

COMMISSIONER OF CANADA ELECTIONS



ANNUAL REPORT

2018-19

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I am very pleased to present the 2018-2019 annual report for the Office of the Commissioner of Canada Elections (CCE).

A great deal has changed for our Office in a relatively short period of time. Indeed, change has been the overarching theme for our organization over the last year or so. While you will read about those changes in greater detail throughout the report, they are also part of the reason that this, our first, standalone annual report, covers a longer period (April 1, 2018 to December 31, 2019) than what would typically be presented. My intention going forward is to report annually on the work carried out by our Office between January 1 and December 31.

Bill C-76

Looking back over the last 20 months, a number of important developments stand out in my mind. Chief among these were the significant legislative amendments brought about by Bill C-76, which received royal assent in December 2018. Although the timing of the adoption of these amendments, some of which did not come into force until June 2019, posed certain difficulties with respect to training and standing up of new programs so close to the fixed-date general election, it also made important and extremely positive changes to the *Canada Elections Act's* (the Act) compliance and enforcement regime. Importantly, Bill C-76 granted the Commissioner:

- the power to apply to a court to issue an order to compel testimony
- the ability to lay charges without prior authorization from the Director of Public Prosecutions
- the power to include, as part of a compliance agreement or undertaking, any term or condition he believes is necessary to ensure compliance with the Act, including the payment of a sum of money to the Receiver General for Canada
- the ability to impose Administrative Monetary Penalties (AMPs) for contraventions related to illegal voting, communications, third parties and political financing, or for a breach of a condition of a compliance agreement or undertaking.

These changes are particularly significant in light of Canada's overburdened criminal court system. It appears to me that, of late, the criminal justice system has tended to downplay violations of Canada's electoral law. As can be seen elsewhere in this report, the sentences imposed by judges in our cases recently have generally been low-level fines, and even conditional and absolute discharges have become more common. This is somewhat surprising in light of Parliament's clear statement in favour of stricter enforcement of electoral law in 2014, when it decided to increase maximum fines for offences under the Act by a factor of *ten*. Now that we have the ability to address these types of violations using AMPs or more robust compliance agreements means that, in the future, we will likely have less frequent recourse to criminal courts, using that avenue for the most egregious offences.

Bill C-76 also included the administrative reintegration of our organization to within the Office of the Chief Electoral Officer (OCEO). Transferring an Office such as ours from one organization to another is a complex and time consuming undertaking. My sincere thanks go out to our counterparts at the Public Prosecution Service of Canada (PPSC) both for the support to our Office during our four years as part of their group, and for helping us during the transition to the OCEO. Furthermore, the transition team at Elections Canada (EC), who worked closely with the PPSC to make sure the transition to the OCEO was as seamless as possible, did so under enormous time pressures and while simultaneously preparing for an election. I am tremendously grateful for their diligence and hard work.

In addition to the changes noted above, Bill C-76 also upheld many of the important safeguards contained in previous legislation, in particular those surrounding the independence of our Office. To me, these provisions are critical not only because of the administrative reintegration of our organization within the OCEO, but also because of the criticism our Office has faced of late with regards to our independence as it relates to the integrity of the decision-making process. I have repeatedly stressed (and will continue to do so) that all the decisions that are made with respect to compliance and enforcement issues are mine and mine alone. They are made without any influence from anyone and with a view to doing one thing: preserving the integrity of the system and upholding the law. At all times, they are based on, and informed by, the relevant considerations described in our [Compliance and Enforcement Policy](#). As I indicated in a statement I issued on May 2, 2019, “there has never been any attempt by elected officials, political staffers or public servants to influence the course of an investigation or to interfere with our work. And I want to make it clear that if this ever happened, I would promptly and publicly denounce it.”

That said, despite the fact that we are subject to the strict confidentiality provisions contained in the Act, I fully understand that I, as Commissioner, and we, as an Office, have a responsibility to provide more information on how we work and come to our decisions. We may not be able to provide investigative details, but we must do a better job of communicating with Canadians about who we are, what we do, and, wherever possible, why we do it. We are committed to improving our ways in this area.

43rd General Election

In keeping with the theme of change, it is clear that modern election campaigns bear only a passing resemblance to those fought in the past. It is also clear that they will continue to evolve at a pace that we have not seen previously—one that will require ongoing awareness on the part of both law-makers and those who enforce the law.

With that in mind, our Office spent a significant amount of time leading up to the election consulting with our partners and reaching out to other governments and stakeholders in order to benefit from both their expertise and experiences. We also built on existing relationships—and established new ones—with digital platforms,

with a view to ensuring collaboration both during and after the election period. This is an area in which we intend to continue to work assiduously.

I am pleased to be able to say that these measures served us well and that, as an organization, we were generally well-equipped to address issues arising out of our mandate. Here, I would like to mention that, on the issue of interference—foreign or otherwise—we have seen little evidence that Canada was the target of the kinds of attacks that were perpetrated in other countries.

What you will see throughout the report, and specifically in the *Issues of Particular Interest* and statistical sections, is that there were clearly a number of issues that were top of mind to Canadians. Even more interesting was that Canadians reached out to us in much greater numbers than we had seen in previous elections. However, while we saw an increase in the number of separate complaints we received compared to previous elections, the actual number of different fact situations that led to those complaints was relatively stable. Put another way, there weren't necessarily more problems, the problems just appeared to be greater, or were amplified, because we may have received multiple complaints in relation to the same potential offence. Whether this amplification occurred as a result of increased awareness of electoral issues on the part of the Canadian population, or the spread of messages across social media during the campaign period, we may never know, but it will have a significant impact on the way we carry out our work going forward.

With the addition of new program areas stemming from Bill C-76, and due to the increasing volume and complexity of our files, our Office has almost doubled in size over the last two years. To ensure that our structure and processes reflect this new reality and that we continue to operate efficiently and in a way that is forward-looking, we plan to undertake a review of our organization in the coming fiscal year. The findings and recommendations stemming from the review will be discussed in future reports. In the immediate term, and following the addition of new program areas brought about as a result of Bill C-76, coupled with the need to ensure the continuity of our operations both now and in the future, I have created a Deputy Commissioner position within the Office.

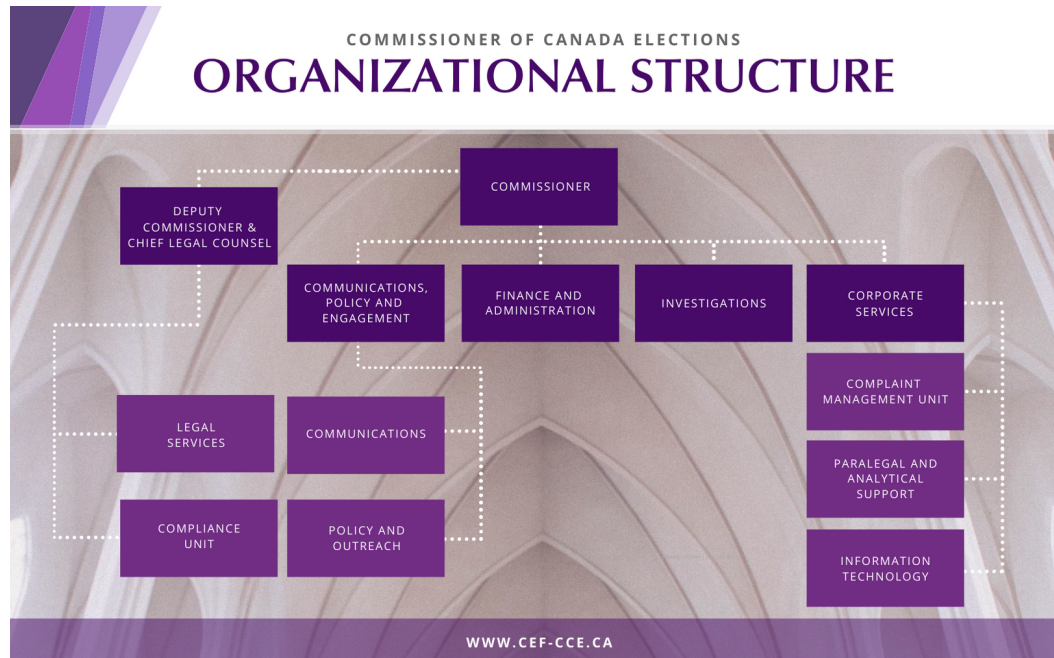
These last 20 months have challenged us in new ways and required us to stretch beyond what have perhaps been our traditional boundaries. We have collaborated more, started to communicate better and looked beyond our traditional partnerships to improve our understanding of the issues we will face in the future. Our success—and I truly believe we have been successful during this time of change—can be attributed to our small, but growing, team who have faced these changes and challenges head-on and done so with enthusiasm and determination. They are dedicated, professional and above all, they enjoy and believe in what they do. I thank them for all that they do and I am proud to lead the CCE team.

