

## SUMMARY INVESTIGATION REPORT ON ROBOCALLS

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An Investigation into Complaints of Nuisance Telephone Calls and of Telephone Calls Providing Incorrect Poll Location Information in Electoral Districts Other than Guelph During the 41st General Election of May 2011

APRIL 2014

Summary Investigation Report on Robocalls

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## Foreword

This report sets out the conclusions reached following my Office's investigation into what has become known as the "robocalls" affair, which arose in connection with the May 2011 federal general election.

The report describes the nature of the complaints received and, in broad terms, how the investigation was carried out. It also summarizes the evidence that was gathered. It touches only briefly on robocalls in the electoral district of Guelph, which are the subject of a separate investigation.

I have decided to issue a report on this matter principally because of the high level of interest it has generated among the public. I think it is important that Canadians be informed of what we did and what we found.

### Purpose and Result of the Investigation

The purpose of the investigation was to determine one thing: whether there was enough evidence to recommend to the Director of Public Prosecutions that charges be laid for violations of the *Canada Elections Act* in relation to nuisance calls or calls providing incorrect poll location information outside the electoral district of Guelph.

The conclusion I have reached is that the evidence uncovered in the investigation is not sufficient to give me reasonable grounds to believe that an offence was committed. As a result, I will not refer the matter to the Director of Public Prosecutions, the legal test for such a referral under subsection 511(1) of the Act not having been met.

### Difficulties in the Investigative Process

I would like to highlight two difficulties that my Office encountered during this investigation.

The first relates to the fact that, in the vast majority of the cases, complaints were made many months after the election. As a result of the passage of time, recollections had weakened and access to the relevant evidence had become more difficult.

This highlights how important it is that Canadians contact the Commissioner's Office quickly when they have reason to believe that their rights as electors are being interfered with. That way, not only will evidence be of better quality and more readily accessible, but it may also make possible an early intervention to stop abuses.

The second relates to the length of the investigation, evidenced by this report being issued three years after the events. There are several reasons why the investigation took so long, and the report describes them in some detail.

There is one I would emphasize. It is linked to the type of co-operation investigators received from the various people and entities involved. Though co-operation was generally good, there were several instances where, for example, simply arranging interviews took a long time (in some cases, months). There were also instances of outright refusal to co-operate.

This reinforces a point that I have made in my annual report and, more recently, elsewhere. The Commissioner should have the ability to apply to a court to compel testimony. Otherwise, investigations will continue to take time and, in some cases, a lot of time. Regrettably, without this tool, some investigations will simply abort because of our inability to get at the facts.

## **Independent Review**

In light of the conclusion arrived at and considering the significance of this file, I retained the services of an independent expert to review the investigation in its entirety. The expert was mandated to report to me on the quality and the thoroughness of the investigation and on the validity of the conclusions reached.

The Honourable Louise Charron, a former justice of the Supreme Court of Canada, performed this review. As a former Crown prosecutor and a recognized expert in criminal law, Ms. Charron was particularly well placed to undertake such work.

Ms. Charron's report is published in the Appendix. It sets out her full mandate, describes the access she was given and explains how she performed her review. It also contains her observations and her conclusions, which strongly support both the overall quality of the work done by investigators and the conclusion reached that there are no grounds to believe that an offence under the Act was committed.

Yves Côté, QC  
Commissioner of Canada Elections  
April 2014

## Executive Summary

1. During the course of the 41st federal general election, held from March 26 to May 2, 2011, the Commissioner of Canada Elections (the Commissioner) received approximately 100 complaints from electors who reported receiving nuisance telephone calls or calls providing them with incorrect poll location information. This number included complaints in Guelph concerning incorrect poll location calls, which are the subject of a separate investigation.
2. Beginning April 29, 2011, individual returning officers<sup>1</sup> for some electoral districts also reported receiving a limited number of elector complaints of calls providing incorrect poll location information. At the time, returning officers dealt with these instances as errors, taking the matter up directly with individual local campaigns or through Field Readiness and Event Management at Elections Canada.<sup>2</sup>
3. The Commissioner initiated an investigation into allegations of nuisance calls and calls providing incorrect poll locations, other than those already under investigation in Guelph, to determine whether there was enough evidence to cause him to believe, based on reasonable grounds, that one or more persons committed an offence or offences under the *Canada Elections Act* (the Act).
4. After February 23, 2012, when media reports began describing the Commissioner's investigation in Guelph, numerous additional complaints of inappropriate calls to electors were received. Complainants recalled both automated and live calls, all of which have since become known as "robocalls." Some complainants reported calls from persons claiming to be calling from Elections Canada, advising that their poll location had changed. Others complained of calls that were allegedly rude, made at late hours or involved personation.
5. The investigation was extensive, but certain factual elements could not be uncovered. In some cases, investigators were able to confirm that complainants received a political call but found no additional evidence of its content. In most cases, no evidence was found to confirm whether or not a complainant was called.
6. From the investigation, it is clear that the current elector discontent about political calling arose in large part from the decision made by a number of national and local campaigns to provide electors with information on their specific poll locations during get-out-the-vote (GOTV) calls. Elections Canada is the only authoritative source of information on poll locations.
7. Ultimately, investigators have been able to determine that incorrect poll locations were provided to some electors, and that some nuisance calls occurred. However, the evidence does not establish that calls were made a) with the intention of preventing or attempting to prevent an elector from voting, or b) for the purpose of inducing an elector by some pretence or contrivance to vote or not vote, or to vote or not vote for a particular candidate. This proof of

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<sup>1</sup> Returning officers are the individuals responsible for the administration of the electoral process in each of the 308 electoral districts across Canada.

<sup>2</sup> The Field Readiness and Event Management unit is responsible for the administration of an electoral event.

intent is necessary for the Commissioner to consider recommending to the Director of Public Prosecutions that a prosecution under the Act be initiated. As a result, the Commissioner found insufficient grounds to recommend that any charges be laid.

8. It is useful to note, moreover, that the data gathered in the investigation does not lend support to the existence of a conspiracy or conspiracies to interfere with the voting process (see, for example, sections 1.3 and 4.3).

## Introduction

9. This report outlines the findings of the Commissioner's investigation into complaints of nuisance telephone calls and calls providing incorrect poll location information in electoral districts other than Guelph during the 41st general election, held from March 26 to May 2, 2011.
10. The Commissioner is the independent officer responsible for ensuring compliance with and enforcement of the Act. As such, he has the authority to initiate investigations of possible contraventions of the Act, which is what he did here.
11. If the Commissioner believes on reasonable grounds that an offence has been committed, he may refer the matter to the Director of Public Prosecutions in accordance with section 511 of the Act. The Director of Public Prosecutions has sole authority under the Act to decide whether charges will be laid.
12. Elector misdirection in Guelph was the subject of a separate investigation by the Commissioner. One charge under the Act resulting from the Guelph investigation is now before the court in Guelph.<sup>3</sup>
13. Although these events of the 2011 general election raise a number of other issues, many of which were mentioned in the Chief Electoral Officer's report of March 26, 2013, *Preventing Deceptive Communications with Electors*, they were not the primary concern of this investigation. The purpose of the present investigation was a narrower one – that is, to determine whether there was enough evidence to recommend to the Director of Public Prosecutions that he consider initiating a prosecution for violations of the Act in relation to nuisance calls or calls giving electors incorrect poll locations outside of Guelph.

### 1. Complaints

14. The Commissioner received elector complaints of nuisance calls and calls providing incorrect poll locations in three ways: directly, through Elections Canada, and through the third parties to whom they were originally addressed (such as members of Parliament). A small number of complaints were received during the election campaign or immediately thereafter. The bulk of complaints, however, were filed on and after February 23, 2012, when the media began reporting on the Guelph investigation. Complaints continued to flow in over a considerable period of time, well into 2013.
15. The volume of complaints and of general communications about inappropriate calling of electors was unprecedented, and each contact required careful review. For ease of reference, this report distinguishes between complaints and general communications, as well as between the complaints arising in Guelph and elsewhere.

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<sup>3</sup> Some Guelph electors, however, did receive nuisance and misdirection calls unrelated to the matter currently pending before the court. As well, a small number of the Guelph misdirection calls were in fact sent to electors living outside of Guelph.



