizing a contest

A registered party or registered EDA can choose to run a nomination contest in an ED to select a candidate for the next election but is not required to do so.

Parties and EDAs set many of the rules, such as who can run and who can vote, and prescribe the manner of voting. Voting is usually restricted to party members in the ED. The Act does not regulate who

⁷ Required if the campaign accepted contributions totalling \$1,000 or more, or incurred nomination campaign expenses totalling \$1,000 or more.



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can be a party member, how membership is obtained or how voters are identified when they are issued a ballot.

Nomination contests can be held at any time, whether between or during elections. There is no maximum or minimum length to a contest period.

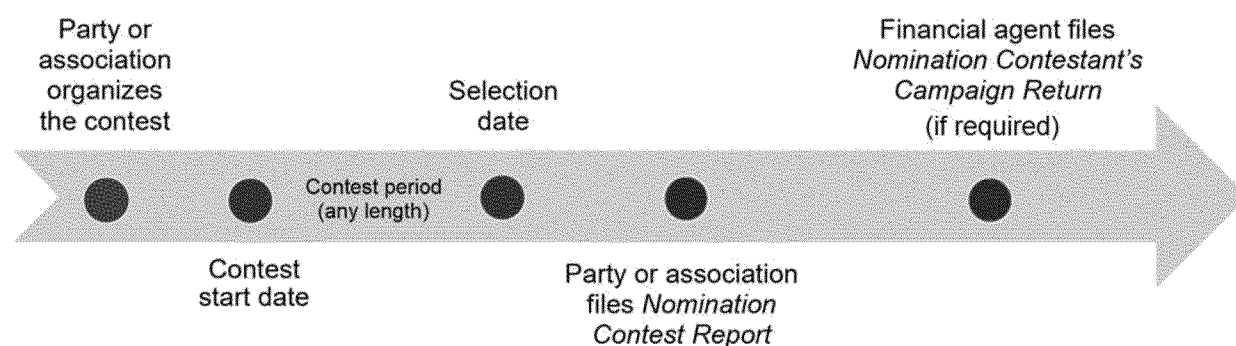
EC's role in nomination contests is limited, and it is exclusive to political financing. The agency does not administer any aspects of a contest. There is no advance reporting of nomination contests or contestants to EC.

Within 30 days after the contest, the party or EDA that held it must file a report with the contest dates, the contact information of nomination contestants, and the winner's name. EC uses the information to communicate with contestants about reporting obligations, deadlines and extensions.

A contestant's financial return is usually due four months after the contest, unless the end date of the contest occurs during an election or within 30 days before it. More information on reporting by contestants is provided in section 2.1.5.

Based on the information reported, some 700 nomination contests were held in relation to the 2021 GE. Based on our experience, not all nomination contests are properly reported to EC.

2.2.2 Timeline of a nomination contest



2.2.3 Contribution and spending limits for contestants

Only Canadian citizens and permanent residents can contribute to a nomination contestant. The contestant's financial agent is responsible for accepting contributions and issuing receipts.

There is an annual limit on contributions to the combined nomination contestants, registered EDAs and candidates of each registered party. The limit for 2024 is \$1,725. A nomination contestant can give an additional \$1,000 in total per contest to their own campaign.



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There is a spending limit on nomination contest expenses. It is generally 20% of the limit that was allowed for a candidate's election expenses during the last GE in that ED.⁸

The highest limit for a nomination contestant in advance of the 44th GE was \$29,087.21, compared to the highest limit of \$152,723.52 for a candidate at the 44th GE.

2.2.4 Nomination contest expenses of contestants

Nomination contest expenses are expenses incurred for property or services used to promote or oppose a nomination contestant during the contest period. These expenses are subject to the spending limit.

Only the financial agent and nomination contestant can incur nomination contest expenses. An expense is incurred when the campaign becomes legally obligated to pay (e.g. when a contract is signed) or when a non-monetary contribution or transfer is accepted.

Only the financial agent can pay nomination contest expenses, and they must be paid from the campaign bank account (other than petty expenses paid from the petty cash).