Yves Côté, QC

The position of Commissioner of Canada Elections (CCE) was originally created in 1974. The powers of the Commissioner of Election Expenses (as it was known at the time) were limited to ensuring compliance with, and enforcement of, rules relating to election expenses. In 1977, the Commissioner's powers were significantly expanded to include all provisions of the *Canada Elections Act* (the Act) and the position formally became known as the Commissioner of Canada Elections.

Today, the CCE continues to play an important role in safeguarding Canadians' trust in the democratic process. As an independent officer, the Commissioner's dual roles of ensuring compliance with, and enforcement of, the Act and the federal Referendum Act, are carried out with the aim of promoting the integrity of the electoral process.

The Commissioner is supported by approximately 50 people, including federal public servants and independent contractors.



Complaints and Referrals

All complaints received by the CCE are assessed to determine if they fall within the mandate of the Office. The CCE also receives referrals from Elections Canada. These are mainly files from both its electoral integrity and political financing divisions. In addition, Elections Canada transfers some complaints it receives from the public to the CCE when they fall under the Commissioner's mandate.

Individuals whose complaints or allegations do not fall under the Commissioner's area of responsibility are advised and, wherever possible, are redirected to the appropriate complaint mechanism.

If, following a preliminary review, the Commissioner concludes that the allegations made in connection with a complaint or referral may have merit, an investigation may be conducted to clarify the facts and gather evidence related to the alleged offence. At all times throughout the process, the Commissioner ensures that decisions are guided by the principles of independence, impartiality and fairness.

Additional information regarding the Commissioner's mandate can be found in the *Compliance and Enforcement Policy of the Commissioner of Canada Elections* available on the CCE's website at: www.cef-cce.ca.

Submitting a Complaint

The CCE receives complaints from a variety of sources. Anyone with a complaint or allegations of wrongdoing under the *Canada Elections Act* may contact the Commissioner's Office:

- by web form: www.cef-cce.ca,
- by e-mail: info@cef-cce.ca,
- by fax: 1-800-663-4906 or 819-939-1801, or
- by postal mail:

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

The Office of the Commissioner of Canada Elections

In 2018-2019, as part of a series of legislative amendments (described in greater detail below), the Office of the Commissioner of Canada Elections was transferred from the PPSC to the OCEO. This administrative reintegration of the CCE within the OCEO facilitates the CCE's access to relevant information held by EC. It also eases overall collaboration between those responsible for the election machinery and those responsible for enforcement. The bill also maintained important safeguards established in 2014, to ensure the independence of the Office, including the requirement that the Commissioner carry out his compliance and enforcement mandate independently of the Chief Electoral Officer (CEO). The CCE will also continue to carry out its day-to-day operations in a physically separate location.

The CCE also recognizes that while maintaining its independence is critical, this does not prevent it from increasing transparency of its functioning and decision-making processes. As a result, as of the writing of this report, the CCE is exploring, among other things, how the Office may best benefit from the expert advice of EC's Departmental Audit Committee in order to improve transparency and accountability in its operations without compromising the integrity and independence of its work.

Legislative Amendments

On December 13, 2018, Bill C-76—making significant amendments to the Act—received royal assent. The Commissioner believes these changes will better position the Office to address some of the threats to elections that lie ahead. In addition, the bill also addressed long-standing recommendations put forward by the Commissioner.

Chief among these changes was the creation of an AMPs regime. Under this new system, the Commissioner may impose financial consequences for violations committed under Parts 16 (communications), 17 (third parties) and 18 (political financing), for violations related to illegal voting under the Act, as well as to breaches of conditions contained in compliance agreements or undertakings. Furthermore (although more broadly applicable to all provisions of the Act), additional changes enacted through Bill C-76 allow for conditions requiring the payment of an amount to be included in compliance agreements. In many cases, these two compliance and enforcement mechanisms will grant the Commissioner much greater flexibility to impose meaningful consequences for non-compliance under the Act, without necessarily having to rely on the courts—except in the most serious of cases.

Newly adopted provisions of the Act now enable the Commissioner to institute a prosecution without prior authorization of the Director of Public Prosecutions (DPP). This change, which reinstates a power that was available to the Commissioner until 2006, offers greater transparency with respect to the Commissioner's independence in decision-making for these types of cases.

After charges have been laid, the DPP is responsible for all aspects of the prosecution including any decisions to stay charges, to launch appeals, 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 way of a compliance agreement.

The Commissioner may also apply to a court to issue an order to compel testimony. Although not expected to be used routinely, this new tool enables the Commissioner and those working under his direction, to have access to the information they need, in particular in cases where partisan loyalties may cause someone to be reluctant to cooperate with the Office. It also comes with conditions to ensure that an individual's constitutional rights are fully respected.

In light of all of these changes, the Commissioner's [*Compliance and Enforcement Policy*](#) was also updated to reflect changes to the Office's business and to clarify its processes with a view to improving openness with regards to its compliance and enforcement processes.

Preparation for the 43rd General Election

In 2018-2019, the Office expended considerable time and resources towards preparations for the 43rd general election. Election preparation requires that a significant part of the CCE's focus be directed to ensuring the Office is properly equipped to manage and respond to the influx of complaints associated with a general election. It is also essential to complete to the greatest extent possible, any ongoing files and investigations.

The CCE also faced additional pressures stemming from the timing of the adoption of Bill C-76. This required the Office to divide its focus between preparedness and the implementation of legislative amendments including: the transfer of the organization to the OCEO; extensive training regarding new and rather complex legislative provisions; and staffing a team to manage the new compliance tools, including the AMPs regime.

These changes, and in particular the transfer of the CCE to the OCEO, also carried with them the risk of a reduction in public awareness regarding the distinct and separate functions of the CEO and the Commissioner. To counteract this perception, and to ensure that Canadians better understood the Commissioner's mandate, sectors across the CCE devoted considerable time to outreach with their respective counterparts and stakeholders.

The expanded use of social media, both at home and abroad, was identified as raising considerable investigative challenges. The CCE not only directed resources towards developing specialized expertise in this area, it also continued to liaise with digital platforms with a view to seeking a firm commitment that they would do everything in their power to facilitate the work of the Office, particularly as it relates to the gathering of all relevant evidence needed to carry out its investigations.

In the same vein, the CCE also collaborated with other organizations that play a role in the detection and prevention of interference in the electoral process. In the government context, these processes were formalized through updated or new memoranda of understanding with CCE partners including:

- the Canadian Security Intelligence Service (new);
- the Royal Canadian Mounted Police;
- the Public Prosecution Service of Canada; and
- the Canadian Radio-television and Telecommunications Commission.

CCE staff also actively participated in Deputy Minister, Assistant Deputy Minister and Director General-level committees on election security.

External Engagement & Outreach

Throughout 2018-2019, the CCE was actively involved in reaching out to stakeholders, academics and counterparts—both provincially and internationally—with a view to raising awareness of the Office, while simultaneously expanding its professional network and benefitting from the lessons learned in other electoral contexts.

Outreach

Throughout the reporting period, the CCE worked to build collaborative relationships with the research community and with other experts both inside and outside of government. In that context, academics and other experts were invited to share their knowledge with CCE personnel on a variety of topics of interest.

The Office also participated in symposiums, conferences and other events related to the CCE's mandate. Among these was the CCE's participation as part of the steering community for the November 2019 *Symposium on Foreign Threats to Democracy in the Digital Age*. The event, which was organized by members of the G7 Rapid Response Mechanism at Global Affairs Canada (with the support of the European Union, the United Kingdom, the Netherlands and Australia), also featured a presentation from the CCE's Director of Investigations during the panel on electoral interference.

The CCE also recognized that international collaboration is key to ensuring that the Office is aware of the latest trends, tools and best practices so that it can better anticipate risks, bolster its preparedness and fulfill its overall mandate. For this reason, in 2018-2019, CCE met with visiting foreign delegations and representatives from the Organization for Security and Co-operation in Europe (OSCE), and also proactively reached out to several other government representatives from like-minded countries. These meetings resulted in constructive discussions on enforcement issues of common interest. Employees from the CCE also met with representatives of provincial, territorial and foreign electoral management bodies who were taking part in Elections Canada's Visitors Program.

Prior to the start of the election period, the Office reached out to Chiefs of Police across the country to advise them of the CCE's mandate and to seek collaboration during the election period. It also served as an opportunity for the Office to remind them of the requirements surrounding the need for employers to allow their employees three consecutive hours to vote. A similar initiative was undertaken—in collaboration with Elections Canada—to highlight time-off-to-vote requirements to hospitals across the country. This was done with a view to reducing the overall incidence of offences committed by employers in these two groups for failing to provide their employees with the three required consecutive hours.

