



Office for Democratic Institutions and Human Rights

CANADA

EARLY FEDERAL ELECTION

20 September 2021

ODIHR NEEDS ASSESSMENT MISSION REPORT

23-26 August 2021



Warsaw
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ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following the official invitation to observe the 20 September early federal elections in Canada, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 23 to 26 August 2021. The NAM was composed of Oleksii Lychkovakh, acting ODIHR Senior Election Adviser, and Hamadziripi Munyikwa, ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and preparations for the early federal elections. Based on this assessment, the NAM recommends whether to deploy an ODIHR election-related activity for the 20 September elections and, if so, what type of activity best meets the identified needs. The NAM held meetings with officials from state institutions as well as with representatives of political parties, media and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Department of Global Affairs for its assistance and co-operation in organizing the NAM. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and for sharing their views.

II. EXECUTIVE SUMMARY

On 15 August 2021, the Prime Minister requested that the Governor General issue a writ of election for the House of Commons, thereby dissolving parliament and setting the date for an early election on 20 September. In the upcoming early federal election, voters will elect the 338 members of the House of Commons in single-member constituencies through a first-past-the-post system.

The electoral legal framework was significantly amended ahead of the 2019 federal elections. Several amendments addressed prior ODIHR recommendations such as expanding the competencies of the Commissioner of Canada Elections, introducing additional measures to facilitate women's political participation, repealing restrictions on prisoner voting, and refining recruitment practices for polling station staff. While some stakeholders had been critical of the level of consultation ahead of the 2018 reforms, the legal framework enjoys broad confidence. Since then, no substantial changes were made. COVID-19 pandemic related amendments were introduced in parliament in December 2020, but were not adopted. The Chief Electoral Officer (CEO) through his office's regulatory powers issued adaptations and instructions including some of the measures proposed in the bill.

Elections are managed by a three-tiered election administration, governed by Elections Canada, an independent, non-partisan institution that oversees federal elections. ODIHR NAM interlocutors expressed a high level of confidence in the professionalism and impartiality of the election management bodies at all levels, including in their capacity to administer voting by mail and election day procedures. Key changes for the upcoming election include health and safety protocols to prevent the spread of the COVID-19 pandemic and universal access to the online registration for vote by mail, as well as postage-paid return envelopes.

The Security and Intelligence Threats to Elections Task Force coordinates relevant agencies, to respond to potential cybersecurity threats to the electoral process. A special protocol decides upon thresholds and timelines for the public dissemination of information on threats to elections as a countermeasure against potential misinformation related to electoral security. Most ODIHR NAM interlocutors expressed a high level of confidence in the electoral infrastructure and in the authorities' efforts to mitigate cybersecurity risks.

Citizens aged 18 years or older by election day are entitled to vote. There are no restrictions to voting based on disability or criminal conviction. Valid forms of voter identification include any official photo ID issued by Canadian federal, provincial or local government. Some ODIHR NAM interlocutors indicated that certain categories of voters, notably indigenous, elderly, student, and low-income voters are often less likely to possess forms of photo identification. A few stakeholders expressed dissatisfaction with amendments that relaxed identification requirements, indicating that stricter requirements would be more effective in protecting electoral integrity.

Candidates can be nominated by political parties or groups of voters. Prospective candidates must submit notarized signatures of 100 registered voters, or 50 registered voters in sparsely populated constituencies. To facilitate nominations during the COVID-19 pandemic, Elections Canada set up an online platform for the submission of supporting signatures. While ODIHR NAM interlocutors were generally satisfied with the administration of the candidate registration process, some of them expressed concern that parties were less likely to nominate women in constituencies which they deem winnable.

The official campaign period, begins immediately following the issuance of the writ of elections by the Governor General and the dissolution of the outgoing parliament. At 36 days long, the official campaign period for this election is the minimum mandated by law. Despite COVID-19 pandemic related restrictions on public gatherings and interactions, all ODIHR NAM interlocutors were satisfied with the ability to campaign freely, though political parties indicated that they would be more reliant on online campaigns. The government, renewed an agreement with major online platforms committing these platforms to take steps to maintain a "healthy online ecosystem" and to mitigate election interference.