## 1.1 Election Period Complaints

16. During the election period, a small number of electors submitted complaints to the Commissioner concerning nuisance calls. These varied in type, from complaints of simply being called at all, to complaints of rudeness, repetitive calling, late calling, and calls in which the elector doubted the truth of the caller's claim to represent a particular party.
17. As well, between April 29 and May 2, 2011 (election day), a small number of electors complained to their returning officers of receiving phone calls directing them to an incorrect poll location. Returning officers from 11 electoral districts reported some of these calls to Field Readiness and Event Management at Elections Canada. According to the returning officers, the reported calls claimed to be made on behalf of Conservative Party campaigns, or provided calling numbers that, when called, led to Conservative Party voice mailboxes.
18. On May 6, 2011, Field Readiness and Event Management asked returning officers for each of the 308 electoral districts to report any information they had concerning electors who had been directed to an incorrect poll location. Their responses identified 49 complaints from approximately 40 electoral districts, thinly spread across Canada. Notably, several returning officers – including in Guelph – reported “calls” or “many calls” from electors complaining of incorrect poll location calls, without being able to provide an actual number of electors who complained. Returning officers identified few complainants by name.

## 1.2 Investigation of the Guelph Complaints

19. The information that follows is already publicly known and is summarized here to provide context for the report. It is not intended to prejudge the outcome of the Guelph prosecution.
20. On May 2, 2011, and in the days following election day, electors in Guelph reported receiving automated calls advising them that, due to a higher than anticipated voter turnout, their poll location had been changed to a downtown mall. The Commissioner began investigating these reports in May 2011. While the number of known Guelph complainants grew as the investigation was progressing, that number was fewer than 100 until the events of February 23, 2012, described below.
21. With the allegations in Guelph, which have not yet been proven in court, the common element to almost all complaints was that of a recorded bilingual call purporting to be from Elections Canada, advising individual electors that their poll had moved. In many cases, the electors noted the same calling number.
22. A single individual has been charged with an offence under paragraph 281(g) of the Act, and the matter was pending before the court at the time this report was completed. The broader investigation, which is the subject of the present report, did not reinvestigate these calls.

### 1.3 Post-Election Complaints (February 23, 2012 and Onward)

23. The Chief Electoral Officer's March 2013 report, *Preventing Deceptive Communications with Electors*, describes the extensive media coverage of the Guelph investigation. That coverage began on February 23, 2012, and was based on disclosure of court documents relating to the investigation, namely Information to Obtain (ITO) documents. The articles were repeated and expanded at a significant rate.<sup>4</sup> As this was happening, the number of communications received by the Commissioner rose exponentially in apparent response.
24. Figure 1 shows the correlation between the salience of the issue in the print media in 2012 and the number of complainants making complaints to the Commissioner.

**Figure 1**

Media Coverage and Number of Complainants		
Time Period	Number of Print Media Articles	Number of Complainants
January 1 to February 22, 2012	1	14
February 23 to March 31, 2012	2,360	1,273
April 1 to December 31, 2012	1,236	216

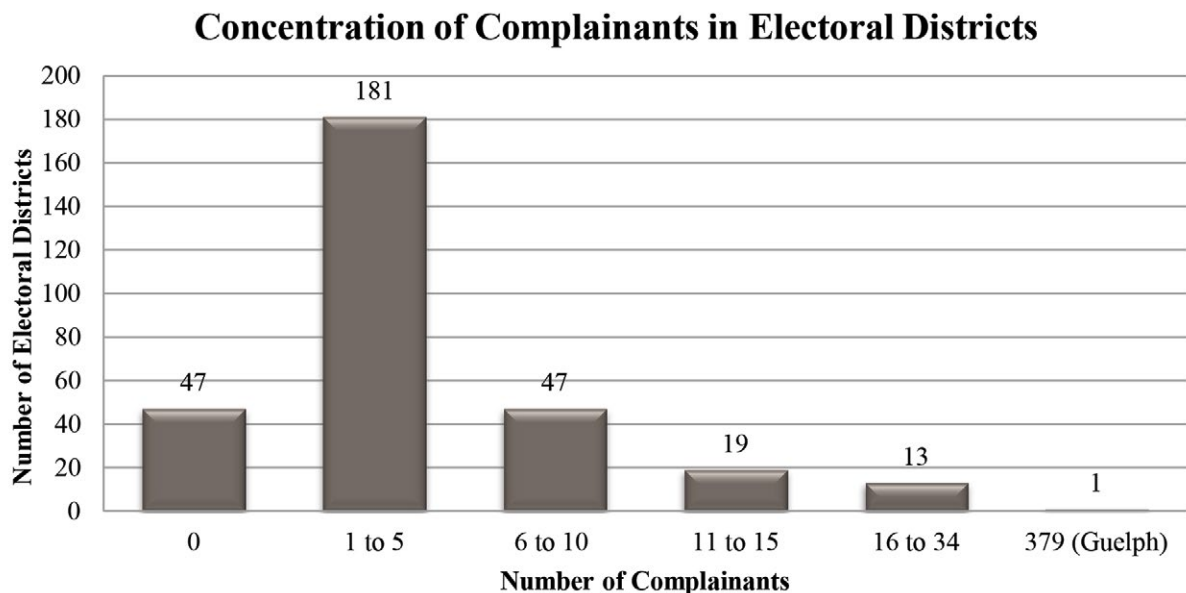
25. The Commissioner received over 40,000 general communications and complaints about “robocalls.”<sup>5</sup> Most were from people who said they had not actually received an inappropriate call, but wished to express their concern that these kinds of calls had taken place. In all, 39,350 were received via an online form sponsored by an organization called Leadnow. Electors were encouraged by Leadnow to complete the form (which had a prefilled message that could be revised) and send it to a number of intended recipients, including the Commissioner. The vast majority of those 39,350 communications seemed to simply reproduce the form's original wording.
26. Investigators examined each of the more than 40,000 communications to separate actual complaints from general communications. Ultimately, 96% fell into the latter category, where Canadians expressed their profound dissatisfaction with inappropriate calls without providing any specific information about the commission of a possible offence. In the context of the investigation into potential breaches of the Act, no further action could be taken respecting these general communications because they did not disclose any possible offence. For that reason, little more will be said about them in this report.

<sup>4</sup> The February 23, 2012, article appeared in a number of newspapers under the headline “Elections Canada investigating robocalls that misled voters.” The story began with the statement that Elections Canada had traced the misleading poll call in Guelph to an Edmonton voice broadcaster that worked for the Conservative Party. The story referred to Guelph being one of 18 ridings where voters were targeted by harassing or deceptive messages to Liberal supporters. Most of the February 23 article described the Guelph investigation, based on ITO information and media interviews of individuals named in the ITO.

<sup>5</sup> The use of robocalls as a form of political communication is not in itself illegal, contrary to what many seem to believe. See paragraph 44 below for additional information about the Canadian Radio-television and Telecommunications Commission rules concerning automated calls.

27. For the purpose of the investigation, a complaint was defined as information about an allegation of an elector having actually received a call, pertaining to the 41st general election, that could constitute a breach of the Act. Complaints were categorized as one of two types: reports of nuisance calls, or reports of calls providing electors with incorrect poll locations. Through this process, for example, investigators determined that 158 of the 39,350 communications originating with Leadnow could be classified as complaints.
28. In total, across the election and post-election periods, 1,726 complainants representing 261 electoral districts, including Guelph, filed a total of 2,448 complaints. Of these complaints, 1,207 related to calls allegedly providing electors with incorrect poll locations and 1,241 related to alleged nuisance calls. In most cases, the complaints referred to a call that a complainant had received at least nine months earlier. It is therefore not surprising that relatively few complainants could be specific about the time or date they received the call, or about its content.
29. With the exception of Guelph, complainants were thinly scattered geographically. Figure 2 shows that in 74% of electoral districts (i.e. 228 of 308 electoral districts) there were 5 complainants or fewer, and in 89% of electoral districts (i.e. 275 of 308) there were 10 complainants or fewer. The concentration of complainants in any single electoral district was substantially lower, by a very wide margin, than in Guelph. At 379 complainants, Guelph was the only electoral district with more than 34 complainants.

**Figure 2**



## 2. The Legal Context

30. In order to understand the steps taken in the investigation of the complaints and the conclusions reached, it is necessary to provide a brief overview of some of the rules and practices that currently apply to the conduct of elections.

