

Canada: Stability, Independence and Public Trust

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The Office of the Chief Electoral Officer, known as Elections Canada, is the national EMB responsible for the management of national elections, by-elections and referendums. Provincial and territorial electoral matters are managed separately by the EMBs in each of their respective jurisdictions.

The Legislative Framework

Elections in Canada go back to the 1800s, but it was the Dominion Elections Act of 1920 which paved the way to true electoral democracy in Canada. This act consolidated Parliament's control of federal franchises and established the position of Chief Electoral Officer (CEO). Over the years, subsequent electoral legislation has taken the form of amendments to this act (now called the Canada Elections Act), and has included:

- the elimination of disqualifications based on race in 1948;
- the lowering of the voting age from 21 to 18 in 1970;
- the introduction of campaign finance legislation in the 1970s;
- ensuring access for people with disabilities in 1992;
- the introduction of the special ballot in 1993 to permit voting by any eligible Canadian in or outside Canada who cannot vote in person on election day;
- the elimination of door-to-door enumeration, to be replaced by a continuous National List of Electors;
- the introduction of longer and staggered voting hours in 1996; and
- the strengthening and expansion, in 2003, of political financing regulations, including extending disclosure and registration requirements for political entities; introducing new limits on political contributions from individuals to candidates and political entities; and banning contributions from unions and corporations to political parties and leadership contestants.

The amended act also provides for payment of a quarterly allowance to registered political parties based on the percentage of votes obtained in the previous general election. The Income Tax Act was also changed to increase the maximum tax credit for a political contribution, and

to allow district associations of political parties, as well as political parties and candidates, to issue tax receipts.

The 1982 Canadian Charter of Rights and Freedoms, an integral part of the New Canadian Constitution, provides that 'Every citizen of Canada has the right to vote in an election of the members of the House of Commons or of a legislative assembly and to be qualified for membership therein'. The advent of these rights provided the basis of successful court challenges to the provisions of the Canada Elections Act, which had prohibited voting by judges, prisoners and persons with mental disabilities.

The Canada Elections Act itself is quite detailed in its provisions concerning electoral operations and the powers of the CEO. There are no detailed regulations as part of the legislation. The CEO is, however, given reasonable discretion to manage the operations and to issue related materials, directives and instructions, and may adapt many of the provisions of the act to meet unforeseen circumstances during an electoral event.

Institutional Structure

Despite the massive geographical size of Canada, Elections Canada is a totally centralized body with the head office and its distribution centre located in Ottawa, the capital. The field structure at present comprises 308 constituencies, or electoral districts, each one under the responsibility of a political appointee – a returning officer. Returning officers are appointed from all walks of life by the government in power. The CEO is not consulted in the selection process, nor can he discipline or fire returning officers, but only make recommendations to the government on their retention or removal. The returning officers' responsibilities equate to those of a very senior operational and technical manager, but the selection process does not usually take this into account. The result is that, despite intensive training, returning officers range in competence from the outstanding to the inadequate. This represents the weakest link in Elections Canada's institutional structure.

The CEO, under the provisions of the act, is appointed on a full-time basis by a resolution of the House of Commons (the lower house) – traditionally by a unanimous vote – until age 65, regardless of length of service. The CEO can only be removed for due cause, following a majority vote in both the upper and the lower houses of Parliament. The CEO's salary is guaranteed at the level of a judge of the Federal Court and the CEO is prohibited from voting federally. These provisions ensure the complete non-partisanship and independence of action of the CEO in the management of federal elections in Canada.

There have only been five CEOs between 1920 and 2006.

Powers and Functions

Elections Canada is responsible for the conduct of all federal elections, by-elections and referendums.

Under the act, Elections Canada is responsible for:

- ensuring that all voters have access to the electoral system;
- informing citizens about the electoral system;
- maintaining the National Register of Electors;
- enforcing the Canada Elections Act;
- training electoral officers;

- producing electoral district maps;
- registering political parties, district associations, and third parties that engage in election advertising;
- administering allowances paid to registered political parties;
- monitoring and enforcing election spending rules for candidates, political parties and third parties;
- publishing financial information on the above plus district associations, nomination contestants and leadership contestants;
- supporting the independent commissions responsible for adjusting the boundaries of federal electoral districts following each decennial census; and
- reporting to Parliament on the administration of elections and referendums.

In addition, Elections Canada provides technical advice and guidance to the independent electoral district boundary commissions which consider each province and territory once every decade on average. Following the completion of the boundary commission reports, the CEO, using a constitutional formula, announces the number of House of Commons seats allocated to each province and territory.

A Commissioner of Canada Elections is appointed by the CEO to ensure compliance with and enforcement of the provisions of the Canada Elections Act, to investigate and to apply sanctions. This includes instituting prosecutions for infractions where applicable, including infractions involving political parties and candidates.