Campaigns are financed from both public and private sources. Expenditure limits for parties and candidates are determined by Elections Canada in relation to the specific constituency contested. Contestants who pass a given threshold of votes received are entitled to public reimbursement of a share of specific campaign expenses. For this election campaign expenses related to protection against COVID-19 were deemed reimbursable. ODIHR NAM interlocutors generally view the current system of campaign finance regulation favourably.

The media landscape is pluralistic and the Constitution guarantees freedoms of expression and the press, though journalists, particularly women, have increasingly become the targets of online harassment. ODIHR NAM interlocutors generally expressed satisfaction with media access and coverage during elections, including the impartiality of the public broadcaster, however, some noted that the formula for distribution of broadcast time favours incumbent parties. Two official debates, in English and French both translated into 8 indigenous languages, will be broadcast by a media consortium selected through an open tender and overseen by the Leaders Debates' Commission for balance and impartiality. Some ODIHR NAM interlocutors noted that the additional French debate that will be aired on the Quebecois private TV station *TVA* would advantage certain parties over the others.

The Commissioner of Canada Elections oversees compliance with, and the enforcement of the electoral legal framework. The Commissioner has the authority to impose administrative monetary penalties and to request a court order to compel testimony. In cases of a serious offence, the Commissioner may initiate a prosecution. Contrary to a prior ODIHR recommendation, there are no election-specific timelines for the adjudication of complaints. Still, ODIHR NAM interlocutors were generally confident in the election dispute resolution system in place and of the integrity and effectiveness of the Commissioner of Canada Elections.

Candidates have the right to deploy representatives as “scrutineers” to monitor voting procedures, as well as counting at the polling stations, the RO and Elections Canada offices. For these elections their number and duration of their presence could be limited to ensure full implementation of COVID-19 pandemic protocols. The law does not explicitly provide for citizen or international observation of elections. However, the authorities assured the ODIHR NAM that a potential ODIHR observation activity would be facilitated in line with OSCE commitments.

The majority of the ODIHR NAM interlocutors welcomed a potential ODIHR election observation activity for the upcoming elections, emphasizing the added value of an external review. All ODIHR NAM interlocutors expressed full confidence in the electoral process noting professionalism and reliability in all aspects of the electoral administration. No concerns were raised with regard to respect for fundamental rights and freedoms, including the equal treatment of contestants by the authorities. Some ODIHR NAM interlocutors identified specific areas that would merit from an external review, such as the practical implementation of amended legal framework, the conduct of electoral operations under COVID-19 pandemic restrictions, including potential increase in postal voting as well as the campaign coverage and treatment of contestants by traditional and online media, and social networks.

On this basis, the ODIHR NAM recommends deploying an Election Expert Team (EET) for the upcoming early federal election, subject to the availability of resources. ODIHR also encourages the authorities to consider previous recommendations and issues of concern from its previous reports that remain unaddressed.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Canada is a constitutional monarchy with a federal and parliamentary system of government. The Crown is the head of state and legislative powers are vested in the bicameral parliament. The 338 Members of the lower chamber, the House of Commons, are elected by popular vote under a majoritarian system within single-member constituencies. Members of the upper chamber, the Senate, are appointed by the Governor General on the advice of the Prime Minister, and serve until the age of 75. While executive authority is formally vested with the Crown, it is exercised in the name of the Governor General, by the Prime Minister and cabinet. As a federal state, the Constitution distributes power between two orders of government, the federal government and provincial and territorial governments.

On 15 August 2021, the Prime Minister requested that the Governor General issue writs of election for the House of Commons, thereby dissolving parliament and setting the date for the early election on 20 September.

In the previous federal elections in October 2019, five parties and one independent candidate were elected to the House of Commons.¹ While no individual party obtained the seats required to form a majority government, the Liberal Party, having won the most seats (157) formed a minority government.