### 2.1 Voter Registration and Lists of Electors

31. Elections Canada maintains the National Register of Electors, which is a permanent, continually updated database listing Canadians registered as eligible voters. In 2011 the Register contained approximately 24 million electors. The Register contains the name, address, gender and date of birth of electors, their electoral district number, the polling division to which they are assigned, as well as a unique personal identifier to help track changes to each elector's record.
32. Elections Canada informed investigators that about 15% to 17% of elector information changes each year because of factors such as change of residence, attainment of the voting age, death, and new Canadians becoming eligible to vote. For instance, approximately 3 million Canadians relocate every year. Some of these moves occur during election periods or shortly before. Elector information is updated continually in partnership with a number of authoritative sources, as authorized by law. Electors can opt out of being listed in the Register at any time; if they do so, they must establish their eligibility to vote during a campaign period.
33. The Register is used to create quarterly and annual lists of electors, as well as preliminary lists of electors at the beginning of an electoral event. Copies of these lists are provided to political parties and candidates for the purpose of communicating with electors, as required by the Act.<sup>6</sup> Electors' dates of birth are not included on the lists that go to the parties or candidates, nor are telephone numbers.
34. During the course of an election campaign, the lists of electors are revised at the electoral district level as eligible voters come forward to register, as planned revision activities occur, and as electors update their information at advance or election day polls. Returning officers provide local campaigns (but not national parties) with three successively revised sets of lists during the course of a campaign.<sup>7</sup> During the revision period for the 41st general election, for example, the lists were revised with 732,234 address updates.
35. Consequently, and very importantly, the content of the national voters list constantly evolves during an election campaign, and its administration is decentralized to give returning officers control over the content for their electoral district.

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<sup>6</sup> See s. 110 of the Act.

<sup>7</sup> Respectively, these are known as the "updated preliminary lists of electors," the "revised lists of electors" and the "official lists of electors." The "final lists of electors" are completed after election day.

## 2.2 Elections Canada's Communication of Poll Locations

36. Each electoral district is divided into a number of geographic areas called polling divisions, each comprising at least 250 electors. Generally, there is one polling station, or ballot box, for every polling division. Up to 15 polling stations may be grouped together in a central polling place. Once an election is called, returning officers secure space for polling stations, often in the same location as used in previous elections, but situations can arise during the election period that make changes of location necessary.<sup>8</sup>
37. Returning officers at the electoral district level notify electors of their poll location by means of a voter information card (VIC), prepared and mailed to each registered elector beginning on the 24th day before election day. Each VIC indicates the address of the elector's polling site, voting hours, dates of advance and election day polls, and a telephone number to call for further information.
38. If it becomes necessary to change the location of a polling site, the returning officer will mail amended VICs to affected electors if time allows. If time does not allow, they will use local media and election workers posted at the previously announced site to advise electors of any change. Elections Canada does not call electors to inform them of changes in poll locations. Subject to very few exceptions, Elections Canada does not have the telephone numbers of electors. The numbers it does have are excluded from the National Register of Electors or any list of electors, and are therefore not communicated to any political parties or candidates.
39. The Act requires that returning officers in electoral districts inform local candidates of the location of polling sites and of any changes. This is because the Act authorizes candidates or their representatives to be present at polling stations and at the counting of votes.<sup>9</sup> Traditionally, it has been up to the local candidates to communicate polling site information to their respective parties at the national level. The location of polling sites can also be retrieved individually on the Elections Canada website in a search by household address.
40. Following the request of a party during the 41st general election, Elections Canada provided initial polling site information to all registered political parties. In doing so, Elections Canada included several caveats and restrictions, stating that:
  - the data was a “static representation of a database that may change”;
  - “due to unforeseen circumstances a returning officer may have to change a polling location or redirect a number of electors to another location, and the database would therefore not be accurate”;
  - “the local Elections Canada office, Elections Canada's Voter Information Service and the VIC sent to each registered elector are the authoritative sources of information for voting location addresses”; and
  - the database was to be used for internal purposes only, and was not to be “used to inform voters of their voting locations via mail-outs or other forms of communications.”

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<sup>8</sup> Such a situation might arise, for example, if a poll location has been rendered inaccessible because of a fire or flood.

<sup>9</sup> See ss. 135-140 and 283-291 of the Act.

## 2.3 Political Parties' Telephone Communication with Electors

41. Freedom of expression is entrenched in the *Canadian Charter of Rights and Freedoms*, as are the democratic rights of citizens, including the right to vote. Communications with electors by political entities are essential to the democratic process. To facilitate communication, Parliament has included provisions in the Act requiring the transmittal of elector information to parties, candidates and members of Parliament through lists of electors, containing the name and address of each elector.<sup>10</sup> While parties communicate with electors in a variety of ways, this investigation is only concerned with telephone communications.
42. Each major party maintains a database of electors. A central element of party databases consists of information that Elections Canada must provide about electors, which parties may use for communicating with them. Investigators were told that each of the major parties has taken steps to ensure their elector databases are password-protected and may be accessed only by individuals authorized to do so by a central party authority, with access limited to that portion of the database relevant to their work.
43. Investigators were also told that parties match elector names with commercially available telephone lists and call electors in order to identify their supporters. This is known as a “voter ID” call. Later in the election period, parties make “get-out-the-vote” (GOTV) calls, intended to maximize their voter turnout. GOTV calls are normally only made to electors whom the respective parties believe to be their supporters, based on the information collected in their elector databases. In the course of the various interviews conducted by investigators, it became clear that many participants in the campaign process see voter ID and GOTV efforts as essential to success.
44. In the 2011 election, parties and many local campaigns made calls to electors using volunteers, third party commercial telemarketers or both. Such calling is to be conducted in accordance with rules issued by the Canadian Radio-television and Telecommunications Commission (CRTC). These rules include various requirements, such as adhering to calling hours, using a clear identification message, and providing a number at which a representative of the caller can be reached, which is often accomplished through a call display number. This number need not be the actual calling number, but one that allows the call recipient to follow up on the call received.<sup>11</sup> The CRTC is responsible for the enforcement of these rules.

## 2.4 Prohibitions Under the *Canada Elections Act*

45. Under section 110 of the Act, parties are entitled to use voters list information for the purpose of communicating with electors and for soliciting contributions. They are, however, prohibited from knowingly using the personal information of electors for a purpose other than one in accordance with section 110.<sup>12</sup>

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<sup>10</sup> See ss. 45, 94, 93(1.1) and 107(3) of the Act.

<sup>11</sup> CRTC fact sheet: “Key facts on telemarketing rules for political candidates, parties and organizations.” [www.crtc.gc.ca/eng/info\\_sht/t1041.htm](http://www.crtc.gc.ca/eng/info_sht/t1041.htm).

<sup>12</sup> See para. 111(f) of the Act.

46. The Act contains specific provisions that are meant to protect electors from inappropriate practices:
- 281.** No person shall, inside or outside Canada,  
...  
(g) wilfully prevent or endeavour to prevent an elector from voting at an election;
- 482.** Every person is guilty of an offence who  
...  
(b) by any pretence or contrivance, including by representing that the ballot or the manner of voting at an election is not secret, induces a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate at an election.
47. For these provisions to apply to a call allegedly providing an elector with incorrect poll location information, it is not sufficient to simply prove the content of the call and the identity of the caller. It is also necessary to obtain sufficient evidence to prove that the call was made a) with the intention of preventing or attempting to prevent an elector from voting, or b) for the purpose of inducing an elector by some pretence or contrivance to vote or not vote, or to vote or not vote for a particular candidate. The burden of proof required in such matters is the criminal standard of proof beyond a reasonable doubt.
48. The same intent must be proved in order to apply these provisions to a nuisance call. For example, a call made repetitiously, accompanied by false claims to be representing an opponent party, might amount to an offence should proof of the intent to interfere with an elector's vote be discovered. To transmit false or mistaken information without the requisite intent, however objectionable it may be, is not, in itself, an offence under the Act.
49. Certain provisions of the *Criminal Code* may also apply in limited circumstances:
- Harassing or misleading phone calls, subsections 372(1) and (3) – It is an offence to convey by telephone information known to be false “with intent to injure or alarm any person.” It is unclear whether a court would consider that affecting an opponent's chance of electoral success would constitute an “injury.” It is also an offence to make or cause to be made repeated telephone calls “with intent to harass” the recipient.
  - Personation, section 403 – It is an offence to fraudulently personate another person with intent to achieve any of four specified purposes, including “to cause disadvantage to ... another person.” Current case law is such that the personation must be of a real person, and not of an entity, such as Elections Canada.

## 2.5 Investigative Challenges

50. Before describing the investigatory steps taken, it is important to explain how aspects of the existing legal framework posed challenges during the course of this investigation. These challenges are more fully set out in the Chief Electoral Officer's March 2013 report, *Preventing Deceptive Communications with Electors*, to which reference was made earlier, but will be summarized here.



