



Interpretation Note: 2021-03

Canvassing and Campaigning in Residential Areas and Public Places

Comments made during consultation period of March 10 to April 23, 2021

Comments received from the Conservative Party of Canada	Elections Canada response to the Conservative Party of Canada
<p>Thank you for the opportunity to provide feedback towards OGI 2021-03. Our compliance team has reviewed the draft and has requested clarification for the following sections of the document:</p> <p>1. Page 4) “For the purpose of gaining access to canvass and campaign under sections 81 and 81.1, a person becomes a candidate only when their nomination is confirmed during the election period by the local returning officer.”</p> <p>As access to public spaces is only protected once the nomination is verified by the Returning Officer, any delay by that Officer will hold up the candidate’s ability to canvass. Will Returning Officers commit to meet with candidates and review their nomination papers as soon as possible after they are presented? In past elections, candidates have at times experienced unexplained delays in booking appointments or confirming their nomination.</p>	<p>Elections Canada advises returning officers to respond promptly to prospective candidates’ requests, though there may be local conditions that make it difficult for an appointment to be immediately booked.</p> <p>Prospective candidates are encouraged to submit their nomination paper through the Political Entities Service Centre, as it automates several steps in the verification process. The candidate’s solemn declaration can be done by videoconference rather than in person.</p> <p>Once a nomination paper is filed, according to the <i>Canada Elections Act</i>, returning officers have no more than 48 hours to confirm or refuse the nomination.</p>

2. Page 4) “Candidates who are refused access, or whose representatives are refused access, are encouraged to contact the local returning officer for assistance. While a returning officer cannot compel a person in control to give access, they can speak with them, confirm that the candidate’s nomination has been approved, ask for their cooperation and inform them of their obligations and the consequences of non-compliance under the CEA.”

Many apartment complexes have locked lobbies or elevators, without a staffed reception. It is common for campaigns to reach out to the Property Manager to be granted access to those key-limited areas, to canvass at the individual residences. At what point does a reasonable attempt to coordinate access become “refused access”? If a keyholder is only willing to meet at a limited time, is that refusing access? Can further instruction be added to this document, to coordinate? Page 6 references areas “accessed using secured cards” being excluded from public places. I don’t believe it was the intention of this section to exclude apartment complexes. Perhaps that should be made clear.

Campaigns are to refer non-compliant property managers to the Returning Officer, who has no authority to compel them to comply? Perhaps there is a better solution, such as referring these cases directly to the CCE? This will protect the Returning Officer’s time, and hopefully lead to a timely resolution for all.

While there is no definition of “refused access” in the Act, if the campaign is prevented from canvassing because a person in control is not responding to their request or is not responding in a reasonable manner, the candidate’s campaign can file a complaint. The following sentence has been added: “Refusal of access includes a failure on the part of a person in control to respond to the campaign’s request within a reasonable time frame or to grant access in a reasonable manner.”

Decisions of what is reasonable must be made case by case. For example, a building undergoing major renovations may limit canvassing to outside business hours, if there would otherwise be work disruptions or safety concerns. We encourage parties to give their candidates advice on the most effective ways to reach out to persons in control of premises and coordinate with them.

The OGI refers to areas accessed using secured cards only in the section on public places. An apartment complex is, indeed, not a public place as defined in section 81.1. The candidate still has access rights to canvass there under section 81.

While the Commissioner can receive complaints about refusal of access, his enforcement powers come after the fact and are based on investigations that cannot be completed quickly across 338 electoral districts. We suggest leveraging the letter provided by the Chief Electoral Officer on accessing public places and residential dwellings to communicate your right of access. Additionally, engaging the local returning officer might lead to a quicker resolution, as they have the most recent list of confirmed candidates, are familiar with the local context and can explain the rules to persons in control. If there is no resolution after attempts at negotiation, then a formal complaint should be filed with the Commissioner.