The CEO also appoints a broadcasting arbitrator to allocate paid and free time to registered political parties on the electronic broadcasting networks.

Elections Canada has no international mandate, but does participate in a limited number of international activities including election monitoring and the provision of technical assistance. It also receives visiting delegations.

Financing

Elections Canada's financing is subdivided into two categories – government funding and statutory funding.

Government funding. Each year, Elections Canada, like any government department, is required to prepare a budget covering only the costs of its 300+ permanent staff members and related material support costs. These estimates can be modified by the government.

Statutory funding. In addition, when putting forward its budget, Elections Canada provides an estimate of the funds that it expects to spend over the next fiscal year for all its activities directly related to election preparation and management, including boundary redistribution, the remuneration of the CEO, applications of technology and the employment of part-time staff. This estimate cannot be altered by the government as, by law, Elections Canada has direct access to the Consolidated Revenue Fund (the Treasury) for these 'statutory funds'.

There are no external donors involved with the financing of Canadian electoral events.

Accountability

Elections Canada is fully accountable for both its statutory and its non-statutory expenditures, as well as being subject to audit by the Auditor General of Canada. The CEO reports to

Parliament and appears before a parliamentary committee several times a year. Although no prior approval is required for the spending of statutory funds, Elections Canada must account afterwards to Parliament for all its expenditure.

The Professionalism of Election Officers

The headquarters staff of Elections Canada are for the most part either public service managers or administrators recruited by competition from other government departments and agencies or private industry, or developed from within through on-the-job training. At the other end of the spectrum are the returning officers – one for each of the 308 electoral districts where their offices are located, who are selected by the government party. Elections Canada provides returning officers with intensive professional training courses on the complete spectrum of electoral management of their constituencies, including their responsibilities for the application of technology. Returning officers, in turn, are charged with the training of all electoral officers and the administration of electoral events in their districts.

Relations with the Media

Other than the role played by the broadcasting arbitrator, Elections Canada does not have responsibility for monitoring or other regulation of the press or other electronic media. There are two exceptions: political campaign broadcasting from outside Canada, which is prohibited; and some restrictions on the publication of public opinion polls and on the dissemination of results on polling day. Elections Canada is the enforcement agency for breaches of these: the Commissioner of Canada Elections investigates and prosecutes all infractions, and any person guilty of an illegal act (such as broadcasting from outside Canada) or corruption will lose the right to stand for election or to sit in the House of Commons, as well as to hold any office in the nomination of the Crown.

For public information during an electoral event, Elections Canada contracts with an advertising agency, through competitive bidding, to conduct national advertising campaigns during election periods in order to educate voters and encourage turnout.

Relations with Other Institutions and Agencies

As an agency of Parliament, Elections Canada does not come under any government ministry or minister, but reports to Parliament through the speaker of the House of Commons. For ease of communication with the government, a minister, usually the leader of the House, is designated as the person responsible to communicate with Elections Canada.

After each election, the CEO must provide a report to Parliament. The CEO submits the report to, and accounts for the expenditures and activities before, an all-party committee of the House of Commons on an ongoing basis.

Although there are no legally required meetings between Elections Canada and civil society, regular meetings are held with representatives of all registered political parties to discuss Elections Canada's plans and programmes, and items of party concern.

The Canada Elections Act defines the persons who are permitted to be present at the polls. Until the act was amended in 2000 no one apart from the responsible officials was allowed

– not even observers – and the CEO did not have the power to permit others to be present. The amendment gave the CEO the power to permit observers to be present at polling stations.

Electoral Reform Management

Only Parliament can make electoral reforms which require amendments to legislation. Within this restriction, the CEO has both the power and the access to the required financial resources to explore and to modify any or all of his election-related activities which fall under the provisions of the Canada Elections Act. The CEO also frequently makes recommendations to Parliament related to changes in electoral legislation, and at times advises and assists the legal drafters charged with electoral reform amendments.

Elections Canada, being solidly established, well funded, and actively involved in exploring and acquiring related new technology and other resources, has no sustainability challenges. Canadians generally have a high level of trust and confidence in the Canadian electoral process and in Elections Canada itself – a factor which contributes to Canada’s stable political environment. The strengths of Elections Canada include its independence from government in almost every aspect of its activities, including financial independence, and the freedom to investigate infractions and act rapidly to resolve problems. The three constraints which could hamper its effectiveness are the government’s control over the budget related to Elections Canada’s permanent staff; the issues inherent in the structure of the EMB, with a single CEO, who has an open-ended term of office to age 65, with virtually ‘absolute power’; and the government’s patronage appointments to the key positions of returning officers. However, in mid-2006 the government proposed to change the legislation to permit the appointment of returning officers by the CEO through a competition process.