Mexican Election Observation

At the request of Global Affairs Canada, the Commissioner and his General Counsel (now Deputy Commissioner and Chief Legal Counsel) participated in the foreign visitors' program organized by the *Instituto Nacional Electoral* for the purposes of the 2019 Mexican general election, as guests of the *Fiscalía Especializada para la Atención de Delitos Electorales* (FEPADE). The FEPADE is the branch of the Mexican prosecution service responsible for investigating and prosecuting offences under Mexican electoral law. The Commissioner and Deputy Commissioner observed voting at polling stations in and around the city of Mexico, and participated in exchanges with their Mexican counterparts on best practices for ensuring compliance with, and enforcement of, electoral law.

Exchanges with Peruvian officials and NGOs

Also at the request of Global Affairs Canada, the Deputy Commissioner participated in a series of meetings organized by the Embassy of Canada to Peru and IDEA International to discuss the Canadian experience with ensuring compliance with, and enforcement of, the rules on political financing. The Deputy Commissioner met with officials from the *Comisión de Alto Nivel para la Reforma Política*, created by the President of Peru to develop a proposed legal framework for political financing in Peru with, among other things, an effective system of penalties that acts as a deterrent in order to enhance compliance. The Deputy Commissioner also had exchanges with officials from the *Oficina Nacional de Procesos Electorales*, which has the mandate to administer the Peruvian political financing rules and to enforce them. Moreover, the Canadian Ambassador to Peru and the Deputy Commissioner met with legislators from various Peruvian political parties who are interested in electoral law, to discuss the Canadian experience with reforming the political financing rules to make them enforceable. Finally, the Deputy Commissioner participated in a public forum on the issue of best practices and lessons learned in Canada on reforming political financing rules and ensuring their enforcement.

COGEL

In December 2019, the CCE was represented at the Council on Governmental Ethics and Laws (COGEL) conference. At the invitation of COGEL organizers, the Director of Investigations participated in a panel discussion on foreign interference—alongside American counterparts—to discuss the varied types of interference that can present threats to the legitimacy of elections and to highlight potential strategies to mitigate these risks.

Committee Appearances

In 2018-2019, CCE representatives appeared before both House of Commons and Senate committees to discuss proposed amendments to the Act. On June 6, 2018, the CCE's General Counsel appeared before the House of Commons Standing Committee on Procedure and House Affairs in the context of their examination of Bill C-76. In addition, in November 2018, the Commissioner testified before a rare sitting of the Senate Committee of the Whole (alongside the CEO) and later, the Senate Standing Committee on Legal and Constitutional Affairs, where he shared his views surrounding the proposed changes to the Act's compliance and enforcement regime. In particular, the Commissioner and General Counsel highlighted the benefits of the proposed system of AMPs, the power to seek a court order to compel testimony, and the elimination of the requirement to seek pre-approval from the Director of Public Prosecutions for the laying of charges.

The full text of the remarks for each of these appearances is available on the [CCE's website](#).

Issues of Particular Interest

The Act covers a wide array of matters, some of which pose particular compliance and enforcement challenges for the CCE. Throughout 2018-2019, some issues arose that, while they may not be the subject of a high volume of complaints, are worth underscoring. In some instances, the issues raised below may shape future recommendations for legislative changes by the Commissioner to Parliament.

Voting by non-Canadians—42nd General Election (2015)

A significant number of potential cases of illegal voting by non-citizens during the 42nd general election were identified by Elections Canada in late 2019. This was made possible as a result of changes to the Act made with Bill C-76, that allow Immigration, Refugees and Citizenship Canada to disclose, to the CEO, information on individuals who are in Canada but who do not have Canadian citizenship.

Based on this new information, Elections Canada was able to identify potential cases of illegal voting at the 2015 general election, and the CEO provided this general information to parliamentarians during Committee appearances. After due consideration—and after consultations with the CEO about institutional impacts of going forward with these

referrals—the Commissioner decided it was not in the public interest for his office to deal with these recently-identified instances of potential voting by non-Canadians at the 2015 general election, except in cases where there are reasons to suspect that there may have been conspiracy, collusion or an attempt to effect wide-spread election fraud. The Commissioner has informed the CEO of this decision.

Considering all of the work required to be done to address complaints made in relation to the 2019 general election—and given the importance of ensuring a state of readiness in an accelerated manner in a minority government context—the Commissioner judged that the resources and energies of his Office would be better invested in addressing potential cases of illegal voting that occurred during the 2019 general election.

Factors taken into account in this determination include: (1) the Office's past experience with non-citizen voting (e.g.: not infrequently, non-citizens voted after they had passed the citizenship exam, but before having taken the citizenship oath, not knowing that they actually did not become citizens until they had taken the oath; (2) the considerable length of time elapsed since the 2015 general election meant that the evidence to make out the illegal vote would be much harder to obtain and that trials would not take place until at least six years after the event; (3) the impossibility of having recourse to the new AMPs regime to deal with these 2015 instances meant that evidence must be obtained at the higher criminal threshold [i.e., proof beyond a reasonable doubt]). The AMPs regime is only available for violations that occurred after June 19, 2019, when the relevant legislation came into force.

False Statements

In 2017, during an appearance before the House of Commons Standing Committee on Procedure and House Affairs, the Commissioner testified that the language contained in the provisions related to false statements (section 91) was extremely broad and did not “provide an adequate degree of clarity as to the type of statements that are prohibited. So, while the public believes it is applicable to a wide variety of scenarios, from an enforcement standpoint, the circumstances in which it can be applied are actually quite limited.” At the time, the courts had interpreted the section as applying only to false statements imputing criminality or moral turpitude. As a result, the Commissioner recommended that the section be reviewed to address the obvious disconnect between the narrow way the courts interpreted the provision and what Canadians understood the provision to mean.

Bill C-76 amended the existing section 91 to make it applicable to false statements about prospective candidates, party leaders and public figures associated with a registered party, in addition to candidates. However, it limited the application of the provision to false statements concerning criminal activity, or specific information about these individuals concerning their: citizenship; place of birth; education; professional qualifications; or membership in a group or association.

While this did provide greater clarity as to what constitutes prohibited conduct, the provision no longer extends to allegations of “moral turpitude” that do not constitute criminal conduct. During House and Senate Committee appearances on Bill C-76, the Commissioner noted that this could result in a lessening of the protection offered by the Act—and the Office’s ability to take any compliance or enforcement action—when serious false allegations are made that could have a determining effect on the outcome of an election.

Foreign Interference

Foreign interference became a significant concern for many Canadians in the lead-up to the 2019 general election. To address this concern, legislators adopted more robust political financing rules surrounding foreign contributions—both to candidates’ campaigns and to third parties. While the Commissioner welcomed the strengthening of these provisions, he noted during his Parliamentary Committee appearances on Bill C-76 that it may be of value to consider adding, as constituting “undue influence” under the Act, the situation where foreigners knowingly make false statements with a view to influencing Canadian electors.

Advertising and Access to Condominiums

At every election, the CCE receives multiple complaints from Canadians and candidates alike, regarding rights to access and advertise in condominiums and other multiple-residence buildings. Many condominium boards and corporations have rules explicitly preventing access for advertising or canvassing purposes—something that runs counter to the Act. The Commissioner is of the view that the federal statute clearly overrides these private rules or bylaws, and condo owners and corporations that fail to comply with the provisions of the Act could be subject to legal sanctions. It will be important for the purposes of future elections to find ways, in cooperation with Elections Canada, to better inform the public about the requirements of the Act in this regard.

Secrecy of the Vote

Photos of marked ballots on social media platforms were the source of a number of complaints to the CCE during the 43rd general election. For many Canadians, “ballot selfies” were viewed as a serious breach of the principle of the secrecy of the vote, while others maintained that sharing who they voted for was their right.

The Act currently contains clear provisions against taking and sharing photos of one’s marked ballot. These provisions exist to protect electors by reducing the likelihood that they have been intimidated or bribed into voting in a particular way. They are not intended to suppress an individual’s right to free speech, and indeed, a person may openly declare, outside of a polling station, for whom they have voted.

While it is important for the Act to contain safeguards to protect the secrecy and the integrity of the vote, enforcement of such rules can be a challenge. Currently, the only tools at the Commissioner’s disposal for these instances are the laying of charges in the criminal courts, or the entering into of a compliance agreement with the person who shared a picture of their marked ballot. The former appears to be a heavy-handed

response, while the latter—which requires the consent of the person who contravened the Act—is not a viable option where the individual does not feel that the need to protect the secrecy and integrity of the vote should trump their right to freedom of expression. Alternative ways of dealing with such matters should be considered, including the possibility of making this subject to the AMPs regime.

Unpaid Claims and Loans

In early 2019, the Office received a significant volume of referrals from Political Financing and Audit Directorate (PFAD), involving potential contraventions of the Act with respect to unpaid claims and loans for candidates. The 36-month period to repay unpaid claims and loans for the 42nd general election came to an end on November 19, 2018.

