



COMMISSIONER OF
CANADA ELECTIONS

Compliance and Enforcement Policy of the Commissioner of Canada Elections

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I. Preface

1. The integrity of the electoral process rests in large measure on the good faith of participants and their willingness to meet the various legal requirements of election law. The Commissioner of Canada Elections (“the Commissioner”) urges all participants in the process, including political parties, candidates, third parties and electors, to participate and have confidence in the electoral system and to abide by the rules that have been put in place to protect it.
2. In the event of an alleged offence under the [Canada Elections Act](#) (the Act), the Commissioner depends and counts on the full and timely co-operation of all those involved. Such co-operation facilitates the efficient resolution of potential instances of non-compliance.

II. Objective and Disclaimer

3. This document offers general information on the Commissioner’s mandate, on the responses available to the Commissioner for addressing violations of the Act and on the process of handling complaints.
4. This document does not provide legal advice. Rather, it sets out a non-binding policy statement that describes how the Commissioner carries out his mandate under the Act. Those interested in learning about their obligations or responsibilities under the Act are advised to consult the Act and other relevant information available on the Commissioner’s Web site at www.cef-cce.ca or on the Elections Canada Web site at www.elections.ca. (Elections Canada is the official mark under which the Office of the Chief Electoral Officer (OCEO) carries out electoral operations, other than those that fall under the Commissioner’s mandate.) This document replaces any other policy statement previously issued by the Commissioner.

III. Commissioner’s Mandate Under the Act

5. Subsection 509(1) of the Act provides that the Commissioner is appointed by the Chief Electoral Officer of Canada (CEO), after consultation with the Director of Public Prosecutions (DPP), for a ten-year term, and can only be removed for cause. Pursuant to section 509.2 of the Act, the Commissioner is responsible for ensuring that the Act is

complied with and enforced. (The Commissioner is also responsible for enforcement of the *Referendum Act*, by virtue of section 38 of that statute.)

6. Section 3 of the *Canadian Charter of Rights and Freedoms* guarantees the right of every citizen of Canada to vote in an election of members of the House of Commons or a legislative assembly and to be qualified for membership therein. The Supreme Court of Canada has described this as the right to meaningful participation in the electoral process, resulting in effective representation. In order to ensure the full exercise and enjoyment of this right in the federal context, the Act regulates certain aspects of the electoral process and the obligations it imposes are enforced through the imposition of penal, administrative and civil sanctions.
7. The Commissioner is responsible for ensuring compliance with the Act. He receives complaints concerning offences under the Act and may launch an investigation when the facts and circumstances so warrant. The Commissioner may also initiate a review or investigation of his own initiative, absent any complaint having been made, or in response to a referral from Elections Canada.
8. Enforcement of the offence provisions of the Act devolves to the Commissioner and the DPP, who are charged, respectively, with the investigation of and the laying of charges for offences under the Act, on one hand, and with prosecuting these offences, on the other. The Commissioner reviews allegations of non-compliance and investigates them, where appropriate. Where he decides that it is in the public interest to institute a prosecution to address a case of non-compliance, the Commissioner causes charges to be laid before a justice of the peace, and the DPP takes over and conducts the prosecution of the offences.
9. In appropriate circumstances, the Act allows the Commissioner to use non-punitive corrective measures in response to certain instances of non-compliance. For example, as will be seen below, instead of instituting a prosecution to be conducted by the DPP, the Commissioner can address certain situations of non-compliance by entering into a compliance agreement with a person or entity that did not comply with the requirements of the Act.
10. During an election period, the Commissioner may apply for a court injunction pursuant to section 516 of the Act to bring an end to a breach, or require an individual to comply with the Act, if the integrity of the electoral process and the public interest are at stake.
11. Moreover, section 521.1 of the Act authorizes the Commissioner to request the judicial deregistration of a registered political party that does not have as one of its fundamental purposes participating in public affairs by endorsing one or more of its members as candidates and supporting their election.
12. More is said below about each of these formal compliance and enforcement tools.

IV. Description of the Organization Supporting the Commissioner

13. Since April 1, 2019, the Act provides that the position of Commissioner of Canada Elections is within the OCEO, but subsection 510(3) provides that the Commissioner carries out his investigations independently from the CEO. In the execution of his duties, the Commissioner is assisted by investigators, lawyers and other personnel, including administrative, communications and intelligence staff. The investigators review the complaints assigned to them. They gather the relevant information and evidence and, in the event that a decision is made to institute a prosecution, they lay the charges on behalf of the Commissioner and prepare, together with the lawyers, the prosecution report and the disclosure of evidence.
14. 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 Act—including by laying charges for prosecution by the DPP—is taken by the Commissioner or by his staff duly authorized to do so.