51. First, the lack of contractual information between local or national campaigns and telemarketers employed to call electors had a significant impact on the investigators' search for the source of the impugned calls. The challenge lies in the limited information that must be provided to Elections Canada under the Act. Currently, party expenses are grouped in broad categories and parties do not have to submit supporting documents. Candidates are required to submit supporting documents; however, the purpose for which a firm was retained, the phone numbers called, and the text of any calls made is not reported.
52. Second, the *Criminal Code* places certain limitations on the means of obtaining information and evidence. Investigations under the Act must meet applicable standards of acquiring evidence. The threshold to obtain a production order, described later in this report, means that any investigation must have made significant progress before a production order can be applied for and obtained. Another limitation is the inability to compel oral evidence from potential witnesses. In the present investigation, these limitations meant that, after a certain point, investigators had to rely on the voluntary participation of any concerned entity or person to obtain relevant information.
53. Third, there are no binding industry standards for the creation and retention of records by telephone service providers and telemarketing companies. Only a minority of the former keep records unless there is a financial interest in doing so (such as outstanding long distance charges), and the latter have inconsistent record keeping policies. In the present investigation, telephone service providers gave varied responses when asked for subscriber information. Some service providers were unwilling to provide information about incoming calls made to complainant subscribers. They cited a concern with third party privacy interests of the incoming callers under the *Personal Information Protection and Electronic Documents Act*.
54. In addition to challenges posed by the existing legal framework, other challenges relate to the current state of technology. This includes, for example, the present inability to counter technological means that callers may use to prevent being traced or identified. The widespread use of Voice over Internet Protocol (VoIP) allows callers to enter any calling number they wish, greatly limiting, if not eliminating entirely, the ability to trace a VoIP call back to its actual source.
55. Finally, two other factors significantly exacerbated the difficulties encountered during the course of the investigation:
  - The passage of time – nine months or more – from the reported events and the receipt of most complaints resulted in memory loss, data loss or both.
  - The extensive media coverage, which seemingly acted as a catalyst for complainants to report, raised issues of potential interference with recall.



### 3. The Investigation

#### 3.1 Information Provided by the Complainants

56. As indicated above, investigators examined each of the more than 40,000 communications received by the Commissioner to distinguish actual complaints from the more general expressions of elector concern. In total, 1,726 complainants made 2,448 complaints (some reporting both incorrect poll location calls and nuisance calls). Investigators attempted to contact each and every complainant, at times repeatedly, in order to ensure the collection of all possible relevant details: further information on the complainant's identity; his or her telephone service provider; the content, time of day and date of the call; and any other relevant information that might be available.
57. It should be emphasized that, at all times, investigators assumed the good faith of each elector in submitting a complaint. In most instances, however, complainants could provide only vague and incomplete information. Only a limited amount of the information gathered could be used as evidence. Each complainant had typically engaged briefly with the caller in question months before. Few could provide an incoming calling number, and some could not identify their own telephone service provider. Only two were able to provide a recording of the call, while another provided a transcript of the call.
58. Many electors said their complaints were prompted by media accounts, raising the significant difficulty of ascertaining whether or not their subsequent recollection was influenced by the media stories. The investigators could not and did not rely on unsubstantiated information reported in the media that could not be independently verified, nor did they focus on any particular political party.
59. It is worth noting that, of the three calls for which complainants provided a recording or transcript, investigators found the content of two to be innocuous after reviewing the evidence provided. The remaining call was an instance of incorrect poll information sent to a party supporter. On further investigation, it was found to have likely come from the same party's local campaign. It would be unreasonable to infer from this specific evidence that the caller intended to prevent the elector from voting.
60. Finally, a review was conducted of those electoral districts having 15 or more complainants, which represented 667 (39%) of the 1,726 complainants. In those districts, 6 (0.8%) of the 667 complainants told investigators that they did not vote as a result of the calls in question.
61. In examining investigators' contact with the complainants, it may be useful to highlight the following numbers. Of 1,726 complainants:
  - 163 (9%) could not be reached despite repeated attempts by investigators to do so;
  - 1,556 (90%) could not provide the incoming calling number of the impugned call;
  - 170 (10%) could provide what they believed to be the calling number;
  - 273 (16%) could not identify their own telephone service provider.

62. Given that, in most cases, recollection of a call received months earlier was the only available evidence, it was essential as a matter of good investigative practice to carefully examine the information provided. To more objectively assess recollections, particularly in the context of extensive media reports, investigators consulted a subject matter expert in applied memory research. The expert advised caution on the basis that, among other things, a) delay from the time an event is experienced and then recollected may influence recall by allowing details to be misremembered or filled in, and b) details of media accounts could come to be incorporated in a recollection.

## **3.2 Follow-up on Information Provided by Complainants**

### **3.2.1 Source of Incoming Calls**

63. As noted earlier, 170 complainants provided investigators with a calling number for the alleged inappropriate calls they were reporting. Once duplicate numbers were accounted for, investigators were left with 96 unique calling numbers.
64. Some of these numbers were confirmed to be those of known political telemarketers, while others were linked to commercial telemarketers who were not engaged in political calling. Using link analysis software, investigators determined that the largest number of calls to complainants from one reported number was 13 calls. That incoming number was linked not to a political entity or someone acting on its behalf, but to a credit card phishing scam.<sup>13</sup>

### **3.2.2 Complainants' Telephone Service Providers**

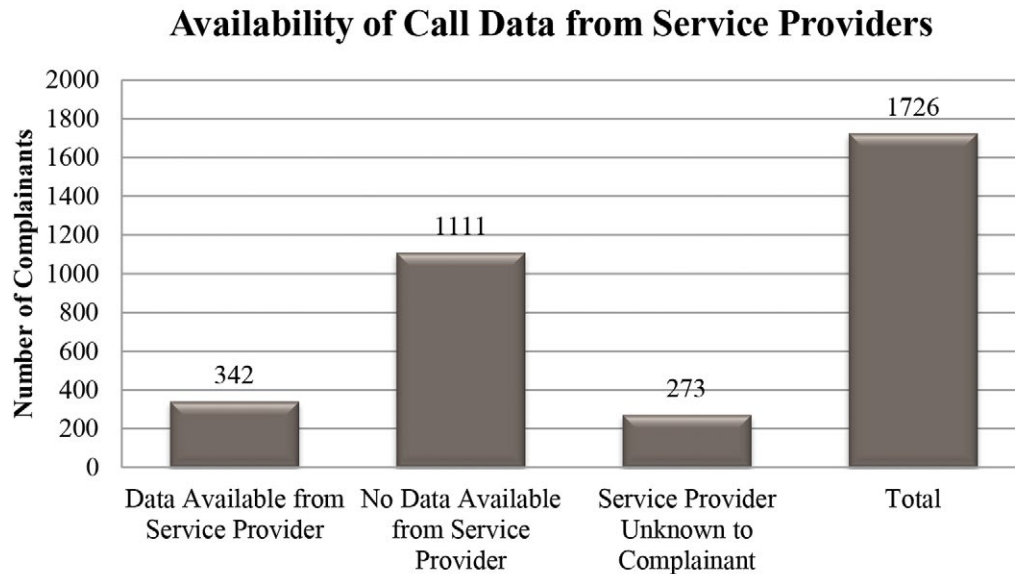
65. In an attempt to identify the source of the impugned calls, investigators sought complainant telephone records from their telephone service providers by way of judicially authorized production orders or, in a few cases, through voluntary co-operation from service providers on the consent of complainants.
66. There is no legal requirement for a telephone service provider to retain call records. Service providers retain call records for varying amounts of time if the record relates to calls for which billing information is required. Otherwise, many do not retain records at all.
67. Only a few service providers, particularly those using digital data capture such as Internet logs, retained some data and were able to retrieve it for investigators on the basis of a production order. A majority of complainants subscribed to service providers, such as Bell Canada and Telus, that did not retain call records except for those having a financial component. This had no application in the case of complainant subscribers. In addition, a rather large number of complainants (273, as noted above) were unable to identify their own service provider. Finally, even where data was available, such as with Rogers, Shaw and Videotron, the service providers could not guarantee the data was complete, or that its integrity had not been degraded through the archiving process.

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<sup>13</sup> A phishing scam over the telephone is typically one in which the caller purports to be calling on behalf of a legitimate company, but which is really intended to trick recipients into providing personal, financial or password data.

68. Figure 3 shows that call data was available for 342 complainants (20%) and unavailable for the remaining 1,384 (80%).

**Figure 3**



69. In most cases where call records were retained, recipient consent for the release of records for their own number was not sufficient authorization for most service providers. They would only respond to a judicial order.

### 3.2.3 Production Orders

70. Production orders are judicial orders obtained under the *Criminal Code* requiring third parties – that is, a person or entity that is not under investigation, such as telephone service providers – to produce specific documents or data. To obtain an order, an investigator must first swear an affidavit, known as an Information to Obtain (ITO), before a justice. The ITO must demonstrate an investigator’s reasonable grounds to believe that:
- an offence has been or is suspected to have been committed;
  - the data will provide evidence respecting the commission of the offence; and
  - the subject of the order has possession or control of the documents or data being sought.
71. Investigators sought production orders for the complainants’ telephone records in the relevant period as the sole means of identifying with certainty the telephone numbers of incoming calls. A production order could only be sought, however, for telephone records of complainants whose report was detailed enough to provide reasonable grounds to believe an offence is suspected to have occurred, that the data sought would afford evidence respecting the commission of an offence, and where there were reasonable grounds to believe that the service provider still retained a record.