The timing of these referrals coincided with preparations for the 43rd general election as well as the implementation of legislative amendments. In the interest of making a good use of limited resources, a streamlined approach was adopted and a number of these files were closed using informal means.

Going forward, unpaid claims and loan contraventions (occurring after June 13, 2019), may be addressed through the new AMPs regime. However, the legislated 36-month timeframe for repayment—and subsequent referral to the Office—means that, in some instances, files for one election may not be closed before a new election period begins.

New Third Party Regime

On April 13, 2017, during an appearance before the Standing Senate Committee on Legal and Constitutional Affairs, the Commissioner noted that, following the 2015 general election, a significant number of complaints had been received expressing serious concern that expenses incurred by third parties to support or oppose candidates or political parties other than by conducting election advertising were unregulated under the Act. This meant that third parties, acting independently, could spend limitless amounts of money to oppose or support candidates or parties (for example, by holding rallies, conducting door-to-door canvasses, having election surveys taken or making telephone calls to electors), while similar expenses incurred by parties and candidates were subject to strict spending limits. At the time, the Commissioner noted that this risked undermining the level playing field sought by Parliament when the third party regime was adopted in 2000.

Bill C-76 considerably increased the scope of regulation for third party activities to include “partisan activities” and election surveys, in addition to election advertising, for the purposes of the pre-election and the election period. During the 43rd general election, a relatively small number of complaints were received about third parties not meeting these new requirements. Despite the challenges inherent in implementing these new rules in short order after their adoption, it appears that Elections Canada’s efforts to educate third parties about their new obligations were largely successful. The new regime appears to have been quite effective in dealing with the most egregious issues related to the role played by third parties in the course of the 2015 general election.

Use of Personal Information by Political Participants

There is growing concern with the ways that registered parties are making use of the list of electors supplied to them by Elections Canada. The Act requires that the CEO make the lists of electors available to registered parties each year. The lists of electors set out information on each elector, including their surname, given names and address. Registered parties may use these lists to communicate with electors, including using them to solicit contributions and recruit members. The increasing use of electronic databases by registered parties—and the lack of statutory requirements addressing their collection and storage of personal information—have allowed them to amalgamate information from the list of electors with other personal data sources, resulting in powerful voter management platforms. The CEO and the Privacy Commissioner have both, over the years, called for Parliament to review whether the current legal framework is sufficient to meet Canadians' expectations concerning the protection of their personal information. While a number of complaints have been received by the CCE over the years, enforcement action has generally not been warranted because the Act's provisions are broad and minimally restrictive with respect to using the information contained in the lists of electors (that is, using the name, address and unique identifier of the elector). Indeed, the existing prohibitions allow those with access to the lists of electors to use the information for any purpose related to communicating with electors, and does not regulate at all any other information that parties may also collect about electors. It is this other information, in fact, that may be more sensitive in terms of the elector's privacy rights.

Amplification

In 2019, the CCE observed a significant increase in the overall number of complaints it received during the election period. This phenomenon has, in large part, been attributed to the use of technology—and social media in particular—to amplify the issues that arose during the campaign. Unlike in previous years, where a particular fact situation may have generated one or only a few complaints, during the 43rd general election, in a number of separate instances, the CCE received multiple complaints in relation to the same potential offence.

This resulted in a significant increase in the volume of work associated with files (e.g. processing and analysing all complaints) and created delays in responding to individuals who submitted a complaint.

However, despite this amplification, the Office did not observe a large increase in the overall number of incidents when compared to previous elections.

Compliance and Enforcement

The integrity of the electoral process depends in large measure on the good faith of participants and their willingness to follow the requirements set out in Canadian election law. The Commissioner's mandate reinforces and strengthens oversight of the electoral system, ensuring that all participants can confidently participate in the electoral process. The [Compliance and Enforcement Policy of the Commissioner of Canada Elections](#) outlines how the Commissioner exercises his mandate under the Act.

Caution and Information Letters

Caution and information letters are an informal means of encouraging future compliance with the Act. Between April 1, 2018 and December 31, 2019, the Commissioner issued 429 caution and information letters to address minor contraventions or cases of inadvertent non-compliance. These letters are not made public.

Compliance Agreements

The formal compliance and enforcement scheme under the Act provides the Commissioner with a number of various tools to address electoral offences. Compliance agreements are voluntary agreements which set out the terms and conditions necessary to ensure compliance with the Act. As of June 13, 2019, compliance agreements may contain financial consequences for the person or entity who failed to comply with a requirement of the Act. The consequences of non-compliance with the terms and conditions of a compliance agreement may also result in the imposition of an AMP or the laying of charges for the offences dealt with in the compliance agreement.

Between April 1, 2018, and December 31, 2019, the Commissioner entered into 16 compliance agreements:

- [Two compliance agreements](#) were entered into with companies for illegal contributions made to federal political entities. The Act states that only individuals who are Canadian citizens or permanent residents of Canada can make contributions.

As a result of the investigation into the contributions made by these two companies, they agreed to make payments totalling almost \$450,000 to the Receiver General, a portion of which was intended to offset the costs of the CCE's investigation. This also included an amount that was three times the value of the illegal contributions that had been made in their names.

- [Five compliance agreements](#) were entered into with individuals who acknowledged having requested a ballot after having already voted during the federal general election of October 2015. Three of the five individuals also acknowledged having applied to be included in the list of electors for a polling division in which they were not ordinarily a resident.

As part of the conditions of these compliance agreements, and considering the very serious nature of the offence, two individuals agreed to pay \$750 for the illegal vote, while three agreed to pay \$1000 for the illegal registration and vote.

The following compliance agreements were negotiated before the Commissioner was given the power to negotiate more robust terms and conditions in compliance agreements, including the payment of money by the Contracting Party.

- A [compliance agreement](#) was entered into with a candidate for the 42nd general election. The candidate attempted to circumvent the legal contribution limit that an individual was allowed to make to his or her own campaign, and also attempted to conceal the identity of the contributors. Furthermore, the candidate failed to appoint a replacement auditor without delay, following the resignation of his auditor.
- A [compliance agreement](#) was entered into with an individual who served as an official agent during the 42nd general election. The agent failed to issue receipts to 72 individuals for contributions of more than \$20, as required by the Act.
- The Commissioner entered into a [compliance agreement](#) with an individual who negotiated a prohibited lease agreement with the official agent of a candidate. The lease agreement set out the terms of the lease, which included the issuance of a tax receipt to the landlord for a non-monetary contribution to the campaign of the candidate. The Act prohibits entering into an agreement for the provision of goods or services to a registered party or candidate, a condition of which is for someone to make a political contribution.
- A [compliance agreement](#) was entered into with an individual who acted as the auditor for a candidate for the purpose of the 42nd general election while he was not a member in good standing of a corporation, association or institute of professional accountants, as required by the Act.
- The Commissioner entered into a [compliance agreement](#) with an individual who, as the financial agent for a registered association or a registered party, failed to return a contribution to the Receiver General of Canada within 30 days after becoming aware that the contributor was ineligible to do so. Under the Act, only an individual who is a Canadian citizen or a permanent resident of Canada can make a contribution.
- [Two compliance agreements](#) were entered into with a third party and the campaign manager for a candidate during a by-election. The third party produced and distributed an advertising pamphlet with the assistance of the campaign manager. Since the third party did not act independently from the candidate's campaign in carrying out election advertising, it constituted an illegal non-monetary contribution from an entity to the campaign of a candidate. The campaign manager contravened the prohibition against anyone other than the official agent of a candidate accepting contributions on behalf of the campaign, and circumvented the Act's prohibition against an entity making a contribution.

- The Commissioner entered into a [compliance agreement](#) with an individual who, as the official agent for a candidate, made an illegal non-monetary contribution to the campaign of another candidate's campaign during the 42nd general election. The Act does not allow for monetary or non-monetary contributions to be made between candidates' campaigns.
- An individual who acted as the official agent for a candidate during the 2015 general election entered into a [compliance agreement](#) with the Commissioner for failing to submit to the CEO an electoral campaign return, as well as other related documents, within four months following polling day.

The full text of the agreements appears on the CCE's website at: www.cef-cce.ca and are communicated to the public via the CCE's social media accounts.

Charges and Prosecutions

If the Commissioner believes on reasonable grounds that an offence has been committed under the Act, he may lay charges. After charges have been laid, the Office of the DPP is responsible for all prosecutions (including appeals). Of note, prior to April 1, 2019, the DPP had sole authority to decide whether charges could be laid. The charges that appear below were laid under that system.

Charges were laid against nine individuals during 2018-2019.