ODIHR has previously observed two federal elections in Canada.² The ODIHR NAM report for the 2019 federal elections concluded that it “noted full stakeholder confidence in the overall integrity of the electoral process, including election day procedures” and that “some ODIHR NAM interlocutors identified specific areas that would benefit from further review, including the implementation of new cybersecurity practices, the role of traditional and online media, as well as social networks, in the campaign, and the effectiveness of oversight of campaign and campaign finance rules”. It recommended the deployment of an Election Assessment Mission (EAM) to assess “the revised legal framework, cybersecurity measures, campaign and campaign finance rules including for online and social media, and the participation of women, indigenous groups and persons with disabilities in the electoral process”. However, the EAM was not deployed due to budgetary constraints.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Federal elections are regulated by the 1982 Constitution Act, the 1982 Charter of Rights and Freedoms, the 2000 Canada Elections Act (“the Elections Act”, last amended in June 2021), the 1985 Electoral Boundaries Readjustment Act, as well as various types of regulations and instructions issued by Elections Canada. This framework is complimented by the 1985 Canada Human Rights Act, the 1993 Telecommunications Act, and the 1985 Criminal Code. Canada is party to major international and regional instruments related to the holding of democratic elections.

The Elections Act has not been substantively amended since the 2019 federal election.³ Legislation aiming to amend the Elections Act in order to regulate the conduct of elections during the current pandemic was introduced in parliament in December 2020 and deliberated on throughout 2021, but was not adopted prior to the dissolution of the outgoing parliament. Among the amendments, proposed at the recommendation of the Chief Electoral Officer (CEO), were extending voting to a three-day period, the introduction of a 13-day period for administering voting in long-term care facilities, changes to postal voting procedures, and additional authority for the CEO to adjust certain electoral procedures to mitigate public health risks.⁴ The CEO introduced a number adaptive measures and instructions, including some proposed proposed by the bill, through his office’s regulatory powers (see *Election Administration* section).

Shortly prior to the 2019 federal election, substantial amendments were introduced to the Elections Act through the 2018 Elections Modernization Act. Several provisions of the Act address prior ODIHR recommendations, including expanding certain competencies of the Commissioner of Canada Elections, introducing additional measures to facilitate women’s political participation,

¹ Liberal Party (157 seats of whom 52 were women), Conservative Party (121 seats, of whom 22 were women), Bloc Québécois (32 seats, of whom 12 were women), New Democratic Party (24 seats, 9 of whom were women), Green Party (3 seats, of whom 2 were women) and independent Jody Wilson-Raybould.

² See [prior ODIHR election-related reports on Canada](#).

³ A minor amendment to the Elections Act was introduced by the federal budget bill C-30 in June 2021, clarifying intentionality as a basis for liability in cases of dissemination of false information.

⁴ Proposed measures relating to postal voting included ballot drop-off boxes at polling places, new sanctions for interfering with drop-off boxes, extended possibilities for requesting mail-in ballots, the possibility for voters to vote in-person even if registered to vote by mail, and online receipts for mail-in ballots.

repealing restrictions on prisoner voting, and adjusting recruitment practices for polling station staff.⁵ Some other previous ODIHR recommendations remained unaddressed, including those related to the need for explicit provisions on citizen and international observation as well as expedited timelines for election dispute resolution. ODIHR NAM interlocutors did not express any concerns relating to the changes introduced in 2018, nor the COVID-19 pandemic related regulations.

