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Commissioner of
Canada Elections

Commissaire aux
élections fédérales

ANNUAL REPORT OF THE COMMISSIONER OF CANADA ELECTIONS

Yves Côté, Q.C.

Commissioner of Canada
Elections

Contact Us

ONLINE:

www.cce-cef.gc.ca

SECURE ONLINE COMPLAINT FORM:

[https://www.cce-cef.gc.ca/
complaint/index_e.aspx](https://www.cce-cef.gc.ca/complaint/index_e.aspx)

TELEPHONE:

1-855-759-6740

FAX:

1-800-663-4908 or 819-939-1801

MAIL:

Commissioner of Canada Elections
P.O. Box 8000 Station T
Ottawa, Ontario
K1G 3Z1

EMAIL:

info@cef-cce.gc.ca

April 30, 2015

Mr. Brian Saunders, Q.C.
Director of Public Prosecutions
160 Elgin Street, 12th Floor
Ottawa, Ontario
K1A 0H8

Dear Mr. Saunders,

Pursuant to subsection 16 (1.1) of the *Director of Public Prosecutions Act*, I am pleased to submit the 2014–2015 Annual Report for my office. In accordance with the requirements described in subsection 16 (1.1), this report provides an overview of our activities and operations from April 1, 2014 to March 31, 2015, but contains no details of our investigative work.

Sincerely,



Yves Côté, Q.C.
Commissioner of Canada Elections

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COMMISSIONER'S MESSAGE

It is an honour to present the 2014–2015 annual report for the Office of the Commissioner of Canada Elections.

This past fiscal year has been one of considerable change for our organization. In particular, the adoption and implementation of Bill C-23 has had a significant impact on both our work and our working environment. As you will read in greater detail in this report, the transfer of our organization under the Director of Public Prosecutions (DPP) and the subsequent move to a new building – physically separating us from both Elections Canada and the Public Prosecution Service of Canada (PPSC) – presented a unique set of challenges not only for my staff but for those within the PPSC and Elections Canada as well.

I am sincerely grateful for the tremendous cooperation and goodwill of both PPSC and Elections Canada personnel throughout the transition period. It is thanks to their extremely generous collaboration that we were able to seamlessly transition from one organization to the next. Looking ahead, I am confident that the important agreements respecting the interactions between and among all three of

our organizations have us well-placed to carry out our respective mandates in an effective and independent manner.

Despite these very positive relations, the adoption of Bill C-23 has not been without its challenges. First and most importantly, I believe that there are a number of areas where additional legislative changes are required. When the legislation was debated in Parliament last year, I recommended that the Office be given the power to obtain orders from a judge to compel individuals to provide information in connection with matters under investigation, with necessary safeguards in place to protect the privacy interests of witnesses and their rights regarding self-incrimination. At that time I indicated that without this ability, some investigations would be lengthy and in some cases would abort altogether. One year on, I must unfortunately confirm that a number of our investigations have had to be closed because of individuals who – despite clear indications that they had information relevant to our investigations – refused to cooperate with us.

Additionally, we have a number of ongoing investigations that have taken much longer than they should, due in large part to our inability to get to the information.

Secondly – and this is also an issue I raised when C-23 was debated – I continue to be concerned by the lack of flexibility afforded by the enforcement mechanisms contained in the *Canada Elections Act*. Currently, there are essentially two enforcement tools available to us: compliance agreements and the laying of charges. Compliance agreements rely on cooperation, and more specifically, a willingness on the part of the other entity to enter into this type of agreement. Conversely, charges are a very heavy-handed and resource intensive tool involving large amounts of time, effort and money. In my view, the timely and efficient enforcement of certain provisions of the Act – particularly for minor violations of the legislation – would be made immeasurably easier if a regime of administrative monetary penalties were introduced.

I would urge Parliament to re-examine these two issues at the first opportunity, as their implementation would provide more robust, efficient and timely enforcement of the rules enacted by Parliament to ensure fair elections. Furthermore, their adoption would only serve to enhance Canadians' trust in the electoral process.

