

The Legal Framework: The Context for an EMB's Role and Powers

How Legal Instruments Define Electoral Processes

63. The structure, powers, functions and responsibilities of EMBs are defined in those parts of a country's legal framework that deal with electoral processes. Especially in emerging democracies, the current trend is to develop a comprehensive legal framework that guarantees the independence and integrity of the electoral process, promotes consistency and equality in electoral management, and promotes full and informed participation in electoral events by political parties, civil society organizations and electors. The full legal framework for elections can be based on a variety of sources. These can include:

- a. international documents, for example, article 21 of the Universal Declaration of Human Rights, which states in clauses (1) and (3) that *'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives'* and *'The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures'*;
- b. the constitution;
- c. national laws, which may take the form of one comprehensive electoral code, as in Albania, Argentina, Armenia and the Philippines. Alternatively, there may be a set of laws covering different aspects of the electoral process. Indonesia, for example, has a Law on General Elections, a Law on Presidential Elections, a Law on Political Parties, a Law Establishing the Constitutional Court (one of whose functions is the resolution of certain electoral disputes) and a Law on Local Governance which includes provisions for elections for the heads of regional executive branch of government. Some countries (e.g. Azerbaijan, Latvia, Nigeria, South Africa, Uzbekistan and Zambia) define the structure, composition and powers of their EMB in a separate law;
- d. provincial or state laws, which in federal countries may govern processes for provincial or state and local electoral events (as in Australia) or for national electoral events (as in the United States);
- e. ordinances and regulations made by national or lower-level authorities;
- f. regulations, proclamations and directives issued by an EMB, if it has powers to do so;

- g. customary laws and conventions which may be integrated into electoral law, or EMB regulations or policies, dealing with issues such as separate voter registration and voting arrangements for women and men;
- h. administrative policies made by an EMB or other bodies; and
- i. codes of conduct (voluntary or otherwise) which may have a direct or indirect impact on the electoral process, for example, for EMBs, election participants, observers, and election reporting by the media.

64. The organization and administration of electoral processes is complex and always involves a substantial mass of detail. It is therefore usual for it to be specified in written laws and regulations, rather than determined through unwritten tradition or administrative policy making. Written law and regulations provide the benefits of certainty, visibility and transparency, are easier to subject to judicial review, and are accessible to interested parties, including electors. The legal certainty provided by a detailed exposition of electoral processes embedded in law, backed by constitutional authority, will tend to promote confidence in the consistency, fairness and even-handedness of electoral administration, and provide clear opportunities for legal redress. The level of detail specified at different levels of the legal framework will vary from country to country, depending on factors such as systems of law and the levels of trust in EMBs' willingness and ability to make fair and consistent decisions and policies.

Further detailed discussion of the legal framework for elections can be found in IDEA's publication *International Electoral Standards: IDEA's Guidelines for Reviewing the Legal Framework of Elections* (<<http://www.idea.int/publications/browse/electoral.cfm>>); and the *Legal Framework Topic Area* of the ACE Encyclopaedia (<<http://www.aceproject.org/ace-en/topics/lf>>).

International Treaties and Agreements

65. Many UN member countries incorporate into their domestic law (using a variety of constitutional means) key UN decisions and treaties, such as the 1948 Universal Declaration of Human Rights and the 1952 Convention on the Political Rights of Women. In such cases, domestic electoral laws, and the EMB policies and actions, need to consider the treaties' provisions relating to issues such as universal and non-discriminatory suffrage, secret and free voting, the rights of women to be elected and hold public office, and the rights of minority language groups. Bilateral agreements between countries and regional treaties on supranational bodies (e.g. for the European Union) may also contain electoral requirements. While complementary laws are usually required to give effect to such treaties, EMB actions that contradict rights contained in ratified treaties may still be legally challengeable.

66. It is also common in the OSCE, Organization of American States (OAS), Southern African Development Community (SADC) and Economic Community of West African States (ECOWAS) regions for member countries to implement treaties and decisions adopted by such regional bodies, through either legislative or executive ratification. One example of such a regional and enforceable treaty that affects the legal frameworks for EMBs is the ECOWAS

Protocol on Democracy and Good Governance of 2001, under which member countries commit themselves to independent or impartial election administration and timely electoral dispute resolution.