Members of the House of Commons are elected by a simple majority vote in single-member ridings (constituencies). The number of seats in the House of Commons is recalculated after each decennial census to reflect changes in population; the next constituency delineation process will be conducted by independent provincial commissions beginning in September 2021 with the new district boundaries expected to be introduced by April 2024.⁶ While constituencies should be divided equally among the population, the law permits deviations of up to 25 per cent from the average, with additional exceptions in cases of minority populations, sparsely populated areas, and to protect historical boundaries.⁷ ODIHR previously commented on significant disparities in the size of electoral constituencies, affecting the equality of the vote and recommended the revision of the legal framework to better provide for upholding the principle of equality of the vote.⁸

C. ELECTION ADMINISTRATION

Elections are managed through a three-tiered election administration. It comprises Elections Canada led by the CEO which is responsible for nation-wide operations and oversight, 338 Returning Officers (ROs) in each of the constituencies, and Deputy Returning Officers (DROs) and Poll Clerks (PCs) at approximately 18,000 polling sites accommodating some 65,000 polling stations.⁹ ODIHR NAM interlocutors expressed a high degree of trust in the integrity of Elections Canada at all levels and indicated confidence that the elections, including voting by mail and election day procedures, would be professionally managed.

Elections Canada is an independent, non-partisan institution that reports directly to parliament. It is mandated with a wide range of functions in preparing and overseeing the federal elections, including the maintenance of the National Register of Electors, training and support of ROs, campaign finance oversight, as well as, dissemination of public information and voter education.¹⁰ The CEO is appointed by a resolution of the House of Commons for a ten-year non-renewable term. The CEO develops recommendations on potential legislative reforms following each election.¹¹

⁵ Other notable provisions reintroduced the use of both the vouching system and voter information cards as valid forms of identification, extended opportunities for early voting, introduced a fixed pre-election period for fixed-date elections and additional regulations on third party campaigning, as well as establishing new rules for the disclosure of online political advertisements.

⁶ The Constitution stipulates that the number of constituencies cannot be fewer than (1) the number of seats allocated to the province or territory in the Senate, or (2) the number of seats it held in the House either in 1976 or during the 33rd parliament elected in 1984.

⁷ Section 2.2.iv of the Council of Europe's Venice Commission's [2002 Code of Good Practice in Electoral Matters](#) recommends that "the permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)".

⁸ Constituencies range in population from approximately 27,000 to almost 160,000, with a calculated average of slightly over 100,000.

⁹ As a public health measure for these elections, the roles of Deputy Returning Officer (DRO) and Poll Clerk (PC) have been consolidated into one role in order to limit the number of staff in the polling stations.

¹⁰ The Elections Canada currently has approximately 600 permanent staff at its headquarters. This number will be extended to over 1,000 by temporary staff hired for electoral period.

¹¹ See all [official reports on the Elections Canada website](#).

Elections Canada conducts public education campaigns in 16 indigenous languages and 33 “ethnocultural” languages, as well as in multiple accessible formats including large print, Braille, audio files, full transcription, open captioning, and videos with sign language interpretation.

ROs manage the electoral operations at the constituency level, including the establishment of polling locations, recruitment and training of polling staff, aggregation and validation of constituency results. ROs are appointed through an open competition from among eligible voters for a fixed ten-year term, and are required to sign a code of conduct on abstention from political activities. Elections Canada also deploys Field Liaison Officers (FLOs) throughout the country to assist the ROs and to report local findings.

Election day procedures in polling stations are administered by DROs and PCs. In line with a previous ODIHR recommendation, the right to nominate candidates for these positions was extended to all parliamentary parties. Elections Canada indicated that it had initially anticipated recruitment challenges for the next general election due to COVID-19 pandemic related safety concerns of potential election workers. While mitigation measures were put in place, including consolidating the PC and DRO duties and improving working conditions for poll workers, Elections Canada ultimately did not report any current concerns with recruiting adequate staff.

For the upcoming elections, the CEO made a number of administrative changes related to the conducting elections in the context of the COVID-19 pandemic. . The key changes include health and safety measures at polling sites and Elections Canada offices such as the requirement for masks, social distancing, single-use pencils and the requirement to sanitize work surfaces. Other important changes include online registration for vote by mail and postage-paid return envelopes. At the time of this report, the CEO, through his regulatory powers, also issued four instructions to adapt the special voting rules and made three adaptations to the Canada Elections Act, including on offering adapted voting services to electors in a long-term care institution. Elections Canada indicated that is working closely with provincial and local public health authorities and the operators of seniors’ residence and long-term care facilities to offer a variety of options for residents to cast ballots including setting up polls at facilities, and postal voting where residents are unable to vote at their assigned polling place.