V. General Principles

15. In all aspects of their work, the Commissioner and his staff are guided by the principles of independence, impartiality and fairness.

Independence and Impartiality

16. Independence is crucial to the performance of the Commissioner's duties. 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 is able to exert influence over the organization responsible for ensuring compliance with and enforcement of the rules, to attempt to gain an advantage or harm an opponent.
17. Consequently, the Commissioner carries out his duties independently of any political, ministerial or government interference or influence. This independence was reinforced through the amendments made to the Act in 2014 and 2018. In performing his duties, the Commissioner takes care to guard against his intervention being sought or used for political advantage, or for any other improper purpose.

18. At all times, investigators carry out their duties in an independent and impartial manner. They act in good faith with objectivity, seeking to neither favour nor disfavour a political party, a candidate, an organization or any other person or entity.

Fairness

19. The Commissioner treats all parties to 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 well, before instituting a prosecution and after advising them of their rights under the *Canadian Charter of Rights and Freedoms*, the Commissioner provides the person or entity who is the subject of an investigation the full opportunity to offer their account of the facts and to provide any other relevant information they may wish to submit.

VI. Complaints and Review Process

Complaints from the Public

20. The Commissioner receives complaints from the public, as well as referrals from other sources. Regardless of their source, the Commissioner examines carefully all complaints he receives concerning the possible commission of an offence under the Act.
21. Anyone with reason to believe that an offence under the Act has been committed may file a complaint with the Commissioner. Complaints can come from political parties or candidates as well as from any person, group or association.
22. Complaints should be submitted in writing and accompanied by documents or information supporting the allegation. For quick and efficient processing, the complaint should contain, at a minimum, the following information:
 - a) the complainant's full name and contact information;
 - b) a full description of the facts and circumstances surrounding the alleged offence, including, for example, the date and location of events;
 - c) identification of the persons or entities allegedly involved;
 - d) identification of the information sources; and
 - e) the names of potential witnesses.

23. Those who wish to file a complaint may do so by contacting the Commissioner in writing:

- [by online complaint form](#)
- by email: info@cef-cce.ca
- by fax: 819-939-1801, or 1-800-663-4908
- by postal mail:

Commissioner of Canada Elections
30 Victoria Street
Gatineau, Quebec
K1A 0M6

Referrals from Elections Canada

24. The Commissioner also receives referrals from Elections Canada. For example, Elections Canada's Political Financing and Audit directorate regularly sends files to the Commissioner where the audits of the regulated political entities' and third parties' financial returns reveal the potential commission of offences under the Act. Similarly, the Electoral Integrity Office at Elections Canada sends potential cases of illegal voting when information in their possession suggests, for example, that someone who is not qualified to vote may have voted, or that an individual may have voted more than once at an election.

Processing and Investigating Complaints

25. The first step after a complaint or referral is received is a preliminary review. This review considers whether the complaint falls within the Commissioner's jurisdiction, whether the information provided is sufficient and whether an investigation is warranted.

26. To determine whether a complaint warrants an investigation, the Commissioner considers the following factors in particular:

- a) Does the complaint provide reason to suspect that an offence under the Act may have been committed?
- b) Does the available information allow the matter to be resolved without an investigation?
- c) Does the complaint contain enough factual information to guide the investigators?
- d) Do the nature and seriousness of the alleged offence call for an investigation, considering the expected cost of such an investigation and the importance of making an optimal use of scarce and limited resources?

27. The following grounds are some that may warrant the closing of a complaint at the preliminary review stage:
- a) The complaint is anonymous.
 - b) The allegations are too vague or are clearly unfounded.
 - c) The acts or omissions involved are not sufficiently serious.
 - d) The allegations raise no issues under the Act or are outside the Commissioner's jurisdiction.
 - e) Appropriate corrective measures have been taken by the person or entity such that, given the nature of the allegations, no useful purpose would be served by taking further action on the complaint.
28. Generally, if the Commissioner finds that a complaint does not warrant further consideration, the complainant will be informed.
29. If, on the other hand, the Commissioner concludes after the preliminary review that the allegations made in a complaint may have merit and an investigation is warranted, an investigation is then conducted with a view to clarifying the facts and gathering the relevant evidence. In accordance with subsection 510(2) of the Act, but subject to one exception, the Commissioner gives written notice to the person whose conduct is being investigated as soon as feasible after beginning an investigation. The exception where the Commissioner does not have to give notice is where he has formed the opinion that doing so may compromise or hinder the investigation or another ongoing investigation.
30. It is an offence pursuant to section 482.1 of the Act for anyone to obstruct the Commissioner or his investigators while they are carrying out their duties. In particular, it is an offence to make a false or misleading statement to the Commissioner or his investigators while they are carrying out their duties.

