

COMMISSIONER OF CANADA ELECTIONS



ANNUAL REPORT



2021

TABLE OF CONTENTS

MESSAGE FROM THE COMMISSIONER OF CANADA ELECTIONS	2
The 2021 General Election.....	2
Administrative Monetary Penalties	2
Illegal Voting	2
Protection of Personal Information Held by Political Parties.....	3
Goodbye and Thank You	4
The Future	4
ABOUT US	6
Organizational Structure.....	6
Complaints and Referrals.....	6
Submitting a Complaint.....	7
YEAR IN REVIEW: 2021	8
The Office of the Commissioner of Canada Elections	8
Interactions with the Public	8
Relationship with Chief Electoral Officer	9
Legislative Amendments – False Statements	9
Ongoing Work Related to Previous Elections.....	9
2021 Federal General Election.....	10
Outreach	10
Complaints.....	11
Issues of Particular Interest	12
Pandemic-Related Complaints.....	12
Think Tanks Associated with Parties	12
Incentive to Vote.....	13
Misleading Electors.....	13
Illegal Voting.....	13
Missing or Late Campaign Returns.....	13
Unpaid Claims.....	14
Compliance and Enforcement.....	14
Charges.....	15
Compliance Agreements.....	16
Administrative Monetary Penalties	17
Undertakings.....	18
Informal Resolution	19
WRITTEN OPINIONS, GUIDELINES AND INTERPRETATION NOTES	21
LOOKING AHEAD.....	22
Ongoing Work Related to the 2021 Federal General Election.....	22
Refining the Administrative Monetary Penalties Regime.....	22
Continued Electoral Readiness.....	22
Preparing for a New Commissioner	22
APPENDIX A – DISPOSITION OF CASES.....	23
Comparison of the Number of Active Files per Year	23
Most Common Referrals from Elections Canada	24
Most Common Potential Contraventions Having Given Rise to Complaints from the Public.....	24
Most Common Complaints Related to the 2021 Election Period.....	24
APPENDIX B - FINANCIAL TABLE.....	28

MESSAGE FROM THE COMMISSIONER OF CANADA ELECTIONS

It gives me great pleasure to present my last annual report as Commissioner of Canada Elections (CCE). The following pages provide an overview of our key activities as well as issues that were of particular interest to us during 2021.

I would also like to focus on a few points that I think are particularly significant. Some of them relate to the year 2021, while others relate to my term as Commissioner.

The 2021 General Election

On the whole, last September's general election went very well, as can be seen below. Although most of our work was done from home, we were able to deal diligently with urgent issues that arose during the campaign.

It is worth noting that, unlike the previous general election (October 2019), when an entirely new regime had just been adopted to regulate the activities of third parties, we received far fewer complaints about this issue in 2021. This was likely due in large measure to the fact that the system had been fine-tuned and stakeholders had had a chance to familiarize themselves with the new rules.

Administrative Monetary Penalties

In 2019, amendments to the *Canada Elections Act* (the Act) came into effect, allowing for the adoption and implementation of an administrative monetary penalties (AMP) regime. This change, which our Office had been requesting for years, makes a significant difference and represents a real turning point for the CCE's compliance and enforcement work.

This is especially helpful at a time when criminal courts across the country continue to face huge caseloads and backlogs. The ability to impose monetary penalties on someone who, for example, has failed to file a financial return (which is critical to maintain transparency in our electoral system), without having to lay charges, is real progress.

Moreover, I am confident that the rate of compliance with the Act will only continue to increase as the ability of the Office to impose AMPs becomes better known. For that reason, and as I mentioned in my [Recommendations Report](#), Parliament should make the AMP regime applicable to other provisions of the Act.

Illegal Voting

Parliament has seen fit to allow for the imposition of AMPs in cases of illegal voting (while maintaining the ability to lay criminal charges). I think this was a very good choice. It allows us to deal with these cases much more quickly.

I would like to take this opportunity to reassure Canadians on this issue. In my ten years as Commissioner, I have seen that, yes, there have been times when non-citizens have voted or have been suspected of voting, or individuals have voted more than once. However, I want to emphasize that this *rarely* happens and, in the vast majority of cases, there is no evidence of criminal intent.

For example, there have been cases where a permanent resident has voted because someone told them in good faith (albeit erroneously), that they could do so. Or, an individual who having passed their citizenship test, mistakenly believed that they were eligible to vote, when in fact it is only after taking the oath of citizenship that one becomes a Canadian (and therefore an elector). In other cases, what appeared to be a double vote was, in fact, the result of an administrative error: the person's name had been crossed off the list of electors by accident, giving the impression that they had already voted.

At no time have we identified any case where the outcome of the election in a particular electoral district was affected by fraudulent votes.

In short, there is no indication that there is a systemic problem with illegal voting in Canada.

That being said, we must remain vigilant and not hesitate to resort to criminal prosecution when the circumstances warrant it. In this regard, it is worth noting that we have [laid charges](#) in several cases of illegal voting in recent years. What may surprise many readers is the relative leniency that the courts have shown to offenders. For example, in two cases of double voting (see [this final disposition](#) and [this other final disposition](#)), the trial court granted the accused a conditional discharge with one year's probation and 75 hours of community service. The Crown appealed the sentence. Its appeal was dismissed. In [another case](#) of double voting, the same type of sentence was imposed: a conditional discharge with six months probation and 15 hours of community service.

The current legislative framework allows for the imposition of an AMP of up to \$1,500 in cases of illegal voting. As a deterrent, this penalty compares favourably to sentences imposed by the courts for this offence.

Protection of Personal Information Held by Political Parties

The vast majority of Canadians have an expectation – and want minimum guarantees – that their right to privacy will be respected. However, and as is well known, the privacy regime currently applicable to federal political parties clearly does not meet citizens' expectations.

Changes made to the Act in 2019 are a step in the right direction. But it is a very *timid* step. For example, while parties are required to create a privacy policy, the Act does not specify the type of protection that parties must provide. Worse, it does not even contain a violation or offence for a party that failed to follow its own policy.

The wording regarding the permitted use of information contained in the list of electors has also not been updated to reflect practices in the social media age. As a result, the Act remains very permissive with respect to the use that parties may make of that personal information.

This means that, under the current legislative framework, very little can be done when electors come to us and express concerns or submit complaints about the use of their personal information by political parties. In this regard, it is worth noting that, in 2019, we received a complaint from the Centre for Digital Rights (CDR) raising this very issue. I dismissed that complaint given the weakness of the statutory provisions. The CDR initiated proceedings in Federal Court to challenge my decision and to force us to conduct a formal investigation. The Court dismissed the CDR's application in 2021 (file T-893-20).

The Chief Electoral Officer (CEO)¹ and the [Privacy Commissioner of Canada](#), as well as others, have lamented the current situation and have made recommendations in this regard. This is also an issue that I raised in my [2018-2019 Annual Report](#).

In March 2022, the [Office of the Privacy Commissioner of British Columbia](#) concluded that federal political parties are subject to the *Personal Information Protection Act*². In Quebec, the [Act to modernize legislative provisions as regards the protection of personal information](#) received royal assent last September. As noted by the Chief Electoral Officer of Québec in his report [Financement politique: Bilan et perspectives 2021](#), when they come into force on September 2023, some of the provisions of this Act will “in part, subject political parties, independent Members and independent candidates to the *Act respecting the protection of personal information in the private sector*” and add “a specific regime for the protection of the personal information of electors in the *Election Act*.” [translation] On the other side of the Atlantic Ocean, a similar trend is emerging. One example is the *General Data Protection Regulation* in Europe.