Ballots are printed in English and French, but are not available in any other languages, including indigenous languages. A comprehensive set of efforts is undertaken by Elections Canada to facilitate the participation of voters with disabilities. Among these are, the legal duty of the the CEO to study and test technologies designed for voters with disabilities. ROs establish polling stations considering specific accessibility criteria. Some ODIHR NAM interlocutors highlighted that certain traditional polling sites, particularly schools, would not be available during these elections owing to the priority of securing these locations against the spread of the coronavirus. Nevertheless, Elections Canada informed the ODIHR NAM that it expects a sufficient number of polling locations that meet the criteria would be available.

The law provides for a number of voting methods. These include voting in-person at polling stations on election day or in advance over a four-day period, from 10 to 13 September; in-person at any of 500 local Elections Canada offices during the election period upon having submitted an advance ballot application in-person or online; or by mail from within or outside the country.¹²

¹² Voters may request mail-in ballots, with postage-paid return envelopes, until 18:00 on 14 September and the marked ballot must be received by 18:00 on election day, either by post or in-person at the respective local Elections Canada office, or at the central Elections Canada office for voters participating outside their riding or abroad.

Elections Canada anticipates a significant increase in mail-in ballot applications as voters are likely to avoid in person polling sites to mitigate the risk associated with the COVID-19 pandemic. Elections Canada stated its confidence that Canada Post will be able to handle the increased volume of mail which is not expected to surpass other peak periods during the year. Counting of mail ballots will take place after polls close.¹³ ODIHR NAM interlocutors expressed concern that unreliable internet service, limited number of locations for polling stations, and less frequent postal service might affect the ability for voters in remote areas to be able to register for postal votes or to post their ballots in time, with indigenous peoples particularly likely to be affected.

D. CYBERSECURITY

The Security and Intelligence Threats to Elections (SITE) Task Force, that comprises the national intelligence agencies and the Department of Global Affairs, established in 2018, continues to coordinate relevant agencies to respond to potential foreign cybersecurity threats to elections.¹⁴

A Critical Election Incident Public Protocol was established in advance of the previous federal election and has remained in place for the upcoming election. The Protocol is intended to counter potentially misleading information in the media relating to electoral security that might undermine voter confidence or detract from the stability of the electoral process. It provides guidelines on the release of information to the affected party and to the public in the event of a cyber or other incident during an election period. A panel of five senior public servants is responsible for determining thresholds and timelines for the release of information related to any potential incidents.¹⁵

Political parties are routinely briefed by SITE on cybersecurity developments and receive guidance on information systems maintenance and security practices. Most ODIHR NAM interlocutors expressed a high level of confidence in the electoral infrastructure and in the efforts of authorities to mitigate cybersecurity risks.

E. VOTER REGISTRATION

All citizens aged 18 years or older by election day, except the CEO, are entitled to vote.¹⁶ Elections Canada maintains a permanent National Register of Electors, which is updated continuously using federal, provincial and territorial data sources. Voter lists are extracted from the National Register ahead of each election. Voters can, at any point in the year, register, update their records or request to have their records removed from the voter lists online, by mail or at their local Elections Canada office. Voters are also able to register at polling stations by presenting a valid form of identification and proof of residence. Approximately 26 million citizens are registered to vote.

¹³ International and national mail-in ballots, as well as ballots from Canadian Forces and incarcerated electors, are all sent to, and counted at, the Elections Canada Ottawa facility, and may be counted up to 14 days before election day if volumes justify it. Returning officers can also start counting ballots cast at local advance polls one hour before polls close in their riding on election night, if the volume of these ballots justifies the early count.

¹⁴ Canadian Security Intelligence Service (CSIS), Royal Canadian Mounted Police (RCMP), and Communications Security Establishment (CSE). The Canadian Centre for Cyber Security (CCCS) is the national Computer Emergency Response Team (CERT) since October 2018.