VII. Means of Ensuring Compliance with and Enforcement of the Act

Commissioner's Discretion in Choosing the Appropriate Means of Resolving a Complaint

31. In carrying out his functions the Commissioner selects what he considers to be the most appropriate compliance or enforcement measure in light of the specific circumstances of each case.
32. In determining the means best suited to enforcing or ensuring compliance with the Act, the Commissioner considers such factors as:
- a) the seriousness of the acts or omissions;
 - b) the evidence gathered during any investigation;
 - c) the prevalence of the type of offences involved;
 - d) the prudent and optimal use of public resources;
 - e) whether or not there is a need for specific or general deterrence;
 - f) the level of sophistication of the alleged offender;
 - g) the co-operation or lack thereof by the persons or entities that are the subject of the complaint;
 - h) the existence or absence of previous non-compliance under the Act;
 - i) the time that has elapsed since the alleged incident occurred;
 - j) the degree of involvement or responsibility of the parties in question in the commission of the alleged offence;
 - k) the likely effectiveness of one or another of the compliance and enforcement measures; and
 - l) depending on the offence, the application of automatic administrative responses available, such as loss of the second instalment of a candidate's election expense reimbursement (s. 477.74), a ban on the candidate running in a future election (para. 65(i)) and a ban on an elected member sitting or voting in the House of Commons (ss. 477.72(2) to (4)).

Informal Means: Caution Letter and Other Forms of Communication

33. The Commissioner's duty is to ensure that the Act is complied with and enforced. In certain circumstances, the Commissioner favours the use of informal means of ensuring compliance with the Act. This is often the case for instances involving minor contraventions or inadvertent non-compliance. Also, in making his decision, the Commissioner will consider whether the persons or entities under review or investigation have cooperated fully with investigators and if steps were taken to remedy the situation.
34. Informal means include caution or information letters and other forms of communication (telephone or e-mail) addressed to persons or entities that are the subject of a complaint. Communications of this sort serve mainly to inform the persons or entities involved about the alleged offence and the statutory requirements with a view to rectifying the situation and encouraging voluntary compliance.
35. A caution letter sets out the facts surrounding the commission of an offence and the relevant provisions of the Act. The individuals or entities involved are informed of the potential consequences of committing the offence and are warned that the Commissioner now expects them to act in accordance with the requirements of the Act since they have been duly advised. The individuals or entities are asked to return a signed copy of the caution letter.
36. The Commissioner's staff may also, for less serious matters, contact non-compliant persons or entities—including political parties, candidates or registered associations—to encourage them to take the necessary corrective measures and avoid recurrences of the behaviour in question. For example, during an election period, participants in the electoral process are often contacted and invited to correct the conduct that generated the complaint. Experience has shown that, most often, the persons or entities contacted are willing and eager to comply once they are informed of the Act's requirements. Accordingly, direct contact with the person or entity in question, or sending a letter, will often suffice to ensure compliance with the Act and avoid a continuation or recurrence of the alleged non-compliance.

Formal Means of Ensuring Compliance with and Enforcement of the Act

37. The formal compliance and enforcement scheme under the Act ranges from administrative incentives to prosecutions. Administrative incentives are automatic administrative measures provided for in the Act for certain instances of non-compliance (such as the forfeiture of the reimbursement of election expenses for failure to provide a return in a timely manner, the progressive reduction in the amount of election expenses reimbursed in cases of over-spending, and the loss of a nomination deposit for failure to follow the political financing rules). Generally, the Commissioner is not involved in the administration of these incentives; they are applied by Elections Canada.