The winds of change are blowing harder and harder. It is high time Parliament acted and adopted a regime that is in keeping with the times and that meets the legitimate expectations of voters.

Goodbye and Thank You

Before I conclude, I would like to express my sincere thanks and deepest appreciation to all those in my office with whom I have had the pleasure of working over the past ten years. I have had the privilege of working with all kinds of dedicated, motivated people who believe deeply in our mission and who put their heart and soul into their work. I will miss having regular contact with them.

I would like to make special mention of the quality of the services and advice I received from Deputy Commissioner Marc Chénier. I benefited enormously from his vast experience and his unfailing support.

I would also like to express my sincere appreciation to the CEO and Elections Canada for their continued cooperation and support over the past years.

The Future

Canada is one of the very few democracies that has established and maintained an agency such as ours, with a completely independent mandate for the enforcement of electoral legislation. Indeed, no members of the political class, no public servants, not even the CEO can intervene in any way in our work. Moreover, the legislation guarantees the Office access to all the resources – financial or otherwise – that the Commissioner considers necessary to carry out its work. This is truly extraordinary.

As can be seen on [our website](#), over the years, political parties, ministers, members of Parliament, influential and high-ranking individuals, and major corporations have been charged and found guilty, or have admitted to violations of the Act.

¹ See, for example, [Meeting New Challenges: Recommendations from the Chief Electoral Officer of Canada following the 43rd and 44th General Elections](#) and the [CEO's testimony at the meeting of the Standing Committee on Procedure and House Affairs of May 22, 2018](#).

² An application for judicial review has been filed against this decision. This application is pending before the Supreme Court of British Columbia.

While one might well have feared that the opposite would happen, the Office's mandate and independence have been legislatively strengthened twice during my tenure, in 2014 and 2018.

I pay tribute to the governments and parliamentarians who proposed and passed these legislative changes. And I urge those who follow them to never stray down the opposite path.

I leave with the confidence that the entire team will continue to work as hard, and provide the same quality of support to the new commissioner as I have received over the years.

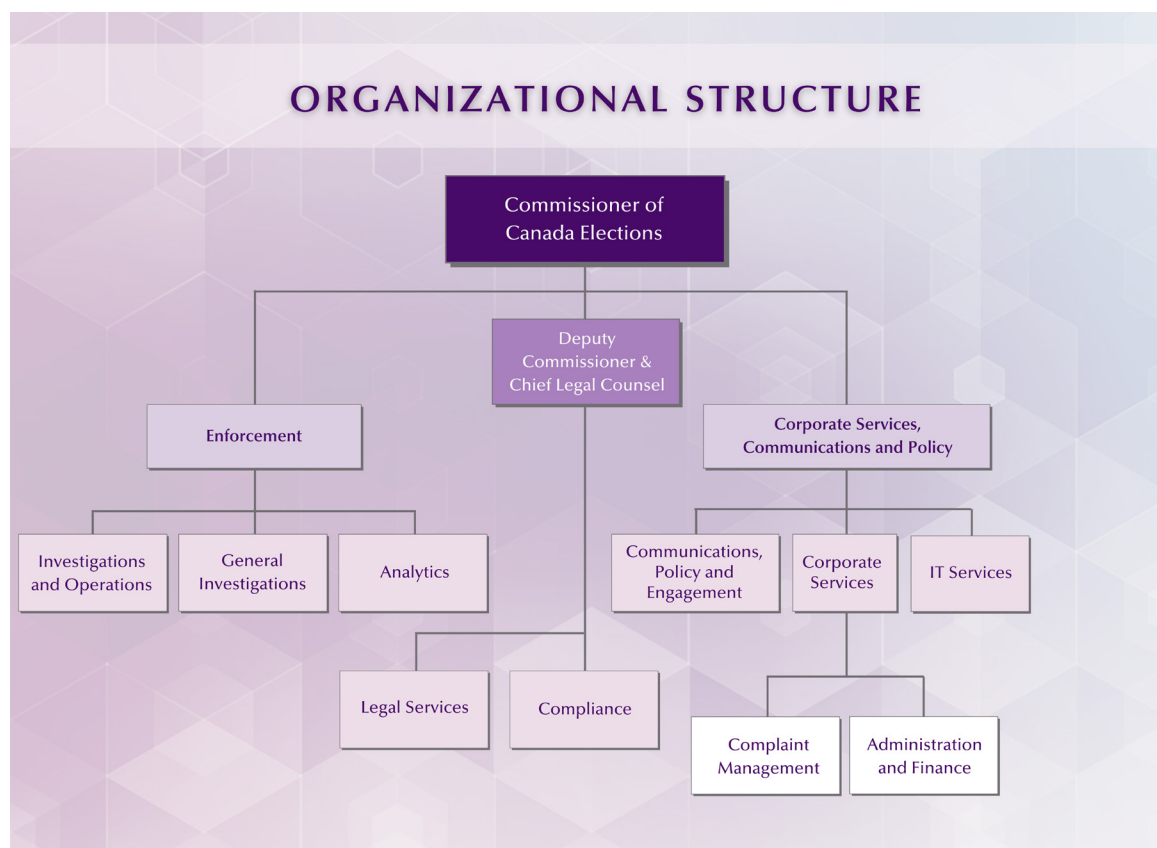
Yves Côté, Q.C.

ABOUT US

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

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

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



Complaints and Referrals

All complaints received by the CCE are assessed to determine if they fall within the mandate of the Office. The CCE also receives referrals from Elections Canada. In addition, Elections

Canada transfers complaints it receives from the public to the CCE when they fall under the Commissioner's mandate. The Commissioner may also look into a matter on their own initiative.

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

If, following a preliminary review, the Commissioner concludes that the allegations made in connection with a complaint or referral may have merit, a review or investigation may be conducted to clarify the facts and gather evidence related to the alleged contravention. 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 CCE's [Compliance and Enforcement Policy](#).

Submitting a Complaint

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

- ◆ by web form: www.cef-cce.ca,
- ◆ by e-mail: info@cef-cce.ca,
- ◆ by fax: 1-800-663-4908 or 819-939-1801, or
- ◆ by postal mail: Commissioner of Canada Elections
30 Victoria Street
Gatineau, Quebec
K1A 0M6

YEAR IN REVIEW: 2021

The Office of the Commissioner of Canada Elections

In 2021, most of the work continued to be conducted virtually, with limited on-site presence as required. The Office has adjusted well to this new work environment, and is able to efficiently carry out its compliance and enforcement activities. Flexible work schedules and locations also allowed employees to work at times and in ways that were best suited to their needs.

As part of its commitment to building a more diverse workforce, the Office began an evaluation of its recruitment and hiring practices with a view to recognizing and reducing barriers to employment. It offered internal training on intercultural effectiveness. The Office also continued to engage in wellness and mental health initiatives to foster a positive and thriving work environment.

The Office of the CCE is a great place to work. In the [2020 Public Service Employee Survey](#), CCE employees reported feeling valued, recognized and supported at work. They also described their workplace as psychologically healthy and felt like their wellness and mental health were prioritized.

In keeping with Bill C-65 and as a means to continue to foster a safe work environment for all of its employees, the CCE implemented its *Policy on Workplace Harassment and Violence Prevention*. All employees received mandatory training on the Policy, which included guidance on how to recognize, minimize and prevent workplace harassment and violence.

As outlined in the [2020 Annual Report](#), the CCE continued the work associated with its organizational review throughout 2021. That review was designed to evaluate the structure of the Office, with a view to ensuring the overall efficiency of its operations and the proper alignment of functions across the organization. Much progress has been accomplished in the implementation of the recommendations that came out of this organizational review.