Campaign workers can buy property or services for the campaign and be reimbursed from the campaign bank account if the financial agent or contestant agrees to incur the expense. The worker must provide the financial agent with an invoice evidencing the expense.

2.2.4.1. Other expenses

All other expenses incurred in relation to the contest, whether before, during or after the contest, are also regulated but are not subject to limits. They include the contestant's personal expenses, travel and living expenses and others (such as contribution processing fees, contest fees and auditor's fees).

For any expense of \$50 and over, the financial agent must keep a copy of the invoice (or other document evidencing the expense) and proof of payment. Under \$50, the financial agent must keep proof of payment plus a record of the nature of the expense.

The following are also expenses that need to be reported:

- liabilities incurred
- the commercial value of donated property and services (other than volunteer labour)
- the difference between an amount paid or liability incurred and the commercial value of the property or services (when they are provided at less than their commercial value)

⁸ A different formula is used if a redistribution of electoral districts (which occurred in 2023) changes the boundaries of the district.



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2.2.5 Financial returns of contestants

A nomination contestant is deemed to be a contestant from the date their campaign accepts a contribution or loan or incurs a nomination campaign expense, even before the contest starts.

Unlike other political entities, nomination contestants must file a financial return only if they incur \$1,000 or more in nomination campaign expenses or accept \$1,000 or more in contributions. Since political financing is self-reported, EC does not know whether a contestant who did not file a return was in fact below the reporting threshold. An auditor's report must also be filed if the campaign reaches \$10,000 in expenses or contributions.

When the reporting threshold is met, the financial agent must prepare a financial return that includes details of all inflows and outflows. It must be accompanied by all supporting documents and, if the campaign reaches \$10,000 in expenses or contributions, an auditor's report.

A contest fee charged by the registered party or registered EDA counts toward these thresholds.

The financial return is normally due four months after the selection date. If the selection date falls within an election period or within 30 days before it, the return is due four months after election day instead.

All debts must be paid within 36 months after the contest or election day, with statements of unpaid claims due to EC after 19 and 37 months. Updated returns must be filed within 30 days after a debt is paid in full.

Financial returns are published on the EC website and are available in a searchable format.

2.2.6 Relationship to candidates

Some transfers of funds, property or services are allowed between the campaigns of nomination contestants and candidates, without being deemed contributions or subject to a limit:

- Nomination contestants can send funds (but not property or services) to the candidate endorsed by the party in the ED in which the contest was held. After election day, this transfer is allowed only to pay debts of the candidate's campaign.
- A candidate who was a contestant can send property, services, or funds to themselves in their capacity as a nomination contestant for the same election.

The nomination campaign and candidate campaign must still open and use separate bank accounts, even if the contestant and candidate are the same person.

2.2.7 Offences

The Act has a series of offences and violations for non-compliance with political financing obligations related to nomination contests (section 497.3). These include situations where a registered party or



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registered EDA has not properly reported a nomination contest, and where a nomination contestant or a financial agent has not followed contribution, spending or reporting rules.

When EC knows there is a contravention (e.g. a financial return was filed late) or has information that may point to a contravention, it refers the matter to the Commissioner for possible investigation and enforcement.

As with other areas of the Act, the Commissioner has several options to enforce the political financing rules if a contravention is found. The Commissioner may:

- cause a prosecution to be instituted if they believe on reasonable grounds that an offence has been committed
- impose an administrative monetary penalty on a person for a violation, or
- use an alternative tool to deal with an act or omission, such as an “undertaking” or a “compliance agreement” whose goal is to ensure compliance with the Act

Offences and violations that apply to nomination contests are solely related to political financing.

Many offences related to voting at elections, such as the prohibitions against bribing and intimidating electors, do not apply to nomination contests.

2.2.8 The organizational structure of Elections Canada's political financing functions

EC is responsible for administering the political financing regime in the Act. The Political Financing Branch, within the Regulatory Affairs sector, has some 110 employees across three directorates.