As this transition period draws to a close, our office has naturally begun to turn its attention to preparations for the upcoming federal general election. As a result of the public attention surrounding a number of our recent investigations, we are anticipating a high number of complaints both during and after the electoral period. To better address complaints and enquiries, and conduct investigations

during this timeframe, additional personnel have been hired and trained to respond to potential compliance issues. We have also begun to develop tools to assist in educating the public about the role and mandate of our office – including some of the limitations to the Commissioner's jurisdiction and powers – in order to assist Canadians in making informed decisions about when and how to submit a complaint.

In closing, I am extremely pleased with the progress and results achieved by our office in 2014–2015. None of the work documented in these pages would have been possible without the outstanding efforts of each and every member of the Commissioner of Canada Elections' team. Their professionalism and willingness to take

on additional duties – particularly in light of the separation from Elections Canada – ensured that we continued to deliver on our mandate throughout the entire transition period. I am confident that the same commitment to excellence, independence and fairness that was present over this past year, will continue to guide our work in the busy year to come.



Yves Côté, Q.C.

Commissioner of Canada
Elections

ABOUT US

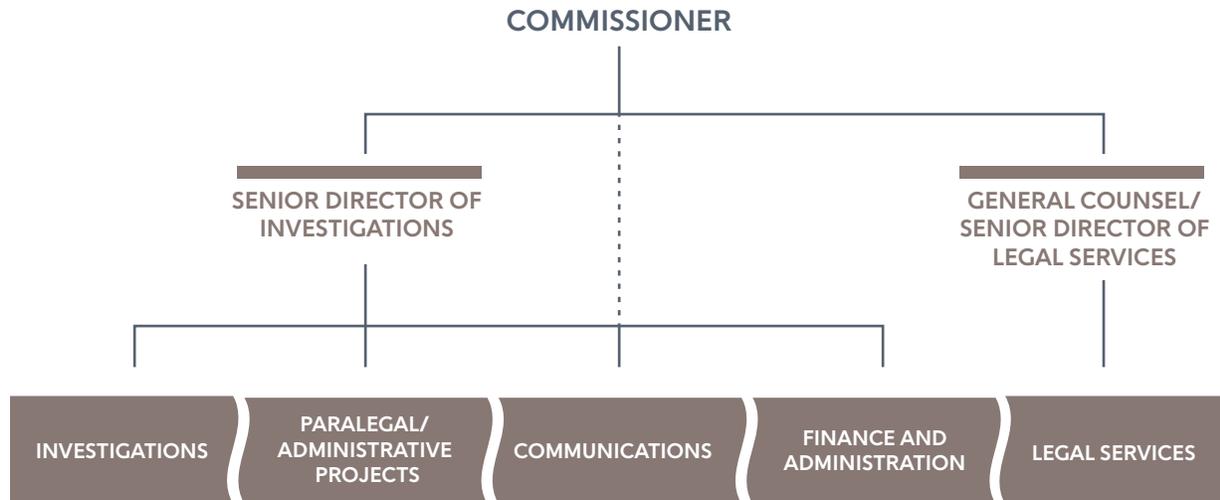
The position of Commissioner of Canada Elections (CCE) was originally created in 1974. The powers of the Commissioner of Election Expenses (as it was known at the time) were limited to compliance and enforcement of rules relating to election expenses. In 1977, the

Commissioner's powers were significantly expanded to include all provisions under the Act and the position formally became known as the Commissioner of Canada Elections.

Today, the Commissioner of Canada Elections 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 *Canada Elections Act* (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 25 people, including federal public servants and independent contractors.



Complaints and Referrals

All complaints and referrals received by the Commissioner with respect to the Act are assessed to determine if they fall within the mandate of the office. Individuals whose complaints or allegations do not fall under the Commissioner's area of responsibility – that is to say, are not covered by the Act – 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 Commissioner's Web site at: www.cce-cef.gc.ca.