<p>3. Page 4) “What is a ‘multiple residence building’ to which the well-being exception applies? Based on subsection 81(1), it is any type of multiple-unit residential building. It is clear that condominium and apartment buildings are included in the concept of multiple-residence buildings because the provision refers to an ‘apartment building, condominium building or other multiple-residence building.’ This is reinforced by subsection 81(2), which allows the exception to be invoked with regard to both canvassing (which is allowed only for apartment and condominium buildings) and campaigning in common areas (which is allowed for all multiple-residence buildings).</p> <p>The only category of residential units that are included in the right of access, but excluded in terms of invoking the well-being exception for canvassing, are gated communities. Gated communities are not multiple-residence buildings; rather, they are single-family homes located in a neighbourhood that can be accessed only through a security gate.”</p> <p>Can this section further clarify the distinction between a multiple residence building and an “other residence building” for which the exceptions are more likely to apply? Page 5 mentions that the “well-being exception” was added for a very narrow purpose, but we are seeing it applied much more broadly by property managers. As an example, what defines when a retirement home or seniors’ residence is classified as an apartment or “other multiple residence building? The type of building? The amenities? The front-desk staff?</p>	<p>There is a difference in access rights between, on the one hand, apartment or condominium buildings and, on the other hand, other multiple-residence buildings. Candidates have a right to canvass door-to-door in apartment or condominium buildings (subject to the well-being exception) but not in other multiple-residence buildings.</p> <p>The difference between an apartment or condominium and other multiple-residence buildings is in the makeup of individual units. In other multiple-residence buildings, individual units are not fully self-contained (or there are no individual units), meaning that some basic amenities like kitchens or washrooms are outside a resident’s unit. Individual units in these buildings may also be less secure and potentially always open or unlocked. Examples of other multiple-residence buildings include many student residences, seniors’ residences, women’s shelters and halfway houses. While there is no right to canvass door-to-door, candidates still have a right to campaign in common areas of these buildings (subject to the well-being exception). This clarification will be added to the OGI.</p> <p>The building type neither limits nor broadens the application of the well-being exception. For example, vulnerable residents may live in retirement homes with individual self-contained units, in what would be considered an “apartment building”; or they may live in long-term care homes with basic amenities outside their units, in what would be considered an “other multiple-residence building.”</p>
<p>4. Page 7) “In other buildings with a polling station or returning office, candidates should avoid campaigning directly in front of those places or on the main pathways leading to them. Under section 282.2, no person shall ‘in any place where voting at an election is taking place, influence or attempt to influence electors to vote or refrain from voting ... for a particular candidate or registered party.’”</p> <p>I would suggest that further clarity is required here for the very specific case where canvassing or campaigning is happening on the same property as a polling location. This wording is a good start; however, I anticipate Returning Officers and campaigns interpreting this instruction differently.</p>	<p>We acknowledge that there may be differences in interpretation between a campaign and a returning officer. As polling places vary widely, it is difficult to provide instruction on precisely where campaigning or canvassing may take place. For this reason, on page 8, we strongly recommend that candidates contact their local returning officer before canvassing or campaigning where polling stations are located.</p>

5. Annex

Candidates' rights of access and exceptions that may be invoked

Location	Right to canvass?	Exception?	Right to campaign?	Exception?
Apartment or condominium building	Yes	Yes: physical or emotional well-being	Yes	Yes: physical or emotional well-being
Other multiple-residence building	No	n/a	Yes	Yes: physical or emotional well-being
Gated community	Yes	No	No	n/a
Public place	n/a	n/a	Yes	Yes: function and purpose of place or public safety

By using these terms for this graph, it could easily be misinterpreted by property managers. “Elections Canada says you cannot canvass within our multiple residence building” or “You cannot campaign within our gated community” are both true statements, as written. I would suggest a more specific term be used here and throughout for “other multiple residence building”, such as “assisted living facility” or similar—anything to further define the separation between an apartment complex and a restricted access residence.

Would it also be possible to include a more specific definition for “physical or emotional well-being” with this graph? As is, property managers can broadly claim this exception, in cases where it perhaps does not apply.

Why does the “right to campaign” not cover gated communities? That appears to be inconsistent with the rest of the document. You can campaign in a grocery store, and canvass within a gated community, but not campaign on the streets of a gated community?

Thank you for the opportunity to contribute to this document.

The statements that a candidate does not have a right to canvass door-to-door within an other multiple-residence building or campaign in common areas within a gated community are true. The wording of section 81 makes it clear that there is no right of access to campaign in gated communities. The rationale may relate to the definition of common areas within gated communities. Spaces between houses and shared outdoor amenities would be common areas, but allowing campaigns to conduct events there would raise privacy and private property concerns. A gated community is not a public place, open for free to the public.

As suggested in your comment, we have added details to the table about locations and exceptions so that it can be used as a quick reference tool by campaigns and persons in control of premises.