Interactions with the Public

Beginning in May 2021, the CCE began reducing the level of detail in its public announcements. This new practice, which will be reassessed on an annual basis, was adopted to better align with the principles of the “right to be forgotten”, which is a concept allowing individuals the right to request that their personal or private information be removed from results of internet searches. Although all compliance and enforcement information remains fully accessible and searchable via the CCE’s website, once archived, the content can no longer be accessed when external search engines are used. Announcements are products often shared by a third party (like external service providers et social media users). De-personalizing public-facing communications ensures that CCE content does not contain these personal identifiers and therefore will not appear in third party sites once the content has been archived on the CCE’s website. Currently, the CCE archives content after 5 years or two election cycles, whichever is longer.

Relationship with Chief Electoral Officer

Building on [Guiding Principles](#) agreed upon by the Chief Electoral Officer (CEO) and the Commissioner following the return of the CCE to the Office of the CEO, an internal services agreement was signed in 2021. It lays out how shared services are delivered to the CCE. In particular, it establishes parameters for the delivery of human resources, financial and IT services by Elections Canada, while continuing to respect the independent nature of the Commissioner's work.

The CEO is accountable for any expense incurred by, on behalf of, or in relation to, the Commissioner under the Act. As outlined in [Appendix B](#), the CCE derives its funding from two sources. To ensure that the CCE's financial resources are well-managed, compliant with legislation, and consistent with Treasury Board policies and the principles of good stewardship, the Commissioner had an evaluation of the CCE's use of its statutory spending authority performed by an independent third party. The review examined and analysed all spending, including the increase in the number of determinate positions in recent years. It found that the CCE's statutory spending was aligned with the authorities set out in the Act. The report's findings were shared with the CEO's Departmental Audit Committee and, upon their recommendation, the Commissioner agreed to strengthen the challenge capacity of the CEO's Chief Financial Officer for the CCE. This will, of course, take into consideration key factors including the Commissioner's independence and the strict confidentiality rules that apply to his Office. The Audit Committee also recommended the *Budget Management Principles and Guidelines* developed by the CEO be applicable to the CCE.

Legislative Amendments – False Statements

In early 2021, the Ontario Superior Court found section 91 of the Act on false statements to be unconstitutional. It determined that making or publishing certain false statements should only be illegal when made while knowing that the statement is false. In keeping with the usual practice when a provision is declared invalid by the Court in one province, the CCE applied the judgment across the country. This meant that, if an election had been called at that time, the CCE would not have enforced section 91.

In response to the decision of the Ontario Superior Court, Parliament amended the offence provisions related to section 91 by adding the word “knowingly”. For an offence to take place, the person or the entity making or publishing a false statement must have knowledge that it is false. The CCE supported the amendment, which, incidentally, was consistent with how the CCE had been enforcing section 91.

More information on this issue can be found in the [issues of particular interest](#) below.

Ongoing Work Related to Previous Elections

Throughout 2021, the CCE continued to review and investigate files stemming from previous election periods.

In addition to ongoing files stemming from complaints to the Office, the CCE also received a significant number of referrals from Elections Canada.

Although some referrals may be in relation to incidents during a campaign, many are only received by the Office well after the end of the election period, either for reasons of administration or stemming from legislative timelines associated with political financing. Of note, unavoidable processing delays arising out of the pandemic have also postponed the transfer of political

financing and potential illegal voting files to the CCE. In the case of the latter type of files, the need to ensure appropriate social distancing at the warehouse where election documents for all of the polling stations are kept has significantly impeded Elections Canada's ability to access the documents required to substantiate potential cases of illegal voting.

Data on the most common types of referrals from 2021 can be found in [Appendix A](#).

The time between when a complaint is received and the announcement of compliance or enforcement action by the CCE varies greatly from case to case. The length of time necessary for a review or investigation can depend on several factors, including the complexity of the file and the level of cooperation from the people or entities involved.

2021 Federal General Election

Whether in the case of a fixed-date election or a minority Parliament which may lead to an early election call, the CCE always ensures that it is prepared to address the influx of complaints and issues that arise during an election period. As a result, in 2021, the CCE devoted a significant amount of time and resources preparing for a possible election.

As part of this work, the CCE undertook an evaluation of lessons learned from previous elections to determine those areas where adjustments may be required. Additional preparatory work was undertaken based on a strategic risk analysis, designed to better understand, prevent, and react to arising issues in the public environment.

Outreach

Throughout 2021, the CCE continued to build on relationships with existing stakeholders and participated in dialogues with experts, both inside and outside of government.

For example, the CCE took part in interdepartmental committees and groups that focus on election security. The CCE also engaged with a number of other stakeholders interested in threats to elections, including the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Communications Security Establishment, the Canadian Centre for Cyber Security and the Rapid Response Mechanism Team at Global Affairs Canada. In addition, the CCE reached out to the Canadian Association of Chiefs of Police in the event that the Office needed to liaise with police of local jurisdiction either during or after the general election.

As in previous years, the Office continued to liaise with digital platforms to ensure a clear line of communication and a rapid response when dealing with online activities that contravene provisions of the Act. These communications greatly help to facilitate the work of the Office, particularly as it relates to the gathering of evidence to carry out its investigative work.

In anticipation of the increased number of visitors to the CCE's website during the election period, the CCE updated its [Frequently Asked Questions](#) to provide more information to complainants and those who are the subject of a complaint. It also launched social media campaigns on its [Twitter](#) and [Facebook](#) accounts providing insight on common types of offences and violations under the Act, from a compliance and enforcement perspective.

Complaints

During an election period, the CCE shifts its focus from ongoing compliance and investigation work to the more urgent work generated by the influx of complaints. Throughout the general election, CCE personnel prioritize the reception, triage and review of thousands of complaints, with the main objective of achieving compliance. Indeed, wherever possible, CCE personnel work with individuals or entities to achieve compliance before election day. Detecting and resolving an issue as early as possible is the best way to ensure that electoral participants play by the rules established by Parliament to ensure a free and fair election.

Although many files and issues are still under review, no major issues were identified in relation to the campaign.

The CCE received **2,500** complaints, requests for information and letters in relation to the 2021 general election. The vast majority of the complaints were submitted by the public. Canadians also reached out to the Office to voice concerns or take positions on issues of interest, as well as to request information on various topics related to the application and enforcement of Canada's electoral legislation.

This number included **336** referrals from Elections Canada on matters that fell within the CCE's jurisdiction. Similarly, the CCE has mechanisms in place with Elections Canada and other enforcement bodies like the Canadian Radio-television and Telecommunications Commission to redirect general election-related complaints, as required.

More than two thirds of the files received by the Office in relation to the 2021 general election were closed by the end of the calendar year. In almost all cases, these files were closed for one of three reasons: they fell outside of the CCE's jurisdiction; they were resolved informally; or there were insufficient facts and evidence to support allegations that wrongdoing may have occurred.

Data for 2021 on the sources of correspondence, the number of active files and the most common alleged violations can be found at [Appendix A](#).

Issues of Particular Interest

In addition to potential violations and offences that were the subject of a high volume of complaints, some issues posed particular compliance and enforcement challenges for the CCE.

Pandemic-Related Complaints

As outlined in [Appendix A](#), during the 2021 general election, the CCE received complaints alleging that electors were being prevented from voting. Some of these complaints were related to electors not being allowed to enter a polling station because of their refusal to wear a mask, a requirement under public-health rules. In other cases, the complaints arose because of demonstrations or other disturbances at the polling place, sometimes linked to opposition to public-health measures. Many of these files remain under review by the Office. Despite the absence of provisions in the Act allowing for access-restrictions at the polling place based on public-health considerations, it is likely that the public interest in ensuring the health and safety of electors, candidates' representatives and poll workers will be an important consideration in how these matters will ultimately be dealt with.