Submitting a Complaint

The Commissioner 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.cce-cef.gc.ca

by e-mail: info@cef-cce.gc.ca,

by fax: 1-800-663-4906 or 819-939-1801, **or**

by postal mail:

Commissioner of Canada Elections
P.O. Box 8000, Station T
Ottawa, Ontario
K1G 3Z1

THE YEAR IN REVIEW: 2014–2015

Bill C-23

There can be little doubt that the series of amendments to the *Canada Elections Act* that received royal assent on June 19, 2014, represent the most significant change to the way Canadian electoral events are administered and enforced in recent history. The changes brought about by Bill C-23 touch on almost every facet of the administration and governance of federal elections. They also make important adjustments to the compliance and enforcement measures that form the basis of the mandate of the Commissioner of Canada Elections.

In April 2014, the Commissioner testified before both the House of Commons Committee on Procedure and House Affairs and the Senate Committee on Legal and Constitutional Affairs on the subject of the proposed amendments to the Act. During his testimony, the Commissioner welcomed the amendments to the proposed enforcement measures, indicating that stiffer penalties and the creation of some new offences represented a significant improvement to the regime. However, the Commissioner also identified three areas of concern, specifically: the placement of the Commissioner of Canada Elections within the Office of the DPP; the inability of the Commissioner to seek a court order to compel testimony; and the restrictions on the office surrounding public communications.

Although the legislative amendments contained in Bill C-23 did not resolve all of the issues

identified by the Commissioner, they did bring about several notable changes to the compliance and enforcement regime.

Confidentiality

Historically, the Office of the Commissioner of Canada Elections has strictly limited the disclosure of information related to a complaint, referral or any activity pertaining to compliance with, or enforcement of, the Act. This limitation on the disclosure of information ensured the privacy rights of individuals – who may have been party to an investigation either as a complainant, a witness or themselves the object of a complaint – were protected. It also served to safeguard the integrity of the investigative process.

Under Bill C-23, the confidentiality rules were strengthened, making the Commissioner and his staff legally bound – except under very limited circumstances – not to disclose information related to their work. (ss.510.1(1))

Notification

The Commissioner of Canada Elections works with a team of qualified investigators charged with reviewing and examining complaints to determine whether there is sufficient and credible evidence to suggest an offence may have been committed under the Act. Investigators then make recommendations to the Commissioner if they believe an investigation should be initiated. Once an investigation has been initiated by the Commissioner, the Act, as amended by Bill C-23,

now requires written notice to be given to the object of the complaint. Bill C-23 does provide for an exception to this rule: notice does not have to be given if the Commissioner believes notification would compromise or hinder an investigation. (ss. 510(2))

Limitation periods

Before Bill C-23 received royal assent, the limitation period for all offences was ten years after the commission of the offence, but no later than five years after the Commissioner became aware of the facts giving rise to the offence. Under the new legislation, the limitation period for strict liability offences – cases where the prosecutor does not have to prove intent to prove the offence – is six years from the date of the act or omission giving rise to the offence (ss.514(1)). Offences requiring proof of intent are no longer subject to any limitation: they may be prosecuted at any time. This change applies to offences committed before the coming into force of Bill C-23. However, it does not resurrect the ability to lay charges in those cases where the limitation period had already expired. (ss. 514(3))

Obstruction of investigations

New rules now govern those who participate in the investigative process. Under the revised legislation, individuals who obstruct, hinder or knowingly make false or misleading statements to the Commissioner or anyone acting on his behalf, are now subject to steep fines, possible imprisonment or both. (s. 482.1)

New Voter Contact Calling Rules

Bill C-23 also included registration requirements for those engaging in voter contact calls during the election period. The new provisions, administered and enforced by the Canadian Radio-television and Telecommunications Commission (CRTC), require service providers, those making voter contact calls and those procuring voter calling services to register with the CRTC and retain registration information. The CCE remains responsible for enforcing the other rules in the Act, such as the rules against attempts to prevent an elector from voting at an election, or making a false statement as to the personal character or conduct of a candidate. In addition, the CCE is now also responsible for enforcing new retention requirements with respect to documentation related to the content of voter contact calls. The CRTC must provide registration information it has collected to the CCE – on request – where such information may assist the CCE in carrying out his investigative work. An agreement detailing the ways in which this information can and should be shared has been signed by both organizations.

