Office of the
Chief Electoral Officer
of Canada

Meeting New Challenges

Recommendations from the Chief Electoral Officer of Canada following the 43rd and 44th General Elections

Elections Canada

For enquiries, please contact:

Public Enquiries Unit
Elections Canada
30 Victoria Street
Gatineau, Quebec
K1A 0M6
Tel.: 1-800-463-6868
Fax: 1-888-524-1444 (toll-free)
TTY: 1-800-361-8935
elections.ca

 ElectionsCanE

 @Elections_Can_E

 ElectionsCanadaE

 Elections Canada

 electionscan_e

ISBN 978-0-660-43283-0

Cat. No.: SE1-5/2022E-PDF

Le directeur général des élections • The Chief Electoral Officer

June 7, 2022

The Honourable Anthony Rota, M.P.
Speaker of the House of Commons
House of Commons
Ottawa, Ontario
K1A 0A6

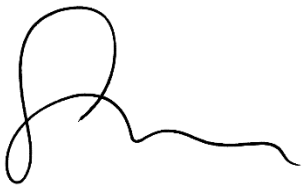
Dear Mr. Speaker:

Pursuant to section 535 of the *Canada Elections Act*, I have the honour to submit my report *Meeting New Challenges: Recommendations from the Chief Electoral Officer of Canada following the 43rd and 44th General Elections*.

The report proposes amendments that, in my opinion, are desirable for the better administration of the Act. The report is accompanied by a separate report setting out amendments proposed by the Commissioner of Canada Elections pursuant to section 537.2 of the Act.

Under section 536 of the Act, the Speaker shall submit these reports to the House of Commons without delay. These reports are referred to the Standing Committee on Procedure and House Affairs.

Yours truly,



Stéphane Perrault
Chief Electoral Officer

30, rue Victoria / 30 Victoria Street, Gatineau, Canada K1A 0M6 • 819-939-1810 / 1-800-463-6868
Télécopieur / Fax: 819-939-1811 • ATS / TTY 1-800-361-8935 • www.elections.ca

Table of Contents

Message from the Chief Electoral Officer 7

Part 1: Recommendations Relating to Electoral Communications 9

1. Moving Beyond Advertising 11

1.1. Transparent Communications 11

1.2. Government Advertising 14

1.3. Advertising Blackout Periods 14

2. Reviewing the Third Party Regime 17

2.1. Third Party Expenses 17

2.2. Third Party Registration Threshold 20

2.3. Third Party Contributions 20

3. Pre-Registration of Candidates 23

4. Protecting Against Threats to the Electoral Process 25

4.1. Prohibiting Certain False Communications 25

4.2. Broadening the Scope of Existing Prohibitions 26

4.3. Political Parties That Promote Hatred 26

5. Regulating Channels of Electoral Communication 29

5.1. Online Platforms 29

5.2. Digital Advertising Registry 31

5.3. Voice Calls and Text Messages 32

5.4. Broadcasting 33

6. Protecting Individuals Receiving Electoral Communications 37

6.1. Political Entities and Privacy 37

6.2. Preliminary List of Electors 39

Part 2: Recommendations Relating to the Administration of the *Canada Elections Act* 41

7. Making Canadian Elections More Accessible 43

7.1. Reducing the Number of Late Special Ballots 43

7.2. Days of Religious and Cultural Significance 48

7.3. Improving Service to Long-Term Care Facilities 49

7.4. Electors Requiring Assistance to Vote 50

8. Serving Political Entities 53

8.1. Simplifying the Candidate Nomination Process 53

8.2. Adjusting the Regulated Fundraising Events Regime 54

8.3. Clarifying Candidate Contribution Rules 56
8.4. Cryptocurrency and Other Means of Contribution 56
9. Sound Electoral Management 59
9.1. Cooperating with Provincial and Territorial Election Authorities 59
9.2. Protecting the Safety and Privacy of Returning Officers 60
9.3. Facilitating the Recruitment of Returning Officers 60
9.4. Collecting Demographic Data about Electoral Participants 61
9.5. More Flexibility for Counting Advance Poll Ballots 61
9.6. Increasing Trust in Party Expense Returns 62
Appendix A: List of Recommendations from the Chief Electoral Officer 65

Message from the Chief Electoral Officer

I am pleased to present *Meeting New Challenges: Recommendations from the Chief Electoral Officer of Canada following the 43rd and 44th General Elections.* These elections were held on October 21, 2019, and September 20, 2021. This report is made under section 535 of the *Canada Elections Act* (the Act), which provides that, after a general election, the Chief Electoral Officer shall set out any recommendations on amendments that are, in his or her view, desirable for the better administration of the Act. Accompanying this report are recommendations from the Commissioner of Canada Elections, which were made pursuant to section 537.2 for better compliance with, and enforcement of, the Act.

The recommendations in this report aim to improve three key aspects of our electoral democracy: transparency, accessibility and resiliency. Transparency has long been a key value of our democratic process, notably in the area of political financing. Yet, there are still areas where improvements are necessary, particularly with the evolution of online communications and the emergence of new forms of funding sources, such as cryptocurrencies, for political activities.

Similarly, the accessibility of the voting process is central to its democratic character. And while improvements in this regard are often administrative, legislative changes are desirable in a range of areas to ensure that our elections are, for example, adapted to reflect the needs of residents in long-term care or voters with disabilities. In this category, I am also including recommendations to avoid conflicts with religious holidays, such as the one we saw in the 2019 general election, as well as improvements to make the process more open to candidates.

A third theme, resiliency, cuts across a number of recommendations that reflect our changing environment and emerging concerns over the last two electoral cycles. These include disinformation, foreign funding of third parties, the emergence of hate groups, and the need to better protect the privacy of Canadians and facilitate cooperation among Canadian jurisdictions in electoral administration.

The report is structured in two parts. The first consists of recommendations that flow from a consultation on electoral communications, which was conducted by Elections Canada after the 2019 general election.[1] Over the last two decades, the ways in which political actors communicate with electors have changed dramatically. Increasingly, communications take place through digital platforms, online ads, text messaging and other digital formats. The regulatory regime under the Act, however, dates from a time when broadcast television was the dominant advertising and communications medium. There is a need to adjust the regime to reflect current realities.

[1] See the report on the consultation, here: https://www.elections.ca/content.aspx?section=res&dir=cons/oth/polcom&document=rep&lang=e

Part 2 of this report addresses other recommendations that I believe are important to improving the administration of federal elections. These recommendations come after the 2019 and 2021 general elections. Among other things, they include several ideas about how to adjust electoral processes to facilitate the timely return of mail-in ballots. The 2021 general election saw a significant increase in this convenient way of voting, and we can expect electors to continue to benefit from it in the future.

The 10-year term of the current Commissioner, Yves Côté, Q.C., ends in June 2022. I thank Mr. Côté for his deep commitment and tireless service to Canadians and Canadian democracy over this last decade, and I wish him well as he completes his tenure as Commissioner.

Stéphane Perrault
Chief Electoral Officer of Canada

Part 1: Recommendations Relating to Electoral Communications

Communications between electors, on the one hand, and candidates, parties and third parties, on the other, lie at the heart of Canada's electoral process.

In recent years, communications between electors and political entities[2]—like so many other aspects of our lives—have been transformed by digital technology. Electors are spending more time online, and candidates, political parties and third parties increasingly use digital communications technologies in their campaigns. Because digital communications are enabled by the collection of personal data, they can be highly targeted. Depending on their nature, digital communications may cost less to produce than messages delivered through traditional media and can be shared millions of times over in a short period of time. Digital communications involve an abundance of information, travelling at high speeds and in multiple directions. This mostly takes place on private-sector online platforms, which, together, exercise a high degree of control over how the information ecosystem operates.

The significance of digital communications for democracy will continue to grow. They create positive opportunities for parties and candidates to enhance their relationships with electors by increasing access to the information that electors need to participate in elections. However, digital communications also pose threats to the values that underpin electoral democracy, including transparency, fairness among competing political entities and meaningful participation in the electoral process. Within the digital information ecosystem, it is sometimes difficult to know who is communicating with electors and why, whether the communicators and their messages can be trusted and, ultimately, what information should be used when making voting choices.

There are also malign actors that seek to manipulate the information environment and election outcomes. The fierce competition for electoral success can lead to false information poisoning the well of otherwise healthy political discourse. Online falsehoods can become real-life threats to the electoral process and to the stability of electoral democracy in general. As we have seen from international events in recent years, malign actors, whether foreign or domestic, have attempted to sow division and cast doubts about the integrity of electoral processes and their results. Canada's information ecosystem is not immune to the risk of being used to undermine elections or even democracy itself.

Following the 2019 general election, Elections Canada chose to address the increasingly complex and important topic of how political entities communicate with electors in the digital age and what steps Parliament may wish to take so that the Act continues to uphold the values and objectives that underlie it.

[2] Unless otherwise specified, the term "political entities" includes candidates, political parties and third parties, along with electoral district associations and nomination and leadership contestants.

In June 2020, Elections Canada started a conversation about how to regulate "political communications" in the digital era. The agency distributed discussion papers on three themes to political parties and stakeholders and experts from academia and civil society organizations: political communications regulated under the Act, the impact of social media in federal elections and the protection of electors' personal information. The discussion papers posed over 50 questions designed to generate discussion and ideas to help inform Elections Canada's recommendations to Parliament. The report on this consultation process can be found on Elections Canada's website. In this report, we have adjusted our terminology from "political communications" to "electoral communications," while keeping in mind their connection with the federal electoral process.

This part of the report is divided into six sections, which are summarized below. Each section describes pertinent legislation, identifies problem areas and proposes recommendations for change. While each section explores a distinct theme, they are all concerned with improving the information ecosystem that underpins the functioning of our federal elections and democracy in general.

1. Moving Beyond Advertising—identifies the drawbacks of regulating only "advertising" as a form of electoral communication in the digital age. It argues that, to increase the transparency of campaign activity, the same rules should generally apply to all electoral communications, regardless of whether they meet the current definition of advertising.

2. Reviewing the Third Party Regime—reexamines the 2018 updates to the third party regime and raises questions about its scope and coverage. It recommends clarifying the definition of issue-based communications, increasing the third party registration threshold and limiting the use of a third party's own funds.

3. Pre-Registration of Candidates—recommends allowing candidates to pre-register with Elections Canada before the election period. This practice would assist the agency in regulating certain aspects of the electoral communications regime as well as increase benefits to candidates, parties and the electoral process.

4. Protecting Against Threats to the Electoral Process—provides an overview of specific sections of the Act that seek to promote healthy debate in an electoral democracy; it recommends creating a new prohibition and broadening existing ones. It also recommends giving any elector the ability to apply to a court and seek to deny registration to, or deregister, parties whose primary purpose is the dissemination of hatred.

5. Regulating Channels of Electoral Communication—discusses the need to modernize regulations with respect to online platforms, text messages and broadcasting. It also recommends enhancing the transparency of digital electoral communications.

6. Protecting Individuals Receiving Electoral Communications—makes recommendations to uphold trust in the electoral process by enhancing the protection of electors' personal information and granting electors the right to opt out of receiving electoral communications.

1. Moving Beyond Advertising

Electoral communications are regulated under the Act in a variety of ways.

A distinct set of rules exists for communications that constitute "advertising," as defined by the Act. However, political campaigns communicate messages that promote or oppose a party or candidate through various means other than advertisements, such as by phone, text message or email. Because these messages do not constitute advertising under the Act, they are subject to fewer requirements.

Challenges in applying the legislative definition of advertising have been highlighted and intensified by the growth in digital communications technology. Looking at the purpose, history and specific requirements of the relevant provisions in the Act pertaining to advertising, Elections Canada has interpreted online advertising as including only messages that have a placement cost (hereinafter called "paid" advertising).[3] This excludes, for instance, digital content without a placement cost, often referred to as "organic content," even where such content is specifically created by or for a registered political entity (e.g. emails, social media posts).

In addition, messages directed toward individuals—rather than to the general public—through means such as phone calls, texts or online messages are not captured by the current legislative definition of advertising. At every election, Elections Canada and the Commissioner of Canada Elections receive complaints about unsolicited communications transmitted through various communication channels. Removing the distinction between advertising and other forms of communication could help uphold the objectives of fairness and transparency.

As addressed throughout this report, regulations governing all electoral communications, not only advertising, should be crafted in such a way that promotes transparency, fairness in the electoral process and healthy public discourse. Such rules should apply during the election period and, when there is a fixed-date election, during the pre-election period.

1.1. Transparent Communications

Transparency is one of the key values underlying the Act. In order to promote transparency, all electoral communications that meet the definition of advertising are required to have a tagline indicating who authorized the advertisement's transmission. Historically, this requirement has ensured that campaigns could be held accountable for the money spent on an advertisement; however, it has also enhanced campaign transparency by permitting the person receiving the communication to know its source.

[3] "Placement cost" refers to either a direct cost to place content (e.g. an advertising rate) or a cost associated with boosting or promoting content that was otherwise posted without cost. See Interpretation Note 2020-05.

For taglines in advertisements by parties and candidates, the Act specifies that they must contain a statement that the ad is authorized by the relevant agent, whereas taglines for third party ads must contain, in addition to an authorization statement, the third party's name, telephone number and Internet or civic address and must be "visible or otherwise accessible."

For communications that do not meet the definition of advertising, the Act does not generally require disclosure of who is communicating. For example, text messages promoting a party may be sent anonymously. Likewise, YouTube videos opposing a party and involving production expenses may be posted without information about who posted the video. The goal of transparency is harmed by the inconsistent treatment of electoral communications that are considered advertising under the Act versus those that are not.

Without a transparency requirement, electors have no way of knowing who is communicating to them. If electors are deprived of the opportunity to make informed choices about who to vote for, their ability to participate meaningfully in the electoral process is limited. Moreover, a lack of transparency makes it difficult for electors to decide whether to trust the content of a message.

While financial reporting obligations provide some transparency about spending on types of communication other than advertisements, such obligations vary depending on the political entity, and spending is generally reported only after the fact.

Fulfilling the objective of transparency does not necessarily mean expanding the existing requirements under the Act. In fact, there is an opportunity to reduce the regulatory burden by removing the requirement for a formal tagline when the message itself clearly conveys who the communicator is and how to obtain more information. In this regard, the Act should focus on the substance of the objective of transparency rather than on the form of the tagline.

