



COMMISSIONER OF  
CANADA ELECTIONS

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**Compliance and Enforcement Policy of  
the Commissioner of Canada Elections**

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**December 2020**



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## I. Preface

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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 non-compliance 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.

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## II. Objective and Disclaimer

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3. This document offers general information on the Commissioner’s mandate, on the responses available to the Commissioner for addressing non-compliance with 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-ccc.ca](http://www.cef-ccc.ca) or on the Elections Canada Web site at [www.elections.ca](http://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.

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## III. Commissioner’s Mandate Under the Act

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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 non-renewable 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 potential cases of non-compliance 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, 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, the Commissioner can address certain situations of non-compliance by entering into either a compliance agreement with or accepting an undertaking from a person or entity that did not comply with the requirements of the Act, or else issue a notice of violation that requires that the person or entity pay an administrative monetary penalty.
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.

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## **IV. Description of the Office of the Commissioner**

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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—is taken by the Commissioner or by his staff duly authorized to do so.

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## **V. General Principles**

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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 be 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 the duties assigned to them in a matter that is consistent with the independence and impartiality of the Commissioner. 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 involved in a matter under review or investigation equally and fairly. Once a complaint has been reviewed, the complainant may be asked to provide further evidence or information pertaining to the allegations. As 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 a full opportunity to offer their account of the facts and to provide any other relevant information they may wish to submit.

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## **VI. Complaints and Review Process**

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### **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 possible breaches of the Act.
21. Anyone with reason to believe that a breach 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 breach, including, for example, the date and location of events;
  - c) the identity of the persons or entities allegedly involved;
  - d) the sources for the information provided; and
  - e) the names of potential witnesses.
23. Those who wish to file a complaint may do so by contacting the Commissioner in writing. This is best done using the [online complaint form](#) on the Commissioner's Web site ([www.cef-cce.ca](http://www.cef-cce.ca)). Alternatively, a complaint can be sent by fax or by postal mail (see section IX. Address and Contact Information for the Commissioner).

## 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 potential non-compliance with 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 there has been non-compliance with a requirement of the Act?
- 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 non-compliance call for an investigation, considering, among other things, the expected cost of such an investigation and the importance of making an optimal use of 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 or hinder the Commissioner or his investigators while they are carrying out their duties. Section 482.1 also makes it an offence to knowingly make a false or misleading statement to the Commissioner or his investigators while they are carrying out their duties.

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## VII. Means of Enforcing the Act

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

31. In carrying out his functions, and in particular when he selects the compliance or enforcement measure to be used in a specific situation, the Commissioner is always guided by the pursuit of the following overarching objective: which measure is most likely to best serve the public interest in light of the specific circumstances of each case.
32. In determining the means best suited to enforce compliance with the Act, and applying where appropriate the principles of a graduated approach, the Commissioner will consider factors such as:
- a) the seriousness of the acts or omissions, and the proportionality of any proposed action to address the non-compliance;
  - b) the nature and the quality of the evidence gathered during any investigation;
  - c) the prevalence of the type of contraventions involved;
  - d) the prudent and optimal use of limited investigative, prosecution and judicial resources;
  - e) the need to make judicious use of prosecutions and to use them where they are clearly called for in the public interest, for example, in the case of particularly serious contraventions or where there is a need for the public denunciation and punishment of the offender's behaviour;
  - f) whether or not there is a need for specific or general deterrence;
  - g) exceptional factors related to the personal background or situation of the alleged offender (such as: state of health, level of sophistication, age, etc.);
  - h) the likely impact a particular enforcement or compliance measure is likely to have on the alleged offender;
  - i) the co-operation or lack thereof by the persons or entities that are the subject of the complaint;
  - j) the existence or absence of previous non-compliance under the Act;
  - k) the time that has elapsed since the alleged incident occurred;
  - l) the degree of involvement or responsibility of the parties in question in the commission of the contravention;
  - m) the measures taken to prevent re-occurrence of the contravention;
  - n) the effectiveness of one or another of the compliance and enforcement measures;
  - o) depending on the contravention, the application of automatic administrative responses available, such as loss of the second instalment of a candidate's election expense

