



## Written Opinions, Guidelines and Interpretation Notes

The Chief Electoral Officer issues guidelines and interpretation notes on the application of the *Canada Elections Act* to registered parties, registered associations, nomination contestants, candidates and leadership contestants, in accordance with section 16.1 of the Act. Before the issuance of any guideline or interpretation note, registered federal political parties and the Commissioner of Canada Elections are consulted and invited to provide comments on a draft version. Guidelines and interpretation notes provide guidance and promote consistency in the interpretation and application of the Act. However, they are for information only and do not displace the provisions of the Act.

Interpretation Note: 2021-03 (Draft – March 2021)

# Canvassing and Campaigning in Residential Areas and Public Places

## Issue

The *Canada Elections Act* (CEA) sets out the rights of candidates and their representatives to canvass and campaign in residential buildings (section 81) and public places (section 81.1). It also sets out exceptions that may be invoked to limit those rights. This interpretation note aims to answer questions raised in recent federal elections about how these provisions apply. It touches on additional considerations when the premises contain a polling station or returning office.

### Interpretation

- (1) A person gains the rights of a candidate to canvass and campaign in certain locations under sections 81 and 81.1 when their nomination is confirmed by the local returning officer. The rights under these sections cease to apply after election day.
- (2) The person in control of any multiple-residence building, including apartment and condominium buildings, may invoke an exception to deny candidates and their representatives the right to canvass or campaign there if residents' physical or emotional well-being may be harmed.
- (3) The person in control of a public place may invoke an exception to deny access if campaigning there would be incompatible with the function and purpose of the place or inconsistent with public safety. A wide variety of locations that are open free of charge to the public, even if privately owned, qualify as public places.
- (4) When deciding whether to invoke an exception to the right of access for canvassing or campaigning, the person in control of the premises should interpret the candidate's rights broadly in light of the democratic principles at stake and must treat all candidates equitably.

- (5) A decision to invoke an exception under the CEA to deny access to a candidate or their representative must be based on the relevant facts of the particular case. The person in control of the premises may be committing an offence if their decision to deny access is not based on an applicable exception.
- (6) Candidates may canvass or campaign in a residential building or public place where a polling station is located as long as they do not campaign directly in front of the polling station or on the main pathways leading to it.
- (7) Candidates should contact their local returning officer before canvassing or campaigning near a polling station to clarify where such activities are allowed and to ensure that their presence will not interfere with the voting process or neutrality of the polling place.

## Legal Framework

The most directly relevant provisions of the CEA in the context of this interpretation note are as follows:

- No person who is in control of an apartment building, condominium building or other multiple-residence building or a gated community may prevent a candidate or their representative from:
  - in the case of an apartment building, condominium building or gated community, canvassing, between 9:00 a.m. and 9:00 p.m., at the doors to the apartments, units or houses, as the case may be; or
  - in the case of a multiple-residence building, campaigning, between 9:00 a.m. and 9:00 p.m., in a common area in the multiple residence. (s. 81(1))
- There is an exception in respect of a person who is in control of a multiple-residence building whose residents' physical or emotional well-being may be harmed as a result of permitting canvassing or campaigning there. (s. 81(2))
- No person who is in control of a building, land, street or any other place, any part of which is open without charge to members of the public, whether on a continuous, periodic or occasional basis—including any commercial, business, cultural, historical, educational, religious, governmental, entertainment or recreational place—may prevent a candidate or their representative from campaigning in or on that part when it is open without charge to members of the public. (s. 81.1(1))
- There is an exception in respect of a place if campaigning in or on it would be incompatible with the function and purpose of the place or inconsistent with public safety. (s. 81.1(2))
- Every person in control of premises who refuses to give access to a building or gated community or refuses to give access to a place open to the public when an exception does not apply is guilty of an offence. (s. 486(2))

## Background

Elections Canada often receives questions from candidates and the public about where, when and how canvassing and campaigning may take place. The Commissioner of Canada Elections also receives complaints when an interaction leaves either the candidate or a member of the public dissatisfied.