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>General Comments</p> <p>We have three general comments that impact numerous sections of the draft interpretation. These include (i) meaning of a “person who is in control”, (ii) assessing the basis of s. 81(2) exception pertaining to a multiple-residence building, and (iii) campaigning in public places during a pandemic.</p> <p>Safe and respectful conversations between candidates, candidates’ representatives, and voters are a fundamental pillar of democratic engagement in Canadian elections, and it’s important that they are clearly facilitated. This includes canvassers being able to access buildings in a manner that respects public health guidance, in full accordance with how that guidance is made available in each community and region of the country. This is also a matter of ensuring that Canadians in lower-income and marginalized communities have equitable access to democratic conversations during an election.</p> <p>(i) Meaning of a “person who is in control”</p> <p>As presented in the draft interpretation, we believe the point of view being presented as to who has the authority to make a decision pertaining to granting a campaign access to the premises may not reflect the reality of who has such authority. Additionally as presented, it also has the potential of exposing these supposed “authorities” to liability if someone is harmed or exposed to, say, COVID-19 following their authorization when the individual that granted authority may not be legally entitled to have made the authorization.</p> <p>Individuals who are responsible for granting access or have some degree of responsibility for the building may not in fact be someone who is in control of the premises. The provided example of a repair person who is responsible for electrical or plumbing maintenance is not necessarily a person who is in control of the building and may not be the one who determines whether a campaign is allowed to enter the premises. Additionally, the example provided implies a single board member of a condominium board has, but likely doesn’t have, unilateral decision-making authority.</p>	<p>With regard to the meaning of a person who is in control, we agree that the definition should be refined and that it is preferable to place liability on individuals with higher levels of responsibility. However, we also note that narrowing the definition too far may make it harder for campaigns to gain access. We have modified the wording to read as follows:</p> <p>“A ‘person who is in control’ for the purpose of section 81 or 81.1 is a person who is responsible for authorizing access to the residential building, gated community or public place and who has responsibility over the property in question. Determining who is in control will depend on the context.</p> <p>A person in control can be a management company responsible for the building, the board of a condominium corporation, a person who has de facto control of the place (such as the on-duty manager), the legal owner of the property or their representative.”</p>

<p>Considering the above, perhaps the paragraphs on page 3 under the Analysis and Discussion section could be modified to read:</p> <p><i>A “person who is in control” for the purpose of section 81 or 81.1 is normally a person who is responsible for granting authorizing access to the residential building, gated community or public place and who has some degree of responsibility over toward the property in question. Generally, determining who is in control will depend on the context.</i></p> <p><i>It could be the person who is contacted in case of a problem (for example, water or electricity problems or something in need of repair). A person in control is could a management company responsible for the building, or a the board member of a condominium corporation. It could be, or a person who has de facto control of the place, such as the on-duty manager, or who is the legal owner of the property. There may be different persons in control at different times.</i></p>	
<p>(ii) Assessing the basis of s. 81(2) exception pertaining to a multiple-residence building</p> <p>While the draft interpretation presents a fulsome discussion around the types of reasons access may be denied to a multiple-residence building based on physical or emotional well-being of the residents being harmed from canvassing or campaigning during a pandemic, multiple-residence building operators may attempt to use the pandemic as the reason for denying a campaign access to the multiple-residence building. Perhaps the draft interpretation can be slightly expanded to suggest that, in such a situation, campaigns could consult with public health authorities to ensure they are taking all of the necessary precautions and that, ideally, the consultation should take place prior to attempting to gain access to the multiple-residence building.</p>	<p>While consulting public health authorities and taking precautions can help a campaign to gain access, the person in control still retains the right to refuse access based on all relevant factors. The following paragraph has been added on page 5:</p> <p>“In the context of a pandemic, campaigns are advised to consult local public health authority guidelines to ensure that they are taking all necessary precautions when canvassing or campaigning. This preparation may help campaigns gain access to a multiple-residence building, though it does not limit the right of the person in control to refuse access if there is a real risk of harm to residents’ physical well-being—for example, based on local pandemic conditions and residents’ ages or health status.”</p>
<p>(iii) Campaigning in public places during a pandemic</p> <p>As in (ii) above, a similar statement could be added to the section pertaining to access to public spaces and the operator using the pandemic to deny access as being inconsistent with public safety.</p>	<p>The following paragraph has been added on page 8:</p> <p>“In the context of a pandemic, campaigns are advised to consult local public health authority guidelines to ensure that they are taking all necessary precautions when campaigning. This preparation may help campaigns gain access to a public place, though it does not limit the right of the person in control to refuse access if the campaign activities are inconsistent with public safety.”</p>

Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections
<p>In the last sentence of the first paragraph on page 5, it is indicated that the exception could apply if multiple-residence buildings happen to be located in a gated community. However, in the table found in the Annex, the answer to the question of whether or not the exception concerning the “physical or emotional well-being” of residents could be invoked is a categorical “No”. For greater clarity, it would be better to reflect this nuance in the table, perhaps in a footnote.</p>	<p>We agree that this nuance should be clarified. We have added details to the table about locations and exceptions so that it can be used as a quick reference tool by campaigns and persons in control of premises.</p>

The following parties did not submit comments to Elections Canada regarding OGI 2021-03:

- Animal Protection Party of Canada
- Bloc Québécois
- Canada’s Fourth Front
- Canadian Nationalist Party
- Christian Heritage Party of Canada
- Communist Party of Canada
- Free Party Canada
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- Marxist-Leninist Party of Canada
- National Citizens Alliance of Canada
- New Democratic Party
- Parti pour l’Indépendance du Québec
- People’s Party of Canada
- Parti Rhinocéros Party
- Veterans Coalition Party of Canada