The transparency requirement is generally achieved when a registered political entity names itself in an electoral communication. Similarly, a formal tagline adds only marginal transparency to an internal electoral communication sent by a third party organization to its members, employees or shareholders. Further, requiring an individual to include a formal tagline on a handmade sign held up by the individual during a march seems absurd: the communicator is typically obvious, and, in most cases, anyone present can walk over to the individual to ask for more information. Not surprisingly, the requirement for a formal tagline has generally not been enforced in these circumstances, nor should one be required.

As noted above, one of the challenges of the current regime is that transparency requirements do not apply to certain types of communications that fall outside the definition of advertising. In the context of online communications, the distinction between paid and unpaid activities is based on the definition of placement cost; only those communications with a placement cost are considered advertising and therefore captured by the regime. In the context of other communications, political entities may not be subject to regulation if, for example, they use unpaid volunteers instead of paid employees to engage in campaign activities. These distinctions seem arbitrary, and, more importantly, they prevent voters from knowing in all instances when registered political entities are transmitting messages that seek to influence their voting choices during an election period.

Elections Canada believes that transparency is important with respect to all the communications of political entities required to register during an election. All electoral communications—whether or not they are advertising—that are made by or at the specific request of registered political entities should be clear about their origin so that electors can properly evaluate them. In this respect, registered political entities should be subject to a high standard.

Registered political entities in an election include registered parties, nominated candidates and third parties (individuals or groups) that spend more than the mandatory registration threshold, which is currently $500.[4] Elections Canada is of the view that the source of all electoral communications, paid or unpaid, made by these entities should be identifiable to the extent that they are made during an election or pre-election period and promote or oppose a party or a candidate running for election.

For other participants (individuals and groups that spend less than $500 on electoral communications), a requirement to identify themselves only in their *paid* communications strikes a more appropriate balance. Focusing on only the paid communications of unregistered participants permits individuals and groups to engage freely in the political discourse that is essential to the democratic process. The Act should regulate these participants only when they engage in online activities that have a placement cost or in any other electoral communications that involve an expense. Their unpaid activities should not be captured by the regime.

Recommendation 1.1.1

- To better achieve the objective of transparency while, on the whole, reducing the regulatory burden on regulated entities, the Act should be amended as follows:
  - Replace formal tagline requirements by a harmonized requirement applying to all electoral communications—not just advertising—to disclose who is communicating and how electors can obtain more information, if desired. This new requirement should focus on the substance, rather than the form, of the transparency requirement while taking enforcement considerations into account. The information about who is communicating should be clearly visible or otherwise accessible.
  - During a pre-election period and an election period, the new harmonized transparency requirement should apply to all electoral communications (regardless of whether they are paid for) made by registered political entities or by political entities that are required to register.
  - During a pre-election period and an election period, the new harmonized transparency requirement should also apply to the electoral communications of individuals or entities who are not required to register, but only in cases where their electoral communications are paid. In the context of online communications, “paid” should continue to mean where there is a placement cost.

[4] See Recommendation 2.2.1, which proposes changing the registration threshold to $1,000.

1.2. Government Advertising

Government advertising in the lead-up to an election may raise questions related to fairness and a level playing field.

Currently, federal government advertising during the election period, and during the pre-election period when there is a fixed-date election, is restricted by the Treasury Board of Canada Secretariat's *Directive on the Management of Communications*. The Directive, specifically sections 6.44 and 6.45, states that all advertising and public opinion research activities must be suspended on the day that the Governor-in-Council issues a proclamation for a general election. In a year when there is a fixed-date general election, advertising must be suspended on June 30. Generally, such activities can resume only when the newly elected government is sworn into office. An exception may be made for advertisements approved by the deputy head of a department or agency.

Part of the Directive's objective is to ensure that government communications are non-partisan. It is also meant to ensure that public funds are not used in partisan ways, which could give the governing party an unfair advantage during an election.

Government advertising and communications are not solely a matter of elections, and the Act should therefore regulate only those that could be perceived as giving the governing party an unfair advantage. It is important that there still be scope for the government to communicate with Canadian citizens during election and pre-election periods about unforeseen events or emergencies where immediate action is required. However, enshrining in law the policy restrictions that currently apply to government advertising and public opinion research during an election or pre-election period would give them additional force, ensuring that the government is held to the highest standard and boosting confidence in the fairness of the electoral process.[5]

Recommendation 1.2.1

- To preserve the objective of fairness by creating a more level playing field between governing and other parties, amend the Act to legislate existing directives that limit government advertising during the pre-election and election periods and on public opinion research during the election period. This would continue to allow for communications with the public when necessary such as in emergencies.

1.3. Advertising Blackout Periods

The Act prohibits the transmission of certain election advertising on polling day (signs and pamphlets are exempted). While this prohibition is aimed at ensuring that campaigns are given an opportunity to respond to a new advertisement before the close of the polls, much has changed since it was created.

[5] This idea is consistent with international standards; see Election Observation and Democratic Support (EODS), 2016, *Compendium of International Standards for Elections*, 4th ed., p. 249, https://www.eods.eu/library/Compendium-EN-N-PDF.pdf.

Communications today are much more rapid, published in real time, 24 hours a day and sometimes without a clear indication of their initial publication date.

With more information made available to them, electors are generally able to make informed choices. In Elections Canada's view, the advertising blackout period has largely been rendered meaningless in the digital age.

Recommendation 1.3.1

- To repeal the advertising blackout provisions of the Act to reflect the fact that, with the Internet and social media, mass communications are available to a large number of actors and people can respond rapidly to misinformation.

2. Reviewing the Third Party Regime

Third parties are individuals and organizations other than certain regulated entities such as candidates and political parties. Many of them (e.g. unions and industry associations) exist for purposes other than elections, but wish to participate in the democratic process by, for example, promoting the interests of their members, including by supporting or opposing certain parties or candidates. Other third parties are created during the election period specifically to engage in the political debate by promoting or opposing a party or candidate for that election. Still others are permanent entities that were created to promote or oppose parties and candidates at all times, including during the election period.

At the 2019 general election, 154 third parties registered with Elections Canada. At the 2021 general election, which did not have a pre-election period, 105 third parties registered with the agency.

By regulating the participation of third parties, the Act protects the level playing field in terms of spending and facilitates transparency about who is promoting those competing for election. Without the regulation of third parties, the Act's spending limits and transparency requirements for political parties and candidates could easily be circumvented by individuals or organizations that support them.

2.1. Third Party Expenses

Before the 2019 general election, the Act regulated third party advertising expenses only during the election period. Third parties were required to register if they spent $500 or more on election advertising and to attach a tagline to any election advertising (whether they met the spending threshold or not). A registered third party had to submit financial reports and was subject to spending limits during the election.

In response to concerns that the existing third party regime was ineffective—partially brought about by the decreasing relevance of the definition of advertising, as discussed above—Parliament amended the law and created two additional types of activities for which third parties are now regulated: partisan activities—which include calling electors, canvassing door to door and organizing rallies—and certain election surveys conducted to support regulated activities. Spending limits for partisan activities, election surveys and partisan advertising were also applied to third parties for the new pre-election period for a fixed-date general election. New requirements for interim reporting were imposed on third parties that spent or received a certain amount.

Two federal elections (in 2019 and 2021) have been administered under the newly expanded third party regime, which was implemented in 2019. The new regime effectively ensures that all third party expenses for activities that promote or oppose parties and candidates are regulated. Given that third party spending limits exist, in large part, to level the playing field for parties and candidates, it is appropriate to apply a similar scope of regulation to third party expenses as applied to the expenses of political parties and candidates.

In the 2019 election, the vast majority of third parties spent well under the spending limit: 86 percent of third parties spent 25 percent or less than the limit, and only 4 percent spent more than 75 percent of the limit. This suggests that the current regulation does not unduly limit third party spending for the vast majority of third parties. At the time this report was tabled, and although data exists for the 2021 general election, an analysis has yet to be completed.

In the two elections since the Act was amended, the area of greatest concern for third parties has been that of "issue advertising." Issue advertising promotes or opposes a party or candidate without specifically naming them. Instead, such advertising takes a position on an issue that is associated with the party or candidate.

Issue advertising by parties, candidates and third parties has long been regulated under the Act. Its regulation with respect to third parties, however, seems to have been especially noted by participants in the 2019 and 2021 elections, perhaps because such advertising is included in the definition of "election advertising" under the Act, but not in the new definition of "partisan advertising," from which issue advertising is expressly excluded. This means that issue advertising by third parties is regulated only during the election period and not in the pre-election period. Its exclusion from regulation during the pre-election period seems to have highlighted its long-standing regulation during the election period.

There is good reason to regulate issue advertising in the same way as advertising (or other communications) that explicitly mentions a party or candidate. Where an issue is so clearly associated with a candidate or a party that taking a position on that issue is a way to promote or oppose the party or candidate, to exclude such advocacy from spending limits or transparency requirements effectively defeats the objectives of the Act.

That said, there are legitimate concerns that expression can be inhibited by too broad an interpretation of issue advertising or communications. Currently, the law regulates all issue advertising that has the effect of promoting a party or a candidate, whether or not such promotion is the purpose of the communication. As a result, a large number of communications may be captured.

According to Elections Canada's survey of registered third parties after the 2019 general election, over half of third parties' financial agents said it was difficult to figure out whether the issues they wanted to advertise were issues that would engage the Act, and 4 in 10 said it was very difficult. The most common reasons cited for this difficulty were that the rules for advertising about issues in an election were not clear, followed by the perception that the issues the third parties regularly work on (e.g. climate change, gender issues) would create a need for registration and regulatory compliance.

Similarly, responses to the consultation conducted in 2020 indicated that the definition of issue advertising could be made clearer. Respondents noted that the link between an issue and a political entity is not always obvious. They also stated that the rules may have the unintended consequence of limiting communications that are conducted in the normal course of business or educational activities.

While it would not be consistent with the objectives of the law to exclude all issue-based communications from regulation, it is important to reduce uncertainty about what is and what is not regulated. Elections Canada believes that greater clarity could be provided, and the goals of the regime better achieved, if the law targeted only those issue-based communications that have the *purpose* of promoting or opposing parties and candidates. As noted, the Act also currently impacts issue-based election advertising during an election period that has the incidental *effect* of promoting a party or candidate while, in fact, being transmitted for some other reason.

Further clarity on the scope of regulated issue-based communications could be provided in law, as suggested by some respondents to the consultation. For example, Ontario's *Election Finances Act* does this by including a number of useful factors to consider when determining whether issue-based advertising falls under that legislation. These factors include whether the advertising was planned to coincide with the election, whether it refers to the election, whether it is similar to party or candidate advertising in appearance and whether it is consistent with the entity's non-election-period advertising. For the reasons noted above, Elections Canada believes that the factors outlined in the Ontario legislation should be applied at the federal level, beyond advertising, to all issue-based electoral communications. Issue-based electoral communications that can reasonably be seen to have the purpose of promoting or opposing a party or candidate should be regulated.

A more targeted regulation of issue-based communications that focuses on the purpose of the communication—with objective factors set out in legislation for determining whether there is a clear link between the particular communication and a party's or candidate's platform—should reassure third parties about the scope of the provisions of the Act. This change would continue to protect the spending limits and transparency objectives of the Act, while ensuring that only communications clearly linked to one or more candidates or parties are subject to regulation.

For consistency, Elections Canada believes that the same test should apply during both the election and the pre-election periods, recognizing that fewer issues should attract scrutiny in the pre-election period, when party platforms are less clearly defined.

Recommendation 2.1.1

- To continue to provide transparency about electoral communications and to protect the objective of fairness through spending limits, the Act should regulate paid issue-based electoral communications—not only issue advertising—that can reasonably be seen as having the purpose of promoting or opposing a party or candidate during the election and pre-election periods.

- To clarify the scope of regulated issue-based communications, a list of factors should be provided in the Act to help determine which communications would be captured under the Act as being for the purpose of promoting or opposing a candidate or party. Section 37.0.1 of Ontario's *Election Finances Act* could serve as a model.

2.2. Third Party Registration Threshold

Although the scope of the regulation of expenses and the related spending limits for third parties have recently been substantially changed, the third party registration threshold—set at $500—has not changed in more than 20 years.

In the 2019 general election, 73 percent of registered third parties spent over $1,000; 3 percent spent between $500 and $999; and 24 percent spent less than $499. Third parties that registered but spent less than $499 did so believing that they would, in fact, exceed the $500 threshold. It is unknown how many other third parties (those that did not register) spent less than $500. At the time this report was tabled, and while data exists for the 2021 general election, an analysis has yet to be completed.

Unlike spending limits, which are adjusted annually, the registration threshold remains frozen. Increasing this threshold would reduce the regulatory burden on smaller organizations and individuals.

Although some may express concern that a higher threshold for registration would allow some actors to escape regulation and thus threaten the goals of the law, it should be noted that the requirement for a third party to include a tagline or authorization statement in its advertisements applies to third parties even if they have not met the threshold for registration.

If Recommendation 1.1.1 is adopted, third parties required to register would also have to disclose their identity in their paid and unpaid electoral communications, and unregistered third parties would have to continue to identify themselves in their paid electoral communications. Therefore, an increased registration threshold for other regulatory requirements to apply could facilitate participation in the electoral process by reducing the regulatory burden on smaller third parties, while not unduly jeopardizing transparency. In line with Recommendation 1.1.1, once a third party has met the registration threshold, it should be required to identify itself in *all* its electoral communications, whether paid or unpaid.

Recommendation 2.2.1

- To reduce the regulatory burden on those playing a smaller financial role in the electoral process, amend the Act to increase the third party registration threshold to $1,000.

2.3. Third Party Contributions

Although third parties have spending limits and reporting obligations that are similar to those imposed on parties and candidates, the same cannot be said with respect to the inflow of resources to third parties. Whereas parties and candidates must record all contributions of funds, goods and services in relation to the election, and such contributions are subject to limits, the same requirements do not apply to third parties.

Third parties are required only to record contributions given to them for the purpose of engaging in regulated activities. Contributions received for no specific purpose, or no purpose directly linked to regulated electoral activities, are treated as general revenue. If they are used for regulated activities, they are reported as forming part of the third party's own

funds or resources. This provides a gap in transparency concerning the true origins of third party resources and provides a way for large anonymous contributions, or foreign contributions, to make their way into Canadian elections.

The proportion of third party funding coming from declared contributions is decreasing. In the 2011 general election, 92 percent of third party funding came from contributions, while 8 percent came from the third parties' own funds. In the 2019 general election, only 63 percent of total inflows used by third parties were recorded as contributions from named contributors; the other 37 percent came from the third parties' own funds.