Many other issues that were of interest in 2021 are addressed separately in the recently-published [CCE Recommendations Report](#).

Finally, it is noteworthy that reports of hostility and threats towards election workers enforcing pandemic-related rules were made to the CCE. Currently, unless a person has contravened ss. 479(4) of the Act by disobeying an order by the election officer for the person to leave the polling station, the Commissioner does not have the ability to take action with respect to any violent act or threat that caused the order to be issued in the first place. Indeed, since the Act does not contain prohibitions against acts of intimidation or violence against poll workers, and since the CCE's mandate to enforce the Act does not include offences committed under the *Criminal Code*, any such occurrence at a polling place would be a matter for the police of local jurisdiction.

Think Tanks Associated with Parties

The CCE received complaints about policy and research institutes ("think tanks") that are (or appear to be) closely associated with particular political parties, and that carry out activities that allegedly provide benefits to the political party and its affiliated entities. Generally speaking, the work carried out by such think tanks is not regulated under the Act, provided that what they do does not result in the making of an illegal contribution to a regulated political entity. This means that they must carry out their activities independently from the political party and its affiliated entities. Moreover, organizations (including, of course, think tanks) that carry out partisan or election advertising or partisan activities are required to follow the rules for third parties set out in the Act.

Finally, where contributions are made to a third party by an organization that solicited contributions for the stated purpose of funding the third party, the Act's anti-avoidance provisions may very well apply. As such, the organization and the third party may be in breach of the prohibition against circumventing the rules on contributions, or against hiding the identity of a contributor. Indeed, in such a case, the third party would only report a contribution having been received from the organization; the identity of the persons or entities that provided funds to the organization to make this contribution would remain hidden, contrary to the transparency objective sought by the Act.

Incentive to Vote

The CCE also received complaints regarding the Act's bribery prohibitions. Under the Act it is an offence during the election period to offer or accept (or agree to accept) a bribe (money or a gift) directly or indirectly with the purpose of influencing someone to vote or refrain from voting. However, for there to be an offence of offering or accepting a bribe, there must be a corrupt intent on the part of the offender. Simply encouraging electors to vote – absent a corrupt intent – is generally not contrary to the Act.

Misleading Electors

The CCE received multiple reports of alleged false statements in 2021 (see [Appendix A](#)). With all the messages circulating online, electors are more exposed to disinformation. These issues can only partly be addressed through the provisions of the Act.

At section 91, the Act prohibits making specific types of false statements in relation to a candidate or party leader, among others, with the intention of affecting the result of the election. However, for the offence to be committed, the person who made the statement must know or be willfully blind to the fact that it was false (see above). In at least one instance during the 2021 general election, an individual communicated alarming and false information about the intended effects of a candidate's support of vaccine mandates. After a review by the CCE, it became evident that despite any potential impact of such alarming statements on the targeted candidate's campaign, there was strong evidence that the subject of the complaint sincerely held these wrong beliefs. In such a situation, enforcement action would be complicated by the fact that it may be impossible for the prosecutor to prove the intent element of the offence. In such cases, the sending of an information or caution letter by the CCE may be useful to inform the person of the need to research the veracity of their particular statements, on the one hand, and to prove wilful blindness as an alternative to knowledge for any subsequent reoccurrence, on the other hand.

Illegal Voting

The CCE received a [number of referrals](#) from Elections Canada related to potential illegal voting in 2021. These files had to do with events arising out of the 2019 general election and included cases of electors who may have voted while not qualified or cases of potential double voting.

Elections Canada refers these files to the CCE for review and closer examination. Due to the volume of cases and pandemic-related delays in the gathering of information regarding the potential illegal vote, the CCE put in place a protocol to prioritize cases to make the best use of resources and ensure a most efficient compliance overall.

Although instances of illegal voting were established, in many cases, alleged occurrences could not be ascertained, it was determined that an administrative error had taken place, or the individual was, in fact, an eligible voter.

Missing or Late Campaign Returns

The Act provides specific timelines for political entities and third parties to submit financial returns. Elections Canada reviews these returns, and refers cases to the CCE when they believe a contravention may have occurred.

During 2021, a significant number of administrative monetary penalties (AMPs) were imposed on the financial agents of nomination contestants of a particular registered party, for the failure to submit a campaign return or to submit it on time. Although it may seem unusual that the Notices of Violation (NOVs) were only issued to financial agents of this party, this is explained by the fact that the latter imposes a participation fee of more than \$1,000 on nomination contestants taking

part in the contest organized by the party. This participation fee in itself constitutes a nomination campaign expense that is sufficient to trigger the obligation for the financial agents of this party to submit a campaign return in accordance with the Act. No other party charges a participation fee requiring, by itself, the submission of a campaign return after the nomination contest.

Unpaid Claims

According to the Act, candidates and nomination contestants have three years to pay their claims for a campaign expense or loan. While this is problematic even in a full four-year election cycle—since files dealing with unpaid claims are referred by Elections Canada to the CCE just as the Office is readying for the next general election—it presents particular challenges in a minority government context. Indeed, in a shortened election cycle, files from the two previous general elections may not have been received before the next election is held. The length of the period to pay claims is problematic from a compliance and enforcement perspective. For that reason, the Office worked on a recommendation to shorten the period, which was included in the [CCE's Recommendations Report](#).

Compliance and Enforcement

The Office has a variety of tools at its disposal to ensure that the Act is complied with and enforced. Formal means include the use of enforcement and compliance tools provided for in the Act, among them the laying of charges, entering into a compliance agreement, the issuance of a Notice of Violation (NOV) imposing an administrative monetary penalty (AMP), and the acceptance of an undertaking. Depending on the circumstances, the Commissioner can also use informal means, such as an information or a caution letter.

In accordance with the Act, the Commissioner has delegated to the Deputy Commissioner the power to impose NOVs and accept undertakings for amounts of up to \$500 for individuals and up to \$1,500 for entities. This resulted in the Deputy Commissioner issuing most of the NOVs and accepting all of the undertakings in 2021.

As required by the Act, all cases resulting in the use of formal means are made public, on the CCE's website. Links to the information are also shared with the public via news releases and the CCE's social media accounts.

Did you know?

The CCE only makes information public at the end of an investigation and only if formal compliance or enforcement action is taken. The Act contains confidentiality provisions that prevent the Commissioner and those working for them from sharing details related to the work being carried out by the CCE, except in some instances. Most of the time, that also means the CCE will not comment on whether a review or an investigation is even underway.

The CCE does not provide updates on the status of files, but complainants are generally notified about the outcome of their complaint.

Charges

If the Commissioner believes on reasonable grounds that an offence has been committed under the Act, they may cause criminal charges to be laid. After charges have been laid, the Public Prosecution Service of Canada (PPSC) is responsible for all aspects of the prosecutions, including appeals.

Although no new charges were laid in 2021, several proceedings were concluded during the year:

- ◆ On May 20, 2021, [Louis Clément Sénat](#) pleaded guilty to the charge of obstructing the work of the CCE by knowingly producing documents that contained false or misleading information. Louis Clément Sénat received a \$2,000 fine payable within 6 months. The PPSC withdrew a second obstruction charge for transmitting false or misleading statements to an investigator while presenting themselves as another person in emails.
- ◆ On May 4, 2021, at the request of the PPSC, the Court ordered a stay of proceedings for four charges against [Mario Martel](#) and five charges against [André Côté](#). The charges were related to an investigation into Roche Ltd, Consulting Group, for illegal contributions made by the firm to federal political entities between January 1, 2005, and December 31, 2011.
- ◆ On November 15, 2021, following consultation with the PPSC and the signing of a [compliance agreement](#), the charges against [Daniel Berlin](#) were withdrawn by the Crown. The agreement addressed the offence of knowingly providing misleading information during the Commissioner's investigation.