67. In addition to ratified, binding treaties and decisions, there are non-binding decisions by international and regional bodies. In October 2005, the Global Declaration of Principles and Code of Conduct for International Electoral Observation was adopted by the United Nations and by a wide range of global and regional organizations. In the SADC region, the Electoral Institute of Southern Africa (EISA) and the Electoral Commissions' Forum of SADC countries (ECF) have jointly developed and adopted the Principles for Election Management, Monitoring and Observation (PEMMO), while the SADC Parliamentary Forum has established its own election norms and standards. These sets of principles, guidelines and standards serve as benchmarks against which observer missions in the region assess whether an election is free and fair.

The Constitution

68. A growing number of countries are incorporating fundamental electoral provisions in their constitutions, often including the type, composition and responsibilities of the EMB. Countries like Bangladesh, Costa Rica, Fiji, Ghana, India, Indonesia and Uruguay set up their respective EMBs as constitutional bodies. This makes it more difficult to alter the status and other constitutionally defined elements of the EMB. Constitutional provisions are almost always more entrenched than mere laws, requiring, for example, a qualified majority in the legislature or a referendum on a constitutional amendment. The barrier that constitutional entrenchment presents to ruling parties which wish to change electoral provisions to their advantage gives opposition parties a feeling of greater protection than they would have if those provisions were contained in statute law, which can be altered by a majority in the legislature, or in government regulations.

Some electoral provisions whose principles are often included in constitutions are:

- EMB independence;
- EMB composition;
- EMB term of office;
- EMB powers and functions;
- suffrage rights or voter registration qualifications;
- political party rights;
- boundary delimitation authority or parameters;
- presidential election systems;
- national legislative election systems;
- the right or qualifications to stand for election;
- the intervals or maximum intervals at which elections must be held; and
- mechanisms for settling electoral disputes.

69. The range and nature of electoral provisions which are considered appropriate to be set out in a country's constitution vary widely according to local considerations. Some examples follow.

- a. Austria's constitution sets out EMB membership, the franchise, the Constitutional Court's role in electoral disputes and the electoral system.
- b. The constitution of Bangladesh defines the powers, independence and functions of the EMB, the franchise, candidate qualifications, and the maximum period between elections.
- c. Cameroon's constitution deals with political party rights, candidate qualifications, the intervals at which elections must be held, and the powers of the Supreme Court and Constitutional Council relating to electoral disputes.
- d. In Costa Rica, the constitution establishes the independence, membership and functions of the EMB, and deals with the franchise, political party rights (including government funding), election systems and qualifications for candidacy.
- e. For elections in the Czech Republic, the constitution defines the franchise, the electoral system and the maximum period between elections.
- f. Ghana's constitution deals with the franchise, the establishment of the EMB, the right to form or to join a political party, and the delimitation of electoral districts.
- g. In India, the constitution has provisions establishing an EMB, dealing with the franchise and the electoral register, barring the interference of the courts in electoral matters, and reserving seats for legally defined 'castes' and 'tribes' in the House of the People.
- h. Madagascar's constitution sets out candidacy rights, the election systems for the Senate and the presidency, and the Constitutional Court's role in elections and election disputes.
- i. The Namibian constitution enunciates the qualifications and procedures for presidential elections.
- j. Peru's constitution deals with the autonomy, membership and functions of the National Elections Tribunal, which supervises electoral processes and is responsible for party registration, the announcement of the results, and electoral dispute resolution. The constitution also empowers the National Office for Electoral Processes to organize materials and logistics, funding and vote count information for all electoral events; sets out the qualifications for its chief executive; and empowers the National Registry of Identification and Civil Status to create the electoral register from its civil registry database.
- k. The constitution of Romania sets out the citizens' right to elect and to be elected, and has provisions for the establishment of the Permanent Electoral Authority.

70. Similarly-targeted electoral provisions in constitutions may also be drafted in very different ways. Consider the following two examples of constitutionally defined 'independence' of an EMB:

'Except as provided for in this Constitution or any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission shall not be subject to the direction or control of any authority or person' – article 46 of the constitution of Ghana.