Charges were laid in the Court of Quebec in Sherbrooke against two individuals on March 5, 2019. [Ms. Sonia Fortin](#), as the official agent for [Mr. Charles Poulin](#), a candidate during the 42nd general election, was charged with failing to submit the electoral campaign return, along with other related documents, within four months after polling day. Moreover, Ms. Fortin and Mr. Poulin were both charged under the *Criminal Code* for committing theft from the candidate's electoral campaign. Both individuals pleaded guilty to the charges. Ms. Fortin received a \$500 fine for failing to provide the candidate's electoral campaign return and was ordered to complete 240 hours of community service for theft as part of a 16-month probation. Mr. Poulin was ordered to perform 240 hours of community service within 12 months as part of an 18-month probation.

Three charges were laid in the Court of Quebec in Sherbrooke on November 13, 2018, against [Mr. Chislain Giroux](#). Mr. Giroux was charged with applying for a ballot in a name that was not his own, knowingly having a ballot in his possession that he was not authorized to have, and obstructing the work of the Commissioner. He pleaded guilty to the first and third charges, for which he was ordered to pay a fine of \$500 for each count and to complete 100 hours of community service as part of a one-year probation. Of note is the fact that this was the first time a charge was laid for having obstructed the work of a person acting under the direction of the Commissioner under s. 482.1, a provision that was added to the Act in 2014.

[Ms. Mai Huong Le Ngoc](#) was charged on October 29, 2018, in the Provincial Court of British Columbia. The four charges related to requesting a second ballot after having already voted by special ballot, knowingly making a false statement to a deputy returning officer, applying for another ballot, and having a ballot in her possession that she knew she was not authorized to have. On February 4, 2019, she pleaded guilty to the first charge of requesting a second ballot and was sentenced to pay a \$500 fine.

Also on October 29, 2018, three charges were laid in the Provincial Court of British Columbia against [Mr. Renato Molina](#). These charges related to requesting a second ballot after having previously voted, knowingly making a false statement in an application for a special ballot, and knowingly applying for a special ballot to which he was not entitled. Mr. Molina pleaded guilty to the first charge on May 22, 2019, and was sentenced to a conditional discharge with six months' probation and 15 hours of community service.

On October 23, 2018, four charges under the *Canada Elections Act* were laid in the Ontario Court of Justice against [Ms. Linh Thny Nguyen](#), a candidate at the 42nd federal general election. The charges were related to Ms. Nguyen's failure to comply with her statutory requirements as a candidate. She was charged with two counts of failure to appoint a replacement official agent, as well as two counts of failure to provide the CEO with her electoral campaign return or other related documents. On March 7, 2019, Ms. Nguyen pleaded guilty to all four charges and was sentenced to pay a \$400 fine for each count. She was also ordered to appoint a replacement official agent and to assist the official agent in preparing and providing the electoral campaign return and other related documents to the CEO.

Five charges were laid in the Court of Quebec in Montreal against [Mr. Normand Morin](#). The charges related to an investigation into SNC-Lavalin Group Inc. for illegal contributions made to federal political entities between March 9, 2004, and May 1, 2011. On November 26, 2018, Mr. Morin pleaded guilty to two of the charges and was sentenced to pay a total fine of \$2000, as well as applicable court fees. The laying of charges in this file concluded the Commissioner's investigation into SNC-Lavalin Group Inc. An earlier stage of the investigation resulted in a compliance agreement with SNC-Lavalin Inc., which is available on the Commissioner's website.

On December 10, 2018, [Clara and Lauren Suraski](#) pleaded guilty to charges related to requesting a second ballot after already having voted. They were both sentenced to conditional discharge with one year probation and 75 hours of community service. With the full support of the Commissioner, the Crown appealed the sentence, but the original sentence was upheld by a judge of the Superior Court of Ontario, on October 23, 2019. The Director of Public Prosecutions decided not to appeal the sentence further.

After the DPP had requested that the Commissioner cause charges to be laid before a justice, [Mr. Ali Shadzik](#) was charged on January 17, 2019, in the Ontario Court of Justice, for attesting to the residence of more than one elector during the 42nd general election. Mr. Shadzik was a Central Poll Supervisor, whose responsibility under the Act was to ensure that voting operations were conducted in accordance with procedures required by the Act. On October 11, 2019, the Crown stayed the charge against Mr. Shadzik.

On June 4, 2019, the Commissioner of Canada Elections laid four charges against [Mr. Stephen Garvey](#) in the Provincial Court of Alberta. As the candidate for the Democratic Advancement Party of Canada during the 42nd federal general election of October 2015, Mr. Garvey was charged with circumventing the contribution limit that a candidate was legally allowed to make to his or her electoral campaign. In addition, Mr. Garvey, who was also the leader of the Democratic Advancement Party of Canada, later known as the National Advancement Party of Canada, was charged with knowingly providing the CEO with false or misleading documents relating to the status of the National Advancement Party of Canada, contrary to the Act. Two *Criminal Code* charges for forgery were also laid in this case. At the time of the writing of this report, the charges were still pending.

Written Opinions, Guidelines and Interpretation Notes

Under the Act, the Commissioner is required to provide comments on draft written opinions, guidelines or interpretation notes proposed by the CEO.

Guidelines and interpretation notes discuss the application of a provision of the Act to registered parties, registered associations, candidates, and/or leadership or nomination contestants (referred to collectively as “regulated political entities”). A guideline or interpretation note is issued for information purposes only and is not binding on regulated political entities. Under the Act, the Commissioner has 45 days to comment on the drafts of these documents. When the guideline or interpretation note is officially issued, the CEO must publish the comments received from the Commissioner on the draft version.

Similar requirements exist when a registered party makes a request to the CEO for a written opinion on the application of any provision of the Act. The Commissioner has 30 days to make comments on a draft opinion, and these comments are published along with the final written opinion. If all material facts submitted with the request were accurate, the final written opinion is binding on the CEO and on the Commissioner with respect to the activity or practice of the registered party that made the request or of its affiliated regulated political entities. The written opinion has precedential value for the CEO and the Commissioner for similar activities or practices of other registered parties and their affiliated entities.

During 2018-2019, the CEO issued eight guidelines and interpretation notes. The CCE provided comments on the drafts that were circulated for consultation. The guidelines and interpretation notes issued by the CEO during this period dealt with the following issues:

- [Pre-Existing Web Content of Registered Parties in an Election](#)
- [Communication Expenses of Registered Parties in a By-Election](#)

YEAR IN REVIEW: 2018-2019

- [Online Contributions Made to Candidates Through the Registered Party](#)
- [Political Financing Handbook for Nomination Contestants and Financial Agents](#)
- [Regulated Fundraising Events](#)
- [Unpaid Claims and Reporting Requirements](#)
- [Cryptocurrencies](#)
- [Political Financing Handbook for Third Parties, Financial Agents and Auditors](#)

Ongoing Work Related to the 43rd General Election

The CCE continues to receive complaints after the election period has drawn to a close. Legislative timelines—particularly those related to political financing—also mean that referrals from Elections Canada may be received years after the election period. This presents particular challenges in a minority government context, where files from the 43rd general election may not have been received before the 44th general election is held.

Recommendation Report

As part of the amendments to the Act adopted in 2018-2019, the Commissioner is required to produce a report containing recommendations for legislative amendments that, in his view, are desirable to ensure better compliance with, and enforcement of, the Act. This report, which will appear as an annex to the CEO's recommendation report, is to address areas falling within the Commissioner's enforcement and compliance mandate.