In addition, three matters were still before the courts at the end of 2021:

- ◆ On September 21, 2020, five charges had been laid against Bernard Poulin, for illegal contributions made to federal political entities between January 1, 2004, and June 11, 2009. As the founder and chief executive officer of Groupe S.M. International Inc., Bernard Poulin had been charged with having solicited political contributions from employees and from an employee's spouse while offering them a reimbursement from the company. Under the Act, it is illegal for anyone other than a Canadian citizen or permanent resident to make a political contribution or to conceal the source of a contribution.
- ◆ On October 8, 2020, two charges had been sworn under the Act against David Berlin. The former leader of the now-deregistered Bridge Party of Canada was charged with causing the official agent of a candidate to provide the CEO with an electoral campaign return containing false or misleading information. David Berlin also faced a charge of fraud of more than \$5,000 under the *Criminal Code*. As noted in the next section, a compliance agreement was signed with David Berlin in 2021, although the charges were still pending at the end of the year.
- ◆ On September 24, 2020, Anderanik Pakbegi had been charged with voting knowing that he was not qualified as an elector. Mr. Pakbegi was also charged with applying to register to vote in the electoral district of Don Valley East knowing that he was not qualified as an elector. As noted in the next section, a compliance agreement was signed with Mr. Pakbegi in 2021, although the charges were still pending at the end of the year.

Did you know?

The Act provides the Commissioner or their delegate with a variety of tools to resolve enforcement matters. In some instances, they may determine that the public interest will best be served through the use of means other than the laying of charges. The use of other tools to address violations and offences under the Act helps to alleviate the strain on the Canadian justice system, and avoids delays that can be associated with criminal proceedings.

Compliance Agreements

Compliance agreements are voluntary agreements that set out the terms and conditions that the CCE considers necessary to ensure compliance with the Act, and are an alternative to the laying of charges. Since June 2019, compliance agreements may contain financial consequences for the person or entity that failed to comply with a requirement of the Act. The consequences of non-compliance with the terms and conditions of a compliance agreement may also result in the imposition of an AMP for the failure to comply, or in the laying of charges with respect to the initial offence to which the compliance agreement related.

Between January 1, 2021, and December 31, 2021, the CCE entered into five compliance agreements:

- ◆ On February 25, 2021, the Commissioner entered into a [compliance agreement with Robert Gibbs](#), co-owner of Romar Communications Ltd. for having circumvented the contribution rules in the Act during the 2015 general election and for acting in collusion with another person or entity for that purpose. Mr. Gibbs agreed to pay \$7,500 to the Receiver General to reimburse the value of the illegal non-monetary contribution made by Romar Communications Ltd. as well as the amount that the campaign had returned to Romar Communications Ltd. to pay the individuals who performed the work, but that was never paid to them.
- ◆ On June 29, 2021, the Commissioner entered into a [compliance agreement with Dennis Theman](#) for contributions made to registered associations, candidates and leadership contestants of the New Democratic Party of Canada that were in excess of the contribution limits set out in the Act. As part of the terms and conditions of the compliance agreement, the Contracting Party agreed to pay a sum of \$7,330 to the Receiver General, of which \$5,830 represents the total illegal contributions and \$1,500 is intended to ensure future compliance.
- ◆ On July 14, 2021, the Commissioner entered into a [compliance agreement with Daniel Berlin](#) for knowingly providing misleading information during the Commissioner's investigation. According to terms and conditions of the agreement, the individual was required to pay \$2,000 to the Receiver General and to complete 150 hours of community service. The charges against Daniel Berlin were then [withdrawn](#) by the Crown.
- ◆ On September 13, 2021, the Commissioner entered into a [compliance agreement with David Berlin](#) for having caused the official agent of a candidate of the party to provide the CEO with an electoral campaign return containing false information. The former leader

of a now-deregistered party was required, through the compliance agreement, to pay an amount of \$20,000 to the Receiver General and to complete 150 hours of community service.

- ◆ On December 3, 2021, the Commissioner entered into a [compliance agreement with Anderanik Pakbegi](#) for voting during the 2015 general election knowing that, as a permanent resident of Canada, he was not qualified to vote. As part of the terms and conditions of the agreement, the individual agreed to pay \$750 to the Receiver General.

Under the terms of compliance agreements in 2021, more than **\$36,000** was paid to the Receiver General for Canada.

Administrative Monetary Penalties

Following changes brought about by Bill C-76 that, among other things, created an AMP regime, the CCE established a Compliance Unit in 2019 and the new unit became fully operational in late 2020. The unit's main business line is management of the AMP regime and issuance of other compliance-related measures.

AMPs provide a financial disincentive to non-compliance and are an administrative alternative to more severe enforcement measures. This measure is used when the Commissioner or Deputy Commissioner believes on reasonable grounds that a person has committed a violation. In such a case, they serve the person with a NOV that sets out, among other things, the nature of the violation and the amount of the AMP to be paid.

The ability to issue a NOV applies to certain contraventions of the Act, including those related to illegal voting, and to the rules on communications, third parties and political financing. They may also be imposed to address failure to comply with a term or condition of a compliance agreement or of an undertaking, or for failing to comply with a requirement issued by the CEO.

In 2021, a total of **76** NOVs imposing an AMP were issued. In its first full year of operations, the regime has proven to be a useful administrative tool in the efficient resolution of compliance matters.

AMPs are only made public once the amount is paid or, if the person fails to pay, request a review, or enter into an undertaking within 30 days. As required by the Act, at the conclusion of a review, if an AMP is confirmed by the Commissioner or the CEO (as the case may be), the AMP is made public after 30 days following the review decision.

In 2021, the CCE [published the following AMP summaries](#) for NOVs that were sent to individuals:

- ◆ 21 financial agents for failing to produce the required nomination contestant's campaign return within four months following the selection date (or polling day if it falls within 30 days of an election period);
- ◆ 18 official agents for failing to produce the required candidate's electoral campaign return within four months after polling day. Of these, one individual was issued two NOVs for failure to meet these requirements while serving as official agent for two candidates;
- ◆ a candidate for transmitting election advertising on polling day;
- ◆ a chief agent of a deregistered political party for failing to provide the CEO with the required financial returns.

Two AMP summaries were also published for an entity failing to register as a third party and to include information required by the Act in its election advertising. Of note, the entity has asked for a judicial review under the *Federal Courts Act*, and the case is still pending.

A request for the review of a NOV issued to a person or entity may be made to the CCE (in cases where the Deputy Commissioner issued a NOV imposing an AMP of \$500 or less to an individual or of \$1,500 or less to a corporation or an entity), or to the CEO (in cases where the CCE issued a NOV beyond this threshold). While the NOV is issued if there are reasonable grounds to believe that a violation occurred, at review, the decider may only maintain the AMP if they are satisfied on a balance of probabilities, a higher evidentiary standard. As such, evidence, information and explanations as to potential defences that are provided as part of the review process may serve to provide greater clarity surrounding the events that led to the issuance of the NOV, and the reviewer may as a result cancel an NOV, or reduce the amount of the AMP imposed.

A total of **18** requests for review were submitted in 2021. They were all made to the CCE, since they had been issued by the Deputy Commissioner. Following these reviews, **4** NOVs were cancelled, and the amount of the AMP imposed in **4** others were reduced because of mitigating circumstances.