Section 81 of the CEA gives candidates and their representatives a right of access to apartment, condominium and other multiple-residence buildings (such as student residences) for campaigning. It gives them a right of access to apartment and condominium buildings (but not other multiple-residence buildings) as well as gated communities for canvassing. In addition, section 81.1 gives them a right of access to places ordinarily open to the public (referred to here as “public places”), including both privately owned buildings and government buildings, for campaigning.

For the purposes of sections 81 and 81.1, canvassing refers to the activity of knocking on doors to speak to residents. Campaigning excludes door knocking. It refers to other ways of reaching out to electors, including delivering speeches and visiting locations (such as public places or common areas of multiple-residence buildings) with the intent of influencing how electors vote. For greater certainty, canvassing and campaigning are permitted on election day because they are not subject to the election advertising blackout at section 323 of the CEA.

The right of access for canvassing and campaigning exists equally for all candidates of all political affiliations. An exception may be invoked by the person in control of the premises only if:

- in a multiple-residence building, the person in control determines that canvassing or campaigning, as the case may be, could harm the residents’ physical or emotional well-being; or
- in a public place, the person in control determines that the campaigning activities would be incompatible with the function and purpose of the place or inconsistent with public safety.

The remainder of this note clarifies the meaning of certain terminology and how the relevant legal provisions apply.

## Analysis and Discussion

### Meaning of “person who is in control”

A “person who is in control” for the purpose of section 81 or 81.1 is normally a person responsible for granting access to the residential building, gated community or public place and who has some degree of responsibility toward the property in question. Generally, determining who is in control will depend on the context.

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 management company responsible for the building or a board member of a condominium corporation. It could be 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.

Under subsection 486(2) of the CEA, there is an offence for refusing access to candidates and their representatives without justification. It attaches to the person in control who refuses access.

## When does a person gain the rights of access of a candidate?

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. This is different from becoming a candidate for political financing purposes, which happens as soon as they conduct financial transactions for their election campaign.

Therefore, while a prospective candidate is at the stage of gathering signatures to support their nomination, the rights of access at sections 81 and 81.1 do not apply. The rights extend only from the date the candidate is confirmed by the returning officer until election day. This applies to both the candidate and their representatives.

Once a candidate is confirmed, they receive a notice of confirmation from the returning officer. They are also given a copy of a letter from the Chief Electoral Officer, explaining a candidate's rights of access. These documents can be shown to the person in control of the premises to support the candidate's or their representatives' right to canvass or campaign there. A person in control who wishes to verify the status of a candidate may also consult the Elections Canada website, which lists all the confirmed candidates during an election period, or call the local returning officer.

It is recommended that a candidate's representative also carry with them a letter from the candidate, indicating that they have been authorized to act as a representative for the purpose of campaigning or canvassing. This supporting document may help representatives exercise their rights more easily.

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. Candidates who believe that they were wrongly denied access to a residential building, gated community or public place for canvassing or campaigning may also file a complaint with the Commissioner of Canada Elections.

## What is the scope of the well-being exception under section 81?

Although candidates have a right to canvass or campaign in residential areas, as described above, an exception may be invoked for multiple-residence buildings. The legal obligation to grant access does not apply to "a person who is in control of a multiple residence building whose residents' physical or emotional well-being may be harmed as a result of permitting canvassing or campaigning" (subsection 81(2)).

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).<sup>1</sup>

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<sup>1</sup> The French version of the well-being exception at subsection 81(2) is drafted slightly differently in that it does not mention canvassing; however, it refers to campaigning activities ("les activités de campagne") mentioned in subsection 81(1), which includes both canvassing door to door ("frapper aux portes des logements") and campaigning in common areas ("faire campagne dans les aires communes").

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. The person in control of the gated community cannot refuse access to candidates or their representatives for canvassing using the exception at subsection 81(2). However, if multiple-residence buildings happen to be located within a gated community, then the exception could be applied to those buildings.