The Centre of Operations Directorate's primary responsibilities are registering political entities, providing planning and logistical support to the branch, and publishing financial returns online.

The Systems, Business Intelligence and Regulatory Instruments Directorate's primary responsibilities are maintaining the financial reporting software and forms, analyzing data to support audit activities, and issuing guidance on the application of the Act to political entities (e.g. political financing handbooks).

The Political Financing and Audit Directorate's primary responsibilities are performing audits, managing the reimbursement of expenses to eligible political entities, and answering entities' questions through the Political Entities Support Network.



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2.2.9 Audits

Risk-based auditing

Auditors in the Political Financing and Audit Directorate review the financial returns of all political entities to ensure that they are complete. Risk-based auditing is used to determine which files will be audited and what level of audit will be performed.

For example, the following files are audited:

- nomination contestants who spend close to their spending limit.
- nomination contestants who win the election in their ED but do not spend close to their limit.
- nomination contestants whose reporting shows anomalies compared to other similar contestants.

EC's risk-based auditing is focused on protecting the core values of the Act rather than the accuracy of every transaction, since political entities with high-value transactions will have undergone an external audit.

A risk-based approach helps speed up the overall process and mitigates the risk of passage of time, particularly on possible enforcement actions by the Commissioner.

Detecting non-compliance

Candidates, contestants and third parties must open a bank account to be used exclusively for the campaign, and all money must flow through it (with a few exceptions). This makes it possible to track most transactions.

Auditors use several strategies to verify compliance:

- review supporting documents against the financial return to identify missing entries
- use data analytics to compare financial returns and identify anomalies in reporting (e.g. an elected candidate who has not reported an office expense)
- follow up on information from outside sources, such as complaints or media reports



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When auditors look for possible ineligible contributions (inflows), including foreign funds, some elements are risk factors that may require closer scrutiny. These include:

- cheques without preprinted names
- deposits from foreign banking institutions
- signatures on contribution cheques that do not appear to match the contributor's name
- multiple contributors with the same address
- contributors with commercial addresses
- contributors with addresses from outside the electoral district (for contributions to candidates, nomination contestants or EDAs)

When auditors look for possible ineligible expenses (outflows), some elements that are risk factors include:

- expenses that are well above or well below the average for a comparable political entity
- numerous expenses or high-value expenses paid by an intermediary, such that the supplier is different from the original supplier (e.g. a campaign manager buys goods and is reimbursed by the campaign)

Auditors may contact the political entity's authorized agent to seek assurance that the contributions or expenses are eligible. When potential violations are identified, they are referred to the Commissioner for possible investigation and enforcement.

However, there are inherent limitations to an audit because of the nature of the political financing system, which depends on a degree of diligence from political entities and self-reporting. This is especially true in relation to fraudulent transactions or deliberate and organized actions intended to conceal non-compliance.

Audit limitations increase with regard to the financial returns of registered parties and registered EDAs, who are not required to file supporting documents.



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2.3 Reference Material

Information for the public

Political financing and spending safeguards

<https://www.elections.ca/content.aspx?section=vot&dir=int/pol&document=index&lang=e>

Registering a political party

<https://www.elections.ca/content.aspx?section=pol&dir=pol/bck&document=index&lang=e>

Becoming a candidate

<https://www.elections.ca/content.aspx?section=pol&dir=can/bck&document=index&lang=e>

Guidance and tools for political entities

Political financing handbooks:

- Registered parties (December 2023) – **ELC0000039**
<https://www.elections.ca/content.aspx?section=pol&document=index&dir=pol/man/ec20231&lang=e>
- Electoral district associations (December 2023) – **ELC0000036**
<https://www.elections.ca/content.aspx?section=pol&dir=dis/man/ec20089&document=index&lang=e>
- Candidates (April 2024) – **ELC0000987**
https://www.elections.ca/content.aspx?section=pol&dir=can/man/ec20155_c76&document=index&lang=e
- Nomination contestants (December 2023) – **ELC0000038**
https://www.elections.ca/content.aspx?section=pol&dir=nom/man/ec20182_c76&document=index&lang=e
- Leadership contestants (January 2022) – **ELC0000037**
<https://www.elections.ca/content.aspx?section=pol&dir=lea/man/EC20195&document=index&lang=e>
- Third parties (June 2021) – **ELC0000040**
<https://www.elections.ca/content.aspx?section=pol&dir=thi/ec20227&document=index&lang=e>