72. Of the 342 complainants for whom call records existed, 129 had provided investigators with enough detail to establish reasonable grounds to seek a production order by the time in the investigatory process that production orders were being sought. Among the remaining 213 complainants for whom call records existed, a handful had alleged conduct for which call records were unnecessary – for example, several alleged misconduct relating to a provincial election. Most of the remaining complainants, however, had submitted complaints after the initial step of the production order process was underway (September 2012). Investigators intended to seek the records for these latter complaints in subsequent production orders.
73. Production orders were obtained for records from Rogers, Shaw and Videotron. Together, they provided records of 6,051 incoming calls received by the 129 complainants named in the production orders. Investigators determined that these calls originated from 1,597 different numbers. Each number was matched to a subscriber where possible. Some service providers gave subscriber information, but others refused to confirm subscribers without a production order. Some numbers originated with US service providers, all of whom similarly refused to co-operate. In the end, subscriber information for incoming calls was obtained for 949 numbers and could not be obtained for 648 numbers. Each number was also checked against political telemarketers' call log data, numbers known to have been used by political entities, and the CRTC and Canadian Anti-Fraud Centre databases of suspect numbers.
74. Of the 129 complainants whose call records were obtained by production order, political calls could be confirmed in some instances, but, in the majority of cases, not the call content. Of these calls, not all were determined to be problematic.<sup>14</sup> In some instances the call content retrieved from voice recordings was inconsistent with the allegations made by complainants.
75. Overall, no discernible pattern of misdirection, such as a single predominant calling number or constellation of predominant calling numbers, was noted that would suggest a potential breach of the Act. Investigators were able to establish that several political calls were directed to an elector living outside the electoral district targeted by the call, and they uncovered instances of multiple calls to the same elector. As well, investigators were able to confirm the content of one call, found in the complainant's call records, that provided incorrect poll location information. In this last case, however, investigators found no evidence that the call was intended to interfere with the elector's right to vote.
76. The analysis of the production order results led investigators to conclude that reasonable grounds to believe that an offence had been committed no longer existed in respect of the 129 complainants. A review of the information from the 213 complainants whose service providers retained records determined that the nature of their complaints was very similar to that of the initial 129 complainants, and did not provide enough new information to provide reasonable grounds to seek additional production orders.
77. This meant that it was no longer possible to seek further production orders or search warrants; that avenue had come to an end and could not be pursued further. The inability to access the call records of the 213 additional complainants for whom call records existed, but whose complaints came too late to be included in the initial ITOs, meant that some complainant

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<sup>14</sup> Political calls were confirmed, and in some cases their content determined, using database records of several organizations. This included voice recordings from the telemarketer Responsive Marketing Group, about which more will be said later in this report.

reports could not be checked against concrete telephone records. This made reliance on the co-operation of political parties and telemarketers even more important.

### **3.3 Follow-up with Political Entities, Their Telemarketers and Other Relevant Actors**

78. A significant amount of investigative effort and time was used in attempting to obtain the co-operation of individuals, political parties, telemarketers and telephone service providers. Those who agreed to co-operate sometimes took considerable time to come to that decision or to schedule a response to investigators' requests for meetings; in some cases, they declined to co-operate fully. Some telemarketers and telephone service providers refused outright to co-operate.
79. Investigators conducted over 65 extended interviews with various actors: individuals (some more than once) from each of the major parties, participants in local campaigns, telephone service providers, telemarketing companies and Elections Canada staff. As indicated above, investigators analyzed available data using link analysis software and consulted with subject matter experts in telephony, statistics and memory. Extensive and sophisticated spreadsheets were used to identify, organize and regularly compare each piece of data.

### **3.4 Calls Made on Behalf of Political Entities**

80. Each of the major parties used telemarketing companies to make live or automated calls to electors. In some cases, calls were also made directly by campaign volunteers. Call processes varied by party.
81. At the national level, the Conservative Party, using data from its Constituent Information Management System (CIMS) database, called through two primary telemarketing companies: Responsive Marketing Group (RMG) for live calls, and RackNine for automated calls. Individual candidate campaigns used a variety of telemarketers. For its part, the Liberal Party used its Liberalist database and called electors through two telemarketing companies, Prime Contact and First Contact, while individual candidate campaigns used several telemarketers. The New Democratic Party used its NDP Vote database and called through one telemarketer, Strategic Communications.
82. Investigators also sought and generally obtained the co-operation of the three major parties and their telemarketers to provide access to party officials and to check party database records against the phone numbers of complainants, with the assistance of an independent expert third party. It must be noted, however, that in some instances co-operation was slow in coming. There were a few instances where it took several months or longer for investigators to receive the information they had requested, or for interviews they had asked for to be arranged. In one instance, a person who investigators believed could have provided very relevant information declined to be interviewed.
83. Through this process, investigators were able, in some cases, to track alleged inappropriate calls from the caller to the complainant through call centres and databases. In most of those cases, however, investigators were only able to confirm whether or not a complainant had in fact received one or more calls from a political telemarketer. They were unable to establish the content of that call or determine that the call received was the one about which the elector

submitted a complaint. As a result, in many cases, it was simply not possible to gather any information confirming the allegation made by a given complainant that he or she had received an inappropriate call.

84. The next sections describe the results of inquiries with parties and co-operating telemarketers. The parties are discussed in alphabetical order.<sup>15</sup> Investigators determined that each of the three major parties called some complainant numbers and that, in some cases, electors were given incorrect poll location information. In a few cases, it was admitted that calls made could possibly be perceived as nuisance calls, but were not intended to be so.

### **3.4.1 Conservative Party of Canada**

85. A number of the telemarketers providing the bulk of call services for the Conservative Party or Conservative Party candidates were contacted by investigators. Most agreed to co-operate. Investigators were told that no telemarketer had independent access to the Conservative Party's CIMS database, and that each relied on selected CIMS elector data provided to them by the party or by local campaigns for calling purposes. Two telemarketers, RackNine and RMG, retained recordings of their calls. Only one telemarketer, RMG, advised electors of their poll locations.

#### **Campaign Research**

86. Campaign Research provided call services to 39 local Conservative Party campaigns and called 89 complainant numbers during the election. The company does not retain recordings of calls made. Campaign Research provided investigators with a list of call display numbers used. One matched a call display number reported by a complainant, but as no call recording was available, investigators were unable to determine the call content. Investigators were advised that Campaign Research callers worked from a script, a sample of which was provided. The text of the script raised no concerns relevant to the investigation. Investigators were told that callers did not have access to, or provide electors with, poll location information.

#### **Front Porch Strategies**

87. Front Porch Strategies is an American telemarketer with a Canadian operation. Investigators learned that Front Porch Strategies provided services to 10 Conservative Party campaigns for telephone town hall meetings, and did not provide poll location information to electors. The company provided their call display numbers, none of which could be linked to the impugned calls.

#### **RackNine**

88. RackNine sent recorded messages on behalf of the Conservative Party and a number of its local campaigns during the 41st general election. In all, 405 complainant numbers were matched to RackNine-generated calls under the supervision of an independent expert third

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<sup>15</sup> The Bloc Québécois is not referred to in this report as it was not named in any complaint.



party. The role of the expert third party with RackNine, and with other telemarketers, was established by investigators to ensure that database matching and data extraction, where necessary, were done in a way that ensured the integrity of the process and the resulting data collection, and protected privacy interests. The RackNine calls to complainants were linked to 92 separate recorded messages. Upon listening to each of these messages, investigators discovered that 87 messages related to the 41st general election, while the remainder related to other political events or entities. The messages were solicitations of support or announcements of upcoming events; none were problematic and none provided poll location information.<sup>16</sup>

## **Responsive Marketing Group**

### ***Responsive Marketing Group Calls and Communication of Poll Locations***

89. RMG provided live calling services to the Conservative Party national campaign and 80 local campaigns, using CIMS calling data provided by the party or by local candidates. RMG was the only telemarketing service in the 2011 general election that made and retained recordings of live calls. The approved GOTV script from the Conservative Party, intended for use in the national campaign and provided to RMG for use by its callers, read as follows:

“Hi, I’m calling for (name from list)

This is (first name) with Prime Minister Stephen Harper and the Conservatives. Your candidate (Candidate name) asked **me** to call you.