The legislative history of subsection 81(2) indicates that protecting residents of women's shelters was the impetus for adding the well-being exception. However, it is also clear that women's shelters were intended only as an example of a type of residence for which the exception could be invoked. The language of the provision does not rule out a broader application beyond multiple-residence buildings that house traditionally vulnerable populations. For example, in the context of a pandemic, vulnerable individuals (those who are older, immunocompromised, etc.) may be found in a variety of multiple-residence buildings.

The decision to grant access or invoke the exception to refuse access is made by the person in control of the premises. The CEA does not give Elections Canada the authority to dictate the specific circumstances under which the exception may be invoked.

Nonetheless, the person making the decision must be mindful of certain points. The right of access for canvassing or campaigning should be interpreted broadly in light of the democratic principles at stake. The decision to deny access must be based on context and facts, pointing to a real risk that the residents' physical or emotional well-being will be harmed. The harm cannot simply be that some residents may be annoyed or upset by the presence of candidates or their representatives. Were a group of residents to request that access be denied for a reason unrelated to their physical or emotional health, this would be an insufficient basis to deny access. When making the decision to grant access or invoke the exception to refuse access, the person in control must treat all candidates equitably, regardless of their political affiliation.

Although the CEA speaks only of refusing access, as opposed to imposing rules to allow access, those two concepts are not mutually exclusive. The person in control of the premises may refuse access if the candidate does not abide by a set of rules, on the grounds that those rules are intended to protect the residents and that failure to follow them would endanger their physical or emotional well-being. Any rules imposed by the person in control should be necessary to protect the well-being of the residents and should be applied in the same way for all candidates.

Finally, to avoid misunderstandings when refusing access, it is recommended that the person in control provide their reasons to the candidate or representative and give them an opportunity to follow any imposed rules, if applicable.

### **What types of establishments are public places under section 81.1, and when would campaigning be incompatible with the function and purpose of a place?**

Subsection 81.1(1) of the CEA gives candidates and their representatives the right to campaign in a building, on land, on a street or any other place, "any part of which is open without charge to members of the public, whether on a continuous, periodic or occasional basis." Although collectively referred to as public places, they include places that are both privately and publicly owned. The provision includes a non-exhaustive list—namely, "any commercial, business, cultural, historical, educational, religious, governmental, entertainment or recreational place"—as long as it is open without charge to the public.

A wide variety of locations or establishments could qualify as public places. Shopping centres, grocery stores, community and recreation centres, universities, places of worship and public libraries likely all qualify as public places. During a federal election, parts of federal government facilities (land or buildings) that are open without charge to the public could also qualify as public places and be used by candidates to hold a political event. Public places exclude areas that are accessed using secured cards and are thus not open to the public at large.

However, determining that a location is a public place under subsection 81.1(1) does not guarantee that it may be used for campaigning. Subsection 81.1(2) provides an exception to the right of access where campaigning in or on that place would be “incompatible with the function and purpose of the place or inconsistent with public safety.” As with the rules for multiple-residence buildings, section 81.1 does not give Elections Canada the authority to dictate the specific circumstances under which the exception may be invoked.

It is the person in control of the building or land, as the case may be, who must determine whether the exception applies and a candidate may be denied access. Again, here, the right of access should be interpreted broadly. Whether campaigning is incompatible with the function and purpose of a place or inconsistent with public safety depends on context and must be determined based on the facts of a particular case. The fact that a place (such as a religious site or a government building) is typically an apolitical one is not a valid reason for refusing access because subsection 81.1(1) specifically permits campaigning in governmental and religious places.

The person in control should make the decision to allow or refuse access by considering the type of activities that candidates and representatives would like to conduct in the place. The remainder of this section provides elements for the decision maker to consider and hypothetical examples.

Access may be denied where campaigning would be sufficiently disruptive as to be incompatible with the function and purpose of the place. For example, while a place of worship is likely a public place, a candidate could be denied access to distribute pamphlets in the middle of a religious service. Campaigning near an entrance to a shopping mall is likely permitted, but blocking the entrance to a store or theatre or the aisles in a supermarket could be incompatible with the commercial function of the establishment and, possibly, public safety. A candidate in a public library could be asked to limit their campaign activities to the lobby, for example, on the ground that campaigning in the library itself would be incompatible with the function of a place that normally asks patrons to remain silent.