Transfer to the Public Prosecution Service of Canada

With changes adopted through Bill C-23, the Commissioner and his staff are now housed within the PPSC. The legislation contains important safeguards aimed at protecting the integrity of the work carried out by the CCE, specifically a clause establishing the Commissioner's independence from the DPP in the conduct of

his or her investigations. However, while both entities recognize that effective enforcement and prosecution require that they exercise their respective roles independently – albeit co-operatively – there are some areas where shared corporate resources and services are both useful and cost-effective for the organization. Services previously provided by Elections Canada, including human resources, financial and security services are now provided by the PPSC. Conversely, as part of a negotiated agreement between the DPP and the Chief Electoral Officer, Elections Canada remains responsible for providing the majority of IT services to the CCE.

A detailed framework outlining the principles regarding the working arrangements between the DPP and the Commissioner of Canada Elections is publicly available on the CCE Web site.

New Location, New Resources

Prior to the transfer to the PPSC, the Office of the Commissioner of Canada Elections was co-located with Elections Canada in Gatineau, Quebec. The proximity of the two organizations facilitated investigative processes and ensured timely and efficient information sharing. Although the relationship with Elections Canada remains largely unchanged with regard to the requirement to share information, in transferring the organization to the PPSC, it was necessary to create a separation – both real and perceived – from both Elections Canada and the PPSC's prosecution function.

On February 16, 2014, the Commissioner and his staff officially took up residence in a new office

space located at 22 Eddy Street in Gatineau. The move provides the staff of the Commissioner's office with a secure and physically separate space in which to conduct their investigative work. The new accommodations also provide space for the additional legal, communications and intake personnel hired following the separation from Elections Canada as well as any additional resources who may be engaged temporarily to assist with the next general election.

Compliance and Enforcement

The integrity of the electoral process relies 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 all participants can confidently partake 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. Following the implementation of Bill C-23, the policy was revised to reflect the changes to the Commissioner's mandate resulting from the various amendments to the Act.

Caution Letters

Caution letters provide an informal means of ensuring compliance with the Act. Between April 1, 2014, and March 31, 2015, the Commissioner issued 23 caution letters to address minor contraventions or inadvertent non-compliance.

Compliance Agreements

The *Canada Elections Act* provides that the Commissioner may enter into a compliance agreement with anyone who he has reasonable grounds to believe has committed, is about to commit or is likely to commit an act or omission that could constitute an offence. Compliance agreements are voluntary and set out the terms and conditions the Commissioner considers necessary to ensure compliance with the Act.

Between April 1, 2014 and March 31, 2015, the Commissioner entered into two compliance agreements:

- The first was with a municipal government for the purchase of a ticket for a federal political fundraising event, which constituted a corporate contribution under the Act.
- The second agreement was with an elector who had requested a second ballot, after having already voted, during the 2011 federal general election.

Charges and Prosecutions

If the Commissioner believes on reasonable grounds that an offence has been committed under the Act, he may refer the matter to the DPP, who has sole authority to decide whether charges will be laid. The DPP acts as an independent prosecution authority, with a mandate to prosecute cases under federal law and to provide legal advice to investigative agencies.