'General elections shall be organized by a general election commission of a national, permanent, and independent character' – article 22E(5) of the Indonesian constitution.

While enshrining major electoral provisions in the constitution generates confidence in the electoral system, there may be disadvantages if these provisions are too detailed. The legal framework may then be difficult to change in the light of experience because it is difficult to satisfy the conditions for amending the constitution or because of the length of time it takes to amend the constitution.

71. The extent to which electoral provisions are incorporated in the constitution is significantly affected by the level of public trust in the election administration of the country. In many established democracies where a high level of public trust exists in lawmaking and public administration in general, and the organization of elections in particular, constitutions do not make provision for the design of the EMB. Yet it is common – and not only among fledgling democracies – to have independent and robust EMBs which are supported by sophisticated and detailed legal frameworks which incorporate key electoral provisions in the constitution. The authority and clarity of the constitution foster stakeholder confidence in the electoral process.

Electoral Laws: Acts and Ordinances

72. An EMB may be established by statute, through an act of the legislature. Countries like the UK (see the case study), which has no written constitution, Australia, Burkina Faso and Canada established their respective EMBs entirely by statute law. It is generally good practice to lay down transparently the legislative framework for electoral processes and clearly allocate the responsibility for filling in the gaps and/or detail through secondary legislation or regulations or EMB administrative procedures.

73. It is good practice for such legislation to define the status of the national EMB(s) and any subsidiary EMBs, including their accountability, powers, responsibilities and functions. It is also good practice for legislation to provide a clear and sufficiently detailed framework to ensure effectiveness and integrity in all matters relating to electoral administration, such as EMB member and staff appointments and tenure; operational management issues relating to voter registration, political party and candidate registration, political campaigns, and voter education and information; EMB transparency; voting, vote counting and the announcement of results; financial and asset management issues; and electoral offences and the way in which electoral disputes will be resolved. Other issues which may be covered in electoral legislation include boundary delimitation principles and processes, and codes of conduct for EMB members and staff, political parties, the publicly-owned media and election observers.

74. Parts of the legal framework may also be enacted as secondary legislation, for example, by an EMB itself under a power to make regulations by some form of executive decree; in a federal country, by a state or provincial legislature in the form of secondary legislation; or by municipal authorities in the form of ordinances.

75. Provisions for the conduct of provincial and local elections are often contained in separate legislation. In federal countries, national and provincial electoral legal frameworks may need to be separately defined, depending on the constitutional split of powers between the national and provincial levels. Inconsistencies or overlapping provisions between national and provincial electoral legislation, for example for voter registration or voting procedures, may confuse electors. Regular consultations between federal and provincial lawmakers and electoral administrators can assist in minimizing confusion and duplication.

76. In addition, where elections to a supranational body are contemplated, national legislation is likely to be necessary to define the electoral management structure within the overall supranational agreement. Looking at the example of the European Parliament, the provisions contained in the European-level legal instruments are for the most part very general in nature, and the definition of the electoral management structure for European Parliament elections is left to each member state of the European Union.

77. As with the balance between electoral provisions in the constitution and in legislation, the balance between electoral provisions in legislation and subsidiary regulations or procedures needs to be finely judged. Electoral legislation needs to be sufficiently detailed to ensure integrity and effectiveness, but not so detailed that legislative amendment would be required to permit EMBs to deal with minor changes in their operations. Too much detail in the legislation can result in, for example, an EMB being unable to change the staffing structure in its divisions or the design of an administrative form, or to introduce office automation systems, without a change to the law. Particularly in environments where election processes take place after legislatures' terms of office have ended, electoral legislation needs to allow EMBs the flexibility to respond to changing electoral circumstances.

78. A modern electoral legislative scheme may entail one or several different laws. Traditional legal drafting for electoral legislation has often been precise but in a structure and language that are not very accessible. The legislation may become particularly difficult to understand if it is subject to successive amendments over time, without a fully revised and consolidated law being produced.