When individuals or entities are issued a NOV, they have 30 days to either pay, request a review or propose an undertaking. After this period, an unpaid portion of an AMP (with interest) is a debt due to the Crown, which may be recovered in the Federal Court. To facilitate the recovery of unpaid amounts, the CCE and the Office of the CEO have approached Canada Revenue Agency to have such debts recovered through the Agency's Individual Refund Set-Off program.

More information about AMPs and requirements set out in the Act can be found in the CCE's [AMP regime](#) and [Policy for the AMP Regime](#).

Undertakings

As an alternative to the imposition of an AMP, an undertaking is a pledge made by a person or entity that did not comply with a requirement of the Act to take action to comply with the requirement. The undertaking is therefore accepted as a means of addressing situations of non-compliance by the Commissioner or Deputy Commissioner. It may be offered by an individual or entity when a violation has been committed or following the issuance of a NOV imposing an AMP. Each undertaking contains the terms and conditions that are considered appropriate, which may include the payment of an amount to the Receiver General for Canada.

Five undertakings were accepted during 2021, each one of them dealing with a matter arising from the 2019 general election:

- ♦ On June 29, 2021, the Deputy Commissioner accepted an [undertaking from the Saskatchewan Party](#) for failing to include contact information and an authorization message in partisan and election advertising messages; register with the CEO immediately after having incurred \$500 in partisan or election advertising expenses; and provide a third-party expense return to the CEO within four months after polling day.
- ♦ On August 10, 2021, the Deputy Commissioner accepted an [undertaking from Kulwant Brar](#) for failing to register as a third party with the CEO immediately after having incurred \$500 in partisan activity expenses; and provide a third-party expense return to the CEO within four months after polling day.
- ♦ On December 6, 2021, the Deputy Commissioner accepted an [undertaking from Canadians for Clean Prosperity](#) for failing to include contact information and authorization messages in its election advertising; register as a third party with the CEO immediately after having incurred \$500 for its partisan activities, partisan advertising and election advertising expenses; and provide a third-party expense return to the CEO within four months after polling day.
- ♦ On December 21, 2021, the Deputy Commissioner accepted an [undertaking from Campaign Life Coalition](#) for failing to register as a third party with the CEO immediately after having incurred \$500 for partisan activity expenses; and provide a third-party expense return to the CEO within four months after polling day.
- ♦ On December 21, 2021, the Deputy Commissioner accepted an [undertaking from Grant Hepworth](#) for failing to appoint a replacement official agent without delay, upon the death of their official agent.

Informal Resolution

In certain cases, the CCE chooses informal means to resolve a file. This is often the case for minor or unintentional acts or omissions. To decide whether to proceed formally or informally, the Commissioner or Deputy Commissioner carefully considers all aspects of a case to select the measure that would best serve the public interest in a particular situation.

Informal tools, such as information and caution letters, encourage the person or entity to take all necessary steps to avoid a contravention

In 2021, the CCE issued **199** caution letters and **49** information letters. As required under federal privacy legislation, informal correspondence of that kind is not made public.

of the Act in the future. An information letter may be sent when the Commissioner or Deputy Commissioner determines that there has not been a contravention of the Act or that evidence of such a contravention is not obtainable, but that it would be useful to provide information to the person or entity involved in order to prevent future contraventions of the Act. A caution letter serves as a warning. It may be issued in cases of minor contraventions where the Commissioner or Deputy Commissioner determines that it is not in the public interest to take formal enforcement action.

These informal letters form part of the person or entity's compliance record. A person or entity receiving a caution letter should expect any recurrent non-compliance to be addressed using a formal response. Whether or not a person has taken steps to avoid committing a violation in the future is one of the factors that guides the CCE in determining the best course of action and the amount to be paid, should an AMP be imposed. More information on the aggravating and mitigating factors considered in the calculation of an AMP can be found in the [CCE's Policy for the AMP Regime](#).

WRITTEN OPINIONS, GUIDELINES AND INTERPRETATION NOTES

Under the Act, the Commissioner is required to provide comments on draft written opinions, guidelines or interpretation notes proposed by the CEO. The CCE has 45 days to comment on the drafts of guidelines and interpretation notes, and 30 days to comment on draft written opinions. When the opinion, guideline or interpretation note is officially issued, the CEO must publish the comments received from the Commissioner and from registered parties on the draft version.

During 2021, the CCE provided official comments on seven guidelines and interpretation notes that were circulated for consultation to the registered parties and the Commissioner:

1. [Participating in Third Party Campaign-Style Events During Pre-election and Election Periods;](#)
2. [Irregular Transfers Between Affiliated Political Entities;](#)
3. [Political Financing Handbook for Nomination Contestants and Financial Agents;](#)
4. [Political Financing Handbook for Electoral District Associations and Financial Agents;](#)
5. [Political Financing Handbook for Candidates and Official Agents;](#)
6. [Political Financing Handbook for Registered Parties and Chief Agents;](#)
7. [Canvassing and Campaigning in Residential Areas and Public Places.](#)

Guidelines and interpretation notes deal with 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”). They are issued for information purposes only and are not binding on regulated political entities.

LOOKING AHEAD

Ongoing Work Related to the 2021 Federal General Election

A significant number of files that were received during the 2021 general election remain under review and investigation. The CCE is also continuing to receive complaints from Canadians and referrals from Elections Canada. Legislative timelines — particularly those related to political financing — also mean that referrals from Elections Canada may be received for several years after the election period.

Refining the Administrative Monetary Penalties Regime

The imposition of AMPs has shown to be an efficient alternative to address compliance issues. With the implementation of the AMP regime completed, the CCE will continue to adjust its processes to support the execution of this compliance measure. Internal procedures will also be analyzed to ensure the regime is the most efficient possible.

Continued Electoral Readiness

Historically, the tenure of minority governments in Canada fall short of the four-year fixed term set out in the Act. The CCE will continue to build its readiness capabilities in order to ensure it is prepared for an electoral event prior to 2025.