Will you be voting on Monday?

(if yes) Great. Elections Canada has changed some voting locations at the last moment.

To be sure could you tell me the address of where you’re voting? (check against the address you have)

That’s the right address. It’s open until (time). What time will you be voting?

Do you need a ride to vote? (if yes, mark it, and have the campaign call them)

I’ll have someone call you to arrange your ride.

Elections Canada reported that more than 2 million Canadians voted in the advance poll—up 36% from last election—more than any other advance poll in Canadian history. That means many of our opponents have already voted.

We need you to vote on Monday, because our opponents have already voted.

Will you please vote on Monday? (Wait for answer)

Can we offer you a ride to the polls on Monday?

Thank you for your time.”

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<sup>16</sup> RackNine was the autodial service that broadcast the voice message at the centre of the Guelph investigation. The independent expert third party examination of the RackNine database, for the purpose of the present investigation, excluded the Guelph message from consideration.

90. RMG provided investigators with a list of the call display numbers it used, against which complainant information could be matched. In February 2013 and again in September 2013, supervised by an independent expert third party, complainant telephone numbers were matched against RMG call logs and associated files. RMG allowed investigators to select, review and listen to all the calls made to any of the complainants' telephone numbers, as well as to a random sample of 1,000 completed calls to non-complainant telephone numbers. From this, investigators could determine if RMG callers stayed on script when speaking with electors and whether or not the calls made included incorrect poll location information or contained anything that could constitute a nuisance.
91. Information collected during the investigation showed that RMG attempted to call 289 complainant numbers. Not all call attempts were completed. For example, some calls were not answered, went to voice mail or resulted in a hang up. Investigators reviewed all dial attempts to complainant numbers. Investigators discovered that among those calls which did connect and were recorded, only some resulted in an agent talking to an elector about his or her poll location. There were many reasons for this. In some cases, for example, the intended recipient was not available. In other cases, recipients sometimes told the caller they had already voted, hung up, or ended the conversation for some other reason before a poll location could be discussed.
92. In total, investigators reviewed all 126 completed calls to complainants and 1,000 completed calls to other electors. Of the recorded calls in which RMG callers reached the intended elector, the callers identified themselves as calling on behalf of the Conservative Party in almost every case. None said they were calling from Elections Canada, although, as noted in the script, the words "Elections Canada" were used twice and there was a reference to a change in some poll locations.
93. Investigators found that a number of RMG callers told electors at which poll location they should vote, rather than asking electors to verify the poll location indicated on their VIC as outlined in the script. As well, a number of the RMG calls identifying a specific poll location provided incorrect information, usually directing electors to a location farther away than their assigned poll.<sup>17</sup> Other RMG calls directed electors to the same location as that on the elector's VIC. Most calls did not provide a poll location.
94. Investigators grouped call content into two different categories: calls that did not provide a poll location, and calls that did provide a poll location. Where a poll location was mentioned, investigators grouped call results into three subcategories: "RMG provided correct information," "RMG provided incorrect information" and "impossible to determine if information RMG provided was correct or not." This latter subcategory refers to a conversation in which electors did not confirm or refute, during the call, the information regarding their poll location. This subcategory applies only to 1,000 sample calls. For complainants, investigators were able to determine the assigned poll location and whether or not the information provided by RMG was correct. Figure 4 shows the results of the review.

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<sup>17</sup> In some cases the difference was a few kilometres; in several cases the difference was more than 100 kilometres. The furthest location, provided to an elector called twice by RMG, was 740 kilometres from the correct location.



**Figure 4**

<b>Discussion of Poll Locations by Responsive Marketing Group Callers</b>				
<b>Category of Discussion</b>	<b>Sample Calls</b>		<b>Calls to Complainants</b>	
Poll location not provided	720	72.0%	65	51.6%
Poll location provided				
RMG provided correct information	235	23.5%	27	21.4%
RMG provided incorrect information	10	1.0%	34	27.0%
Impossible to determine if information RMG provided was correct or not	35	3.5%	0	0.0%
<b>Total</b>	<b>1,000</b>	<b>100%</b>	<b>126</b>	<b>100%</b>

95. It is important to highlight some of the information contained in Figure 4, which was compiled by investigators when they listened to the recordings of calls made by RMG callers.
96. Investigators have determined that, with respect to the complainants, in 51.6% of the cases poll location was not provided and in 21.4% of the cases the poll location information provided by the RMG caller was correct. Put another way, in 27.0% of the cases involving complainants, RMG provided wrong poll location information.
97. Importantly, while some RMG callers who provided electors with incorrect poll locations told the elector where to vote, the majority of calls providing an incorrect location were more nuanced. In the latter cases, the RMG caller stated a different poll location than the electors saw on their VIC, but the caller acknowledged that the elector should check with Elections Canada to be sure.
98. Finally, as Figure 4 shows, in the sample of 1,000 randomly selected conversations that were listened to, investigators determined that in 72.0% of the cases poll location was not provided. In 23.5% of the cases the information provided was correct, and in 3.5% of the cases investigators were not able to determine if the information given was correct or not. On the other hand, investigators were able to confirm that wrong information was provided in 1.0% of the sample cases.

***Responsive Marketing Group Calls and Conservative Party Officials***

99. Investigators were told by the Conservative Party national campaign chair that Elections Canada had no authority to limit a party’s use of the poll location data, as outlined in the Elections Canada caveats and restrictions (see paragraph 40 above) that accompanied the information. He said that the calling strategy was to tell supporters where to vote rather than refer them to Elections Canada, for fear the elector would not bother to call and consequently might not vote
100. Through information obtained from the Conservative Party, investigators learned that during the final days of the election some electors complained to one local Conservative Party campaign of Conservative Party callers providing incorrect poll location information to party

supporters. The local campaign challenged the accuracy of CIMS poll location data, and one campaign worker suggested to the national campaign that the callers stop giving electors “polling advice.” In one e-mail response, the party’s Coordinator of Direct Voter Contact noted that the incorrect information arose from CIMS placing electors in the wrong polling division. He concluded that “[t]his is a very small group of people, but there will be a handful in every riding.” This statement is consistent with the number and distribution of complaints of calls providing incorrect poll locations outside the electoral district of Guelph.

101. The coordinator also told investigators that he recalled receiving some “notes,” originally from Elections Canada, about calls providing electors with incorrect poll location information. These notes were provided to him by party officials. He advised investigators that his practice in such a case was to ask RMG if they had called the elector, and if so, to provide him with the call recording. In every case he could recall regarding complaints of an incorrect poll location, the issue had been a one-off error in the CIMS database and not a system error affecting many electors at once.<sup>18</sup> He said that having found that the problems related to data rather than a systemic error, he allowed RMG calling to continue; had he discovered a systemic error, he would have halted calling. He noted that all databases have errors despite best efforts at data cleaning.
102. The reference to some “notes” of calls from Elections Canada may refer to events of April 29 to May 1, 2011, when returning officers in 11 electoral districts reported elector complaints of incorrect poll location information coming from Conservative Party callers. When contacted by returning officers, local Conservative Party campaigns advised that the calls were from the national campaign of the party, and that the campaigns could not stop them. Through established channels, Elections Canada raised the issue twice with the Conservative Party. The party twice assured Elections Canada that they understood that some poll locations had been changed by returning officers and that, in consequence, candidates were confirming the proper poll location in calls to a number of supporters.

### **3.4.2 Green Party of Canada**

103. No issue arose about inappropriate calls involving the Green Party. One candidate self-reported that the autodial company she employed had looped calls to a small number of electors so that the same electors were called repeatedly for a period of time. The campaign apologized to each elector and explained the problem. None complained to the Commissioner.

### **3.4.3 Liberal Party of Canada**

104. A number of electors complained of receiving inappropriate calls from someone claiming to be from the Liberal Party or from one of its candidates’ campaigns. The Liberal Party and its campaigns used telemarketers Prime Contact and First Contact as their primary call centres. First Contact calling numbers were matched to three complainant reports; however, without a recording of the call or a detailed report of the call content from a complainant, the substance of the calls is unknown. No Prime Contact calling numbers were available. Prime Contact and

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<sup>18</sup> He provided the example of an Ontario elector whose name was listed twice in CIMS, at an identical street address but in different towns.

First Contact do not retain their calling data, but rather upload it into Liberalist (see below). Investigators were told that the telemarketers used by the Liberal Party at the national level did not advise electors of their poll location.

105. Investigators also learned that some local Liberal Party campaign callers did provide poll location information. Evidence was found indicating that the party's campaign callers in two electoral districts provided or appeared to provide incorrect poll location information to two electors. However, no evidence that would establish a malevolent intent was discovered (indeed, in one case investigators learned that the problem was discovered on election day and corrected by the campaign).