79. A single omnibus law covering all electoral activity can be cumbersome but may facilitate reference and review. Separate laws on individual issues – such as the EMB, political parties, electoral registers, elections to the legislature, presidential elections and local government elections (as in Azerbaijan and Indonesia) – provide clear and easy reference to specific electoral activities, but it may be too time-consuming or difficult to ensure that there are no conflicts of content between them. Another possible solution (as in Hungary) is that the substantive norms (such as suffrage rights, eligibility, number of election rounds and the electoral system) are embodied in separate laws (on elections to the legislature, local elections and referendums) while the electoral process is regulated in a common law that consists of a general part (binding on all types of elections) and special norms for each type of election.

80. International IDEA's publication *International Electoral Standards: IDEA's Guidelines for Reviewing the Legal Framework of Elections* discusses a number of issues to consider when designing or reviewing a legal framework for electoral management. Key considerations are summarized in box 1.

Box 1: Checklist for an Electoral Management Legal Framework

- a. Does the legal framework provide for the EMB to be constituted as an independent and impartial institution?
- b. Does the legal framework require and enable the EMB to operate in an impartial and transparent manner?
- c. Does the legal framework protect EMB members and staff from arbitrary dismissal?
- d. Does the legal framework define the accountability, powers, functions and responsibilities of the EMB at each level and relationships between the levels?
- e. Does the legal framework adequately define the EMB's relationships with external stakeholders?
- f. Does the legal framework provide clear guidance for all EMB activities yet allow the EMB practical flexibility in its implementation?
- g. Does the legal framework allow timely and enforceable review of an EMB decision?
- h. Does the legal framework allow the EMB sufficient time to organize electoral events effectively?
- i. Does the legal framework ensure that the EMB has sufficient and timely funding to manage its functions and responsibilities effectively?

EMB Rules, Regulations and Proclamations

81. In some countries, an EMB has legal powers to regulate the electoral framework either by enacting new laws or by making rules and regulations which complement existing primary legislation. Such an arrangement is time-effective and allows for speedy amendment of the legal framework. For example, the EMB of Uruguay can make decisions and dictate actions which cannot be reviewed by any other branch of government. This means that the EMB has *legislative powers* (making laws which govern elections), *judicial powers* (reviewing and interpreting laws with binding effect) and *implementation powers* for the laws and norms it has enacted.

82. A more usual practice is for an EMB, particularly an independent EMB, to be empowered to make reviewable regulations filling in the detail of concepts contained in the law, or filling existing gaps in the law. For governmental EMBs, this power may be held by the ministry within which the EMB is located. Such regulations in most countries are subject to review, generally by a court or constitutional court, to test whether they are within the powers of the EMB (or ministry) to make and whether they are otherwise consistent with the law.

83. In countries such as Fiji (see the case study), Gambia and Yemen (see the case study), the EMBs have powers to make regulations to facilitate their mandate, including the conduct of elections. In Namibia, the EMB has the power to issue proclamations which by law must be gazetted and which cover issues such as political parties' code of conduct, some procedural issues on voter registration, and parties' disclosure of foreign donations. The Indonesian EMB has specific regulatory powers in some critical areas, including boundary delimitation, voter registration, candidate registration, the conduct of election campaigns, campaign funding reporting, and voting processes.

EMB powers to make regulations should always be exercised in such a way as to ensure consistency with both the constitution and the electoral law.

84. Many EMBs have powers to formulate administrative policies and directions on operational issues such as their relationships with their own staff (on matters such as gender equality, affirmative action, performance management and staff development) and with external stakeholders. These external stakeholders include government ministries – including the Finance Ministry, the legislature, political parties, civil society organizations and the media.

85. Unlike regulations, which by law must be issued publicly, an EMB may have no legal obligation to publish its administrative directives and policies, although it is always good practice for it to do so. It is important that an EMB consult its stakeholders when formulating new policies or reviewing old ones in order to foster stakeholder awareness and buy-in.