38. At the other end of the scale, prosecutions and the other formal means provided for in the Act remain important and indispensable tools. As mentioned earlier, the following formal means of ensuring compliance with and enforcement of the Act are spelled out in the Act:
- the seeking of a court injunction;
 - the seeking of a court order for the judicial deregistration of a political party
 - the negotiation of a compliance agreement; and
 - the laying of charges leading to a prosecution by the DPP.
39. The laying of charges is usually reserved for the more serious cases, in particular, where there is a need to punish the offender. Considering the limited resources available for prosecutions, the Commissioner will consider whether the administration of justice is best served by committing the level of resources required to have a prosecution. Whether to lay charges will also depend on the specific factors of the case, including but not limited to the following:
- in view of the seriousness of the alleged offence and/or the conduct of the subject of the investigation, a prosecution would best maintain public confidence in the electoral system;
 - the person who is the subject of the complaint is relatively sophisticated in respect of electoral matters;
 - the allegations suggest the existence of a deliberate scheme rather than an isolated event;
 - the person who is the subject of the complaint has a history of non-compliance with the provisions of the Act; and
 - there is a need for specific or general deterrence.
40. A decision to lay charges will not be influenced by any of the following:
- any of the prohibited grounds of discrimination at subsection 3(1) of the *Canadian Human Rights Act*;
 - the political associations, activities or beliefs of the offender or any other person involved in the investigation;
 - any personal feelings about the individual or entity who is the subject of the complaint;
 - any partisan consideration, including possible political advantage or disadvantage to the government, any registered party or association, candidate, contestant, or political group.

Injunctions

41. Section 516 of the Act provides that the Commissioner may apply to a court for an injunction ordering any person to refrain from committing a prohibited act or to do any act that is required by the Act. The Commissioner can seek an injunction only during an election

period. The short period during which an injunction can be sought – namely, the election period – imposes considerable practical limitations on the use of this remedy.

42. The Commissioner may apply for an injunction only if he has reasonable grounds to believe that a person has committed, is about to commit or is likely to commit an act or omission that is contrary to the Act.
43. A court may issue an injunction if it is satisfied on reasonable grounds that the issuance of an injunction is required by:
 - a) the nature and seriousness of the act or omission;
 - b) the need to ensure the fairness of the electoral process; and
 - c) the public interest.

Deregistration

44. The Act grants the Commissioner the authority to apply to a court for judicial deregistration of a registered political party if he has reasonable grounds to suspect that it does not have as one of its fundamental purposes participating in public affairs by endorsing one or more of its members as candidates and supporting their election. The procedure and conditions for using this important mechanism are set out in the Act at section 521.1.

Compliance Agreements

45. Section 517 of the Act allows the Commissioner to conclude a compliance agreement with a person or entity whom the Commissioner 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 Act.
46. A compliance agreement is a formal agreement voluntarily signed by the Commissioner and the person or entity in question. It is accompanied by conditions that the Commissioner considers necessary, including a requirement that the contracting party pay a specified amount. Prior to entering into a compliance agreement, the Commissioner must inform the person or the entity concerned of their right to obtain advice from legal counsel.
47. Pursuant to subsection 517(4) of the Act, a compliance agreement 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. In practice, however, unless the compliance agreement is with respect to an offence that has yet to be committed, the Commissioner will require that the individual or entity admit such responsibility as a condition of entering into a compliance agreement. Nevertheless, it should be noted that entering into a compliance agreement does not result in a record of conviction. Further, the fact that a compliance agreement was entered into, and any statement of responsibility by the contracting party is not admissible as evidence against the contracting party in any civil or criminal proceedings.

48. As long as the person or entity in question 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. In the case where there has only been partial compliance with the agreement, the court may dismiss the proceedings if it is of the opinion that they would be unfair under the circumstances.
49. If a matter under investigation by the Commissioner has not been subject to the institution of a prosecution, the conclusion of a compliance agreement prevents the Commissioner from instituting a prosecution unless the person or entity in question fails to comply with the agreement.
50. Even after the institution of a prosecution, the DPP may, after consulting the Commissioner, refer the matter back to the latter for potential resolution by means of a compliance agreement if the DPP considers that a compliance agreement would better serve the public interest.
51. At any time before it is fully executed, the Commissioner and the person or entity involved may renegotiate the terms of the compliance agreement at either's request.
52. If the Commissioner is of the opinion that the compliance agreement has been fully complied with, he notifies the individual or entity involved and the DPP, if applicable, and issues a compliance notice. Service of the compliance notice prevents prosecution based on the act or omission dealt with in the compliance agreement.
53. Any portion of the amount that must be paid to the Receiver General by the contracting party under the terms and conditions of a compliance agreement that remains unpaid after the expiry of the period to pay the amount under the agreement is a debt owed to the Crown, and may be recovered in the Federal Court.
54. To ensure the transparency of the process, the Commissioner publishes on his Web site at www.cef-cce.ca a notice that sets out the contracting party's name, the act or omission in question and the text of the compliance agreement, except the parties' signatures. Any party agreeing to conclude a compliance agreement with the Commissioner must consent to such publication.