In the case of entities that receive a substantial portion of their revenue from fundraising—notably, third parties created for the purpose of supporting or opposing parties and candidates—reporting that the entity's "own funds" are being used can have the effect of hiding whose resources are truly being used in the electoral process. This is because, under the Act, contributions received by an entity to support a given cause (or to support the entity more generally), but not specifically for regulated campaign activities, are considered to be part of the entity's general revenue and are reported as the entity's "own funds." This weakens transparency and can open the door to the use of foreign funds when they are co-mingled with general revenue.

Another problem with the current third party contributions regime is that a third party (e.g. entity A) can receive funds from another entity (entity B) that collects contributions. In that case, entity A's contributions from entity B are disclosed as such, without reference to original contributors, individual or otherwise. Again, this undermines transparency and allows for inflows of foreign contributions.

One solution to this lack of transparency could be to provide that all resources used by a third party to promote or oppose a party or a candidate should be subject to the same rules as those governing contributions to political parties and candidates. Only contributions from individual Canadian citizens or permanent residents, and subject to statutory limits, could be used by a third party for regulated electoral activities. While effective, such a solution may raise issues under the *Canadian Charter of Rights and Freedoms* because it restricts the expressive activities of a broad range of entities such as unions and commercial corporations by preventing them from using their own funds altogether, even though they carry on activities and generate revenues in Canada.

An alternative solution is to impose restrictions on those third parties that receive a significant level of funding from contributions (e.g. 10 percent per year). These entities, which present higher risks to transparency, would be able to register and participate in a Canadian election as third parties, but they would be required to use only funds that could be traced to contributions from individual Canadians and permanent residents. They could not rely on their "own funds" or contributions from sources other than individuals. These third parties would be required to have a separate bank account for their third party campaign expenses; such an account would receive inflows only from these individual contributors, and all regulated expenses would need to be made from it.

These restrictions should not apply to individuals registering as third parties who should be allowed to continue relying on their own funds. In the last two elections, only a small number of individuals registered as third parties (8 in 2019 and 7 in 2021), and only one reported

expenses above $5,000. Current prohibitions in the Act on the use of foreign funds are adequate with respect to this category of third party.

Recommendation 2.3.1

- To achieve improved transparency and help prevent foreign funding of third parties, the Act should provide that third parties other than individuals who wish to rely on their own funds to finance regulated electoral activities need to provide Elections Canada with audited financial statements showing that no more than 10 percent of their revenue in the previous fiscal year comes from contributions.
- All other third parties that are not individuals should be required to incur expenses to support or oppose parties and candidates only from funds set aside in a separate account established for that purpose. Such third parties should also be required to identify the contributors whose funds have been used to promote or oppose parties or candidates, and such contributors should be made up only of individual Canadian citizens and permanent residents.

3. Pre-Registration of Candidates

The *Elections Modernization Act* extended the third-party registration requirement to the pre-election period when there is a fixed-date general election. This change reflects the reality that political campaigns are not restricted to the election period. Placing limits on third party spending during the pre-election period prevents third parties from being used during this time to circumvent the spending limits imposed on registered parties.

However, a regulatory gap exists when it comes to potential candidates. A "potential candidate" is a person whose nomination has not been confirmed, but who has been selected in a nomination contest, is a member of Parliament or has the support of a registered party to be a candidate. Potential candidates cannot register (i.e. be nominated) until after the election period begins, and they are explicitly excluded from the definition of "third party."

If a potential candidate subsequently becomes a confirmed candidate, their financial transactions and expenses during the pre-election period (and the election period up until their candidacy is confirmed) are regulated retroactively. If, on the other hand, they do not become a confirmed candidate, there is no transparency or oversight with respect to their financial activities, even if those activities had the purpose of promoting or opposing a political party or candidate. In effect, they will have been able to spend as a third party without any third party rules applying to them.

Allowing candidates to pre-register would provide a solution to this gap in the political financing regime. The opportunity to pre-register would need to be accompanied by a change in the definition of "third party" during the pre-election period. Individuals who do not pre-register as a candidate but carry out financial activities during the pre-election period would be treated as third parties and would be required to register as such if they meet the registration threshold.

In addition to closing a regulatory gap, there would be other important benefits to the pre-registration of candidates, especially for independent candidates or party candidates in electoral districts where there is no active electoral district association. Pre-registered candidates could be allowed to issue tax receipts for contributions from the time they pre-register. This would facilitate the ability of candidates to compete on a level playing field in the period before the issue of the writs.

Pre-registration would also allow Elections Canada to make candidates aware of their obligations and to assist them with compliance earlier in the electoral process. For example, candidates could be informed early on about their obligations to appoint an official agent, open a bank account and issue receipts for all contributions. This would mitigate the possibility of unintentional non-compliance that can occur under the existing rules when an individual is retroactively deemed to be a candidate from the moment of their first financial transaction. In addition, pre-registration could potentially reduce the pressure on campaigns and returning officers in the lead-up to the close of nominations (21 days before election day). Finally, pre-registration would provide assurances that all those engaged in electoral communications are governed by similar obligations and reporting requirements.

At present, once a candidate's nomination papers are accepted, the associated political party cannot withdraw its support. To facilitate pre-registration, parties should be given the option of withdrawing their support for a pre-registered candidate, up to a reasonable point before the close of nominations, and endorsing a different candidate.

Consideration could also be given to allowing a party that has become eligible for registration to become registered on filing its first pre-registration of a candidate. Currently, an eligible party may become registered only once it has nominated a candidate at an election. The benefits of registration include the ability to issue tax receipts, receive the preliminary list of electors and access the allocation of broadcast time by the Broadcasting Arbitrator.

In the year of a fixed-date election, pre-registration could take place during the pre-election period, or it could be extended to a certain time in advance. In other years, the timing for the pre-registration of candidates is less clear; individuals should not be entitled to remain pre-registered for years. The Act could perhaps provide a pre-registration mechanism that would require candidates to renew their pre-registered status after a certain period, absent an election call. This would also allow political parties to renew or repeal their endorsement.

In summary, creating a process for pre-registering candidates, specifically in the pre-election period of a fixed-date general election, would close an existing gap in the electoral communications regime. Other more substantial benefits could flow from a general process allowing candidates to pre-register at any time, such as an extended eligibility period for tax credits for contributions and greater financial flexibility outside the campaign period. Such benefits should be counterbalanced by obligations to ensure transparency (notably, increased reporting obligations). Finally, pre-registration of candidates would assist voters who wish to vote by special ballot to do so earlier in the election campaign and help reduce late mail-in ballots.

Recommendation 3.1.1

- To better ensure reporting of all expenses to promote or oppose a candidate or party during a pre-election and election period, allow a process for candidates to register with Elections Canada before the election period (either only in years of a fixed-date election or at any time with certain conditions). In addition, permit pre-registered candidates to issue tax receipts and make them subject to the regulatory requirements (opening a bank account, appointing an official agent, etc.) that ensure transparency.

- To respond to the possible hesitation of parties to pre-register candidates, allow parties to withdraw their endorsement of a pre-registered candidate up to a reasonable point before the close of nominations and endorse a new candidate for the same electoral district.

- To close a potential gap in the law, repeal the definition of "potential candidate" and amend the definition of "third party" so that "pre-registered candidates" are excluded from the definition.

4. Protecting Against Threats to the Electoral Process

The Act sets spending limits and requires most political entities to report on the money they raise for and spend on an election campaign. The content of electoral communications is, for the most part, not restricted.

In certain limited situations, however, the content of a communicator's message is regulated by the Act. Parliament has enacted such regulation to promote fairness and trust in elections and, in some instances, to promote healthy democratic discussion.

4.1. Prohibiting Certain False Communications

False information about the electoral process and the integrity of elections can harm public trust in elections. This can serve to facilitate voter suppression and, in the longer term, jeopardize trust in the entire electoral system on which democracies rest.

There are no specific prohibitions in the Act against making false statements about the electoral process. For example, statements that wilfully mischaracterize when, where and the ways to vote are not specifically prohibited, nor are false statements that portray official results as having been manipulated. When such statements are knowingly made to suppress participation, they may trigger the application of existing prohibitions against actions to interfere with the voting process.

However, in some cases, the deliberate dissemination of inaccurate information may serve a broader purpose—namely, to undermine the legitimacy of the election itself or the counting of the votes. Even if the person making the statements knows them to be untrue and makes them for the clear purpose of undermining the election, they would not be caught by existing prohibitions.

To protect freedom of expression, the threshold for any provision that seeks to circumscribe speech must be high. While recognizing the importance of freedom of expression, it seems appropriate to limit expression where the speaker knows the information to be false and communicates it in order to disrupt the conduct of an election or to undermine the legitimacy of election results.

Recommendation 4.1.1

- To protect against inaccurate information that is intended to disrupt the conduct of an election or undermine its legitimacy, amend the Act to prohibit a person or entity, including foreign persons and entities, from knowingly making false statements about the voting process, including about voting and counting procedures, in order to disrupt the conduct of the election or to undermine the legitimacy of the election or its results.

4.2. Broadening the Scope of Existing Prohibitions

In 2018, the *Elections Modernization Act* clarified the prohibitions against foreign interference and added the prohibition against misleading publications that falsely purport to be from an election worker, political party or candidate. These prohibitions apply only during an election period. To deter such threats to the integrity of elections, the period to which these prohibitions apply should be extended.

Recommendation 4.2.1

- To better protect against foreign interference and the spread of inaccurate information about elections and electoral participants, amend the Act to extend to the pre-election period the prohibitions against foreign interference and extend to all times the prohibition against misleading publications that falsely claim to be by an election worker, political party, leadership contestant, nomination contestant or candidate.

Since 2018, the Act has made it an offence to use a computer system fraudulently with the intention of affecting the outcome of an election. However, the offence does not capture activity that is designed to interfere with or discredit the electoral process.

In a world at risk from cybersecurity threats, phishing scams and automated bots that have the unprecedented ability to amplify messages, our electoral law should seek to deter the potential damage that can be done by electronic means to our democratic processes, including by foreign actors who may wish to discredit our democracy.

Recommendation 4.2.2

- To ensure the more appropriate targeting of an existing offence, amend the Act to broaden the scope of the offence of using a computer system to include acting fraudulently with the intention of disrupting the conduct of the election or undermining the legitimacy of the election or its results.

4.3. Political Parties That Promote Hatred

A “political party” is defined in the Act as an organization, one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election.

A political party may apply to register with the CEO. Registered political parties obtain a number of benefits, including the ability to issue tax receipts and becoming eligible for expense reimbursements. They also receive access to free broadcasting time and to lists of electors, and the party’s name appears on ballots. To maintain their eligibility to receive these benefits, a party must have a minimum of 250 confirmed members and endorse at least one candidate to run for office in a general election.

In recent years, parties and candidates involved in the dissemination of hatred against particular communities have attracted attention from the media, the public and political actors. Concerns have been raised about such individuals and groups gaining access to lists of electors and to financial support from the state.

The Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott* has defined hate speech as "speech that exposes a group to hatred, that seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society."[6] In this respect, hate speech must be more than merely offensive or hurtful: it must present an "extreme and egregious example of delegitimizing expression."

Canadian case law recognizes 11 hallmarks of hateful expression, which have been applied by courts and tribunals. These hallmarks include portraying a targeted group such as an ethnic or religious minority as a powerful menace and as responsible for society's or the world's current problems. Hateful expression also uses highly inflammatory language; dehumanizes a targeted group through comparisons to and associations with animals, vermin or excrement and other noxious substances; trivializes or celebrates past persecution or tragedy involving members of the targeted group; and calls for violent action against a targeted group.

When a party has as one of its primary purposes the promotion of hatred against a targeted group, there is at present no ground for barring the party's registration, or requiring the party's deregistration, under the Act.

It is not appropriate for the CEO (or the Commissioner of Canada Elections) to have a role in choosing which political parties are registered based on their political views, even when those views may be hateful. The CEO should remain strictly impartial in the administration of elections and the enforcement of the Act, and it is therefore proper that the Act not provide an election administrator any scope to make judgments about the positions of political entities in determining whether or not to register them. Nevertheless, the possibility of registering an organization that has the promotion of hatred as one its primary purposes as a political party entitled to benefits raises obvious policy concerns.

In order to ensure that the CEO and Commissioner remain non-partisan, and be seen as such, electors could be given the authority to apply to a court when there is reason to believe that an organization seeking party registration, or that is already registered, has as one of its primary purposes the promotion of hatred against an identifiable group. In making this determination, a court could use the test that has been applied under Canadian law.

Recommendation 4.3.1

- To ensure that an organization that has as one of its primary purposes the promotion of hatred against an identifiable group does not enjoy the benefits of being a registered party, including access to lists of electors and public financing, give electors the authority to apply to a court for a determination as to whether the organization has such a primary purpose. If the court determines that it does, the organization would not be eligible to register as a political party or would be deregistered.

[6] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 (CanLII), [2013] 1 SCR 467, https://canlii.ca/t/fw8x4.

5. Regulating Channels of Electoral Communication

Many of the Act's provisions relating to campaign communication channels were drafted before the advent of digital communications. The opportunity presented by new communications media comes with questions about whether and how to regulate their use during (and outside) elections to uphold the values of transparency, a level playing field and free and fair participation in the electoral process.

5.1. Online Platforms

By far the most transformative communication channels have been online platforms, including social media and other digital platforms that enable users to create, share, discover and interact with content online. Having become a central component of our electoral environment, these platforms can be valuable tools for reaching Canadians efficiently and inexpensively, and they are credited with spurring people on to participate in elections in many ways, whether by updating their voter registration, donating to a political party or cause or accessing information about political options or about when, where and the ways to vote.

In the wake of digital interference in elections around the world and the spread of inaccurate and harmful content, governments—alongside academics, civil society and online platform companies—have begun taking a closer look at the impact of online platforms.

These platforms hold immense power in today's information environment. American and European legislators have noted that this power has become concentrated to the point that a small number of commercial companies have a near monopoly on the market. Similar concerns have been raised by experts in Canada.[7] A few powerful private companies employ algorithms that impact the information we consume, meaning that some political messages may make their way to users' screens, while others do not.