CHAPTER SUMMARY

- Electoral processes are complex, standardized activities requiring clear, simple and relatively comprehensive legal definition in order to promote consistency, equity and a common understanding of electoral frameworks by all electoral stakeholders.
- The electoral legal framework within which an EMB operates may be defined in many different types of instrument – including international treaties, the constitution, national and sub-national statute law, and EMB and other regulations.
- International treaties and agreements provide a framework of norms against which a country's electoral legal arrangements can be defined and assessed.
- There is a trend towards defining key electoral issues in the constitution, as this may provide a workable means of entrenching electoral norms against manipulation by the ruling party. Electoral arrangements may be further defined in statute law, secondary legislation and regulations.
- Electoral statute law may be a single law or multiple laws which need to be kept in harmony. EMBs or the executive branch of government may be able to make regulations filling in gaps in the law; usually these would be subject to some form of judicial or other review. EMBs may also be able to set their own administrative policies. For confidence in election processes it is important that all parts of the electoral framework – treaties, constitution, statute laws, and EMB and other regulations, as well as administrative policies – are freely and publicly available and that changes are discussed and shared with key stakeholders.
- A balance needs to be struck between on the one hand providing for certainty and consistency in the legal framework, and on the other allowing an EMB the flexibility to respond effectively to changing electoral circumstances. The amount of electoral detail in higher-level instruments – constitutions and statute laws – will often depend on the level of trust in political participants and in the performance of the EMB.
- International IDEA's publication *International Electoral Standards: IDEA's Guidelines for Reviewing the Legal Framework of Elections* provides guidelines for assessment of electoral legal frameworks.
- EMBs' powers to make regulations should always be exercised in consistency with both the constitution and the legal framework.

The Republic of Georgia: A Commission in Transition

Robert Patterson

Georgia, the first Soviet republic to secede from the USSR, held its first presidential election in May 1991 and endured instability due to violent secessionist conflicts until 1995. Between 1995 and 2001, the Citizens' Union of Georgia (CUG), headed by President Eduard Shevardnadze, held a majority in the Parliament. By mid-2001 the CUG had begun to break apart. By 2002 no clear majority existed, and the Parliament's ability to pass timely legislative initiatives suffered.

After 1991, the state and the registered political parties, using various formulas, determined the membership of the Central Election Commission (CEC). In 2003, due to flaws in previous elections and distrust of past commissions, interlocutors expressed concern that unless the CEC changed questions over the fairness of the upcoming parliamentary elections could cause instability and violence. Consequently, in August 2003, the Parliament passed transitional provisions for the Unified Election Code (UEC) which reallocated CEC member appointments and required that the chair be nominated by the Organization for Security and Co-operation in Europe (OSCE) and appointed by the president of Georgia.

Many observer groups felt that the November 2003 parliamentary election fell short of international standards. Flaws in the electoral registers disenfranchised many voters, and differences between the parallel vote tabulation and the official results led to allegations of fraud. Public protests, known as the Rose Revolution, lasted two weeks and culminated in the resignation of President Shevardnadze. Following the revolution, the Parliament amended the UEC on 29 November 2003 to authorize the president to appoint the CEC chair unilaterally.

The Legislative Framework

The 1995 constitution establishes the election systems used for presidential and parliamentary elections, sets the minimum age for candidacy, and specifies how political parties and candidates can register to stand for election. It also guarantees freedom of association and the right to create political parties.

The 2001 UEC establishes the composition and formation of the different levels of election administration, contains detailed provisions for the election of the president, the Parliament and the local self-governance bodies, and requires that the preparation and conduct of elections be transparent and that domestic and international observers must be accommodated.

The UEC establishes the CEC as the supreme election body in Georgia and authorizes it to pass decrees and ordinances that become secondary legislation. The CEC is independent, within the limits of its authority, from other government agencies.

Institutional Structure

Election administration in Georgia is a centralized system composed of three tiers: the CEC; district election commissions (DECs), one for each electoral district; and precinct election commissions (PECs) whose number in each electoral district varies according to district size. The CEC and DECs are permanent bodies while the PECs only perform their duties during an election period.

The CEC is composed of seven members – the chair and six others. Their term of office is six years. No later than 60 days before the expiration of their term, the president issues an order to hold a competition for the positions. From a shortlist of candidates vetted by presidential staff, the president chooses one name for chair and two names for each of the six other seats on the CEC, and these names are presented to the Parliament for a roll-call vote on each position.