The DPP and Prosecutions

55. The Act states that, if the Commissioner believes on reasonable grounds that an offence under the Act has been committed, he may institute a prosecution or cause one to be instituted. If the Commissioner decides to institute a prosecution, he asks an investigator from his Investigations Directorate to swear information before a justice to lay charges under the Act.

56. After the charges have been laid, the Office of the DPP is responsible for the prosecution. The DPP decides what action to take in response to the institution of a prosecution, in accordance with the [PPSC Deskbook](#). When deciding whether to commence the prosecution or not, the DPP essentially considers two questions: whether, based on a review of the evidence that is likely to be available for trial, there is a reasonable prospect of conviction, and if so, whether prosecution best serves the public interest.

Limitation Period

57. Under amendments to the Act that came into force on June 19, 2014, a prosecution for an offence not requiring intent must be instituted no later than six years after the commission of the offence. On the other hand, offences requiring that intent to commit the offence be proven by the prosecutor are not subject to any limitation: they can be prosecuted at any time.

58. Before June 19, 2014, the limitation period in the Act for all offences was ten years after the commission of the offence, but no later than five years after the day on which the Commissioner became aware of the facts giving rise to the offence. For offences committed before June 19, 2014, the new limitation periods described in paragraph 57 apply if, on that date, the previous limitation period in effect had not yet expired. For any offence where the previous limitation period had already expired, however, the adoption of the new provisions did not have the effect of restoring the ability to lay charges.

Offences and Punishments

59. Part 19 of the Act sets out a number of offences involving, among others, acts or omissions of candidates, electors, registered parties, registered associations, third parties, leadership or nomination contestants, official agents and election officers.

60. The various provisions of the Act dealing with offences establish the level of intent that the Crown must establish in order to prove the guilt of the accused and to obtain a conviction. Some are strict liability offences, where proving the fact of the occurrence is sufficient to secure a conviction unless the accused establishes on a balance of probabilities that they acted with due diligence.

61. For certain offences, the Act requires evidence of an element of intent – e.g., that the person wilfully or knowingly committed the offence. This means that the evidence must show that the accused knew what they were doing and intended or were reckless in regard to the alleged act or omission, or that they knew or suspected that further enquiries were needed, but deliberately chose not to ask.

62. Upon conviction, the court can impose a sentence chosen from a range of penalties provided for each offence, including a discharge, fines and prison terms. Pursuant to subsection 501(1) of the Act, the courts also have the power to impose additional punishments, including:
- a) community service;
 - b) payment to the Receiver General of the value of any financial benefit or the value of any illegal contributions;
 - c) compensation for damages suffered;
 - d) performance of the obligation that gave rise to the offence (e.g., submit a return that should have been submitted); and
 - e) any other reasonable measure to ensure compliance with the Act.
63. If a registered party, its chief agent or registered agent, or one of its officers has been convicted of an offence referred to in subsection 501(3) of the Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, and in addition to any other punishment that may be imposed under the Act, direct the Chief Electoral Officer to deregister the party. Such offences include providing or certifying false or misleading information or making a false declaration in a party return or registration document, or failing to provide a return.
64. Finally, a number of offences are identified in the Act as being either “illegal” or “corrupt” practices when committed by a particular class of persons (see section 502 of the Act). These include instances where a candidate or official agent votes more than once, obstructs an election officer, exceeds the election expense limit or impersonates a revising agent. These are wrongdoings that could very seriously affect the integrity of the electoral process. An individual convicted of such an offence automatically loses certain entitlements – for the next five years in the case of an illegal practice and seven years in the case of a corrupt practice – namely:
- a) the right to be elected to or to sit in the House of Commons; and
 - b) the right to hold any office under the appointment of the Crown or Governor in Council.

VIII. Information Gathering and Processing by the Organization Supporting the Commissioner

65. In carrying out his mandate, the Commissioner will usually need access to information in the possession of persons other than a complainant or the individual or entity against whom a complaint has been made. As well, the information needed to establish the commission of an offence may be personal information or information for which there is a reasonable expectation of privacy.