Major online platforms decide how, when and at what price to sell digital advertisements. And although the cost to enter the digital landscape is relatively low, the use of dynamic pricing strategies makes the cost and effectiveness of a digital advertising campaign difficult to predict. This unpredictability may present a risk to the level playing field if political

[7] Makena Kelly, "House Lawmakers Introduce Five Bipartisan Bills to Unwind Tech Monopolies," *The Verge*, June 11, 2021. Retrieved from https://www.theverge.com/2021/6/11/22529857/democrats-antitrust-big-tech-facebook-amazon-google-apple-competition-package-bills.
Billy Perrigo, "How the E.U.'s Sweeping New Regulations Against Big Tech Could Have an Impact Beyond Europe," *Time*, December 30, 2020. Retrieved from https://time.com/5921760/europe-digital-services-act-big-tech.
Vass Bednar and Robin Shaban, "The State of Competition Policy in Canada: Towards an Agenda for Reform in a Digital Era," Centre for Media, Technology and Democracy, April 21, 2021. Retrieved from https://www.mediatechdemocracy.com/work/the-state-of-competition-policy-in-canada.

entities are treated unequally by online platforms that act as gatekeepers to electors' attention.

Though some platforms have advertising and content-moderation policies in place, experts have noted that these policies are not necessarily applied consistently or transparently. For example, the US-based Brennan Center for Justice reports that content created by marginalized populations is moderated more heavily or removed at disproportionate rates and has called for more transparency into content-moderation practices.[8]

In Canada, several online platforms signed on to the Canada Declaration on Electoral Integrity Online before the 2019 federal election. The signatories committed to acting with integrity, transparency and authenticity, and consistently, with Canadian laws and other legal obligations in the lead-up to, and during, the election. There are also voluntary measures being taken to identify and remove malign actors, manage inappropriate content and collaborate with agencies and authorities to uphold trust in the electoral process and in democratic institutions more generally. However, more transparency, especially during elections, would be welcome.

In particular, there is a lack of transparency—and thus not much predictability for election administrators or regulated entities—about the approach used by online platforms to manage election-related content, including advertising. A legislative requirement for transparency would allow online platforms to be held accountable for their practices. This accountability is crucial to upholding the values of our electoral democracy because the decisions made by online platforms impact both political entities' participation in the electoral process and the information electors receive. More transparency could help increase trust in digital campaigning as well as improve enforcement and electoral security.

Recommendation 5.1.1

- To provide greater transparency concerning the use of online platforms in elections, require such platforms (as defined in accordance with Recommendation 5.1.2 below) to publish their policies on the administration of paid electoral communications and on user accounts during the pre-election and election periods.

- To strengthen the accountability of online platforms during elections, require them to publish policies indicating how they will address content (paid or unpaid) that misleads electors about where, when and the ways to vote or that inaccurately depicts election-related procedures during the election period (e.g. by moderating, downgrading or removing content).

Online platforms are currently defined in the Act as Internet sites or applications that sell advertising space, either directly or indirectly. Online platforms that meet a threshold of

[8] Ángel Díaz and Laura Hecht-Felella, "Double Standards in Social Media Content Moderation," Brennan Centre for Justice at New York University Law School, August 4, 2021, p. 3. Retrieved from https://www.brennancenter.org/sites/default/files/2021-08/Double_Standards_Content_Moderation.pdf. Laura Hecht-Felella, "A Call for Legislated Transparency of Facebook's Content Moderation," Brennan Centre for Justice at New York University Law School, September 28, 2021. Retrieved from https://www.brennancenter.org/our-work/analysis-opinion/call-legislated-transparency-facebooks-content-moderation.

minimum monthly users—3 million, 1 million, or 100,000 unique monthly visitors in Canada for platforms in English, French or another language, respectively—are required to maintain a digital advertising registry, described in more detail below.

All online platforms, irrespective of whether they sell advertising space for electoral communications, or their number of monthly users, make decisions about whether the content on their platforms is acceptable and whether it aligns with the terms and conditions of their services. Accordingly, Parliament should revisit the current definition of "online platform" in the Act to ensure that the transparency requirements described above apply to all platforms.

Recommendation 5.1.2

- To ensure that the important goals of the law are met regardless of the size of the online platform hosting election-related content, amend the definition of "online platform" to extend beyond only those that sell advertising space and eliminate the minimum monthly threshold requirement for digital advertising registries.

5.2. Digital Advertising Registry

The *Elections Modernization Act* introduced a requirement for online platforms that meet a certain threshold of monthly users to maintain and publish a digital advertising registry. Registries must contain a copy of all ads purchased by political entities and the name of the person who authorized the publication.

Digital ad registries bring transparency, but the experience of the 2019 and 2021 general elections suggests that their impact is mixed. Some major platforms opted out of the election advertising market altogether, citing technical and timing challenges associated with implementing an ad registry. Therefore, political entities could only communicate to electors through advertisements on the platforms that chose to adopt the ad registry requirements.

As well, the formats of the digital ad registries that platforms did implement varied considerably. Notably, there was no standardized way to search ads within, or compare them across, registries. Registries are not required to include how much an ad costs or who is being targeted. Without the ability to easily search for basic information across platforms, transparency is not as complete as it could be.

In addition, the user thresholds for online platforms do not capture smaller platforms, to which malign actors may turn to communicate inaccurate information or where targeted messages may be left unscrutinized.

These limitations prevent electors from forming an overall picture of the digital advertising landscape. Because electors do not have access to all a political entity's advertisements, they cannot be fully informed about how it is attempting to influence their vote. Furthermore, there is no incentive for political entities to provide consistent messaging; rather, they can target different messages to different population groups without being held to account.

Many consultation respondents in 2020 welcomed the idea of a centralized registry that could increase searchability and transparency; some suggested that Elections Canada host such a

repository. Several noted that unique identifiers could increase transparency for electors and would also help researchers better understand who is purchasing digital ads and to what extent.

The technical challenges of creating one unified registry for electoral communications would be significant. Instead, existing registries could present their data in a searchable and shareable fashion, as recommended below. In addition, political entities could increase transparency by making all their paid digital communications available on their websites. Rather than having political entities establish their own registries, which may be challenging for smaller political parties, requiring them to provide a link to the registries that host the electoral communications they purchased would strike the right balance.

The latter requirement would provide an added layer of transparency so that the general public can easily get a full picture of a political entity's paid digital communications.

As a matter of election administration, Elections Canada plans to assign each registered political entity a unique identifier that could be used when purchasing digital electoral communications. This change does not require a legislative amendment.

Recommendation 5.2.1

- To enhance transparency concerning digital advertising in elections, amend the Act to:
  - Require political entities to disclose in a timely manner comprehensive information about their paid digital electoral communications—for example, by requiring their websites to link to the registries of the online platforms that host their paid digital communications.
  - Require that the platform's paid digital communications registries include searchability (e.g. by purchaser or date) and exportability of data.

5.3. Voice Calls and Text Messages

The Voter Contact Registry was created in 2014 in response to automated voice calls (or robocalls) that misdirected electors about where to vote during the 2011 general election. Maintained by the Canadian Radio-television and Telecommunications Commission (CRTC), the Registry is meant to protect electors from rogue or misleading calls during federal elections and ensure that those who do contact voters do so transparently. Entities making or authorizing calls to voters during an election must file a registration notice within 48 hours of making the first call, and notices are made publicly available on the CRTC's website.

Phone calls are still widely used to communicate with electors. In the 2019 general election, registration notices with the Voter Contact Registry were filed by 718 persons and groups using calling-service providers, 659 calling-service providers and 51 persons and groups using internal services to make voter-contact calls. In the 2021 general election, 681 persons and groups using calling-service providers, 619 calling-service providers and 27 persons and groups using internal services to make voter-contact calls filed notices.

Text messages, however, are not currently captured in the Registry. The use of text messages to communicate with electors, particularly by third parties, has been increasing in recent years.

Both Elections Canada and the CRTC believe that the voter-contact-calling regime should be extended to apply to electoral communications through text messages because texting is based on the same principles and technology as phone calls, and it can be used in the same way to mislead thousands of voters at a very low cost.

Recommendation 5.3.1

- To enhance transparency and apply the same rules to text messages as to telephone calls, amend the Act to add text messages to the voter-contact-calling regime administered by the CRTC.

5.4. Broadcasting

The broadcasting provisions of the Act seek to ensure fairness and equity in the provision of broadcasting time during the election period. Since broadcasting is one of the most expensive channels of electoral communication, the Act requires all broadcasters to make 6.5 hours of prime-time broadcasting time available for purchase by registered and eligible parties during the election period. All networks are required to provide free broadcasting time (not in prime time) to registered and eligible parties.

The allocation of time is presided over by the Broadcasting Arbitrator, who is also responsible for setting guidelines and arbitrating disputes between parties and broadcasters over the application of the rules in particular cases.

In addition to ensuring an adequate supply of broadcasting time, the Act contains a provision to ensure that broadcasting and periodical advertisements are made available at the lowest rate charged for an equivalent amount of broadcasting time or advertising space.

There are numerous problems with the current broadcasting provisions. These issues have been identified in previous reports, including the CEO's 2016 recommendations report (on which the CRTC, CBC/Radio-Canada and the Canadian Association of Broadcasters were consulted). Generally, the provisions are overly complex and prescriptive when considering the decreasing substantive benefits they deliver. In addition, the reliance on "broadcasters" and "networks," as defined in law, to distribute time has weakened the provisions because broadcasters and networks take up an ever-smaller portion of the television landscape. While the current provisions present problems, the goals being pursued remain valid.

Television broadcasting may be less relevant now than it was before the digital age, but it remains an important communication channel for political entities. For example, political parties represented in the House of Commons before the 2019 general election spent a majority of their election advertising dollars on television ads (47.4 percent), followed by online ads (28.3 percent), other ads (13.3 percent), radio ads (9.6 percent) and print media (1.4 percent). At the time this report was tabled, parallel data was not yet available for the 2021 general election.

Respondents to an evaluation of the 2019 federal leaders' debates indicated that television was the most popular means of watching the debates. Eighty-five percent of English and 93 percent of French respondents reported watching the debates on television.[9] According to an Elections Canada survey conducted after the 2021 general election, among electors who recalled seeing or hearing information from Elections Canada's Voter Information Campaign, 56 percent recalled seeing or hearing it on TV, 48 percent saw it in a brochure, 41 percent saw it on social media and 40 percent heard it on radio.

Given the continued relevance of traditional communication channels, the broadcasting regime, which is designed to provide equitable access to information about registered parties, should be modernized rather than eliminated from the Act.

Respondents to the 2020 consultation were in favour of maintaining the position of the Broadcasting Arbitrator, and several indicated that the mandate could be expanded to include social media. Respondents were in favour of limiting the influence of money and providing equal access to broadcasting time, and most were in favour of maintaining the provisions for access to both free and paid broadcasting time. Several welcomed expanding the paid broadcasting provisions beyond traditional broadcasting to newer forms of media.

While there have been reports about unfair pricing for social media ads, the costs are relatively low compared with those for television ads, and there is no material scarcity of ad-placement opportunities. Consequently, unlike accessing traditional broadcasting media, there is not a high barrier to entry for using social media to communicate a political party's viewpoints. This means that it may not be necessary to import the equitable and fair pricing requirements from the broadcasting scheme into social media, and it is likely premature to consider expanding the role of the Broadcasting Arbitrator to cover this sphere. That said, given the emerging dominance of social media as a communication medium, Parliament may wish to consider adapting the Broadcasting Arbitrator's role to online platforms in the future.

The current Broadcasting Arbitrator, first appointed in 2020, has been consulted and agrees with the recommendations below (which repeat those made in previous reports).

Recommendation 5.4.1

- To improve the broadcasting provisions in the law, amend them as follows:
  - Separate the paid- and free-time allocation processes.
  - Modify the allocation regime for paid time by giving each party the same entitlement to 100 minutes of paid time, with a cap of 300 minutes on the total amount of broadcasting time that any broadcaster must sell to political parties.
  - Require that paid time be provided at the "lowest unit charge," and clearly define this term to mean the lowest rate charged to non-political advertisers that receive volume discounts for advertising purchased months in advance.
  - Amend the provisions determining to whom the obligation to provide free broadcasting time applies. Instead of applying only to "network operators," these

[9] John R. McAndrews, et al., "Evaluation of the 2019 Federal Leaders' Debates," *Leaders' Debates Commission*, 2019. Retrieved from https://www.debates-debats.ca/en/report/evaluation-2019-federal-leaders-debates/.

obligations should apply, through conditions of licence under the *Broadcasting Act*, to all broadcasters that focus on news or public affairs (e.g. conventional television stations, news or talk radio stations and speciality television stations that focus on news or public affairs). Each of these broadcasters should be required to provide a total of 60 minutes of free time, allocated equally among the parties.

6. Protecting Individuals Receiving Electoral Communications

In order to understand and effectively reach their intended audience, political campaigns increasingly rely on data and data analytics. Although surveys are still commonly used, in the digital era, information about electors' identities and preferences can be collected in many ways, whether directly or indirectly. There have been growing calls to better protect the personal information of electors.

Many electors are willing to receive electoral communications, but they also want their personal information to be collected and used in appropriate, transparent and secure ways. While some parties in the digital age collect and use information about voters in ways that are similar to those of commercial entities, political parties are not subject to binding rules governing the collection and use of personal information. Canadians' concerns about the use and potential misuse of their personal information could undermine their trust in political entities such as political parties and, eventually, their trust in the electoral process.

6.1. Political Entities and Privacy

As political parties expand the ways they communicate with electors, they are also collecting more data about electors. Many, including parliamentarians, have called for stronger protections on electors' personal information.

Extending the fair-information principles found in Schedule 1 of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) to political parties is consistent with past recommendations and statements made by the CEO. It is also consistent with recommendations made by the House of Commons Standing Committee on Access to Information, Privacy and Ethics; the Office of the Privacy Commissioner of Canada; and many academics and civil society organizations. These principles are based on internationally recognized standards that govern the collection, use and protection of individuals' personal information by private and public organizations.

Elections Canada continues to hold the view that applying these privacy principles to political parties is the best approach moving forward.

In 2018, the *Elections Modernization Act* established the requirement for registered and eligible political parties to publish, on their websites, a policy for the protection of personal information and to provide it to the CEO. The policy must include statements indicating the type of information collected and how it is protected and used, under what circumstances information may be sold, how the party collects and uses personal information created from online activity and the name and contact information of a person to whom privacy concerns may be addressed.

While these new requirements increase transparency about the policies on the handling of personal information by political parties, they have been broadly criticized as falling short of fair-information principles because while political parties are required to make their policies

publicly available, there are no provisions requiring them to actually take measures to protect personal information. Further, there is no oversight mechanism to monitor whether parties actually abide by the contents of their policies.

Elections Canada believes that, in line with the application of fair-information principles, certain minimum standards should apply to parties' privacy policies.