Between April 1, 2014 and March 31, 2015, the following charges were laid:

- Charges were filed on October 2, 2014 in the Ontario Court of Justice in Brampton against Mr. David Del Mastro and Ms. Tori-Lynn Manchulenko. The individuals were charged with knowingly concealing or attempting to conceal the identity of the source of a contribution and knowingly circumventing the campaign contribution limit for an individual donor.
- A fine of \$500, payable at a rate of \$50/month with payments commencing on December 15, 2014; and
- 3 years' probation.

As of March 31, 2015, these matters were pending before the courts.

Court Decisions

Decision regarding campaign spending in the electoral district of Montcalm

On December 1, 2014, the Court of Québec imposed a sentence on Mr. Michel Paulette of Terrebonne, Quebec, a candidate for the electoral district of Montcalm during the 2011 federal general election. The sentence, related to charges of unlawfully stealing a sum of money over \$5000, an offence under the *Criminal Code*, and submitting a false or misleading return, an offence under the *Canada Elections Act*, was as follows:

- 240 hours of community service to be served within 18 months following sentencing;
- Restitution under paragraph 738(1)(a) of the *Criminal Code* of the sum of \$361.07 to the Conservative Party Association for the electoral district of Montcalm and \$7,757.54, payable to the Receiver General of Canada;
- Repayment of the sum of \$1,300, to the Conservative Party Association for the electoral district of Montcalm, payable at a rate of \$50/month with payments commencing on October 15, 2015;

Decision regarding campaign spending in the electoral district of Peterborough

On October 31, 2014, the Ontario Court of Justice found Mr. Dean Del Mastro and Mr. Richard McCarthy guilty of knowingly exceeding campaign spending limits and submitting false or misleading financial reports. The former Member of Parliament and his official agent were charged in relation to events that took place during the 2008 federal general election.

As of March 31, 2015, no decision had been made regarding sentencing for the two individuals. The matter remains before the courts.

Decision regarding misleading phone calls in Guelph

In August 2014, the Ontario Court of Justice convicted Mr. Michael Sona of having wilfully prevented or endeavoured to prevent an elector from voting at an election. On November 19, 2014, the court sentenced him to 9 months imprisonment and 12 months' probation (including 100 hours of community service work to be completed within the first 10 months of the probation order).

Both the prosecution and the defence are appealing the sentence.

Report into deceptive telephone calls outside of Guelph

In April 2014, the Commissioner released the findings of an investigation into deceptive telephone calls ('robocalls') outside the electoral district of Guelph. The report detailed the extensive investigation carried out by CCE investigators with respect to the allegations of nuisance calls and calls providing incorrect polling locations. It also explained the investigation's findings and identified the reasons why there were insufficient grounds for the Commissioner to recommend that any charges be laid.

Given the significance of the robocalls issue for Canadians, the Commissioner also retained the services of an outside expert to review the investigation in its entirety. The Honourable Louise Charron, a former justice of the Supreme Court of Canada, was given complete access to all materials and information relating to the investigation. Her review offered strong support for both the overall quality of the investigation and its findings that there were no grounds to believe that an offence had been committed.

Additional information regarding the investigative work carried out by the Commissioner of Canada Elections can be found online at: www.cce-cef.gc.ca.

Written Opinions, Guidelines and Interpretation Notes

Since December 19, 2014, as part of the amendments to the *Canada Elections Act*, the Commissioner is required to provide comments on draft written opinions, guidelines or interpretation notes proposed by the Chief Electoral Officer.

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. In keeping with the Act, the Commissioner has 15 days to comment on the drafts of these documents. When the guideline or interpretation note is officially issued, the Chief Electoral Officer must also publish the comments received from the Commissioner on the draft version.

Similar requirements exist when a registered party makes a request to the Chief Electoral Officer for a written opinion on the application of any provision of the Act. In this case as well, the Commissioner must comment on the draft within a 15-day consultation period, and these comments are published

along with the final written opinion. If all material facts submitted with the application were accurate, the final written opinion is binding on the Chief Electoral Officer 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. With respect to similar practices or conducts of all other regulated political entities, the written opinion has precedential value for the Chief Electoral Officer and the Commissioner.