### **Liberalist**

106. Liberalist is the Liberal Party database used to track information pertaining to electors, including their phone numbers and party support. Liberalist has the capacity to record calls, but this feature was not activated during the election and so it did not retain call recordings, except for one autodial call. Liberalist recorded the date calls were made, but not the time of day for most calls. Investigators were unable to match a specific Liberal Party call to a complaint in the absence, in most cases, of complainant telephone records and of any record in Liberalist of the time of day calls were made.
107. Complainant numbers were matched with Liberalist data under supervision of the independent expert third party. The analysis showed that 480 complainant numbers were called. Calling scripts were retained in only a few cases, and these were provided to investigators by both the Liberal Party and various Liberal Party campaigns. The content of the scripts raised no concerns on review by investigators. However, scripts only indicate what callers are supposed to say to electors, not what was actually said. The data matching process allowed investigators to determine whether a Liberal Party telemarketer called an elector, but not the content of the call.
108. As well, investigators looked into reports that persons believed to be posing as Liberal Party supporters called electors during what was for those electors a religious holiday period. For the purpose of this investigation, such a complaint would only be relevant if there was evidence to demonstrate that the caller knew or had reason to believe the call recipient was of a particular religious faith, and that the call was intended to prevent the elector from voting or, by some pretence or contrivance, to induce the elector to vote or not vote for a particular candidate. No such evidence was located. One relevant local Liberal Party campaign confirmed, during the election campaign, that they had called electors in the electoral district during the religious holiday period, and might have called a complainant as they could not differentiate electors by religious faith.

#### **3.4.4 New Democratic Party**

109. Four complaints related to calls that allegedly came from the New Democratic Party or some of its candidates: two complaints of calls providing incorrect poll location information, and two of nuisance calls. No independent evidence could be provided by the complainants, and their service providers did not retain call records.

110. The New Democratic Party uses a database called NDP Vote. Calling is primarily carried out by Strategic Communications, with limited volunteer calling by the New Democratic Party itself or its local campaigns. New Democratic Party callers did provide electors with poll location information, obtained from NDP Vote, but no call recordings were made and no elector call logs were retained. Strategic Communications provided the call display numbers used, none of which matched complainant reports.

## **4. Findings**

### **4.1 Calls Providing Incorrect Poll Locations**

111. Investigators have confirmed that errors were made in some calls, directing electors to incorrect poll locations. Some electors were told to vote at a poll other than the one assigned on their VIC, while others were told to vote at a different poll but were counselled to confirm with Elections Canada. Some RMG calls gave erroneous information, and some calls from two local Liberal Party campaigns may have made errors while giving out addresses of poll locations. It is clear that these errors caused confusion for some electors.
112. For the purpose of considering whether or not to refer a possible offence to the Director of Public Prosecutions, however, it is not sufficient to find evidence of misdirection of an elector. There must be evidence of an intention to prevent the elector from voting or, by some pretence or contrivance, to induce the elector to vote or not vote for a particular candidate. No such evidence was found.
113. Some complainants reported having received calls from the Conservative Party asking if they would support that party. Having told the caller that they would not, the electors reported receiving calls a short time later directing them to vote at a location other than the one indicated on their VIC. Investigators found no evidence of a link between calls from the Conservative Party seeking support and reported calls to electors misdirecting them. It is understandable that the fact of electors receiving misdirecting calls after stating they would not support the Conservative Party could have been interpreted as an indication that something inappropriate was happening. However, for the purpose of an investigation of a criminal nature, more than a close juxtaposition in time is required. There needs to be other evidence that links the two together. Investigators did not find any such evidence.
114. The fact that electors received a call or several calls asking for their support is part of the normal process practiced by each of the major political parties. By some accounts, millions of such calls were made during the election period. It is not illegal, nor inappropriate, for a party to seek to gauge or confirm its level of support during an election period.
115. Had there been an effort to purposely mislead electors, investigators would have expected to see a single predominant calling number or constellation of such calling numbers. This was not found, based on the information collected in the course of the investigation. Had a false or untraceable incoming number been used in an effort to purposely misdirect electors, investigators again would have expected to see a pattern with multiple calls into a single electoral district from the same number, as occurred in Guelph. No such pattern was found.

116. Investigators found no discernible pattern of misdirecting calls intended to prevent the elector from voting or, by some pretence or contrivance, to induce the elector to vote or not vote for a particular candidate. In the RMG calls listened to (RMG being, as noted above, the only company to record live calls), although investigators noted instances in which electors were given incorrect poll location information, there were relatively few in which the caller stated that his or her information was correct and that the elector's VIC was wrong. Similarly, investigators found no evidence in this investigation to corroborate reports that callers posed as an Elections Canada employee or stated that the call was coming from Elections Canada.
117. It is noteworthy, however, that the investigation found that some national and local campaigns had arranged for calls informing electors of their poll location despite, at least in the case of one party, their knowledge that a small percentage of electors would be given incorrect information, and despite Elections Canada's warning to political parties not to give poll location information.

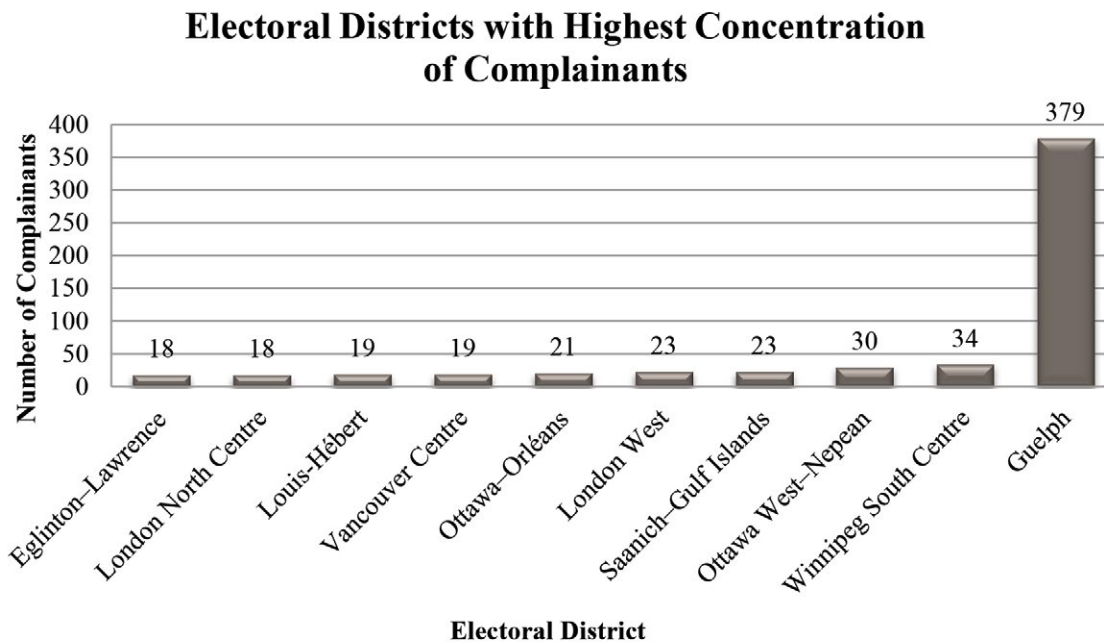
## **4.2 Nuisance Calls**

118. Investigators have not been able to confirm many instances of nuisance calls. Some have been confirmed to a certain extent, but none of these situations provided investigators with evidence of intent to commit an offence under the Act.
119. The lack of available evidence to substantiate the nuisance calls reported by complainants has meant that, in most cases, the complaints could not be pursued further. The details of some nuisance complaints could be matched with available data, such as for repetitive telemarketer calling. But these instances did not amount to an offence. Either the calls themselves did not amount to illegal conduct – for example, where an elector in one electoral district complained of being called by a campaign in another electoral district – or the necessary criminal intent simply could not be established.

## **4.3 Distribution of Complaints**

120. Before concluding, it may be useful to re-examine some of the data from section 1.3. This data shows how thinly scattered complaints were, other than in the electoral district of Guelph. It tends to show that the evidence gathered in the investigation does not lend support to the existence of a conspiracy or conspiracies to interfere with the voting process.
121. As noted earlier, complainants from 261 electoral districts made some form of complaint, with 228 of those electoral districts registering 10 or fewer complainants (and 181 of them registering 5 or fewer). The largest number of complainants in any electoral district other than Guelph amounted to 34. Figure 5 presents the 10 electoral districts registering the highest concentration of complainants, and shows the marked distinction between the first nine and Guelph.