Some electors may not welcome certain types of electoral communications. For example, according to a 2021 Elections Canada survey, respondents were more in favour of being contacted by email (42 percent), voice calls (41 percent) or social media (39 percent) over text messages (27 percent) or automated telephone calls (17 percent). Unsolicited communications may unintentionally reduce trust in elections and damage the relationship between electors and those seeking to represent them.

Political parties are exempt from some of the Unsolicited Telecommunications Rules and Canada's Anti-Spam Legislation (CASL), both administered by the CRTC. Among other things, the Unsolicited Telecommunications Rules require telemarketers to identify themselves when making unsolicited calls, and they enable consumers to receive fewer such calls by registering their telephone number on the National Do Not Call List. CASL requires that individuals be able to unsubscribe or opt out of receiving commercial electronic messages (i.e. emails that offer or promote goods or services for sale).

Many consultation respondents in 2020 also cited the ability to access, view and correct the information that political parties have about an individual as a fundamental privacy right. Under this principle, individuals must be allowed to request access to their personal information as well as to correct it if it is inaccurate or incomplete. Information must be provided on request, except where it is prohibitively costly to provide, or for legal, security or commercially proprietary reasons. Several respondents supported giving parties the ability to decline frivolous or vexatious access requests.

Political parties need to collect information in order to better understand and communicate with the electorate. Trust in their ability to manage this information is likely to improve if they are required to comply with well-established principles that apply to most other private and public entities. Ideally, this greater trust would enhance Canadians' overall confidence in the electoral process.

In this regard, it should also be noted that, in the absence of federal legislation in this area, provinces may act to impose obligations on federal parties. This is already the case in British Columbia, where provincial law has recently been held to apply to federal parties.[10]

Recommendation 6.1.1

- To better protect electors' privacy and enhance their confidence in how political parties manage their personal information, apply broadly accepted privacy principles, as enumerated in Schedule 1 of the *Personal Information and Protection of Electronic*

[10] *Conservative Party of Canada (Re)* 2022 BCIPC 13. Retrieved from https://canlii.ca/t/jmzsq.

Documents Act, to registered and eligible parties, with oversight by the Office of the Privacy Commissioner of Canada.

- Although a full application of such broadly accepted privacy principles would be preferable, to ensure a minimum level of protection of electors' privacy, the policies of registered and eligible political parties for the protection of personal information should be required to contain, at least, the following substantive elements:
  - Enable Canadians to opt out of receiving communications, or certain types of communications, from political parties.
  - Enable Canadians to request access to, and correct, inaccurate personal information that is held by political parties (with an exemption for frivolous or vexatious requests).
  - Explain how Canadians' personal information may be shared by political parties in addition to how it is collected, used or sold.

6.2. Preliminary List of Electors

Under the Act, political parties and candidates are entitled to receive lists of electors that contain electors' names and addresses as well as a unique identifier randomly assigned to each elector by Elections Canada. These lists, which are compiled from the National Register of Electors, form an important basis of the information that parties collect, retain and use to engage electors.[11]

Parties and candidates also receive "statements of electors who voted," sometimes referred to as "bingo sheets," which, by law, Elections Canada must provide. These statements provide anonymized data, which, when matched with parties' own internal information, allows parties and candidates to identify which electors voted at advance and ordinary polls (although not for which candidate they voted).

Lists are distributed annually to members of Parliament for their electoral districts and to registered political parties for each electoral district where they ran a candidate in the previous general election. Political parties and candidates also have access to various lists throughout and immediately after the election period. In addition to being distributed to confirmed candidates, these lists are generally provided to registered parties, but only for the electoral districts where they are endorsing candidates.

The exception is the preliminary lists of electors, which may be requested by political parties even if they do not intend to field a candidate. The preliminary lists may be obtained soon after the issue of the writs, and they contain the name, address and a unique identifier for each elector in an electoral district. However, if a party does not intend to communicate with electors in order to compete for votes, it is not clear what the information in the lists would be used for. Although it is rare for parties that are not represented by a candidate to request

[11] Electors can apply to have their name removed from the National Register of Electors. However, an elector whose name is not included in the Register and who registers to vote on polling day would have their name appear on the final list of electors. The final lists of electors must be shared with the winning candidate and all political parties that ran a candidate in that district.

the preliminary lists of electors, the fact that electors' personal information may be legally distributed for no apparent purpose represents a significant risk to privacy.

Recommendation 6.2.1

- To require the preliminary list of electors to be made available to parties by Elections Canada only in those electoral districts where that party had past candidates or where they have candidates who have pre-registered according to Recommendation 3.1.1 above.

Part 2: Recommendations Relating to the Administration of the *Canada Elections Act*

Part 1 of this report focussed on a specific theme: electoral communications. Part 2 provides a number of additional recommendations designed to benefit Canadians by enhancing the administration of the *Canada Elections Act* (the Act). The recommendations respond to the needs of various stakeholders in the federal electoral process: the electorate, specific groups within the electorate, candidates and other political entities.

The first set of recommendations is designed to provide specific responses to subgroups of the electorate who may face barriers to participation in the electoral process. This set includes potential solutions to reduce the number of special ballots set aside for lateness, an amendment to accommodate days of religious and cultural significance; another to enhance services to electors residing in long-term care facilities; and yet another to facilitate voting by electors with disabilities.

A second group of recommendations is designed to enhance service to candidates and other political entities. Three recommendations aim to facilitate the candidate nomination process, while others focus on the political financing reporting regime.

Finally, a third set of recommendations addresses, amongst other things, the needs of the electoral workforce in the field. Changes are recommended to the conditions of work for returning officers to help recruit and retain the best electoral workforce possible. There are also amendments designed to improve electoral management that would lead to better service delivery for Canadians; and another that focuses on the stewardship of public funds.

7. Making Canadian Elections More Accessible

The recommendations in this section would help ensure that more electors who want to vote can do so without encountering barriers. They include recommendations to make it easier for electors to return their special ballot on time; to accommodate days of religious and cultural significance for electors through a proposal for a new mechanism to do so; to consolidate improvements to voting services in long-term care institutions; and to make it easier for electors requiring assistance to vote at the polls to receive that assistance.

7.1. Reducing the Number of Late Special Ballots

As a result of the COVID-19 pandemic, the 2021 general election saw a sharp increase in the use of special ballot voting services. Elections Canada expects this trend to continue. As reported in the Statutory Report for the 2021 general election, 90,274 special ballots were received after the relevant deadlines and had to be set aside.

Data on Special Ballots Issued for the 2021 General Election as of March 1, 2022
(With Comparative Values for the 2019 General Election)

Category of Elector	Ballots Issued	Ballots Returned on Time and Counted	Ballots Returned on Time but Set Aside	Ballots Returned Late	Ballots Not Returned or Cancelled
Local	1,016,084 (401,092)	86.9% (99.0%)	0.6% (0%)	6.1% (0%)	6.1% (1.0%)
National	203,446 (243,938)	78.0% (93.8%)	0.4% (0.5%)	9.5% (1.6%)	13.5% (4.1%)
International	55,696 (55,512)	48.5% (61.5%)	0.4% (0.2%)	21.0% (11.8%)	30.1% (26.5%)
Total	1,275,226 (700,542)	83.8% (94.2%)	0.6% (0.2%)	7.3% (1.5%)	8.4% (4.1%)

Recommendations in this section aim to make it easier for electors to return their ballot in time. While each individual recommendation would have a meaningful impact, it is the individual recommendations in combination that hold out the most promise for a lasting improvement.

Fixed-Date Elections and Registration for Special Ballot Voting

Electors who desire to vote by special ballot must make an application for registration for special ballot voting after the issue of writs but before 6:00 p.m. on the 6th day before polling day. One possible solution to ensure that special ballots are received by the prescribed timeline is to allow electors to make their application earlier in the process when possible. In

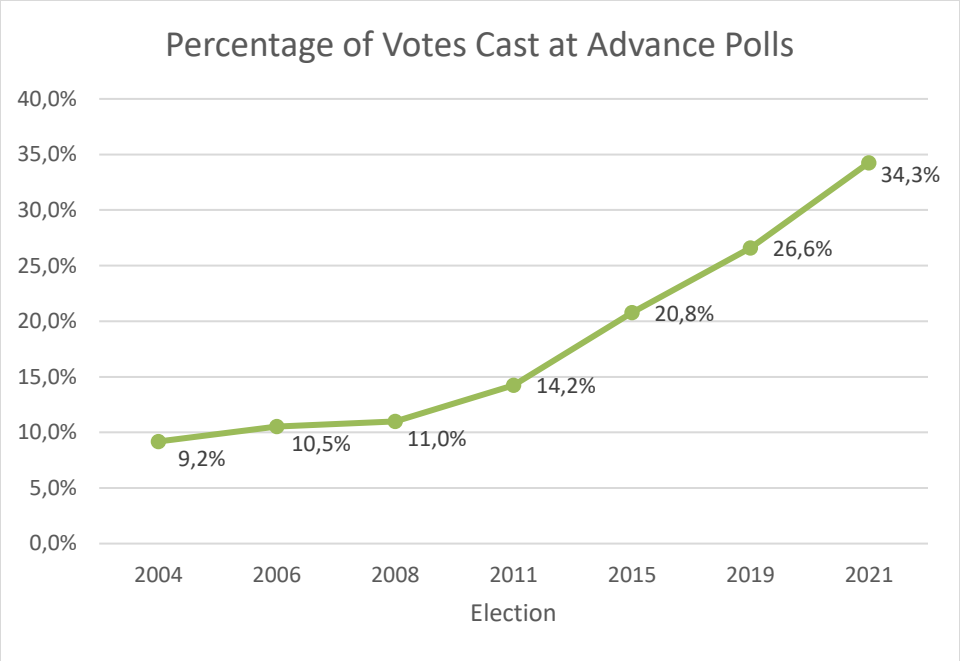
the context of a fixed-date election, electors should be allowed to apply for registration and special ballot 45 days before polling day (or at the issue of the writs if the writ period is longer). Elections Canada would not be allowed to send voting kits until the writs are issued, but could do so immediately thereafter for electors who had already applied. This would ensure that voting kits can be issued earlier in the election and give electors more time to return them.

A Longer Election Period for a Non-Fixed Date Election

The Act provides that polling day must take place no earlier than the 36th day and no later than the 50th day after the date the writ is issued. The Governor General, acting on the advice of the Prime Minister and Cabinet, sets both polling day and the duration of the election period. The 2021 general election was a non-fixed date election, with the shortest election period allowed under the Act.

Electors who wish to vote by special ballot must return their special ballot before the relevant deadlines (6:00 p.m. on polling day to the special voting rules administrator in the National Capital Region; or before the close of the polling stations on polling day to the office of the returning officer) or it will be set aside. A longer election period would allow more time for a special ballot kit to be delivered to an elector and then returned to Elections Canada. The benefits of additional time for the return of special ballots are especially relevant to remote communities where the delivery and return of special ballot voting kits is dependent on a weekly mail service—a missed flight due to bad weather or mechanical issues can make returning a special ballot on time very difficult. As such, guaranteeing a longer election period of 44 days for a non-fixed date election should contribute to reducing the number of late ballots.

A longer minimum election period would also benefit electors by responding to a significant change in the voting habits of Canadians, namely, an increasing use of advance poll voting opportunities. As indicated in the chart below, 34.3 percent of the votes were cast at advance polls during the 2021 general election. If the trend continues, returning officers will soon be preparing to serve almost half the electorate before polling day, whether at advance polls or through other special voting services.



Despite the Act being amended a number of times to increase advance polling opportunities, the election calendar as a whole has never been adjusted to account for the increased volume of electors voting ahead of polling day. The administrative challenges at the beginning of an election period are significant: labour shortages, scarcity of vacant commercial space suitable for local Elections Canada offices and installation delays for the increasing amounts of technical equipment required for modern electoral administration. Many of these challenges flow from the basic fact that, until an election date is known, returning officers cannot secure an office to receive equipment and begin serving electors and candidates. Electors would be better served at advance polls if election administrators had more time to recruit, train workers and make preparations. It should be noted that Elections Canada partners—such as Canada Post and printers that print ballots across the country—would also benefit from a longer election period.

Voting Earlier in the Election Period

The earlier electors cast their special ballot, the more likely it is that it will be received before the deadline. Under the Act, an application for registration for special ballot can be made immediately after the issue of the writs. However, the official list of candidates only becomes available 19 days before polling day. Currently, electors must write down the name of the candidate for whom they wish to vote on the ballot; if the candidate's nomination is rejected or the party endorses a different candidate, the elector's ballot would be rejected.

Where parties have not yet nominated candidates, or where electors cannot recall the name of the candidate of their choice, electors sometimes mark their ballot with the name of the party with whom the candidate is affiliated. Currently, in accordance with the Act, ballots marked only with the name of a political party rather than a candidate are rejected.

Allowing special ballots marked with a candidate's political affiliation (rather than their name) to be counted—as is the case in provincial elections in Saskatchewan and British

Columbia—would enable electors to complete their special ballot earlier and increase their chance of having it delivered to Elections Canada before the relevant deadline.

Earlier Candidate Nomination Deadlines

Currently, nomination applications must be received 21 days before polling day, and nominations must be confirmed by returning officers 19 days before polling day. Setting close of nominations at day 24 before polling day would ensure electors who wish to vote for a specific candidate have more time to complete and return a special ballot. While this shortens the period of time for candidates to complete their nomination papers, the pre-registration recommendation made earlier in this report, if enacted, would ensure that candidates have sufficient time. While a three-day acceleration of the nomination process would seem to promise only a marginal improvement, it is precisely in the three days following polling day that the majority of late ballots are received.

As an additional benefit, moving the close of nominations from 21 days before polling day to 24 days before polling day would allow the printing of ordinary ballots to start earlier and help ensure they are delivered in time for advance polling in remote communities. This is especially relevant in light of the continued increase in electors choosing to vote at advance polls. Delivery of printed ballots in remote communities can be extremely challenging: during the last general election, the CEO adapted the Act to allow for the photocopying of ballots by the returning officer for use at advance polling stations in some remote communities in Nunavut.

Flexibility for Electors

In some instances, electors apply for a special ballot but, for various reasons (e.g. ballot is lost or damaged), may be unable to use it. Allowing an elector who has applied for a special ballot to vote at ordinary polls is currently prohibited by the Act for integrity reasons. During the 2021 general election, the CEO adapted the relevant provisions to allow electors to cast an ordinary ballot in such circumstances, as long as a voting status certificate was completed, including a declaration that the elector has not previously voted. Integrity concerns were addressed through measures applied the day after the polls closed—including verifying polling place records to ensure that double-voting had not occurred. It would be advisable to legislate to make this temporary adaptation permanent.