Soon after the coming into force of these provisions, the Chief Electoral Officer issued a series of draft guidelines and interpretation notes. The Commissioner provided comments on the drafts, as required by the Act. A registry, maintained by the Chief Electoral Officer that contains all written opinions, guidelines and interpretation notes, including the Commissioner's comments, is accessible to regulated political entities and the public via the Elections Canada Web site.

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

LOOKING AHEAD

2015 General Election

Each election brings with it a series of unique challenges. In order to fully discharge its mandate both during and immediately following the election, it is essential that the Commissioner and his staff have the resources required to quickly respond to issues as they arise. Throughout 2014–2015, the Office of the Commissioner of Canada Elections has focused its efforts on ensuring a seamless and coordinated approach to investigations. As part of these measures, the Commissioner and his staff continue to work with officials from Elections Canada and the CRTC to establish new practices and procedures that will facilitate information sharing between the organizations.

In anticipation of an increased number of complaints, in early 2015 the office also took steps to create a pool of qualified investigators that the Commissioner may draw upon to assist with the evaluation and investigation of possible offences arising out of the election.

Interacting with Canadians

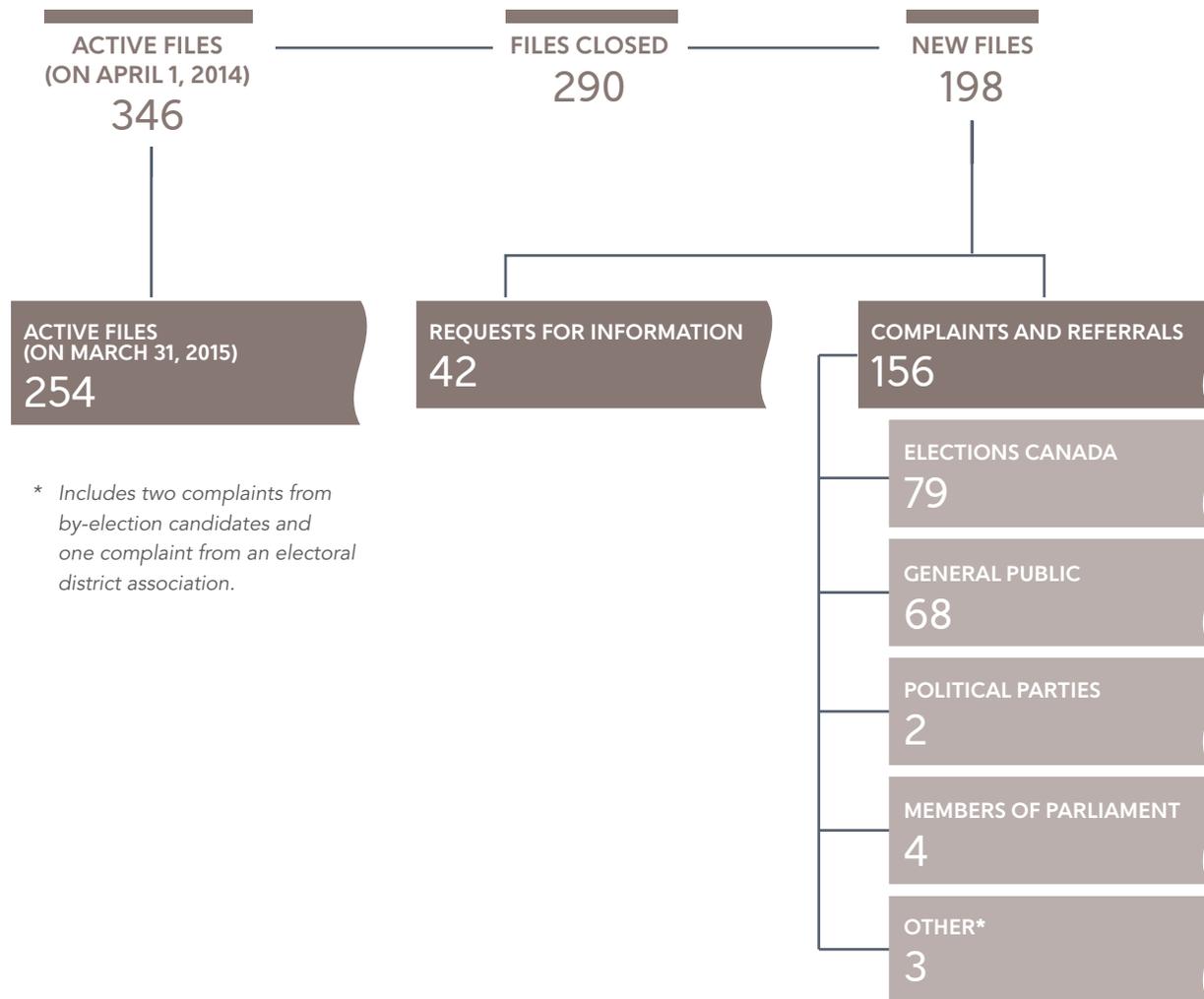
The Commissioner of Canada Elections is committed to providing timely responses to compliance and enforcement-related enquiries from the public and the media. In 2014–2015, the office added new communications and public enquiries staff to bolster the office's ability to communicate directly with the general public, media and stakeholders. This expanded, public-facing presence not only improves upon the CCE's ability