- reimbursement (s. 477.74), automatic reductions in the amount of election expenses reimbursed in cases of over-spending (paragraphs 444(2) and 477.74(3)), 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));
- p) whether enforcement action is required to maintain trust in the electoral or political financing system.
33. Subject to the following paragraph, any one of the above-mentioned factors should not be taken in isolation and applied as if it were the only consideration. All factors must be carefully weighed and balanced against each other in order to determine what, in a particular situation, would best serve the public interest. As a result, given the number of factors to be considered and the fact that their relative importance will vary from one case to the next – often, in ways that will not necessarily be readily apparent – comparing decisions taken in individual cases may prove to be especially difficult, if not be counterproductive since details about evidence gathered may not be in the public domain.
34. That said, the factor at subparagraph 32(b) is unique in that it can, by itself, be determinative. Indeed, the evidence gathered during the investigation must allow for the required evidentiary threshold for the compliance or enforcement outcome being considered to have been met, for the particular option to even be viable.
35. For instance, even in cases where the alleged contravention is serious, and was in the past dealt with by the institution of a prosecution, the option of laying charges in a particular case could not be entertained if the investigation has not yielded reliable evidence that would allow a prosecutor to form the belief that there exists a reasonable prospect of conviction. This requires sufficient evidence to believe that guilt could properly be proven beyond a reasonable doubt. In the absence of such evidence, the laying of charges is simply not an option, even if all other factors at paragraph 32 strongly were to point in the direction of a prosecution.
36. In such cases, another option, such as entering into a compliance agreement, accepting an undertaking or issuing a notice of violation proposing payment of an administrative monetary penalty (where applicable) – all requiring a lower evidentiary threshold than the institution of a prosecution – could become the preferred option.

### **Informal Means: Caution Letter and Other Forms of Communication**

37. 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.
38. 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 non-compliance and the statutory requirements with a view to rectifying the situation and encouraging voluntary compliance in the future.

39. A caution letter sets out the facts surrounding the commission of an alleged non-compliance and the relevant provisions of the Act. The individuals or entities involved are informed of the potential consequences of committing or remaining in a state of non-compliance and are warned that the Commissioner now expects them to act in accordance with the requirements of the Act. The individuals or entities are asked to return a signed copy of the caution letter. Caution letters are not provided for in statute and do not have the same legal force as formal enforcement responses. Furthermore, they do not constitute a finding of guilt or civil liability but do form part of the person or entity's compliance record. In addition, by applying the graduated approach principles, a person or entity receiving a caution letter should expect any recurrent non-compliance to be addressed using a formal response.
40. 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 all 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.

### **Formal Means of Ensuring Compliance with and Enforcement of the Act**

41. 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, and the progressive reduction in the amount of election expenses reimbursed in cases of over-spending). The Commissioner is not involved in the administration of these incentives; they are applied by Elections Canada.
42. 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 acceptance, by the Commissioner, of an undertaking;
  - the issuance of a notice of violation requiring the payment of an administrative monetary penalty assessed by the Commissioner;
  - 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.

## *Undertakings*

43. An undertaking is a formal pledge voluntarily signed by a person or entity and accepted by the Commissioner, which may include the terms and conditions that the Commissioner considers appropriate, including the payment of an amount by the person or entity. Prior to accepting an undertaking, the Commissioner must inform the person or the entity concerned that a notice of the undertaking will be published as required by the Act. In practice, the Commissioner accepts an undertaking by signing it and by sending a copy of the signed undertaking to the person or entity.
44. The Commissioner can also delegate the power to accept undertakings to a member of his staff. To this end, the Commissioner has delegated to the Deputy Commissioner, the power to accept or refuse undertakings arising from NOV's issued, or which could be issued. This delegation is limited to NOV's where the amount of the penalty is \$500 or less, in the case of an individual, or \$1500 or less, in the case of a corporation or an entity.
45. Section 521.13 of the Act allows the Commissioner to accept an undertaking from a person or entity that has committed a violation under the Act. Violations are defined under the Act. These include contravening the prohibitions against voting illegally (at sections 281.3 to 281.5 of the Act), as well as any provision of Parts 16 (Communications), 17 (Third Parties) or 18 (Political Financing) of the Act. It is also a violation under the Act to fail to comply with a requirement of the CEO under these Parts of the Act, or with a provision of a compliance agreement or of an earlier undertaking.
46. If the Commissioner has already issued a notice of violation imposing the payment of an administrative monetary penalty, he may accept an undertaking from the person or entity to whom the notice of violation was issued, as an alternative to the imposition of the monetary penalty. This acceptance may occur at any time before the person or entity is deemed to have committed the violation, as discussed below at paragraph 69.
47. Pursuant to subsection 521.13(3), an undertaking must include a description of the acts or omissions to which the contravention or failure to comply relates, as well as identify the provision of the Act or the requirement that was contravened or not complied with.
48. Section 508.3 provides that where an act or omission may be dealt with either as a violation (the civil route) or as an offence (the criminal route), proceeding in one manner precludes the Commissioner from proceeding in the other. This means that if the Commissioner has issued a notice of violation or accepted an undertaking for an act or omission that is also an offence, entering into a compliance agreement or laying charges for that offence will generally no longer be possible.
49. If the Commissioner accepts an undertaking before a notice of violation has been issued for the act or omission to which the undertaking relates, he may no longer issue a notice of violation in relation to these acts or omissions.