Continuing the Return of Outer Envelopes to Polling Stations

During the 2021 general election, the CEO adapted the Act to temporarily allow local electors (those voting by special ballot within their own electoral district) to return their outer envelope containing their ballot to any of the electoral district's polling places on polling day. The outer envelopes received at the polling places were then delivered in person by an election officer to the returning officer to undergo integrity checks (including ensuring that no elector voted more than once) and the verification process and, subsequently, to be counted. This option to return the special ballot to a polling place on polling day was modeled on measures proposed in Bill C-19, *An Act to amend the Canada Elections Act (COVID-19 response).*

In addition to the sheer volume of special ballots received during the 2021 general election, the option to return a special ballot to a polling place contributed to the delay in the final vote count in some electoral districts. This delay was well publicized by Elections Canada in advance and, in most electoral districts, preliminary results were such that the special ballot count did not affect the outcome of the vote in that electoral district. By September 23, three days after polling day, 291 electoral districts (86 percent) had completed their count of special ballots. By September 26, all electoral districts had finalized their counts.

Data for the 2021 general election shows that a significant number of electors used this new option to return their outer envelope to their returning officer. Nationwide, it is estimated that approximately 30,500 special ballots were returned to a polling place. That said, the number of ballots returned by polling place varied significantly, with many small polling places receiving none and larger ones receiving several. Geographic circumstances in very large electoral districts have also prevented this option from being available in some locations. This indicates a need for flexibility.

Prohibiting Interference with Ballots and Special Ballots

The Act prohibits a person from altering, defacing or destroying a ballot but does not directly prohibit them from altering, defacing or destroying a special ballot. Also, while the Act prohibits interfering with an elector who is marking a ballot or special ballot, there is no prohibition to interfere with the mark made by an elector on a ballot or special ballot.

The Act also prohibits a person from destroying, taking, opening or otherwise interfering with a ballot box or book or packet of ballots or special ballots but does not prohibit interfering with the inner or outer envelope that appears to contain a ballot or special ballot marked by an elector.

The Act should be amended to correct these omissions and to increase confidence in electoral integrity.

Recommendation 7.1.1

- To reduce barriers to voting by special ballot, amend the Act as follows:
    - Allow electors to make their application for registration and special ballot 45 days before polling day (or at the issue of the writs if the election period is more than 45 days) in the context of a fixed date election.
    - Amend the Act to set a minimum election period of 44 days for a non-fixed date election.
    - Authorize the counting of special ballots marked with a political party name rather than a candidate name.
    - Amend the Act to set the deadline for the close of candidate nominations on day 24 before polling day.
    - Authorize electors to cast a ballot at ordinary polls, with appropriate integrity measures in place, despite having previously applied to vote by special ballot.

- Authorize local electors to return their ballots before the close of polls to any place in the electoral district that the CEO designates.

- To increase confidence in the integrity of the ballot and in the special ballot voting mechanism:

  - Establish new offences prohibiting altering, defacing or destroying a special ballot, tampering with an elector's mark on a ballot or special ballot and prohibiting tampering with an inner or outer envelope that appears to contain a marked ballot or special ballot.

7.2. Days of Religious and Cultural Significance

Some communities celebrate annual religious holidays or days of cultural significance on multiple consecutive days and these days can change from year to year. When the dates of such religious or cultural events coincide with those of ordinary and/or advance polls, some electors may not have the opportunity to vote. Significant barriers may also be experienced by religiously observant candidates.

Since 2007, the Act has provided for a general election to be held on a fixed date: the third Monday of October in the fourth calendar year following the previous general election. That said, the Act includes a mechanism for varying polling day in the context of a fixed-date general election where the CEO is of the opinion that the third Monday in October is "not suitable for that purpose" because of a conflict with a day of cultural or religious significance or a provincial or municipal election. When this is the case, the CEO may recommend to the Governor in Council that an alternate polling day be chosen: either the Tuesday immediately following the Monday or the Monday a week later.

The 2019 general election presented challenges with respect to both the fixed date and the mechanism for varying the fixed date. In 2019, and likely again in future years, both polling day and the advance polling period that occurs one week prior to polling day (and significant portions of the writ period) fell on days of religious significance to the observant Jewish community. Several months before the election, members of the community requested that the CEO recommend an alternate polling date.

While the Act provides for a mechanism for the CEO to vary a fixed date by making a recommendation to the Governor in Council, the timeframe provided by the Act for making this recommendation—up to August 1 in the year of the election—was and will remain problematic. Any change to the electoral calendar so close to polling day would have a significant impact on the availability of polling places and, by extension, on the accessibility of voting services for the population at large. It would also impact the ability of parties and candidates to plan and budget for the election.

During the 2019 general election, the CEO committed to a post-election review of the fixed election date concept and to consultations with communities. A critical finding of these consultations is that the fixed date as set out in the Act will continue to create a conflict with days of religious or cultural significance in years to come. For many Indigenous

communities, October coincides with traditional hunting and cultural activities. Other communities of interest may also be concerned about potential conflicts.

With that in mind, Elections Canada recommends amending the provisions in the Act to allow for polling day to occur during a set period (e.g. within the first four weeks beginning in October) in the fourth calendar year following the previous general election. In the third calendar year following the previous general election, the CEO should be required under the Act to hold consultations with religious and cultural communities and make a recommendation to the Governor in Council with respect to the date for polling day. The Governor in Council should then be required to set the date for the general election within a month of receiving the CEO's recommendation. While the Governor in Council would not be bound by the CEO's recommendation, the date set would still have to be within the statutory window. This process would retain significant predictability while providing sufficient flexibility to ensure an inclusive electoral process for all religious and cultural communities.

This new process would not affect the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.

Recommendation 7.2.1

- To improve the accessibility of the election by setting an inclusive election date, amend the Act as follows:
  - Provide for a designated period in the fourth year following the previous general election (e.g. within the first four weeks beginning in October) within which polling day must occur.
  - Require Elections Canada to consult with religious and cultural communities regarding an appropriate date for polling day one year before the designated election period.
  - Require the CEO to make a public recommendation to the Governor in Council regarding polling day, based on their consultations. The CEO's recommendation should be made no later than 12 months prior to the beginning of the designated period.
  - Require the Governor in Council, within one month of receiving the recommendation, to either adopt the date recommended by the CEO or to choose another date within the designated period and issue an Order in Council to that effect.

7.3. Improving Service to Long-Term Care Facilities

Flexible Voting Services

The tragic impact of the pandemic on vulnerable residents of long-term care facilities, (defined in the Act as institutions where seniors or people with disabilities reside) meant that it was simply not feasible to deliver voting services as usual to these electors. Electors resident in long-term care facilities are typically served by "mobile polls": a team of election officers serving multiple facilities in sequence throughout the electoral district. Given the risk of contagion, having election officers visit facilities in sequence was not an available option.

As a result, the CEO adapted relevant provisions of the Act to provide additional flexibility for voting at long-term care residences. Specifically, the CEO authorized the creation of smaller polling divisions consisting of one institution or part of an institution. This allowed single polls to be established in some facilities. In addition, the CEO extended over several days the period when voting could occur in residences and allowed flexible voting hours.

These adaptations, consistent with what was proposed in Bill C-19 and the CEO's earlier recommendations, provided ways to deliver voting services that were tailored to the needs of each facility, its clientele and applicable provincial public health requirements. While the pandemic environment led to these adaptations, flexibility as to the day and time when voting can occur in residences would continue to be useful in a non-pandemic environment, as facilities have varying populations and needs. The option to group institutions to create a polling division served by a mobile poll should be maintained.

Facilitating Proof of Residence

Many residents of long-term care facilities experience difficulty proving their residence as required by the Act. Beyond the basic fact that there are few government-issued documents that state an elector's address, the difficulty is often exacerbated in long-term care facilities because identity documents are held off-site by family members; or, in the case of drivers' licences (the most commonly used proof of residence), are simply not available due to the physical or mental condition of the resident. While these electors may legally rely on a letter of attestation from their facility administrator, providing such letters to electors is an additional burden on these institutions.

To address this barrier, the Act should be amended to exempt residents of long-term care facilities from the requirement to provide proof of residence when voting in the facility. In many cases electors in long-term care facilities are served at their bedside or in their rooms and, more generally, given the circumstances of residents, there is minimal risk that they will be resident elsewhere and vote in the wrong electoral district. Such residents should only be required to provide proof of identity when voting in the facility.

Recommendation 7.3.1

- To reduce barriers to voting for residents of long-term care facilities, amend the Act as follows:
  - Authorize additional flexibility for voting days and times in such facilities.
  - Allow electors residing in long-term care facilities to vote with proof of identity only when voting in the facility.

7.4. Electors Requiring Assistance to Vote

The Act authorizes electors to request and receive assistance at the polls, including to mark their ballot. Individuals who provide assistance must make a declaration that they will preserve the secrecy of the vote. They are subject to penalties if they fail to do so.

The Act allows such assistance to be provided by either an election officer, a friend, the elector's spouse or common-law partner, or a relative. This list is very specific and does not appear to contemplate that electors with disabilities are often assisted at the polls by caregivers or personal support workers. These trusted assistants are neither family nor friends, and the strict definition of the Act does not reflect the professional nature of the relationship.

Despite this, caregivers often assist electors at the polls as "friends," as there is no requirement to prove the individual's status as a friend or relative. This is not a sustainable option, however. Treating a professional relationship as a "friendship" may be demeaning for both the elector and the caregiver. To many, it may appear that a government entity is denying the reality of their situation.

Furthermore, since election workers have no means of verifying that an individual is in fact a "friend" or a "relative", these distinctions are not meaningfully enforced. The regime can be confusing and stressful for vulnerable electors, and it is not clear that the provisions as drafted strike an appropriate balance between integrity and accessibility.

In light of these issues, the Act should be amended to allow an elector to request assistance to mark their ballot from any individual of the elector's choosing, provided the individual makes the required solemn declaration as family members do now. This simple rule would be better understood and would allow electors requiring assistance to obtain it from an individual they know and trust at this important step in the voting process.

Recommendation 7.4.1

- To remove barriers, amend the Act to allow an elector to request assistance to mark their ballot from any individual of the elector's choosing, providing the individual makes the solemn declaration required.

8. Serving Political Entities

While the most visible element of Elections Canada's mandate is to administer electoral events and serve electors, a less visible but nonetheless critical element of the mandate is to serve political entities. That service takes different forms. Elections Canada regulates political entities for compliance with the regime (through auditing financial returns, for example) but also acts as a facilitator, providing training to political entities and processing candidate nomination applications, among other services. A key aspect of the service to political participants is enhancing communication and building trust between political participants and electors.

8.1. Simplifying the Candidate Nomination Process

Many requirements of the candidate nomination process are undoubtedly complex and sometimes challenging to meet. The recommendations proposed below are designed to simplify the process for prospective candidates while maintaining the integrity of the nomination process.

Requirement for a Signed Copy of a Piece of Identification

The Act requires a prospective candidate who files their nomination paper in person to provide accepted proof of identity. Where someone other than the candidate submits the nomination paper on the candidate's behalf, they must submit a copy of the prospective candidate's proof of identity, and this copy must be signed by the candidate.

However, there is widespread misunderstanding about this requirement: Instead of submitting a copy of an accepted proof of identity where the copy is signed by the candidate, individuals often instead submit a copy of an identification document bearing the candidate's signature, e.g. the candidate's driver's licence; as such, the copy itself is not signed by the candidate. These errors create delays in the nomination process.

The purpose of the requirement is presumably to ensure that the photocopy is an accurate copy of the piece of identification. While this requirement marginally enhances the integrity of the nomination process, it can also result in the rejection of an application and, moreover, impair the efficiency of the nomination verification process. The requirement for an additional signature should be removed.

Witness Requirement When Signatures Are Collected

The Act requires that prospective candidates gather the signatures of 100 electors[12] who are eligible to vote in the electoral district in which the candidate intends to seek election. Each signature must be made in the presence of a witness, and it is the responsibility of the witness to use due diligence to ensure that the signatures made in their presence are all made by

[12] Only 50 signatures are required in specific remote and rural electoral districts, which are listed at Schedule 3 to the Act.

electors resident in the electoral district. There is no definition of "due diligence" in the Act and no means available to Elections Canada to make sure that the witness has indeed applied this principle.

Because the returning officer verifies the residence of electors who sign the nomination papers, it is unclear if the witness requirement adds great value. The witness requirement also impedes the development of digital or online mechanisms for collecting signatures. During the 2021 general election, the pandemic context highlighted the desirability of the remote collection of signatures. The demand will likely continue as Canadians become increasingly accustomed to digital transactions. The witness requirement is thus outdated and should be removed.

Correcting an Inconsistency

In 2018, the *Elections Modernization Act* amended the Act to remove the requirement to submit original paper documents following the electronic filing of an application for nomination. However, necessary correlative amendments were not made in the Act. The subsection currently indicates that, if original documents are not received on time, the returning officer shall cancel the nomination. This is an obvious inconsistency that if applied would undermine the efficacy of the electronic filing system.

Recommendation 8.1.1

- To facilitate the candidate nomination process, amend the Act as follows:
  - Remove the signature requirement on the copy of a prospective candidates' proof of identity when the prospective candidate's application is filed on their behalf by another person.
  - Remove the requirement for a witness to signatures collected as part of the nomination process.
  - Repeal the provision that requires original documents to be submitted before an electronic application is accepted.

8.2. Adjusting the Regulated Fundraising Events Regime

The regulated fundraising event (RFE) regime came into effect in December 2018. It requires parties represented in the House of Commons to post online the date and location of regulated fundraising events—featuring a party leader, leadership contestant or cabinet minister—five days prior to the event. It also requires parties to comply with post-event reporting requirements by listing attendees at the regulated fundraising event. This regime is designed to provide transparency and prevent undue influence with respect to access to influential individuals such as cabinet ministers.

Two significant issues have emerged that should be addressed through amendments to the regime.

Proportionate Consequences for Non-Compliance

The Act requires that where a notice or report for an RFE is not published or filed correctly and on time, all contributions received in relation to the event must be returned. This requirement is in addition to any other compliance or enforcement measure that may apply to non-compliance with a statutory requirement. Currently, the maximum fine for strict liability offences in relation to an RFE is $1,000. Non-compliance with the RFE regime may also result in the application of an administrative monetary penalty (AMP).