Opinions, guidelines and interpretation notes – Registry

<https://www.elections.ca/content.aspx?section=res&dir=gui/reg&document=index&lang=e>

Political financing training

<https://www.elections.ca/content.aspx?section=pol&dir=tra&document=index&lang=e>



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Quick reference tables

Contribution limits

<https://www.elections.ca/content.aspx?section=pol&dir=lim&document=lim2024&lang=e>

Expenses limits

<https://www.elections.ca/content.aspx?section=pol&dir=limits&document=index&lang=e>

Political financing calendar

<https://www.elections.ca/content.aspx?section=pol&dir=pfcal&document=index&lang=e>

Financial disclosure

Search for financial returns <https://www.elections.ca/wpapps/WPF/EN/Home/Index?returntype=1>

Search for financial returns (third parties)

<https://www.elections.ca/content.aspx?section=fin&dir=oth/thi/advert&document=index&lang=e>

Search for contributions <https://www.elections.ca/wpapps/WPF/EN/CCS/Index?returntype=1>

Search for political entity registry information <https://www.elections.ca/WPAPPS/WPR/EN>



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Part 3: Bill C-76 and Bill C-65

3.1 Bill C-76

3.1.1 Third Party Provisions

Scope of Regulated Activities

Bill C-76, which received Royal Assent in December 2018, made a number of changes to the third-party provisions of the Act. These changes significantly expanded the scope of those provisions, which, prior to Bill C-76, had largely been confined to regulating spending on advertising during election periods. Bill C-76 expanded the scope of the activities subject to regulation and the period in which regulation applied and added reporting obligations. Prior to Bill C-76, third party activity was more lightly regulated than activity by other political entities, which potentially created opportunities for foreign activity related to the promotion of candidates and parties for election.

Prior to Bill C-76 only “election advertising” of third parties was subject to regulation. “Election advertising” is defined (in s. 2(1)) essentially as advertising that promotes or opposes a party or candidate during an election period, either directly or indirectly⁹. Bill C-76 added two additional categories of regulation during an election period including: “partisan activities” and “election surveys” (see s. 349). The former are activities carried out by third parties (other than provincial political parties) that promote or oppose candidates or parties for a federal election. The second category of “election surveys” are surveys about who a person will vote for (or respecting issues with which parties and candidates are associated), which are used by a third party in deciding whether to conduct third party activities or advertising, or in those activities or that advertising (together these various categories will be referred to below as “regulated activities”).

In addition to expanding the scope of the third-party regime in terms of the activities that it captures, Bill C-76 also added a period of regulation before the election period of a fixed date general election. As a result, during this “pre-election period” (s. 2(1)), which lasts from June 30 until the date of the issue of the writ for a fixed-date general election, third parties are subject to regulation. During this period, third parties are limited in how much they can spend and must report on partisan activities and election surveys as discussed above, and “partisan advertising”. Partisan advertising is also advertising that promotes or opposes a party or candidate, but the difference with that definition and “election advertising” is that the latter (during the election period) also captures some pure issue advertising¹⁰, whereas “partisan advertising” does not.

⁹ Indirect promotion or “issue advertising” refers to advertising that promotes or opposes a party or candidate by taking a position on an issue with which the party or candidate is associated.

¹⁰ Issue advertising is the transmission of a message to the public that takes a position on an issue with which a candidate or registered political party is clearly associated, without identifying the candidate or party in any way.