to respond to requests for information in a timely manner, but allows the organization to proactively address questions related to the mandate of the office. This flexibility will be a key component in the office's preparations for the next general election.

The Office of the Commissioner of Canada Elections strives to respond to all complaints in a timely manner. In that vein, throughout 2014–2015, the office has been engaged in the development of a more efficient, effective and responsive service delivery model. Among the initiatives undertaken to meet these new standards is the full implementation of new case tracking software that has positioned the office to quickly and expertly adapt to a rapidly changing environment.

APPENDIX A - DISPOSITION OF CASES

(April 1, 2014 to March 31, 2015)



Comparison of active files per year:

| | 2012-2013 | 2013-2014 | 2014-2015 |
|--------------|-----------|-----------|-----------|
| Active Files | 424 | 346 | 254 |

Most common referrals from Elections Canada

- 13 complaints were received concerning the failure to file a report of nomination contest;
- 12 complaints were received concerning the failure to provide financial transactions return for fiscal period or related documents of a deregistered electoral district association;
- 11 complaints were received concerning the failure to satisfy bank account requirements;

- 9 complaints were received concerning the failure to dispose of surplus electoral funds; and
- 8 complaints were received concerning the failure to pay recoverable claim in timely manner.

Most common topics from the public

The most common complaint received from Canadians in fiscal year 2014–2015 concerned communications received from political

parties or Members of Parliament. Specifically, complainants expressed concerns and, in many cases, frustration regarding the fact that political entities had obtained their personal information – in particular their phone numbers and email addresses – and had been in contact with them. Many also objected to what they saw as public resources being used for partisan advertising. These issues comprised 31 complaints from the public.

APPENDIX B – FINANCIAL TABLES

(April 1, 2014 to March 31, 2015)

FISCAL YEAR 2014–2015

| | APPROPRIATION | UNAPPROPRIATED FUNDS - CRF | |
|--------------|-------------------------|----------------------------|------------------|
| | INDETERMINATE POSITIONS | OTHER | TOTAL |
| Salaries | \$1,398,839.00 | \$719,671.00* | \$2,118,510.00 |
| Expenditures | | \$3,791,200.00 | \$3,791,200.00** |
| | | | \$5,909,710.00 |

* Employee benefits packages are included as part of unappropriated spending.

** Includes expenditures associated with moving the Office of the Commissioner of Canada Elections to a new facility following its transfer to the Public Prosecution Service of Canada.