Prior to the enactment of the RFE regime, the Act restricted the return of contributions to substantive breaches of the Act such as over-contributions or contributions made by ineligible contributors. In contrast, the RFE regime imposes the return of contributions for minor administrative non-compliance such as for a short delay in publishing the required notice of the event. This consequence for administrative non-compliance under the RFE regime appears disproportionate in relation to the rest of the political financing regime.

Administrative non-compliance with the RFE regime can be addressed most appropriately through the AMP regime. The regime is a flexible mechanism allowing monetary penalties to be appropriately calibrated to the nature and circumstances of an administrative violation.

Excluding Leadership Contestants from the Regulated Fundraising Event Regime Following the Leadership Contest

Second, the regime requirements appear to be extreme in that the presence of a leadership contestant at a fundraising event may trigger compliance obligations—even after the leadership contest is over. This is the case because, under the Act, an individual continues to be a leadership contestant until all financial and reporting obligations flowing from their leadership campaign have been met. In some cases, individuals remain leadership contestants under the Act for several months or years after the end of the leadership contest.

While a leadership contestant may have significant influence before the resolution of a leadership contest, an unsuccessful contestant has significantly less influence, even though they remain leadership contestants for the purposes of the Act. Some unsuccessful contestants even disaffiliate themselves from their party. The result is that, in such cases, the RFE regime imposes a significant regulatory burden that may impede fundraising efforts, but without significantly enhancing Canadians' trust in their democratic institutions and elected representatives.

Recommendation 8.2.1

- To improve the Regulated Fundraising Events regime, amend the Act as follows:
  - Repeal the requirement for the return of contributions in cases of non-compliance with the regime, leaving violations to be dealt with through the AMP regime.
  - Exclude events attended by leadership contestants outside a leadership contest period.

8.3. Clarifying Candidate Contribution Rules

The Act authorizes candidates (and nomination and leadership contestants) to make contributions "out of their own funds" to their campaigns. The reference to "funds" in the relevant provision suggests that only monetary contributions are included.

However, "contribution" is defined under the Act, and it may be either monetary or non-monetary in nature. Consequently, there is ambiguity as to whether non-monetary contributions are included in the "own funds" contributions of candidates to their own campaigns; this ambiguity can create confusion for candidates and lead to errors. The ambiguity in the wording of the provision also creates difficulties with respect to enforcement.

Since there is no obvious benefit in terms of transparency or integrity to treating monetary and non-monetary contributions differently in these circumstances, the Act should be amended to clarify that both monetary and non-monetary contributions by candidates (and nomination and leadership contestants) to their own campaigns are included in the limit provided under the Act. This would also eliminate the risk of an uneven playing field.

Removing or clarifying the phrase "out of their own funds" would not allow contributions to be made from funds or goods of others through the candidate to the candidate's campaign, as such contributions are prohibited elsewhere under the Act.

Recommendation 8.3.1

- To clarify the candidate contribution regime, amend the Act to remove from the relevant provisions the words "out of their own funds" and "money," as applicable. This will clarify that all contributions, both monetary and non-monetary, are included in the limit of what a candidate or contestant can contribute to their own campaign.

8.4. Cryptocurrency and Other Means of Contribution

In the past, federal political entities have expressed an interest in how cryptocurrencies can be used in the federal political financing system. In 2019, in response to such queries, Elections Canada published an interpretation note on this subject. This note concluded that a contribution of cryptocurrency is a non-monetary contribution for the purposes of the Act, largely because cryptocurrency may not be put directly into a political entity's bank account. Such an approach was noted to be in line with the approach of other federal agencies.

The note also included best practices respecting the use of cryptocurrencies by political entities. This was necessary because, although cryptocurrencies may be used to purchase some goods and services, they cannot be used in a way that allows the various reporting obligations of the Act to easily be met.

Although contributions of cryptocurrencies are "non-monetary" contributions under the Act, the reality of cryptocurrency is that it functions increasingly like money. In some ways, a contribution of cryptocurrency is more like a monetary contribution and, in others, it is more like a non-monetary contribution. For example, unlike money, cryptocurrencies cannot be put directly into bank accounts. However, unlike contributions of goods or services,

cryptocurrencies are not inherently useful. They are valuable as an investment or means of exchange. The nature of cryptocurrencies will continue to evolve, perhaps quite rapidly, in coming years.

A consequence of the determination that a contribution of cryptocurrency is non-monetary is that contributions of up to $200 of cryptocurrencies made to a federal political entity are deemed "nil" for the purposes of the law. This is because the Act has a provision to allow small value gifts of goods and services—those valued under $200 and made by a person not in the business of providing such a good or service—without requiring the reporting and other provisions of the Act to apply. This exceptional provision is intended to allow individuals to donate items such as food for campaign workers, or the use of their personal vehicle without the relevant contribution and expense being regulated. However, in the case of cryptocurrencies, it could be seen as a means by which unregulated resources could enter the federal political financing regime.

The above is especially concerning with respect to cryptocurrencies given that they present challenges in terms of being traceable. This is contrary to the goal of transparency in political financing matters. Notably, it raises the prospect of such contributions being a way for foreign funds to enter the Canadian political system.

To deal with a similar problem of untraceable contributions, Parliament has long limited the amount of cash contributions that may be made to federally regulated political entities. The Act currently prohibits cash contributions of more than $20 and has specific reporting obligations for small cash contributions.

One option to deal with contributions such as those made by cash, pre-paid credit cards and cryptocurrencies would be to prohibit them on the basis that they have the potential to undermine the political financing system. However, Elections Canada has noted that many political entities still use small cash donations as an important means of raising funds. In the circumstances, it is more appropriate to maintain the use of small value cash donations.

The same rationale, however, cannot be applied to near-cash, anonymous means of contribution such as pre-paid credit cards, money orders or gift cards. Such means of passing money to political entities raise transparency difficulties without any particular reason justifying their use. Accordingly, they should be banned.

In the case of cryptocurrencies, it would be premature to ban them altogether as they could be legitimate means of raising funds, provided that such fundraising is done in a transparent manner. To address the unique nature of cryptocurrencies and the transparency challenges that they present, it is recommended that the Act be amended to specifically provide for their receipt and reporting as a category separate from "monetary" and "non-monetary" contributions. Unlike monetary contributions, for which only the names of contributors who gave $200 or more are reported, all contributions made by way of cryptocurrencies should be reported. Furthermore, a receipt should be issued for all such contributions, irrespective of the amount.

This will allow cryptocurrencies to be received by political entities and create a framework for their potentially increased use in coming years while also ensuring the objectives of the Act are preserved.

Recommendation 8.4.1

- To allow political entities to collect and use cryptocurrencies under the Act while ensuring continued transparency, it is recommended that the Act be amended to specifically require the receipting and reporting of all contributions of cryptocurrency received by federal political entities. Receipts should be required for all contributions by way of cryptocurrency, irrespective of their value. Only contributions of cryptocurrency that meet these transparency requirements would be available for use by those political entities.
- Untraceable means of contributing such as pre-paid credit cards, money orders and gift cards should be prohibited. Small cash contributions of under $20 should continue to be permitted.

9. Sound Electoral Management

In Elections Canada's Strategic Plan 2020–28, the agency committed to working collaboratively and to leveraging expertise to enable a strong electoral democracy. In line with these commitments, the recommendations below seek to improve electoral administration.

9.1. Cooperating with Provincial and Territorial Election Authorities

In 1997, Parliament abandoned door-to-door enumeration for future federal elections and created the National Register of Electors. It was conceived as a truly collaborative national resource. Elections Canada was given a legislative mandate to administer the Register, to enter into agreements with federal and provincial authorities capable of feeding updates into the Register, and to share data from the Register with provincial and territorial election authorities in order to assist in maintaining accurate lists of electors across the country. Over the years, data and methodological improvements have been agreed upon between Elections Canada and its federal and provincial partners. Together, these improvements have increased the reliability of the Register and have brought added value to all election management bodies (EMBs) who are drawing from it.

Despite this initiative, cooperation in service delivery with other Canadian EMBs remains limited in 2022. Sharing data about registered electors is only one way in which EMBs throughout Canada could cooperate. There is overlap between Elections Canada and its provincial and territorial counterparts, both with respect to the nature of services offered, electoral materials purchased, and the populations served. In many instances, the same buildings are used as polling places, and these are staffed by the same workers for both federal and provincial elections. Often, the same challenges are faced and overcome, often through collaboration and shared expertise.

Collaboration between Elections Canada and Canadian EMBs is limited in part because the *Canada Elections Act* does not provide a formal framework for meaningful cooperation. It is noteworthy that the Act provides a specific mandate for the CEO to assist and to cooperate with electoral agencies in other countries, but no similar provision authorizes the CEO to assist (or receive assistance from) other Canadian electoral agencies. While the Act clearly provides for the CEO's independent contracting authority, it does not provide the authority to enter into agreements to offer goods or services to, or receive goods or services from, other EMBs in Canada.

In order to realize efficiencies and leverage other EMB experience and expertise, the CEO should have the financial and contracting authority to assist and cooperate with provincial and territorial EMBs. Such authority should come with the power for the CEO to charge for such services, with payment forwarded directly to the Receiver General for Canada.

Recommendation 9.1.1

- To improve electoral administration across Canada, the Act should be amended to explicitly provide the CEO with a mandate to offer assistance and cooperation to provincial and territorial electoral management bodies (EMBs) and to receive assistance or services from EMBs in return.

9.2. Protecting the Safety and Privacy of Returning Officers

The Act requires the CEO to publish the name, home address and occupation of returning officers in the *Canada Gazette* annually. Returning officers have expressed concern with this requirement, with respect to both privacy and safety. The publication of home addresses is of particular concern, especially in an increasingly polarized political environment.

Returning officers are appointed by the CEO following open, advertised and merit-based selection processes resembling those administered for the selection of public servants. Their names and professional contact information, although not their residential addresses, are published and updated on the Elections Canada website, making it easy for electors to identify their returning officer. There is no longer any need for the *Gazette* requirement.

Recommendation 9.2.1

- To protect the privacy and safety of returning officers, the requirement to publish the name, home address and occupation of returning officers in the *Canada Gazette* should be removed from the Act.

9.3. Facilitating the Recruitment of Returning Officers

Under the Act, new returning officers are appointed by the CEO for a fixed renewable term of 10 years following an external appointment process based on merit. Returning officers who have performed well while in office may be reappointed for subsequent 10-year terms.

The 10-year term is a significant challenge for recruitment. Most returning officer candidates express concern with making a 10-year commitment: individual circumstances would prompt many returning officers to prefer a much shorter term. Of the returning officers who have left their positions since the general election of 2015, only 41 percent completed a full 10-year term. This is likely due to new workforce expectations for more mobility and flexibility.

Reducing returning officer mandates to shorter terms could renew interest in appointment, expand the pool of qualified individuals and provide the CEO with the opportunity to recruit new talent to electoral districts more regularly. The Act currently allows the CEO to appoint field liaison officers (who supervise returning officers in a region) for a period determined by the CEO. The relevant provisions should be amended to provide the same for returning officers.

Recommendation 9.3.1

- To facilitate the recruitment of returning officers, the Act should allow the term of office for this position to be set by the CEO, instead of requiring them to be appointed for 10 years.

9.4. Collecting Demographic Data about Electoral Participants

Elections Canada is authorized under the Act to collect specific information about prospective candidates, nomination contestants and leadership contest participants. That information is limited primarily to name, address, and occupation.

Elections Canada does not have a clear legislative mandate to collect demographic information about electoral participants. This lack of data inhibits Elections Canada's ability to integrate Gender-Based Analysis Plus principles into its work and its ability to know what impacts services and programs are having on population groups—and, in particular, whether they are creating unintended barriers.

Crucially, the lack of legislative mandate also means that demographic data about electoral participants is not fully available to Parliament or researchers.

Many groups are under-represented in the House of Commons and the reasons for this are complex. There can be little doubt about the value of working toward a Parliament that reflects the true diversity of Canadian society; but that work must start with high-quality information, not only about members of the House but about all participants in the electoral ecosystem.

This recommendation is also in line with an April 2019 report entitled, *Elect her: A roadmap for improving the representation of women in Canadian politics,* by the House of Commons' Standing Committee on the Status of Women. The report recommended "[t]hat the Government of Canada consider making changes to allow, with candidates' permission, the collection of intersectional data on candidates in nomination races, including data on gender identity."

Recommendation 9.4.1

- To further progress toward a more inclusive and representative electoral system, a new legislative mandate should be included in the Act to allow Elections Canada to collect, on a voluntary basis, and make publicly available anonymized demographic data about electoral participants, including gender, ethnic origin, age, Indigenous status and disability.

9.5. More Flexibility for Counting Advance Poll Ballots

The *Elections Modernization Act* authorized substantially more flexibility in terms of how election officers are assigned to tasks within the polling station. That said, with respect to the count of advance poll ballots, the Act continues to require that counting be conducted by two election officers assigned to the advance poll.

This requirement becomes problematic when advance poll workers are needed to work at ordinary polls on polling day. In this situation, the specific workers assigned to the advance poll may be needed to count votes cast at the close of the polls on polling day itself and so may not be available to count advance poll ballots. This situation could be addressed by authorizing the returning officer to appoint other available election officers to conduct the count of the advance poll ballots.

Given that, since 2018, there has been more flexibility with respect to staffing the polls, it is now unlikely that an advance poll would be consistently staffed with the same election officers over the 48 hours of advance poll voting. New flexibility allows tired election officers to take breaks and for election officers at a busy polling station to be reassigned to serve electors more efficiently during surge periods. For these reasons, assigning the same election workers to counting advance poll votes does not necessarily guarantee greater integrity in the counting process. The reality is that multiple election officers will have administered the advance poll during the four-day period. The Act should be amended to reflect this reality and facilitate advance poll ballot counting.

Recommendation 9.5.1

- In order to facilitate the count of advance poll ballots, the Act should be amended to provide returning officers with more flexibility to staff the count.

9.6. Increasing Trust in Party Expense Returns

The Act does not currently require political parties to provide documentary evidence supporting financial reporting. This differs from the regimes applicable to candidates, leadership contestants, nomination contestants and third parties in which the CEO may request supporting documents related to expenses. Past CEOs of Canada have recommended harmonizing these regimes in reports to Parliament in 2005, 2010 and 2016. Elections Canada again recommends that political parties be required to provide documentary evidence in support of financial returns.

Every election, political parties in Canada receive tens of millions of dollars in direct public subsidies through the reimbursement of eligible election and other expenses; and millions of dollars more in indirect public subsidies in various forms.