50. Conversely, if a notice of violation had been issued for these acts or omissions, the proceedings relating to the notice of violation—including any review of the decision—are ended by the Commissioner's acceptance of the undertaking provided by the person or entity.
51. Where the person or entity had been served a notice of violation and has subsequently proposed an undertaking as an alternative, paragraph 521.21(2)(c) of the Act requires that notice of a decision by the Commissioner not to accept the undertaking be served on the person or entity. In practice, this will be done by sending the notice by electronic means, at the email address provided by the person or entity. In such cases, paragraph 521.21(3)(d) provides that the day of service for the purposes of payment of the administrative monetary penalty proposed in the notice of violation is the day the notice is sent by email. The person or entity must then, within 30 days of the day the notice was sent, pay the penalty or ask for a review of the Commissioner's decision.
52. To ensure the transparency of the process, and as required by the Act, the Commissioner publishes on his Web site at [www.ccf-ccc.ca](http://www.ccf-ccc.ca) a notice that sets out the name of the person or entity that provided the undertaking, along with the text of the undertaking, except the parties' signatures.
53. If the Commissioner has accepted an undertaking from a person or entity in which an amount is to be paid to the Receiver General, any portion of that amount that remains unpaid after the period of time set out in the undertaking to pay the amount are debts owed to the Crown that may be recovered in the Federal Court of Canada.

### *Notices of Violation and Administrative Monetary Penalties (AMP)*

54. The Act identifies some contraventions and failures to comply that are violations subject to an AMP, upon the issuance by the Commissioner of a notice of violation that is served on the person or entity that is alleged to have committed the violation. These contraventions and failures to comply identified as violation are the same as discussed above in paragraph 44.
55. As stated in section 508.4 of the Act, the purpose of an AMP is to promote compliance with the Act, and not to punish (as is the case with the laying of charges).
56. The maximum AMP for a violation by an individual is \$1,500. The maximum for a violation in the case of a corporation or an entity is \$5,000. In addition to these maximum, in the case of an excessive political contribution—or of a political contribution by a person or entity that is not eligible to make a contribution—the maximum penalty mentioned above may be supplemented by an additional amount of no more than twice the amount of the illegal portion of the contribution.
57. Each day on which a violation is committed or continued constitutes a separate violation.
58. The amount for an AMP is determined by taking into account the criteria set out at section 508.6 of the Act:

- the degree of intention or negligence on the part of the person or entity that committed the violation;
- the harm done by the violation;
- whether the person or entity derived any advantage from the violation;
- whether the person or entity made reasonable efforts to mitigate or reverse the violation's effects;
- whether the person or entity has taken steps to avoid committing the violation in the future;
- whether the person or entity has provided all reasonable assistance to the Commissioner with respect to the violation, including reporting it and providing any relevant information;
- the person's or entity's history of compliance with the provisions of the Act;
- the person's or entity's ability to pay the penalty; and
- any aggravating or mitigating circumstances.

59. Section 521.11 of the Act allows the Commissioner—or a member of the Commissioner's staff to whom he has delegated the power—to issue a notice of violation that is served on a person or entity that he believes on reasonable grounds has committed a violation. A notice of violation must set out the following:

- the person or entity's name;
- the provision of the Act that was contravened or the requirement—or the provision of the compliance agreement or undertaking—that was not complied with;
- the act or omission to which the violation relates;
- the amount of the AMP for the violation;
- particulars concerning the manner or payment;
- the process for requesting a review of the decision;
- the process for providing an undertaking that, if accepted by the Commissioner, will end the proceedings commenced;
- the consequences of failing to pay the penalty, request a review or providing an undertaking.

60. In practice, service of the notice of violation on the person or entity is done by electronic means, if the Commissioner or his staff have had previous communications over the last six months with that person or entity using a particular email address.

61. The Commissioner is barred from issuing a notice of violation for any act or omission of which he became aware more than five years before, or that occurred more than ten years ago.

62. If no request for review has yet been made, the Commissioner may cancel the notice of violation or correct an error in it.

63. Instead of paying the amount of monetary penalty set out in the notice of violation, the person or entity may request a review of the Commissioner's decision. The request for review must be made within 30 days after the day they were served with the notice of violation or, if they

provided an undertaking to the Commissioner, within 30 days after they were served with the notice informing them that their undertaking had not been accepted.