In terms of restaurants, bars or coffee shops, anyone can usually access the premises without charge, though they are normally expected to make a purchase once they are inside. While there is a case to be made that restaurants, bars and coffee shops qualify as public places, there may be instances when the person in control of the place can reasonably argue that campaigning is incompatible with the function and purpose of the place. This is particularly true if customers are bothered by the campaign activities to the extent that they interfere with the customers’ enjoyment of their purchase and, thus, with the business of the establishment.

When making this decision, the person in control must treat all candidates equitably, regardless of their political affiliation. Rather than simply refusing access under subsection 81.1(2), the person in control may impose a set of rules on candidates and their representatives to ensure that, if they are given access, their campaign activities will not be incompatible with the function and purpose of the place or inconsistent with public safety. The specific facts of each case will determine whether there is sufficient justification to deny access. For example, if one candidate has been refused access to a library because they wanted to talk to people and hand out pamphlets inside, another candidate who intends only to stay in the lobby and hand out pamphlets quietly should not be prevented from doing so on the basis that another candidate was refused access earlier.



Finally, to avoid misunderstandings when refusing access, it is recommended that the person in control provide their reasons to the candidate or representative and give them an opportunity to follow any imposed rules, if applicable.

### **What rules apply to campaigning near a polling place?**

As described above, candidates have the right to canvass in certain multiple-residence buildings and gated communities, and they have the right to campaign in multiple-residence buildings and public places, provided that none of the exceptions in subsections 81(2) or 81.1(2) apply. However, there may be additional considerations when part of a building is being used as a polling place, whether it is a regular or advance poll, an external service point (such as campus voting) or a returning office.

In a residential building with a polling station, no campaigning should take place around that polling station, which will likely be located in a common area on the main floor. However, canvassing at the doors of the residential units is permitted.

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.” Under sections 142 and 479 of the CEA, election officers assigned to a polling station must ensure that electors are not disturbed when they are in or near that polling station and are responsible for maintaining order there during voting hours.

Candidates who intend to distribute pamphlets or other campaign literature, or post campaign signs, should refer to OGI 2019-08, *Posting and Displaying Partisan Material at Polling Places*. In most cases, it is prohibited to post and display partisan election material within the entire building where voting takes place as well as the entire property on which the building is located, including the parking lot. The returning officer or designated election officers may, at their discretion, determine that it is reasonable to permit partisan material in areas of the building or property that are far removed from the room where voting takes place. For example, while voting is taking place on campus, a candidate may be asked to set up their table with partisan material away from the main pathways that voters use to enter the polling place.

It is strongly recommended that candidates contact their local returning officer before canvassing or campaigning in premises where a polling station or returning office is located to ensure that their presence will not interfere with the voting process or neutrality of the polling place.

Candidates should also be mindful of other rules in the CEA that apply to campaign activities near polling places. A candidate may not use a loud-speaking device for campaigning on election day within hearing distance of a polling station (section 165). While in a polling station, no one may wear “any emblem, flag, banner or other thing that indicates that the person supports or opposes any candidate or political party ... or the political or other opinions” that they entertain (paragraph 166(1)(b)).

### **Conclusion**

Candidates who are confirmed by their local returning officer gain a broad right to canvass and campaign in many residential areas and public places. However, this right is not without its limits. A person in control of a multiple-residence building or public place may invoke an exception and deny access if the exception is justified based on all the facts of the particular situation. When a polling station or returning office is added to the mix, candidates should keep in mind any additional restrictions and recommendations that support the neutrality of the voting process. A summary of the rights of access and exceptions is provided in the Annex.

## Annex

The following table summarizes the rights of candidates and their representatives to canvass and campaign in certain locations as well as the exceptions that may be invoked by a person in control of the premises.

### 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