However, this financial support is provided in the context of decreasing public confidence in political institutions. Financial reporting, verification by Elections Canada, and public disclosure of political financing activities is a crucial mechanism for combatting the decline in trust. Unfortunately, the absence of a requirement to provide evidence of expenses weakens that mechanism.

The *Elections Modernization Act* introduced a provision that allows the Commissioner of Canada Elections to request supporting documentation in the context of an investigation. While this authorization was a necessary addition to the tools available to the Commissioner, it remains that the Commissioner's enforcement mandate only complements the audit and transparency program administered by the CEO and does not replace it. Irrespective of any eventual referral to the Commissioner, electors and taxpayers have the right to expect a full

and rigorous audit process. Furthermore, the CEO's ability to make a referral to the Commissioner when necessary is compromised if he cannot request supporting documents. If the Commissioner is not seized of a matter, his office's ability to request supporting documents becomes irrelevant. The Commissioner of Canada Elections supports this recommendation.

As a matter of transparency and stewardship of public funds, registered political parties should be required to produce documentation evidencing expenses claimed when requested by Elections Canada during the audit process.

Recommendation 9.6.1

- To ensure transparency and increase electors' trust, the Act should be amended to authorize the CEO to request that parties provide any documents or information that may, in the CEO's opinion, be necessary to verify that the party and its chief agent have complied with statutory requirements with respect to the election expenses return.

Appendix A: List of Recommendations from the Chief Electoral Officer

Part 1: Recommendations Relating to Electoral Communications

1. Moving Beyond Advertising

Recommendation 1.1.1

- To better achieve the objective of transparency while, on the whole, reducing the regulatory burden on regulated entities, the Act should be amended as follows:
  - Replace formal tagline requirements by a harmonized requirement applying to all electoral communications—not just advertising—to disclose who is communicating and how electors can obtain more information, if desired. This new requirement should focus on the substance, rather than the form, of the transparency requirement while taking enforcement considerations into account. The information about who is communicating should be clearly visible or otherwise accessible.
  - During a pre-election period and an election period, the new harmonized transparency requirement should apply to all electoral communications (regardless of whether they are paid for) made by registered political entities or by political entities that are required to register.
  - During a pre-election period and an election period, the new harmonized transparency requirement should also apply to the electoral communications of individuals or entities who are not required to register, but only in cases where their electoral communications are paid. In the context of online communications, "paid" should continue to mean where there is a placement cost.

Recommendation 1.2.1

- To preserve the objective of fairness by creating a more level playing field between governing and other parties, amend the Act to legislate existing directives that limit government advertising during the pre-election and election periods and on public opinion research during the election period. This would continue to allow for communications with the public when necessary such as in emergencies.

Recommendation 1.3.1

- To repeal the advertising blackout provisions of the Act to reflect the fact that, with the Internet and social media, mass communications are available to a large number of actors and people can respond rapidly to misinformation.

2. Reviewing the Third Party Regime

Recommendation 2.1.1

- To continue to provide transparency about electoral communications and to protect the objective of fairness through spending limits, the Act should regulate paid issue-based electoral communications—not only issue advertising—that can reasonably be seen as having the purpose of promoting or opposing a party or candidate during the election and pre-election periods.

- To clarify the scope of regulated issue-based communications, a list of factors should be provided in the Act to help determine which communications would be captured under the Act as being for the purpose of promoting or opposing a candidate or party. Section 37.0.1 of Ontario's *Election Finances Act* could serve as a model.

Recommendation 2.2.1

- To reduce the regulatory burden on those playing a smaller financial role in the electoral process, amend the Act to increase the third party registration threshold to $1,000.

Recommendation 2.3.1

- To achieve improved transparency and help prevent foreign funding of third parties, the Act should provide that third parties other than individuals who wish to rely on their own funds to finance regulated electoral activities need to provide Elections Canada with audited financial statements showing that no more than 10 percent of their revenue in the previous fiscal year comes from contributions.

- All other third parties that are not individuals should be required to incur expenses to support or oppose parties and candidates only from funds set aside in a separate account established for that purpose. Such third parties should also be required to identify the contributors whose funds have been used to promote or oppose parties or candidates, and such contributors should be made up only of individual Canadian citizens and permanent residents.

3. Pre-Registration of Candidates

Recommendation 3.1.1

- To better ensure reporting of all expenses to promote or oppose a candidate or party during a pre-election and election period, allow a process for candidates to register with Elections Canada before the election period (either only in years of a fixed-date election or at any time with certain conditions). In addition, permit pre-registered candidates to issue tax receipts and make them subject to the regulatory requirements (opening a bank account, appointing an official agent, etc.) that ensure transparency.

- To respond to the possible hesitation of parties to pre-register candidates, allow parties to withdraw their endorsement of a pre-registered candidate up to a reasonable point before the close of nominations and endorse a new candidate for the same electoral district.

- To close a potential gap in the law, repeal the definition of "potential candidate" and amend the definition of "third party" so that "pre-registered candidates" are excluded from the definition.

4. Protecting Against Threats to the Electoral Process

Recommendation 4.1.1

- To protect against inaccurate information that is intended to disrupt the conduct of an election or undermine its legitimacy, amend the Act to prohibit a person or entity, including foreign persons and entities, from knowingly making false statements about the voting process, including about voting and counting procedures, in order to disrupt the conduct of the election or to undermine the legitimacy of the election or its results.

Recommendation 4.2.1

- To better protect against foreign interference and the spread of inaccurate information about elections and electoral participants, amend the Act to extend to the pre-election period the prohibitions against foreign interference and extend to all times the prohibition against misleading publications that falsely claim to be by an election worker, political party, leadership contestant, nomination contestant or candidate.

Recommendation 4.2.2

- To ensure the more appropriate targeting of an existing offence, amend the Act to broaden the scope of the offence of using a computer system to include acting fraudulently with the intention of disrupting the conduct of the election or undermining the legitimacy of the election or its results.

Recommendation 4.3.1

- To ensure that an organization that has as one of its primary purposes the promotion of hatred against an identifiable group does not enjoy the benefits of being a registered party, including access to lists of electors and public financing, give electors the authority to apply to a court for a determination as to whether the organization has such a primary purpose. If the court determines that it does, the organization would not be eligible to register as a political party or would be deregistered.

5. Regulating Channels of Electoral Communication

Recommendation 5.1.1

- To provide greater transparency concerning the use of online platforms in elections, require such platforms (as defined in accordance with Recommendation 5.1.2 below) to publish their policies on the administration of paid electoral communications and on user accounts during the pre-election and election periods.

- To strengthen the accountability of online platforms during elections, require them to publish policies indicating how they will address content (paid or unpaid) that misleads

electors about where, when and the ways to vote or that inaccurately depicts election-related procedures during the election period (e.g. by moderating, downgrading or removing content).

Recommendation 5.1.2

- To ensure that the important goals of the law are met regardless of the size of the online platform hosting election-related content, amend the definition of "online platform" to extend beyond only those that sell advertising space and eliminate the minimum monthly threshold requirement for digital advertising registries.

Recommendation 5.2.1

- To enhance transparency concerning digital advertising in elections, amend the Act to:
  - Require political entities to disclose in a timely manner comprehensive information about their paid digital electoral communications—for example, by requiring their websites to link to the registries of the online platforms that host their paid digital communications.
  - Require that the platform's paid digital communications registries include searchability (e.g. by purchaser or date) and exportability of data.

Recommendation 5.3.1

- To enhance transparency and apply the same rules to text messages as to telephone calls, amend the Act to add text messages to the voter-contact-calling regime administered by the CRTC.

Recommendation 5.4.1

- To improve the broadcasting provisions in the law, amend them as follows:
  - Separate the paid- and free-time allocation processes.
  - Modify the allocation regime for paid time by giving each party the same entitlement to 100 minutes of paid time, with a cap of 300 minutes on the total amount of broadcasting time that any broadcaster must sell to political parties.
  - Require that paid time be provided at the "lowest unit charge," and clearly define this term to mean the lowest rate charged to non-political advertisers that receive volume discounts for advertising purchased months in advance.
  - Amend the provisions determining to whom the obligation to provide free broadcasting time applies. Instead of applying only to "network operators," these obligations should apply, through conditions of licence under the *Broadcasting Act*, to all broadcasters that focus on news or public affairs (e.g. conventional television stations, news or talk radio stations and speciality television stations that focus on news or public affairs). Each of these broadcasters should be required to provide a total of 60 minutes of free time, allocated equally among the parties.

6. Protecting Individuals Receiving Electoral Communications

Recommendation 6.1.1

- To better protect electors' privacy and enhance their confidence in how political parties manage their personal information, apply broadly accepted privacy principles, as enumerated in Schedule 1 of the *Personal Information and Protection of Electronic Documents Act*, to registered and eligible parties, with oversight by the Office of the Privacy Commissioner of Canada.
- Although a full application of such broadly accepted privacy principles would be preferable, to ensure a minimum level of protection of electors' privacy, the policies of registered and eligible political parties for the protection of personal information should be required to contain, at least, the following substantive elements:
    - Enable Canadians to opt out of receiving communications, or certain types of communications, from political parties.
    - Enable Canadians to request access to, and correct, inaccurate personal information that is held by political parties (with an exemption for frivolous or vexatious requests).
    - Explain how Canadians' personal information may be shared by political parties in addition to how it is collected, used or sold.

Recommendation 6.2.1

- To require the preliminary list of electors to be made available to parties by Elections Canada only in those electoral districts where that party had past candidates or where they have candidates who have pre-registered according to Recommendation 3.1.1 above.

Part 2: Recommendations Relating to the Administration of the *Canada Elections Act*

7. Making Canadian Elections More Accessible

Recommendation 7.1.1

- To reduce barriers to voting by special ballot, amend the Act as follows:
    - Allow electors to make their application for registration and special ballot 45 days before polling day (or at the issue of the writs if the election period is more than 45 days) in the context of a fixed date election.
    - Amend the Act to set a minimum election period of 44 days for a non-fixed date election.
    - Authorize the counting of special ballots marked with a political party name rather than a candidate name.

- Amend the Act to set the deadline for the close of candidate nominations on day 24 before polling day.
- Authorize electors to cast a ballot at ordinary polls, with appropriate integrity measures in place, despite having previously applied to vote by special ballot.
- Authorize local electors to return their ballots before the close of polls to any place in the electoral district that the CEO designates.

➢ To increase confidence in the integrity of the ballot and in the special ballot voting mechanism:

- Establish new offences prohibiting altering, defacing or destroying a special ballot, tampering with an elector's mark on a ballot or special ballot and prohibiting tampering with an inner or outer envelope that appears to contain a marked ballot or special ballot.

Recommendation 7.2.1

➢ To improve the accessibility of the election by setting an inclusive election date, amend the Act as follows:

- Provide for a designated period in the fourth year following the previous general election (e.g. within the first four weeks beginning in October) within which polling day must occur.
- Require Elections Canada to consult with religious and cultural communities regarding an appropriate date for polling day one year before the designated election period.
- Require the CEO to make a public recommendation to the Governor in Council regarding polling day, based on their consultations. The CEO's recommendation should be made no later than 12 months prior to the beginning of the designated period.
- Require the Governor in Council, within one month of receiving the recommendation, to either adopt the date recommended by the CEO or to choose another date within the designated period and issue an Order in Council to that effect.

Recommendation 7.3.1

➢ To reduce barriers to voting for residents of long-term care facilities, amend the Act as follows:

- Authorize additional flexibility for voting days and times in such facilities.
- Allow electors residing in long-term care facilities to vote with proof of identity only when voting in the facility.

Recommendation 7.4.1

- To remove barriers, amend the Act to allow an elector to request assistance to mark their ballot from any individual of the elector's choosing, providing the individual makes the solemn declaration required.

8. Serving Political Entities

Recommendation 8.1.1

- To facilitate the candidate nomination process, amend the Act as follows:
    - Remove the signature requirement on the copy of a prospective candidates' proof of identity when the prospective candidate's application is filed on their behalf by another person.
    - Remove the requirement for a witness to signatures collected as part of the nomination process.
    - Repeal the provision that requires original documents to be submitted before an electronic application is accepted.

Recommendation 8.2.1

- To improve the Regulated Fundraising Events regime, amend the Act as follows:
    - Repeal the requirement for the return of contributions in cases of non-compliance with the regime, leaving violations to be dealt with through the AMP regime.
    - Exclude events attended by leadership contestants outside a leadership contest period.

Recommendation 8.3.1

- To clarify the candidate contribution regime, amend the Act to remove from the relevant provisions the words "out of their own funds" and "money," as applicable. This will clarify that all contributions, both monetary and non-monetary, are included in the limit of what a candidate or contestant can contribute to their own campaign.

Recommendation 8.4.1

- To allow political entities to collect and use cryptocurrencies under the Act while ensuring continued transparency, it is recommended that the Act be amended to specifically require the receipting and reporting of all contributions of cryptocurrency received by federal political entities. Receipts should be required for all contributions by way of cryptocurrency, irrespective of their value. Only contributions of cryptocurrency that meet these transparency requirements would be available for use by those political entities.
- Untraceable means of contributing such as pre-paid credit cards, money orders and gift cards should be prohibited. Small cash contributions of under $20 should continue to be permitted.

9. Sound Electoral Management

Recommendation 9.1.1

- To improve electoral administration across Canada, the Act should be amended to explicitly provide the CEO with a mandate to offer assistance and cooperation to provincial and territorial electoral management bodies (EMBs) and to receive assistance or services from EMBs in return.

Recommendation 9.2.1

- To protect the privacy and safety of returning officers, the requirement to publish the name, home address and occupation of returning officers in the *Canada Gazette* should be removed from the Act.

Recommendation 9.3.1

- To facilitate the recruitment of returning officers, the Act should allow the term of office for this position to be set by the CEO, instead of requiring them to be appointed for 10 years.

Recommendation 9.4.1

- To further progress toward a more inclusive and representative electoral system, a new legislative mandate should be included in the Act to allow Elections Canada to collect, on a voluntary basis, and make publicly available anonymized demographic data about electoral participants, including gender, ethnic origin, age, Indigenous status and disability.

Recommendation 9.5.1

- In order to facilitate the count of advance poll ballots, the Act should be amended to provide returning officers with more flexibility to staff the count.

Recommendation 9.6.1

- To ensure transparency and increase electors' trust, the Act should be amended to authorize the CEO to request that parties provide any documents or information that may, in the CEO's opinion, be necessary to verify that the party and its chief agent have complied with statutory requirements with respect to the election expenses return.