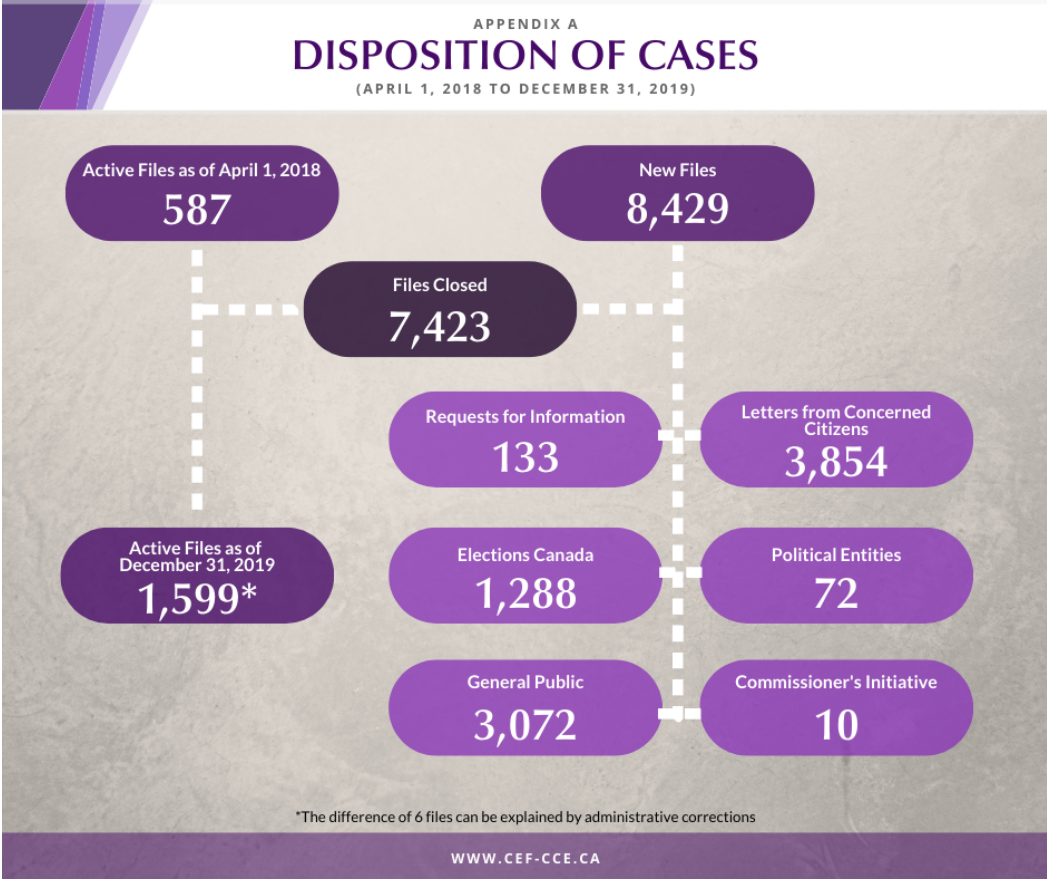
Use of AMPs and Undertakings

The CCE dedicated significant energies during 2018-2019 to the creation of the unit to support the new regime of AMPs, which came into effect on June 13, 2019. Newly drafted policies surrounding the regime were the subject of public consultation earlier in the year and are now available on the CCE's website. It is expected that the system will become fully operational by June 30, 2020. As with other formal compliance and enforcement measures, and as required by the legislation, the CCE will publish information concerning the AMPs that have been issued and the undertakings that have been accepted on its website and via its social media channels.

Continued Electoral Readiness

Historically, the tenure of minority governments in Canada fall short of the four-year fixed term set out in the Act. The CCE will continue to build its readiness capabilities in order to ensure it is prepared for an electoral event prior to 2023.

Disposition of Cases (April 1, 2018 to December 31, 2019)



Comparison of active files:

	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019*
Active files	254	489	311	587	1599

***Reporting covers an extended 21-month period (from April 1st, 2018 to December 31, 2019)**

Most common referrals from Elections Canada:

- 436 files were referred as a result of possible irregularities regarding individuals voting when not qualified or entitled;
- 282 files were referred as a result of possible irregularities regarding potential instances of electors requesting a second ballot;
- 87 were related to a failure to provide updated versions of statements for unpaid claims;
- 76 related to distributing or showing a photograph or video of a ballot or special ballot that had been marked;
- 47 were related to the official agent's failure to pay recoverable claims within three years or paying without authorization; and
- 45 were related to a failure to dispose of surplus electoral funds.

Most common potential offences having given rise to complaints from the public:

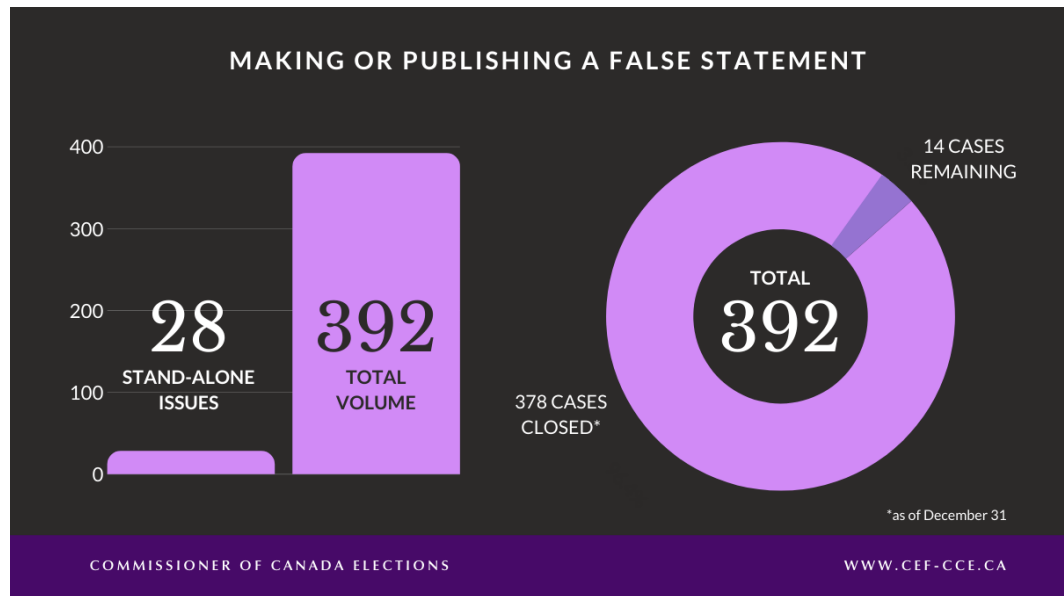
- 97 different instances related to the failure of a candidate, registered party, or a person acting on their behalf, to indicate on election advertising that its transmission was authorized (i.e. tagline) generated 110 complaints;
- 28 different instances related to making or publishing a false statement about a candidate, prospective candidate, the leader of a political party or a public figure associated with a political party with the intent of affecting the election results generated 502 complaints;
- 27 different instances related to the failure of third party to immediately register after incurring expenses of \$500 or more for partisan advertising, partisan activities or election surveys, generated 624 complaints;
- 12 different instances related to foreigners attempting to influence an elector to vote or refrain from voting generated 170 complaints; and
- 27 different instances related to influencing or attempting to influence a person to vote or refrain from voting by any pretence or contrivance generated 83 complaints.

Most common complaints received during the election period, by alleged violation

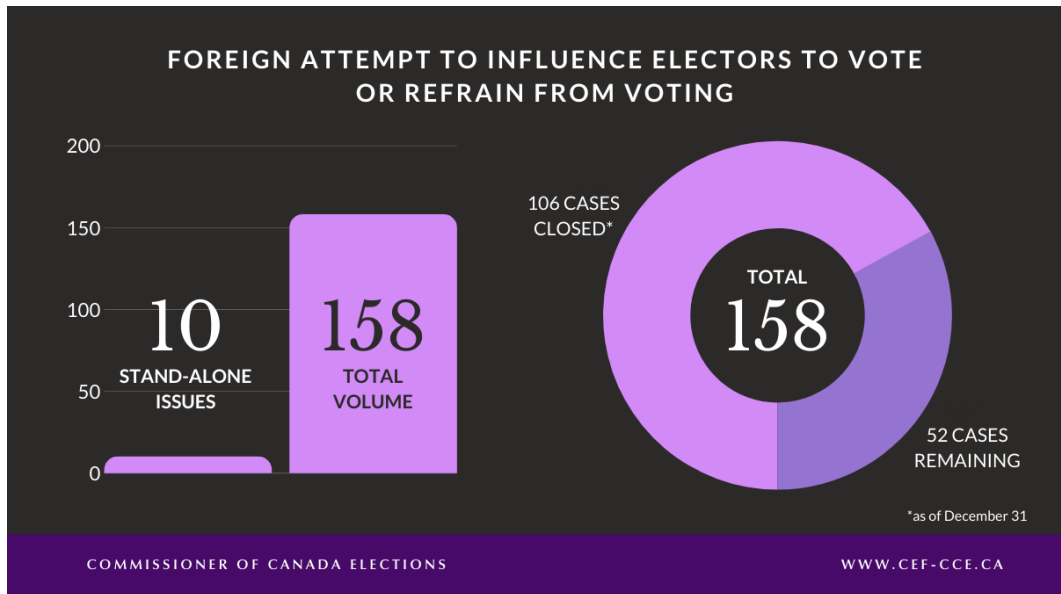
The following section provides an overview of the most common complaints received by the Office during the election period itself. (The statistics provided in the preceding section relate to the number of complaints received during the entire 21-month period covered by this report. For that reason, in many instances, the statistics provided below are smaller as they represent only the complaints received during the campaign.)

Between September 11 and October 21, 2019, the CCE received 2,698 complaints or enquiries related to the 43rd general election. What follows is a description of the top 10 complaints received by alleged violation of the Act. Each category details the total number of complaints received, the number of different fact situations that gave rise to these complaints (“stand-alone issues”), and the number of closed files.