64. A request may be made to the Commissioner to review the alleged violation or the penalty—or both—if the amount of the penalty assessed against an individual for a distinct violation is \$500 or less, or if the amount of the penalty assessed against a corporation or entity for a distinct violation is \$1,500 or less.
65. If the amount of the penalty against an individual, a corporation or an entity for a violation is above the above-mentioned thresholds (i.e., \$500 for an individual or \$1,500 for a corporation or entity), the request to review the alleged violation or the penalty is made to the CEO.
66. Only written evidence and written submissions may be considered by the Commissioner or the CEO, as the case may be, during a review. The Commissioner or the CEO may:
  - determine, on a balance of probabilities, whether the person or entity committed the violation;
  - confirm or reduce the amount of the AMP; or
  - determine that there should be no AMP in respect of the violation.
67. An AMP imposed on an individual is imposed on them in their personal capacity regardless of the capacity in which they acted when they committed the violation. For instance, the chief agent of a party or the official agent of a candidate against whom a penalty has been imposed has the personal obligation to pay the amount.
68. An employer may be vicariously liable for a violation committed by an employee in the course of his or her employment. Further, an entity may be vicariously liable for a violation committed by an agent or mandatory acting within their authority. For instance, a registered party may be vicariously liable for the actions of a volunteer if it had authorized the person to perform the task.
69. In the case of the campaign of a nomination or leadership contestant or of a candidate for election, no campaign funds may be used to pay the amount of an AMP that was imposed under the Act.
70. A person is deemed to have committed the violation:
  - if they pay the amount of the AMP set out in the notice of violation or in the Commissioner or CEO's decision after review;
  - if, within 30 days after having been served the notice of violation, they have neither paid the amount of the AMP, nor exercised their right to request a review, nor provided the Commissioner with an undertaking;
  - if, within 30 days after service of the Commissioner's decision not to accept their undertaking, they have not paid the AMP, nor exercised their right to request a review; or
  - if, within 30 days after service of the Commissioner's or CEO's decision on the request for review, they have not paid the AMP.

71. Once a person or entity is deemed to have committed a violation, the Commissioner must publish a notice that sets out the name of the person or entity, identifies the act or omission or the failure to comply to which the violation relates and sets out the amount of the AMP. The Commissioner publishes this notice on his Web site at [www.cef-cce.ca](http://www.cef-cce.ca).
72. For more information about the AMP regime, please consult the *Policy for the Administrative Monetary Penalties Regime of the Commissioner of Canada Elections*, available on the Commissioner's Web site, at [www.cef-cce.ca](http://www.cef-cce.ca).

### ***Injunctions***

73. 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.
74. 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.
75. 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***

76. 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 believe 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 mechanism are set out in the Act at section 521.1.

### ***Compliance Agreements***

77. Section 517 of the Act allows the Commissioner to conclude a compliance agreement with a person or entity that 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.
78. A compliance agreement is a formal agreement voluntarily signed by the Commissioner and the person or entity. It is accompanied by any terms or conditions that the Commissioner

considers necessary, which may include 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.

79. 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 act or omission 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, 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.
80. As long as the person or entity complies with the terms and conditions of the agreement, no prosecution can be instituted or continued against them for the act or omission constituting the offence that is the subject of the compliance agreement. If there is non-compliance with the terms or conditions, then a prosecution can be instituted or resumed. However, 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.
81. Failure to comply with a term or condition of a compliance agreement constitutes a violation, for which the Commissioner may issue a notice of violation and impose an AMP.
82. If a matter under investigation by the Commissioner has not led 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.
83. 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.
84. 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.
85. 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.
86. 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.

87. To ensure the transparency of the process, and as required by the Act, the Commissioner publishes on his Web site at [www.cef-ccce.ca](http://www.cef-ccce.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.

### ***Prosecutions***

88. The need to make judicious use of prosecutions entails that the laying of charges be reserved for particularly serious contraventions where, for example, there should be public denunciation of the conduct and a punishment imposed on the offender. Further, a decision to institute a prosecution can only be made if there exists sufficient evidence meeting the criminal evidentiary standard.

89. 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.

90. 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.

91. After the charges have been laid, the Office of the DPP is responsible for all aspects of the prosecution (including appeals). Prosecutions are conducted in accordance with well-established principles (see the [PPSC Deskbook](#)). The DPP may decide to stay the charges, or to remit the matter back to the Commissioner if the DPP is of the view that the public interest would be better served by having the matter dealt with by a compliance agreement.

### ***Limitation Period***

92. 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.