**Figure 5**



## **Conclusion**

122. Having carefully examined all of the evidence, the Commissioner found no reasonable grounds to believe that an offence under the Act had been committed.
123. This stems from the fact that, based on the evidence gathered, it cannot be established that calls were made a) with the intention of preventing or attempting to prevent an elector from voting, or b) for the purpose of inducing an elector by some pretence or contrivance to vote or not vote, or to vote or not vote for a particular candidate.
124. In the absence of the necessary degree of proof relative to intent, the Commissioner will not refer the matter to the Director of Public Prosecutions.

## Appendix – Report of the Honourable Louise Charron to the Commissioner of Canada Elections

At the request of the Commissioner of Canada Elections, I have conducted an in-depth review of the investigation into the complaints about deceptive and annoying telephone calls received by voters in electoral districts other than Guelph during the 41st general election.

### 1. The Investigation Under Review

In a nutshell, the investigation under review can be described as follows.

During the last federal election period, a number of voters reported having received either live or recorded telephone calls, falsely advising them that their polling station had been changed. Others reported having received calls which, for various reasons, they considered annoying or harassing. An investigation was conducted by the Commissioner to determine whether sufficient grounds existed to recommend the laying of any charge, either under the *Canada Elections Act* or under the *Criminal Code*. One charge under the *Canada Elections Act* was laid with respect to calls made in the electoral district of Guelph. The investigation I was asked to review focussed on calls other than those relevant to the investigation in the electoral district of Guelph.

Given the nature of the complaints, two sections of the *Canada Elections Act* were potentially at play, both prohibiting acts of interference with electors: (a) wilfully preventing or trying to prevent an elector from voting is prohibited under paragraph 281(g); (b) similarly, inducing a person to refrain from voting, or to vote or not to vote for a particular candidate, by “any pretence or contrivance” is prohibited under paragraph 482(b).

After a lengthy investigation into these complaints, the Commissioner concluded that there was no evidence that an offence had been committed outside the electoral district of Guelph.

### 2. My Mandate

I was asked to conduct a thorough and complete review of the investigation and report on my opinion respecting its overall quality, including but not limited to the following:

- (i) the quality and thoroughness of the investigation;
- (ii) the adequacy of investigative techniques used in the investigation;
- (iii) whether additional investigative measures should be undertaken; and
- (iv) the validity and strength of the conclusions contained in the investigative reports, specifically whether such conclusions are adequately supported by the evidence.

I was also asked to note whether the investigators faced any obstacles during the course of the investigation which might or might not have impacted on the result of the investigation. Finally, I was invited to make any recommendation, as I saw fit, regarding any aspect of the investigation.



In performing this mandate, I first met with the Commissioner and several members of the investigative team, at which meeting I was presented with an overview of the investigation and its results. I was also given access to all documents obtained or produced during the course of the investigation. With the exception of one section protected by solicitor-client privilege, I was provided with a copy of the comprehensive investigative report in both paper and electronic form, with supporting documents conveniently hyperlinked in the electronic version. I was also provided with an overview of the Guelph investigation in order to assist me in understanding the context in which this investigation occurred.

I read and considered the comprehensive investigative report in the light of the supporting material. Without purporting to give an exhaustive list, the supporting material included the following: documentation relating to the intake of the complaints; relevant information from Elections Canada on the electoral process; production orders; data obtained from telephone providers; emails and correspondence; investigators' notes; preliminary reports and briefing notes; transcripts and/or audio recordings of interviews conducted by the investigators; expert reports; statistical analyses; documents obtained from political parties; and media clippings. I reviewed the supporting material to the extent I found necessary to understand the investigative report and assess the validity and strength of the findings that it contained. I also had several follow-up discussions with the Director of Investigations.

I am satisfied that I was provided with everything I needed to perform my mandate. The amount of material gathered and produced by this investigation may have been massive; however, my report can be brief.

### **3. My Findings**

I will start with the ultimate conclusion reached by the investigative team that there are no grounds to believe that an offence under the *Canada Elections Act* or the *Criminal Code* has been committed in relation to the complaints outside the electoral district of Guelph. In my view, this conclusion is amply supported by the evidence.

This conclusion may appear surprising to some, given the 40,000+ communications received from electors regarding the “robocalls”, as they became known in common parlance. Understandably, the misleading calls about the locations of polling stations during the last general election received intensive media coverage. They were also the subject-matter of judicial comment in related proceedings. It is important to stress that most of the communications were from electors expressing their concern about the events reported in the media; fewer alleged having themselves received an inappropriate call. After the findings of the Guelph investigation are carved out of the equation, and the distinction is drawn between communications by concerned electors and actual complaints by recipients of inappropriate calls, we are left with a markedly different picture than the numbers might at first suggest.

There is no question that some inappropriate calls were made to electors in electoral districts other than Guelph during the 41st general election. The evidence revealed that some electors were indeed misdirected to a poll station other than that indicated on their voter information card. However, giving incorrect or false information does not constitute an offence. Without evidence of an intention to prevent the elector from voting, or to induce the elector by some pretence



or contrivance to vote or not to vote, there are no grounds to believe that an offence has been committed. The investigation uncovered no evidence of such intention.

Due to the paucity of records from telephone providers and telemarketing services, it was impossible to ascertain the content of the message or the *identity* of the caller with respect to most complaints, let alone his or her intention. Even at its highest, in instances where the calls could be traced to someone acting on behalf of a political actor, the evidence usually revealed that the callers were targeting electors believed to be the party's own supporters. It would defy logic to infer from this evidence that the misdirection about poll stations was made with the intention of inducing electors not to vote. Further, when the geographic locations of the impugned calls outside of Guelph are considered as a whole, the evidence reveals no discernible pattern of misdirected calls from which one could reasonably infer an intention or design to prevent electors from voting.

As for those complaints that fell in the category of annoying calls – even if their content could have been ascertained with the requisite degree of certainty, which was generally not the case – in my view, there was simply no evidence of conduct that could amount to an offence under the *Canada Elections Act* or the *Criminal Code*.

In my opinion, this absence of evidence cannot be attributed to any deficiency in the investigation. The investigative team comprised highly qualified and experienced members. The investigation was thorough, and conducted in a fair and impartial manner. Each and every complaint was looked into and followed-up to the extent possible, using all available investigative measures. Additional information was sought, at times repeatedly, from all potentially relevant actors, including returning officers, Elections Canada personnel, telephone service providers, telemarketing providers, and political party representatives. In the more sensitive situations, a protocol was wisely reached allowing for an independent third party to oversee the gathering of the requested data to ensure the integrity of the process. Experts were consulted where needed to assist in analysing the data. In brief, the overall quality of the investigation was excellent.

Were the investigators faced with any obstacles which might or might not have impacted on the result of the investigation? In his report on *Preventing Deceptive Communications with Electors – Recommendations from the Chief Electoral Officer of Canada Following the 41st General Election*, the CEO provides an overview of some of the investigative challenges faced by the investigators in their search for the source of improper calls made during the last general election. All of the challenges identified by the CEO in his report certainly impacted on the *course* of the investigation under review, some more significantly than others.

For example, the lack of binding industry-wide standards in the data retention policies of telecommunications companies proved to be a very significant factor in the search for the identity of the callers. As I noted earlier, the paucity of records was such that with respect to most cases it was impossible to determine the identity of the caller. Without evidence about *who* made a particular call, obviously the investigation with respect to that call comes to a dead end. The fact that most of the complaints under review were made some nine months or more after Election Day (following the intensive media coverage in February 2012) further exacerbated the difficulty.

Another significant factor, in my view, lies in the fact that the current limits to the degree of mandatory reporting to Elections Canada by political parties do not require the political parties to provide information about whether a telemarketing firm was retained for making calls to electors, the purpose for making the calls, the numbers called, or the text of the messages communicated to electors. Investigators generally had to rely on the cooperation of political parties and telemarketers to obtain this kind of information. Some telemarketers retained by political parties simply refused to cooperate; others ultimately cooperated, but only after considerable delay. Political parties generally cooperated in providing the data requested, but again here, there were inordinate delays and at times inexplicable resistance to providing the requested information.

I am unable to say if the *result* of this investigation might have been different in a world where none of these investigative challenges existed. My overall sense is that it would not be. As the investigators rightly concluded, had there been an effort to purposely mislead electors outside the electoral district of Guelph, one would have anticipated seeing a single predominant calling number, a constellation of calling numbers, or a pattern with multiple calls into a single electoral district from the same number. There was no such evidence.

In closing, I wish to thank the Commissioner and his investigative team. Everyone has been very cooperative and helpful in giving me all the assistance I needed in conducting this review.

The Honourable Louise Charron, LL.B., C.C.  
February 25, 2014