Each DEC is composed of five members. Their terms of office are also six years. No later than 60 days before the expiration of their term, the CEC issues a decree on holding a competition for the positions in each of the 75 electoral districts. After the deadline for DEC candidacy has passed, the CEC selects the members of DECs by voting on each candidate individually.

One of the qualifications for CEC and DEC candidates is that the candidates must be fluent in the Georgian language. This has the effect of excluding significant numbers of Armenians and Azerbaijanis who grew up in regions where there are no schools with Georgian as the language of instruction.

Each PEC is composed of a maximum of nine members. Three are elected by its DEC. The remaining members are appointed by the three political parties who won the most votes in the last parliamentary elections, each appointing two members.

CEC members and the chairs of the DECs are paid salaries for their entire term of office. Other members of the DECs and all PEC members are paid for their duties when performed. Employees of the CEC are civil servants.

Since the Rose Revolution, the CEC has worked hard to increase the skills and professionalism of election officials by creating new organizational structures, setting standards and adopting assessment methods, training and testing. The administrative structure has been developed to enable the CEC to do this. The CEC is able to enter into bilateral agreements with donors to enhance technological development, staff training and civic education.

Powers and Functions

The CEC undertakes the conduct of elections and referendums, and guarantees the uniform application of the electoral legislation. It determines and monitors the rules for participation in electoral events and the use of governmental and non-governmental mass media during elections. It defines electoral district boundaries, allocates funds to DECs and PECs, and determines the content, design and production of all election material.

The CEC has extensive powers relating to the registration of political parties, party alliances and candidates, and is responsible for compiling the electoral registers and the processing and announcement of election results.

Financing

The CEC submits its budget for annual expenditures to the Parliament. Once approved, this forms part of the state annual budget. The CEC submits its expenses and spending plan for

an electoral event to the Ministry of Finance 55 days before polling day, and the ministry is responsible for transferring funds to the CEC within ten days. If the funds are not transferred, the CEC can file a claim before the Supreme Court. For the November 2003 election, the government was slow in releasing the funds, but this situation improved during the April 2004 election.

Accountability

The CEC is accountable to the Parliament. Within 60 days after the end of an election it must submit a report outlining alleged electoral offences, offending public officials, cases referred to the prosecutor-general, complaints filed by the CEC in the courts, and related court judgements.

A temporary parliamentary commission is given the authority to review the activities of the CEC and its subordinate commissions. Any electoral offences are dealt with in the general court, while criminal activities are referred to the prosecutor-general.

Relations with the Media and Other Institutions and Agencies

For elections, the UEC stipulates that state television and radio must provide two hours daily of free air time for election campaigning, and political advertising for at least 15 days prior to an election. The time must be allocated equally among election parties and/or candidates. No broadcaster is permitted to allocate more than 15 per cent of its air time to political campaigning. Newspapers can also allocate free space. Any party or candidate that uses the free advertising must report to the CEC the equivalent cost of paid time/space. The CEC requires each broadcaster to submit a weekly chart of time allocated for political advertising and tariffs.

During the most recent elections the CEC held frequent media briefings to inform the public about the campaign, upcoming events and important deadlines. As a result, the CEC has developed and maintained a good working relationship with the media.

The CEC has good relations with civil society/NGOs, international observer groups and donor agencies. However, there is a lack of separation between the CEC, political party functionaries and the government administration – particularly at the regional and district levels, where some governors and local officials try to influence the decisions of the DEC.

Electoral Reform Management

The CEC has the authority to approve regulations by decree, but can only make recommendations to the Parliament regarding amendments to the UEC.

The CEC may seek to continue its structural review, develop its corporate services and expand its policy and planning operations. To continue the strides forward taken by the CEC since the Rose Revolution, the Parliament could bring into force a number of general provisions of the Unified Election Code that are not yet operative.

The CEC's ability to develop as an independent agency with public confidence in its integrity may be limited by the political process of shortlisting candidates and the political composition of the PECs.

Canada: Stability, Independence and Public Trust

Ron Gould

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.