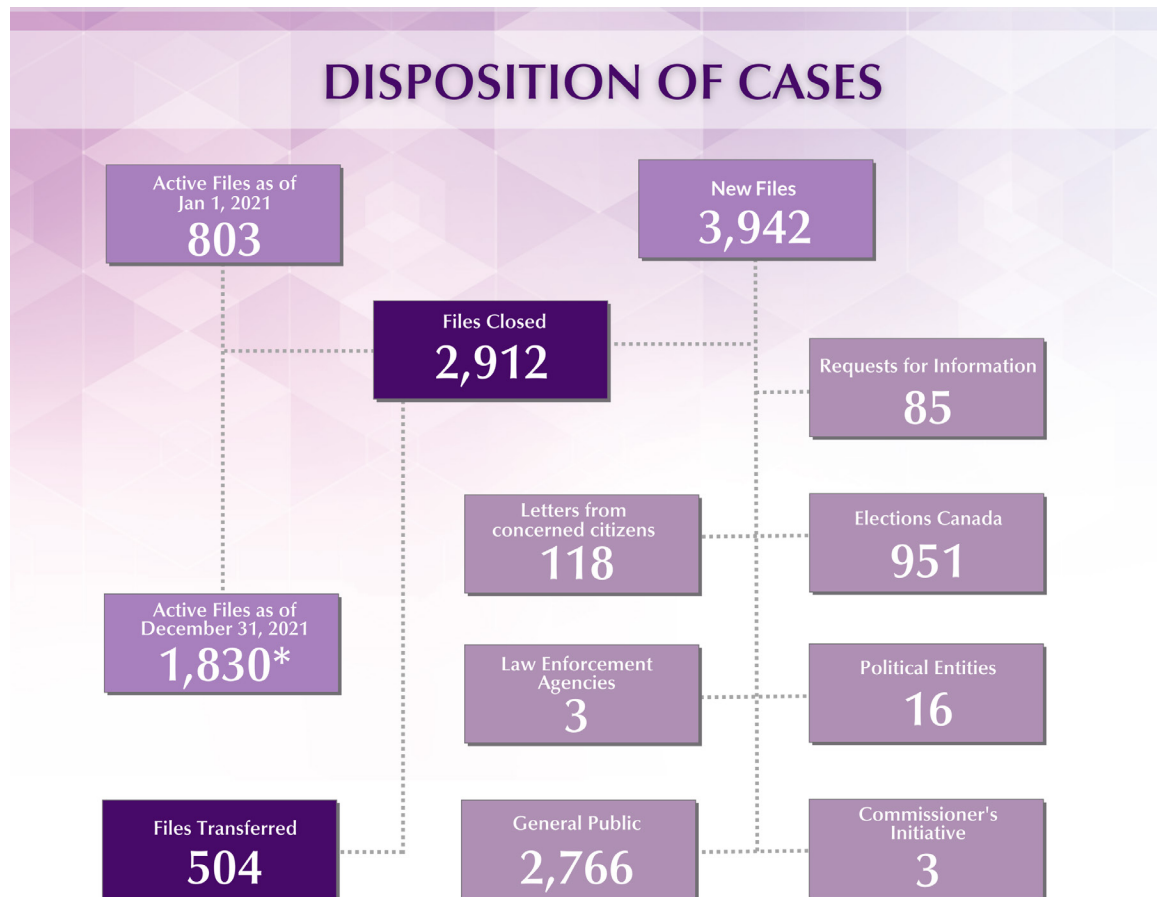
Following each general election, the CCE evaluates its action plan and draws lessons from events arising out of the election that can be applied in the years to come. The CCE also analyzes the public environment and engages in discussions with stakeholders to better understand arising electoral issues in other jurisdictions. Keeping up to date with new trends ensures that the CCE has the tools and knowledge in place to anticipate risk and address challenges before the next federal election.

Preparing for a New Commissioner

The 10-year term of the current Commissioner expires at the end of June 2022. The CEO is responsible for appointing a new CCE, in consultation with the Director of Public Prosecutions. The process to select a new Commissioner was launched in the fall of 2021. At the time of publication of this report, the announcement of a new Commissioner was anticipated for the spring of 2022.

The Office is actively preparing for this change and looks forward to welcoming the new Commissioner.

APPENDIX A – DISPOSITION OF CASES



*The difference of 3 active files between the beginning and end of the year (when adding the new files and removing the ones that were closed) can be explained by administrative corrections.

Comparison of the Number of Active Files per Year

	Fiscal Year 2016-2017	Fiscal Year 2017-2018	2018-2019*	2020	2021
Active Files	311	587	1,599	803	1,830

*Reporting covers an extended period between April 1, 2018 to December 31, 2019.

Most Common Referrals from Elections Canada

In 2021, the most common referrals from EC were related to the 2019 general election:

- ◆ 552 files were referred as a result of possible irregularities regarding potential instances of individuals voting when not qualified or entitled;
- ◆ 331 files were referred as a result of possible irregularities regarding potential instances of electors requesting a second ballot.

Most Common Potential Contraventions Having Given Rise to Complaints from the Public

- ◆ 111 distinct instances related to influencing or attempting to influence a person to vote or refrain from voting by any pretence or contrivance;
- ◆ 101 distinct instances related to preventing or impairing the transmission of election advertising;
- ◆ 99 distinct instances related taking a photograph or making a video of a ballot or special ballot that has been marked;
- ◆ 63 distinct instances related to the transmission of election advertising on polling day;
- ◆ 60 distinct instances related to the failure of a candidate, registered party, or a person acting on their behalf, to indicate on election advertising that its transmission was authorized (i.e. “tagline”).

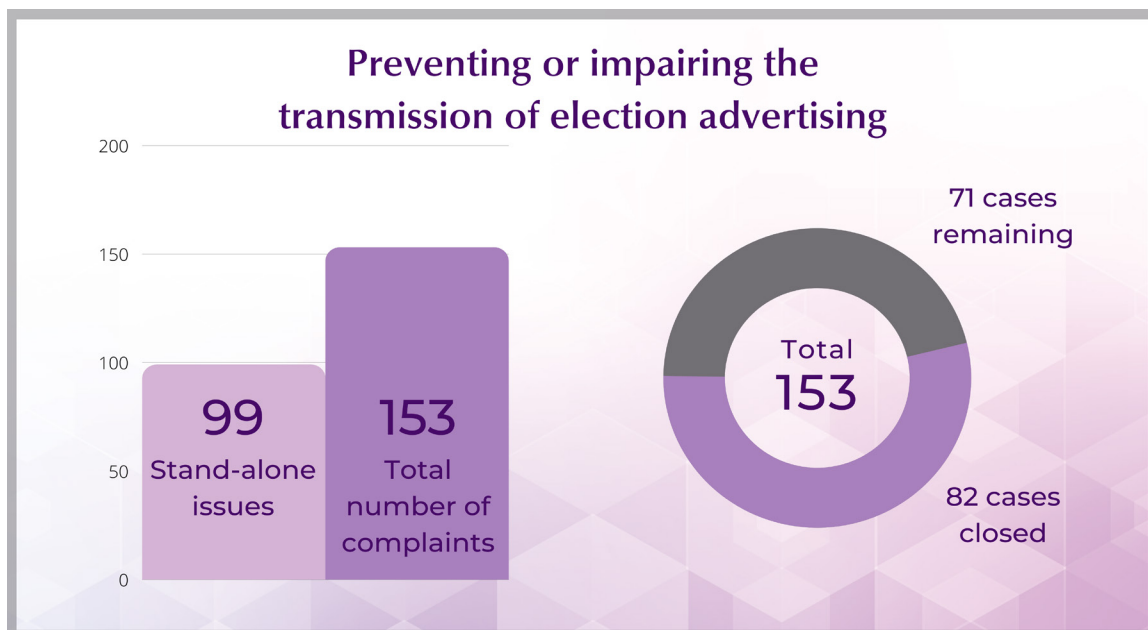
Most Common Complaints Related to the 2021 Election Period

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

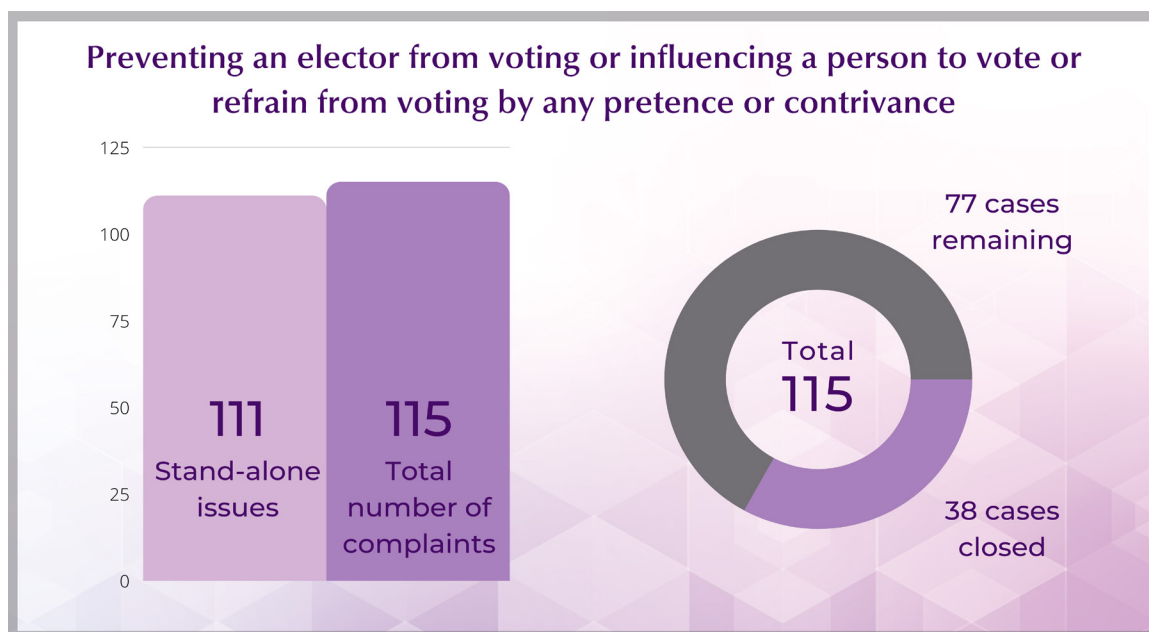
What follows is a description of the top five complaints received by alleged violation of the Act. Each category details the total number of complaints received, the number of different fact situations that gave rise to these complaints (“stand-alone issues”), and the number of files closed as of December 31, 2021.