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Funding of Regulated Activities

Bill C-76 imposed a broad ban on the use of foreign funds (“the source of the funds is a foreign entity”) by third parties for advertising, promoting or opposing parties and candidates and partisan activities at all times (s. 349.02). This ban also extended to “election advertising” (i.e. including issue ads) and “election surveys” (as defined) during the election period. It should be noted that prior to Bill C-76 the Act had prohibited the use of a foreign contribution for election advertising purposes. Although one aspect of the change related to the prohibition on the use of “foreign funds” as opposed to a “foreign contribution”, the more significant element was expanding the scope of activities for which foreign funds could not be used, both inside the election period and at all times. To be clear, under this regime, third parties are free to accept contributions of foreign funds to engage in or support activities that are not regulated activities under the *Canada Elections Act*. They are also free to use their own funds or general revenue, which may include funds from foreign sources, to engage in regulated activities, as long as they do not use foreign funds for those activities.¹¹

Reporting on Regulated Activities

Bill C-76 also added reporting requirements for third parties. Prior to the bill becoming law, third parties had only been required to file a final return four months after election day. Bill C-76 provided that parties were required to file interim reports if they met a threshold of \$10,000 or more of expenses or contributions for regulated activities. Depending upon when the third party was registered, these reports are due for a fixed date general election: the day after the third party registers; September 15; 21 days before election; and seven days before election day (see ss. 349.91, 349.92, 357.01 and 357.02). For a by-election or a non-fixed date general election, there are two interim reports due 21 and seven days before election day.

In addition to the added reporting requirements flowing from the expansion of the scope of regulated activities and the increased number of reports, Bill C-76 also increased the reporting of contributions to third parties. As discussed in greater detail below, both before and after Bill C-76, third parties were only required to report contributions made “for” regulated activities. This is important, because inherently third parties exist as entities with other purposes (e.g. corporations, unions, pressure groups, individuals), and as such generally have their own resources. Unlike other entities under the CEA, they are not restricted to only using contributions obtained from “regulated” sources but can also use their “own funds” without limit.

Prior to Bill C-76, third parties were required to report contributions made for election advertising in the period 6 months before the issue of the writ and ending on polling day. These contributions could be

¹¹ More information about the prohibition on the use of foreign funds is available in section 3 of the Political Financing Handbook for Third Parties and guidance with respect to regulated activities is available in sections 5, 6 and 7 of the same handbook which is available here: <https://www.elections.ca/content.aspx?section=pol&dir=thi/ec20227&document=p3&lang=e#c4>



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from any “domestic” entity (corporations, unions, groups, etc.), and were not limited in amount. Bill C-76 did not alter who could give contributions and in what amount but did extend the reporting period for such contributions to the period beginning on the day after polling day for the previous general election and ending on polling day of the election for which the third party was registered (see s. 359(4)).

Prior to Bill C-76, third parties simply submitted their returns, which were then published by EC without any ability to amend or correct. Bill C-76 added provisions allowing for the CEO to require corrections to an election advertising report and allow a third party to request corrections to its own report (ss. 361 and 361.2). In addition, Bill C-76 somewhat broadened the capacity of EC to ask for supporting documents for matters contained in the third-party return (s. 359(9)). These provisions more clearly established an obligation on EC to review third party returns and verify their correctness.

Bill C-76 also added a requirement for a third party to have a bank account for the sole purpose of its financial transactions in relation to the election (s. 358.1). This obligation mirrors those imposed by the Act on candidates, nomination contestants and leadership contestants, and facilitates the audit of campaigns, and the transparency of their finances.

Collusion

Prior to Bill C-76 third parties were prohibited from colluding with other third parties, candidates or registered parties to exceed spending limits. Bill C-76 broadened the “anti-collusion” provisions of the law by prohibiting a third party from colluding with a registered party or candidate in any way, including by sharing information, to influence the third party in its regulated activities (ss. 349.3 and 351.01). In short, the new provisions sought to ensure that third party activities in support of a party or candidate were undertaken independently of the influence of that party or candidate so as to ensure that third parties were not making a disguised contribution to those entities.

3.1.2 Offences Linked to Foreign Interference

Bill C-76 also changed a number of offences that are linked to foreign interference including two sorts: general offences that would also catch activities that may be associated with foreign interference, and those targeted directly at foreign interference.