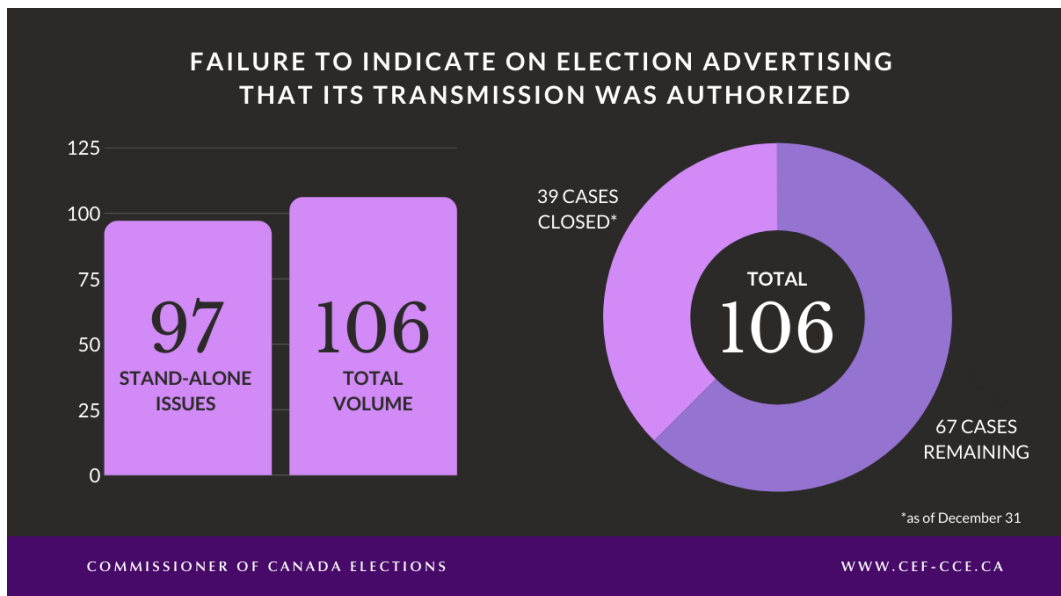
Note that all of the information represented in this section stems from categories assigned during the intake process. These categories may be modified depending on information arising out of a review or investigation.



Of the 392 complaints related to false statements, the majority of the complaints were the result of allegations that a party leader was under investigation by the RCMP. This was seen by many complainants as a contravention of subsection 91(1) of the Act. Following a review of these complaints, the Commissioner concluded that the intention of Parliament was not for this provision to apply to statements that are based on reasonable interpretations of credible information from a source reasonably expected to be knowledgeable in the matter.

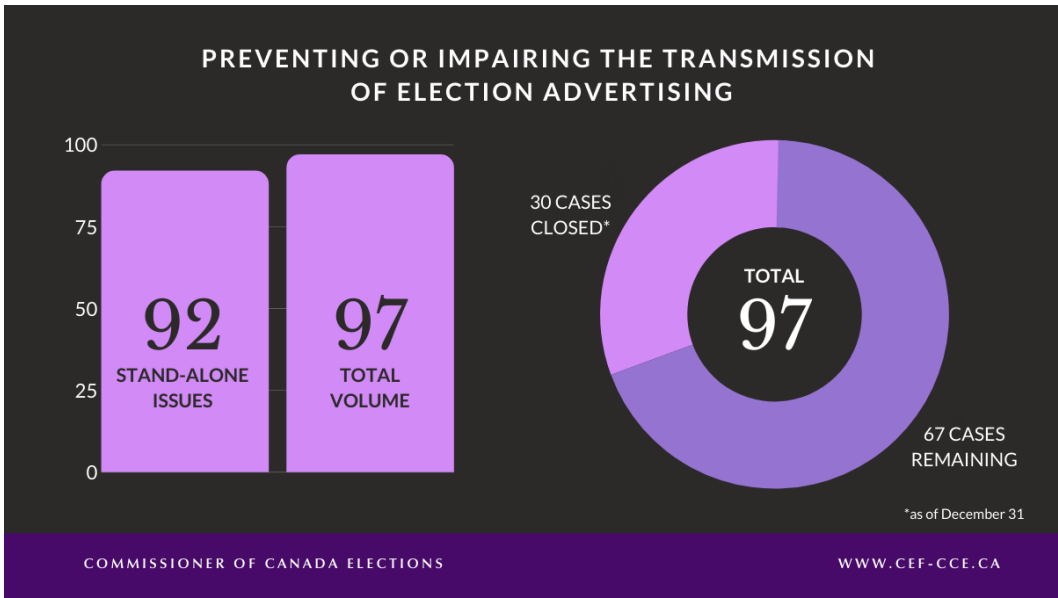


Out of the 158 complaints regarding foreign interference, 100 were related to an article in a foreign publication featuring a party leader. Following a review of these complaints, it was concluded that there was no contravention of the Act, as it constituted editorial content.

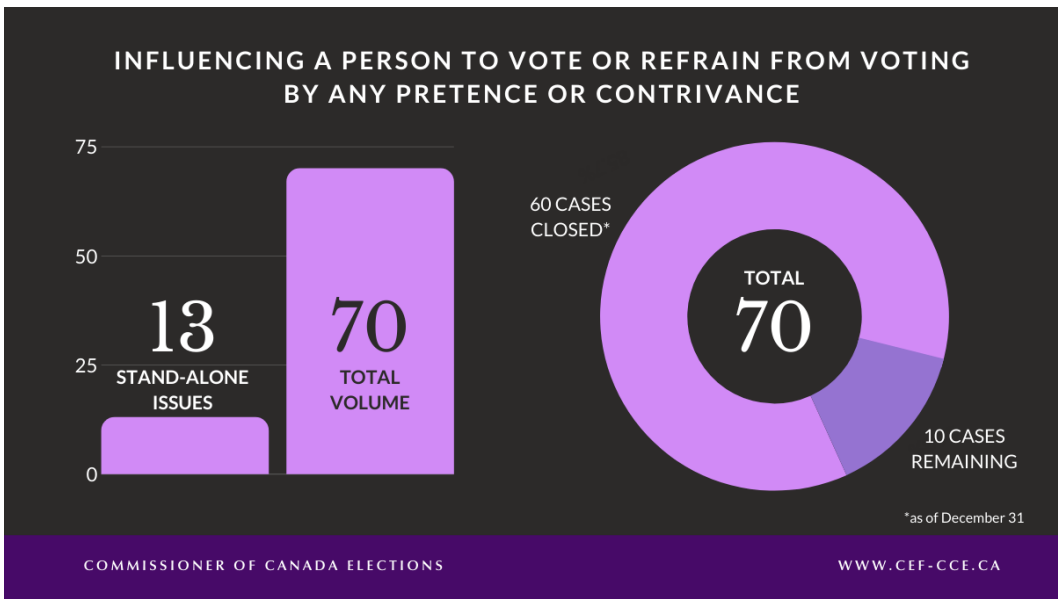


The Act requires that advertising contain an authorization or 'tag line' indicating the message is being transmitted with the consent of either the official agent for a particular candidate or the registered agent of the party. The Act does not stipulate how large the font must be or—in the case of a radio broadcast—how quickly the authorization may be spoken.

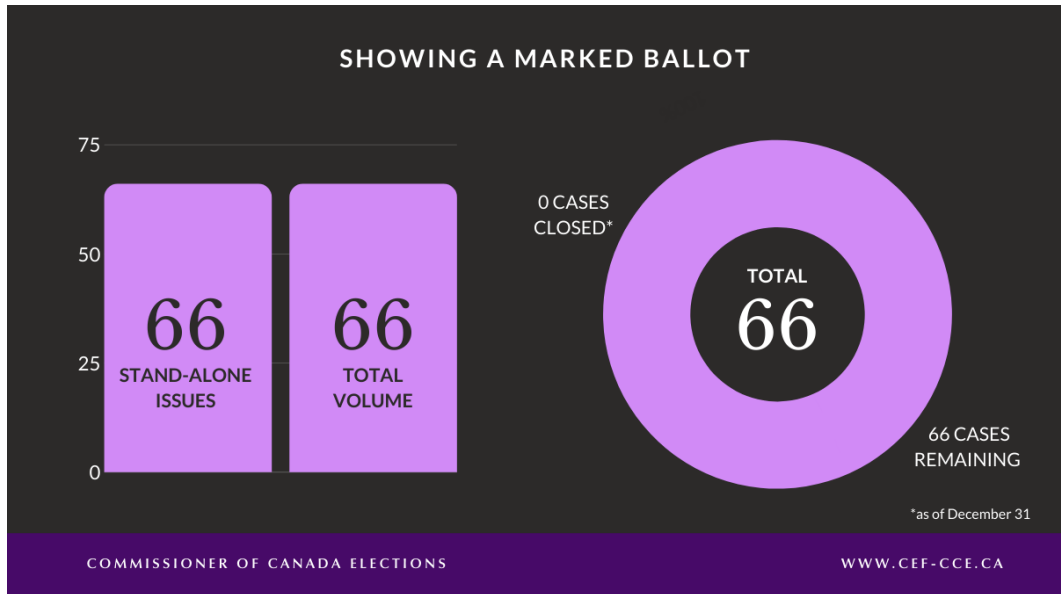
There were 106 complaints alleging election advertising that failed to contain an authorization statement. Many of these complaints were resolved informally during the campaign by communicating with the candidate or party; others were deemed to be unfounded as the authorization was present albeit difficult to read.