93. 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 the paragraph above 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**

94. 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.
95. 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.
96. For certain offences, the Act requires evidence 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.
97. 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.
98. 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.
99. 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.

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## VIII. Information Gathering and Processing by the Office of the Commissioner

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100. 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 a contravention may be personal information or information for which there is a reasonable expectation of privacy.

### Extrajudicial Means

101. 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.

102. 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. As noted above in paragraph 30, it is an offence for anyone to obstruct or hinder the Commissioner's investigations, or to knowingly make a false or misleading statement to his investigators.

#### a) Public Documents

103. 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 CEO;
- b) the CEO's instructions and decisions under the Act; and
- c) any exchange of correspondence between the CEO and election officers or with other persons regarding an election.

104. In a manner that respects the principles and requirements of the *Privacy Act*, the Commissioner and the investigators also use other public source of information, including the Internet.

#### b) Election Documents

105. The Act authorizes the Commissioner to examine election documents in the custody of the CEO. 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**

106. The directorate within Elections Canada that conducts audits, having detected a possible non-compliance 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**

107. The “Investigations Division, 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.

108. 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**

109. 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**

110. The investigators require prior judicial authorization in order to access relevant information for which a person or entity 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.

111. The Commissioner's investigators are "public officers" for the purposes of the *Criminal Code*, and having that status, may ask a judge to issue a search warrant or a production order. If an investigator can satisfy the judge, through affidavit evidence, that there are reasonable grounds to believe 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.

112. 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 the issuing justice or judge 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**

113. 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.

114. 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.

115. On receipt of such an application, the judge may direct that notice of the application be given to the person against whom the order is sought. Alternatively, the judge may proceed *ex parte* (i.e., without informing the person against whom the order is sought) if disclosure of the information in the application would, among other things, compromise the identity of a confidential informant, compromise the nature and extent of an ongoing investigation, provide information about investigative techniques that would prejudice future investigations, or prejudice the interests of an innocent person. Where the judge grants an order *ex parte*, the documents relating to the application are sealed and an order prohibiting the witness from disclosing any information will be issued. The subject of the investigation and their counsel are allowed to attend the examination, unless the order was obtained *ex parte*, or the Commissioner satisfies the presiding officer before whom the examination is to take place that their attendance would be prejudicial to the effective conduct of the examination or of the investigation.

116. 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 so obtained can be used to obtain judicial authorization for a search warrant or production order under the *Criminal Code*.

117. The examination is conducted in private before the presiding officer designated in the court order allowing the examination. The presiding officer will allow the witness to be represented by counsel.

## **Disclosure of Information Held by the Commissioner**

### **Comment of on-going investigations**

118. 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.

119. 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.

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

### **Duty to maintain confidentiality**

121. The Act confirms the importance of maintaining the confidentiality of the Commissioner's investigations. Subsection 510.1(1) 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.

122. Subsection 510.1(2) 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;

- information that the Chief Electoral Officer requires when a review of a decision by the Commissioner to impose an AMP has been made to the Chief Electoral Officer;
- information that, in the Commissioner's opinion, is necessary in order for a person or entity to provide an undertaking; and
- information the disclosure of which is, in the Commissioner's opinion, in the public interest.

### **Disclosure in the Public Interest**

123. 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**

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

### **Communicating with Complainants**

125. The Commissioner's personnel 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.

126. Certain complaints may be closed or resolved at the preliminary review stage without an investigation having taken place or enforcement measures having been used. 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.

127. Generally, when a file has been closed, complainants are notified and are informed of conclusions reached. They are also informed whether a compliance agreement was entered into, an undertaking accepted, a notice of violation issued with an AMP imposed, or charges laid, or whether the case went to trial and what the outcome was.

### **Communicating with the Subjects of a Complaint**

128. 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. However, the subsection also provides that the Commissioner may choose not to send such a notice 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.

129. During an investigation, an investigator will usually contact and offer to 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.
130. 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 Formal Compliance and Enforcement Actions**

131. 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 and on the outcome of court cases.
132. A sentencing digest and the compliance agreements entered into by the Commissioner are posted on the Commissioner's Web site at [www.ccf-cce.ca](http://www.ccf-cce.ca), as well as notices of the undertakings accepted by the Commissioner and notices of violation issued.
133. The Act allows the Commissioner to disclose information that is required to be disclosed in the course of an application for judicial review in respect of a decision taken under the Act. Further, the Commissioner may disclose information that the CEO requires when a request for a review of a decision to impose an AMP has been made.

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## **IX. Address and Contact Information for the Commissioner**

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134. To obtain general information on enforcement of the Act or to file a complaint, please contact the Commissioner and his personnel 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](mailto: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