In terms of the first category, Bill C-76 created a new offence concerning “misleading publications” (s. 481). That offence prohibits persons or entities from publishing or distributing material purporting to be made by an election officer, a party, a candidate or a “prospective candidate”.

A new offence was created concerning the fraudulent use of a computer system with the intention of affecting the results of an election (s. 482). This prohibition includes, *inter alia*, efforts to intercept the



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functions of a computer system by any means, destroying or altering computer data, rendering computer data useless, or obstructing the lawful use of computer data.

In terms of changes more directly aimed at foreign interference, s. 281 was added providing that offences respecting voting listed in Part 11.1 of the Act apply inside and outside Canada. These offences include applying for a ballot when not eligible, bribery related to voting, and influencing a person to vote or not vote by intimidation, duress, pretense, or contrivance.

Bill C-76 also amended existing s. 331 and created a new s. 282.4 in its place. The former s. 331 had provided as follows:

331 No person who does not reside in Canada shall, during an election period, in any way induce electors to vote or refrain from voting or vote or refrain from voting for a particular candidate unless the person is

(a) a Canadian citizen; or

(b) a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

Concerns had been raised by the CEO and the Commissioner in a 2010 report¹² that this section was unduly broad and vague and therefore difficult to enforce. The new s. 282.4 prohibited specified foreign entities from “undue influence”, which was defined as follows:

282.4 (2) For the purposes of subsection (1), a person or entity unduly influences an elector to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party, at an election if

(a) they knowingly incur any expense to directly promote or oppose a candidate in that election, a registered party that has endorsed a candidate in that election or the leader of such a registered party;

(b) one of the things done by them to influence the elector is an offence under an Act of Parliament or a regulation made under any such Act, or under an Act of the legislature of a province or a regulation made under any such Act.

¹² *Responding to Changing Needs – Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election*, ELC0000991.

<https://www.elections.ca/content.aspx?section=res&dir=rep/off/r40&document=index&lang=e>



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However, exceptions were created as follows:

282.4 (3) For greater certainty, subsection (1) does not apply if the only thing done by the person or entity to influence the elector to vote or refrain from voting, or to vote or refrain from voting for the particular candidate or registered party, consists of

- (a) an expression of their opinion about the outcome or desired outcome of the election;
- (b) a statement by them that encourages the elector to vote or refrain from voting for any candidate or registered party in the election; or
- (c) the transmission to the public through broadcasting, or through electronic or print media, of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news, regardless of the expense incurred in doing so, if no contravention of subsection 330(1) or (2) is involved in the transmission.

Subsection 282.4(5) was also added by Bill C-76 prohibiting anyone from selling advertising space to a foreign entity for the purposes of transmitting an election advertising message.

3.2 Bill C-65

Bill C-65, which was introduced in the House of Commons in March 2024, also contains proposed changes that, if the Bill is passed, would directly or indirectly address aspects of potential foreign interference. In June 2024, Bill C-65 was referred at second reading to the Standing Committee on House Affairs and Procedure for study.

3.2.1 Third Parties

Bill C-65 would make changes to who may contribute to third parties (clauses 54 and 59). Generally, with some exceptions, third parties will be required to pay all their regulated expenses from contributions made by individuals who are Canadian citizens or permanent residents. There will be no limits on how much such individuals will be able to contribute.

There are two exceptions to this where third parties would continue to be able to use their “own funds” to pay for expenses. First, individuals registered as third parties would be able to do so (as there is no limit on individual contributions). Second, the Bill would create an exception allowing third parties who received less than 10% of their revenue in the previous year via contributions to use their own funds. The purpose of this rule, which was proposed by the CEO in his 2022 recommendations report¹³, is to

¹³ *Meeting New Challenges: Recommendations from the Chief Electoral Officer of Canada following the 43rd and 44th General Elections, ELC0000054*. Recommendation 2.3.1. Bill C-65 largely adopts this recommendation except



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distinguish between entities that are largely funded by contributions from others, and those that truly have their own funds that are not being passed through in a way that potentially hides the true contributor.¹⁴

A further minor amendment to the third-party regime generally is to increase the threshold for registration from incurring expenses of \$500 to incurring expenses of \$1,500 (clauses 51 and 56).¹⁵

3.2.2 Political Financing Generally

Bill C-65 would ban contributions made to regulated entities if they are made via cryptoassets, or other untraceable means including money orders, pre-paid credit cards or gift cards (clauses 49 and 61)¹⁶. Hard to trace contributions are not only a concern with respect to foreign interference, but they can be a means to help hide the true contributor.