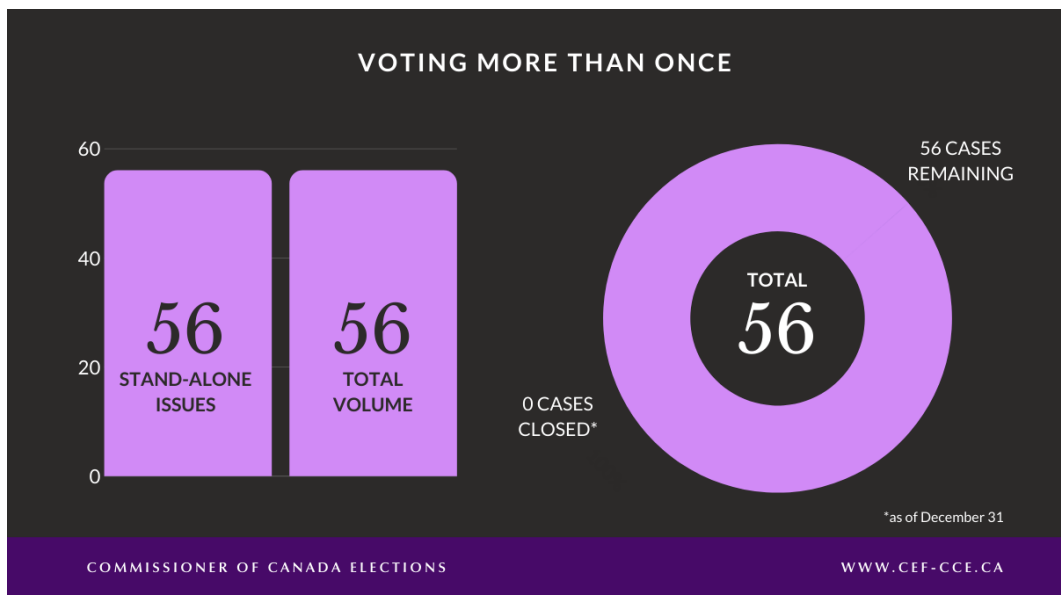
Under the Act, it is an offence to prevent or impair the transmission of an election advertising message. During the campaign period, the Office received 97 complaints related to interference with the transmission of election advertising, most of them relating to the vandalism or removal of signs.



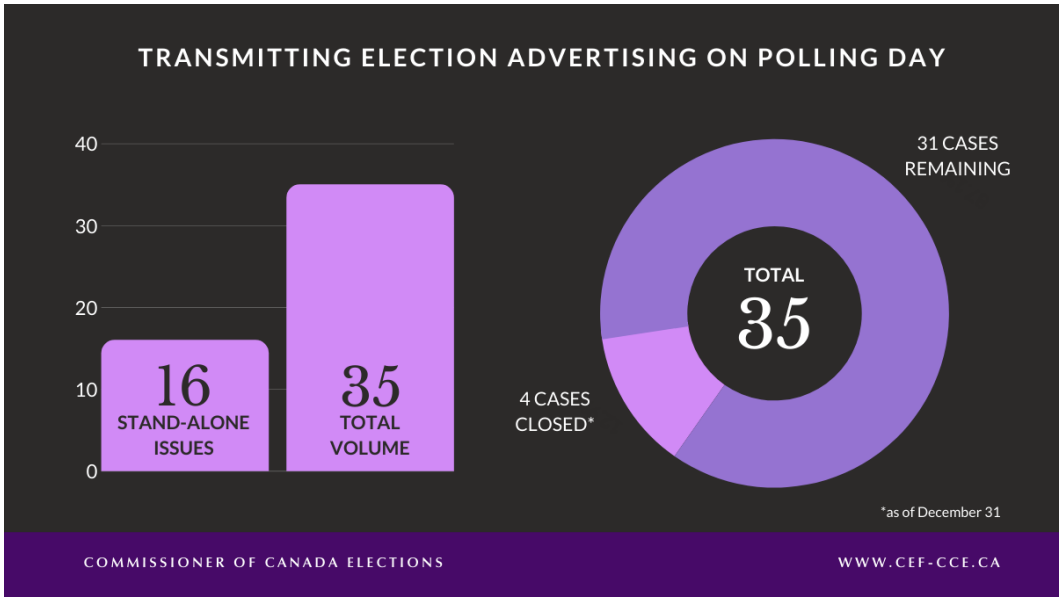
The CCE received 70 complaints regarding the possible influencing of a person to vote or refrain from voting by using a pretence or contrivance. Following a review of these complaints, an informal resolution was reached and all cases are now closed.



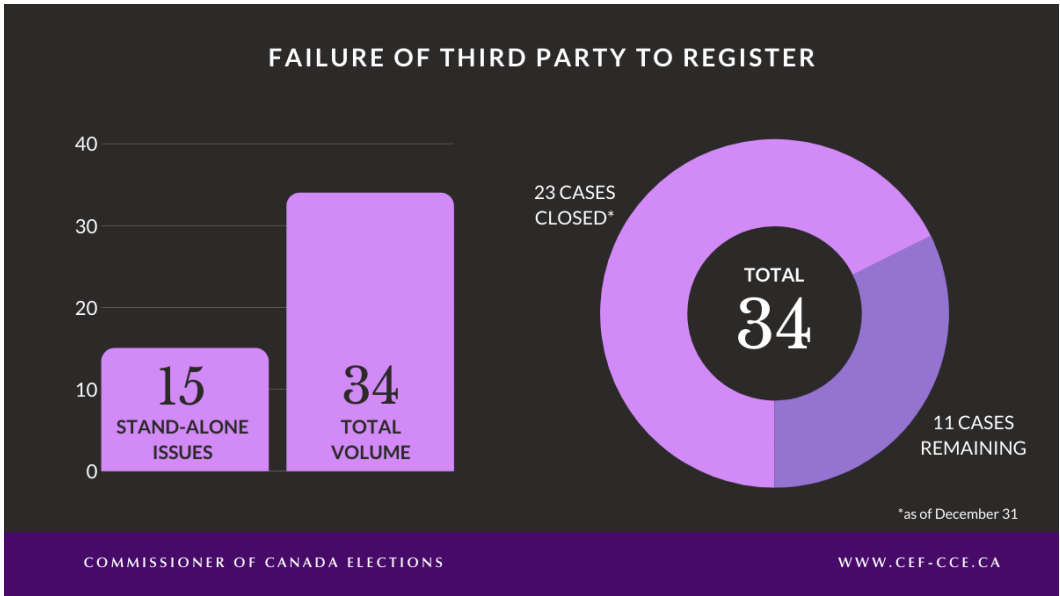
During the election period, the CCE received 66 complaints related to failure to maintain secrecy. Most of those were related to circumstances concerning electors posting pictures of their marked ballots on social media.



The CCE received 56 complaints regarding individuals voting more than once. Due to the administrative procedures surrounding the retrieval of electoral records, these files remain open. These delays are normal in the immediate post-election environment and it is expected that the CCE will receive the records required to complete its analysis of existing files in 2020-2021.



The Act prohibits the transmission, to the public, of election advertising on polling day. This prohibition applies to all advertising messages. Out of the 35 complaints regarding election advertising during the blackout period, 16 were related to candidates advertising on digital platforms. 31 of the 35 complaints were still under review on December 31, 2019.



Third party advertisers who spend \$500 or more during an election period are required to register with Elections Canada and their expenses are subject to spending limits. These limits are dependent on the length of the election period and third parties must produce reports detailing their expenses within four months of polling day.

Among the 34 complaints received by the CCE during both the pre-electoral and electoral periods, a number were unfounded, while others were quickly resolved through interventions by investigators.

Financial Tables (April 1, 2018 to December 31, 2019)

2018-2019			
	Appropriation	Unappropriated Funds - CRF	
	Indeterminate Positions	Other	Total
Salaries*	\$3,361,350.77**	\$2,519,277.24	\$5,880,628.01
Expenditures		\$3,159,806.02	\$3,159,806.02
			\$9,040,434.03

*Employee Benefits Plan (EPB) are included as part of unappropriated spending.

**The transfer of most employee pay files to the Office of the Chief Electoral Officer had not been completed at the end of the reporting period. As a result, the information for April 1, 2019 to December 31, 2019, represents estimated figures for salaries for indeterminate positions and EBPs. Salary recoveries for these positions are expected to be processed in the spring of 2020 allowing actual expenditures to be reflected in future reports.