Extrajudicial Means

66. Extrajudicial means are those that the Commissioner can use to get legal access to information needed to carry out his mandate without the need to obtain a judge's prior authorization.

67. The Commissioner's investigators can receive and use information provided to them voluntarily by the complainants or any other person. The persons or entities that are the subject of an investigation can also voluntarily provide information to the investigators. Persons or entities providing information to the Commissioner or his investigators should always do so in good faith.

a) Public Documents

68. The following are public documents to which the Commissioner, the investigators and any member of the public have access:

- a) the returns and other documents that registered political parties and their associations, as well as candidates and third parties, are required to file with the Chief Electoral Officer;
- b) the Chief Electoral Officer's instructions and decisions under the Act; and
- c) any exchange of correspondence between the Chief Electoral Officer and election officers or with other persons regarding an election.

69. The Commissioner and the investigators also have access to any other public source of information, including the Internet.

b) Election Documents

70. The Act authorizes the Commissioner to examine election documents in the custody of the Chief Electoral Officer. These documents 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 Collected by Elections Canada during an Audit

71. The directorate within Elections Canada that conducts audits, having detected a possible offence under the Act, may decide to refer a matter to the Commissioner. The referral will include all relevant information gathered during the audit.

d) Information under the Control of a Government Institution

72. The “Investigations Directorate, Office of the Commissioner of Canada Elections” is an investigative body for the purposes of paragraph 8(2)(e) of the *Privacy Act*. 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.
73. The request must specify the purpose of the request and describe the information to be disclosed. Disclosure of the requested information is at the discretion of the government institution under whose control the information is kept. That said, where the subject of an investigation has a reasonable expectation of privacy about the personal information under the control of this other government institution, the Commissioner’s investigator will proceed through judicial means to ensure that the individual’s constitutional privacy rights are respected.

e) Request for documents evidencing a party’s election expense

74. During the investigation of a complaint, section 510.001 of the Act allows the Commissioner 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 Commissioner.

Judicial Means

a) Production Orders and Search Warrants

75. The investigators require 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.

76. The Commissioner's investigators who are appointed under the *Public Service Employment Act* are public officers under the *Criminal Code* and may ask a judge to issue a search warrant or a production order under the *Criminal Code*. Investigators who are engaged under contract by the Commissioner are deemed to be public officers by subsection 511(3) of the Act, and as such, can also seek judicial authorization for a search warrant or production order. If an investigator can satisfy the judge, through affidavit evidence, that there are reasonable and probable grounds to believe 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. On the other hand, production orders are designed to compel a third party, i.e., a person other than the target of the investigation, to provide the Commissioner or one of his investigators with information or documents in the possession of the third party and described in the order. The court may issue a production order if he or she is satisfied that there are reasonable grounds to believe that a document or data in the possession of the third party will provide evidence respecting the commission of an offence.

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

77. The Commissioner or an authorized representative may apply to a court for an order under section 510.01 of the Act requiring a witness to be examined under oath on any matter that is relevant to a contravention that is under investigation by the Commissioner's Investigations Directorate, or to make and deliver a written return under oath showing in detail the information required by the order.

78. The judge grants such an order if he or she is satisfied by information provided under oath that:

- a) there are reasonable grounds to believe that the Act has been or is about to be contravened, and
- b) the individual has or is likely to have information that will provide evidence of the contravention.

79. 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* (without 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 Commissioner 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.

80. Testimony, evidence and the written return obtained through such an order cannot be used against the person who gave the compelled testimony, unless in cases of prosecution for perjury or for obstruction of a Commissioner's investigation. Nevertheless, information obtained thusly can be used to obtain judicial authorization for a search warrant or production order under the *Criminal Code*. The presiding officer at the examination will allow the witness to be examined to be represented by counsel. The examination is conducted in private before the presiding officer designated in the court order allowing the examination.

Disclosure of Information Held by the Organization Supporting the Commissioner

81. The investigation of a potential offence under the Act may result in criminal charges being laid, with significant consequences for the subject of the investigation regardless of the outcome. Ensuring fairness is therefore paramount.

82. Moreover, investigations must be protected from factors that could negatively affect their integrity. Investigators must be able to keep their investigative strategy confidential. Potential witnesses must also, as much as possible, be protected from undue interference or influence.