3.2.3 Offences with Link to Foreign Interference

Bill C-65 would make minor changes to the offence under s. 282.4 relating to “undue foreign interference” (clause 44)¹⁷. The offence would no longer apply only in an election period, but at any time. Further, the scope of the offence would be altered so that it would apply not only to supporting or opposing registered parties and candidates, but also eligible parties and potential candidates. Furthermore, the offence prohibiting the sale of advertising space to a foreign entity for the purposes of election advertising in s. 282.4(5) would be updated to include “partisan advertising” (i.e. advertising in the pre-election period) in addition to “election advertising” (advertising in the election period).¹⁸

Section 330 prohibiting the use of a broadcasting station outside Canada would be updated to include using it to influence electors to vote for an eligible party or potential candidate (clause 46). At present it also only mentions registered parties and candidates.

Bill C-65 would also make minor changes to a number of provisions in which “foreign corporation” is defined (clauses 44, 48, 50 and 55). At present, these definitions have minor differences between them: all include corporations that do not “carry on business” in Canada, but some also include corporations

with respect to a requirement for audited financial statements.

https://www.elections.ca/content.aspx?section=res&dir=rep/off/rec_2022&document=index&lang=e

¹⁴ Ibid, ELC0000054, at recommendation 2.3.

¹⁵ The CEO had recommended increasing the registration threshold to \$1,000 in the 2022 Recommendations Report, ELC0000054, at recommendation 2.2.1.

¹⁶ Supra note 11 at recommendation 8.4.1. Bill C-65 only partially adopts this recommendation and adds additional elements not contemplated in the CEO's recommendation.

¹⁷ Ibid. at recommendation 4.2.1. C-65 adopts the CEO recommendation and goes beyond to extend the application of this prohibition not only to the pre-election period but at all times.

¹⁸ The extension outside of the election period was proposed in the 2022 Recommendations Report, ELC0000054 at recommendation 4.2.1.



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whose *primary* purpose during an election period is to influence electors, while others include those whose *only* purpose during an election is to influence electors. The Bill would standardize (and broaden) these definitions so that a foreign corporation would include one that has as “one of its primary activities” in Canada to influence electors.¹⁹

The prohibition against “misleading publications” in s. 481 (where the publication purports to be from an election official, party or candidate) would be expanded to include documents purporting to be published by nomination contestants, leadership contestants and potential candidates (clause 79).²⁰ The prohibition in s. 482 respecting fraudulent use of a computer with the intention of affecting the results of an election would be somewhat enlarged to include fraudulent efforts that are intended to disrupt the conduct of an election (clause 80).²¹

A new s. 482.01 would make it illegal to publish a false or misleading statement intended to affect the results or disrupt the conduct of an election (clause 81). The statement must be made in respect of one of seven listed topics including who may vote in an election, where a person may vote, who a person may vote for, and the process by which results are counted or validated.

¹⁹ This amendment adopts in whole recommendation 2.2 made in the Commissioner of Canada Elections' recommendations to Parliament in 2022, **CEF0000104**: <https://www.cfcce.ca/content.asp?section=rep&dir=rr/rep9&document=sec2&lang=e#sec2.2>

²⁰ The extension outside of the election period was proposed in the 2022 Recommendations Report, **ELC0000054** at recommendation 4.2.1.

²¹ In the 2022 Recommendations Report, **ELC0000054**, at recommendation 4.2.2, the CEO had recommended extending this offence to include disrupting the conduct of the election or undermining the legitimacy of the election or its results.