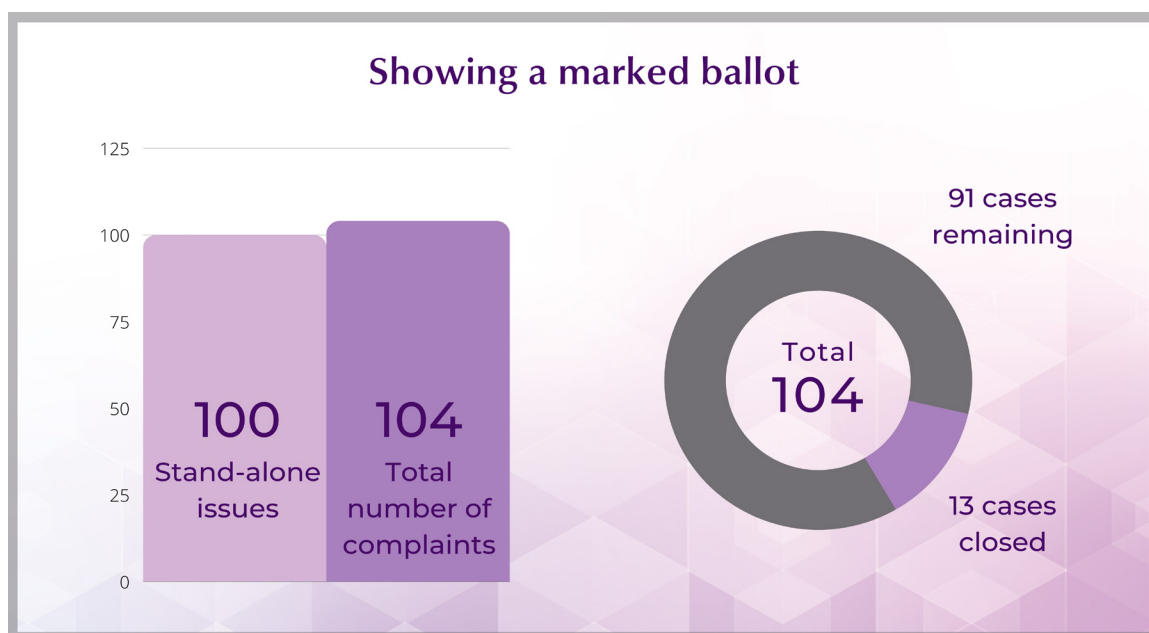
443 complaints were received by the CCE alleging false information about a candidate, prospective candidate, leader of a political party or a public figure associated to a political party with the goal of affecting election results. The majority of these complaints were closed as no offence was found.



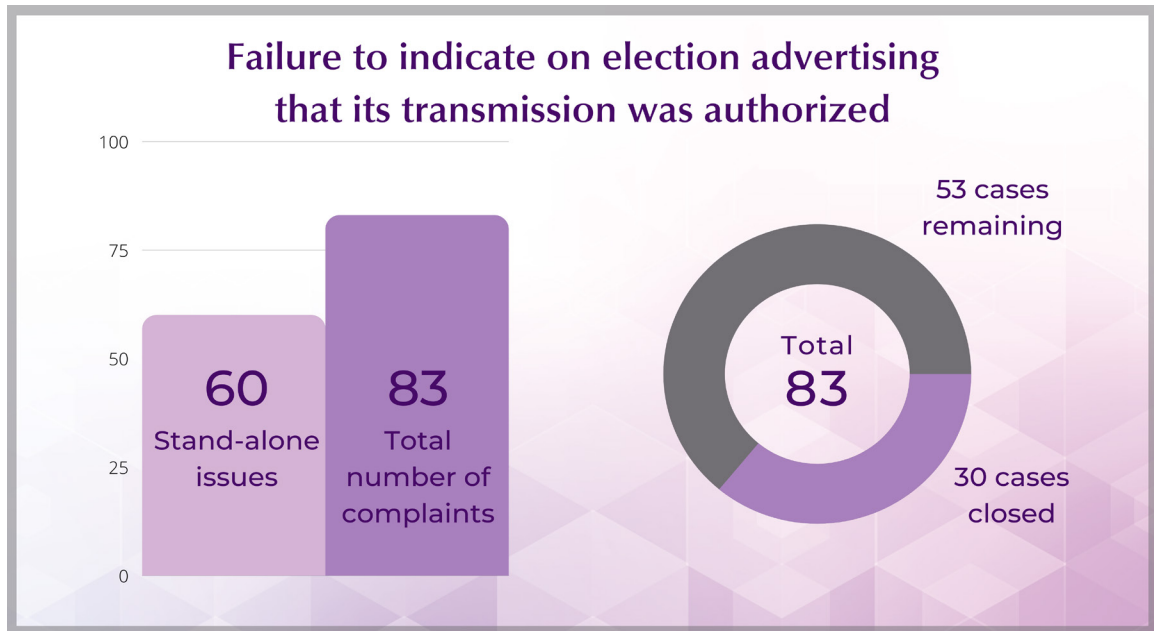
Under the Act, it is an offence to prevent or impair the transmission of an election advertising message. Most of the complaints received related to online video footage showing a candidate removing campaign material from a person's porch. This particular case was resolved through [the imposition of an AMP](#).



The CCE received 115 complaints alleging that an elector had been prevented from voting, or that, by pretext or contrivance, a person had influenced or attempted to influence another person to vote or refrain from voting. Out of the 115 complaints on this issue, 29 were linked to the need to wear a mask inside polling stations. In various places throughout the country, individuals were not permitted to enter a polling place if they did not follow the health and safety measures in place.



During the election period, the CCE received 66 complaints falling in this category. Most of those were related to circumstances concerning electors posting pictures of their marked ballots on social media. Taking or sharing a photo of a marked ballot is illegal in Canada.



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

APPENDIX B - FINANCIAL TABLE

The CCE derives its financing from two sources. It is funded in part by an annual appropriation, its voted authority, which covers the salaries of its employees occupying indeterminate positions. The CCE also has a statutory authority that allows it to draw directly from the Consolidated Revenue Fund for all other expenses including: salaries of determinate employees and payment of contractual resources, other expenses incurred for carrying out investigations, etc. The statutory authority ensures that the CCE has access to the funds it requires to carry out its investigative work while maintaining complete independence from the government.

Appropriated funds	Unappropriated funds		TOTAL
Indeterminate salaries	Other remuneration	Other expenditures	
\$3,377,255	\$1,482,049	\$1,324,783	\$6,184,087