83. Consequently, and like most police forces and most investigative bodies, the Commissioner will not usually comment on an ongoing investigation.

Duty to maintain confidentiality

84. The Act confirms the importance of maintaining the confidentiality of the Commissioner's investigations. Subsection 510.1(1) of the Act prohibits the Commissioner and persons acting under his direction from disclosing details of an investigation, including the identity of the complainant, the object of the complaint or any witness.

85. Subsection 510.1(2) of the Act contains specific exceptions to this duty to maintain information confidential. The Commissioner 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 Commissioner's opinion, is necessary to carry out an investigation;
- when a prosecution has been instituted, information that the Director of Public Prosecutions requires or that is required for the prosecution;
- information that is required to be disclosed in the course of a an application for judicial review;
- information that is required to be disclosed under any other Act of Parliament;

- information that, in the Commissioner's opinion, is necessary in order to enter into or renegotiate a compliance agreement; and
- information the disclosure of which is, in the Commissioner's opinion, in the public interest.

Disclosure in the Public Interest

86. One of the exceptions to the confidentiality requirement applicable to the Commissioner and persons acting under his direction is the disclosure of information that the Commissioner considers to be in the public interest. The Act specifies at subsection 510.1(3) three factors that the Commissioner must take into consideration before deciding that a disclosure is in the public interest:

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

Releasing Information to the Public

87. In some cases, it may be important to release information concerning a complaint or investigation to the public. Such disclosure may be necessary when partial information, inaccurate information or unfounded rumours have been made public and, for that reason, may be warranted by the need to maintain public confidence in the fairness of the electoral process.

Communicating with Complainants

88. The organization supporting the Commissioner generally communicates in writing with complainants to acknowledge receipt of their complaint, to obtain information from them and to notify them of the outcome of their complaint. Complainants may be invited to provide any documentation in support of their complaint or to attend an interview.

89. Certain complaints may be closed or resolved at the preliminary review stage without an investigation having taken place or enforcement measures having been employed. Such is the case, for example, when the complaint involves an act or omission not governed by the Act, when the complaint is not based on sufficiently reliable information or when it is not in the public interest to pursue the matter based on the factors set out in paragraph 26.

90. When a file has been closed, complainants are notified. At that time, they are informed of conclusions reached. They are also informed whether a compliance agreement was entered into, or charges laid, or whether the case went to trial and what the outcome was.

Communicating with the Subjects of a Complaint

91. For any investigation begun after October 1st, 2014, subsection 510(2) of the Act requires, as indicated above, that the Commissioner give a written notice of the investigation to the person being investigated as soon as possible after the beginning of the investigation. The subsection also provides that the Commissioner may choose not to send such a notice, however, if he is of the opinion that it may compromise or hinder the investigation or any other investigation. The requirement to give notice only arises at the beginning of an investigation where it has been assessed that there are reasons to suspect that an offence was committed, and not at the preliminary review stage.
92. During an investigation, an investigator will usually contact or meet with the persons or representatives of entities that are the subject of the complaint in order to ask them questions and obtain their account of the facts. Where legally required, an interview is preceded by the investigator orally advising the person of their rights under the *Canadian Charter of Rights and Freedoms*. Persons or entities are informed of the nature of the investigation during the interview.
93. If the person or entity who is the subject of the complaint has not been questioned and has not been advised pursuant to subsection 510(2) that they are being investigated, the Commissioner may decide to close the file without contacting them.

Releasing Information on Prosecutions or Compliance Agreements

94. The indictment (information), records of proceedings and other court documents, as well as the court decisions concerning the charges laid under the Act, are public documents that can be accessed through the appropriate authorities. After charges are laid under the Act and the prosecution begins, the Commissioner usually releases, in consultation with the PPSC, information on the charges that have been laid or on developments in a court case.
95. A sentencing digest and the compliance agreements entered into by the Commissioner are posted on the Commissioner's Web site at www.cef-cce.ca.

IX. Address and Contact Information for the Commissioner

96. To obtain general information on enforcement of the Act or to file a complaint, please contact the organization supporting the Commissioner directly by telephone, e-mail, online complaint form, fax or mail at:
 - by telephone: 1-855-759-6740

- by e-mail: info@cef-cce.ca
- [by online complaint form](#)
- by fax: 819-939-1801, or 1-800-663-4908
- by postal mail:

Commissioner of Canada Elections
30 Victoria Street
Gatineau, Quebec
K1A 0M6