¹⁵ The five members of the panel are the clerk of the Privy Council, the federal national security and intelligence adviser, the deputy minister of justice, the deputy minister of public safety, and the deputy minister of foreign affairs.

¹⁶ The 2018 Election Modernization Act repealed certain restrictions on the voting rights of prisoners and of citizens residing abroad.

ODIHR NAM interlocutors expressed confidence in the accuracy of voter lists. However, some stakeholders noted concerns that members of indigenous groups tended to be registered at lower rates than the general population. A database, run by Elections Canada, aimed at encouraging registration by younger voters allows citizens aged between 14 and 17 to pre-register to vote.

Valid forms of voter identification include any official photo ID issued by Canadian federal, provincial or local government. Voter identification cards are also accepted when accompanied by at least one form of identification indicating the voter's current address. Registered voters are permitted to vouch for the identity of only one person under the condition that both are assigned to the same polling station. Some ODIHR NAM interlocutors indicated that certain categories of voters, notably indigenous, elderly, student, and low-income voters are often less likely to possess valid forms of photo identification. A few stakeholders expressed dissatisfaction with amendments that relaxed identification requirements, indicating that stricter requirements would be more effective in protecting electoral integrity.

F. CANDIDATE REGISTRATION

Citizens holding the right to vote can stand for election to the House of Commons.¹⁷ There is no requirement that a candidate be registered or resident in the constituency in which they stand for election.

Candidates may be nominated by political parties, or register to stand independently. The deadline for candidate registration is set at 21 days before the election day. In order to register, prospective candidates must submit nomination forms with the names, addresses and notarized signatures of 100 registered voters, or 50 registered voters in sparsely populated constituencies.¹⁸ In response to the COVID-19 pandemic, Elections Canada established an online platform for the submission of supporting signatures. A voter may sign in support of multiple contestants. Employers are legally obliged to grant a leave of absence to employees seeking nomination or running as candidates. ODIHR NAM interlocutors did not express any concerns with the candidate registration process.

Notwithstanding the policy of the last two governments to ensure the parity of women and men within the cabinet, women remain underrepresented in parliament and local governments.¹⁹ Parties are not required to ensure balanced gender representation nor are there any legal requirements for the publication of gender disaggregated data. Several ODIHR NAM interlocutors expressed concern that parties were less likely to nominate women in constituencies which they deem winnable.²⁰

G. ELECTION CAMPAIGN

The official campaign period, begins immediately following the issuance of the writ of elections by the Governor General and the dissolution of the outgoing parliament. At 36 days long, the official campaign period for this election is the minimum mandated by law. As this election was called early the official pre-election period does not apply. Some ODIHR NAM interlocutors raised concerns about the feature of what they called the “Westminster electoral system”, which gives a high degree

¹⁷ Exceptions include holders of certain official positions (who must resign in order to stand), individuals serving prison sentences or previously convicted of electoral fraud, and candidates in past elections who failed to submit campaign finance reports.

¹⁸ Data on the voters who have signed in support of prospective candidates is verified at the RO offices.

¹⁹ Out of the 338 available seats 98 women were elected to the House of Commons in 2019.

²⁰ In order to attract more women to public office, in June 2019 the parliament adopted a 12-month parental leave policy for members of parliament. The Elections Modernization Act also set reimbursement rates for childcare costs at 90 per cent.

of discretion to the incumbent to announce elections at any time. The unregulated authority to announce elections, in their view, may give the governing party an advantage in planning the electoral campaign and consolidating resources.²¹

ODIHR NAM interlocutors expected economic recovery from the COVID-19 pandemic, housing, and climate change to dominate the national campaign discourse. Notwithstanding restrictions to mass events due to the COVID-19 pandemic, no ODIHR NAM interlocutors raised concerns about the ability to campaign freely or otherwise have access to the electorate. Due to COVID-19 pandemic restrictions, the parties met by the ODIHR NAM indicated that they would rely less on traditional campaigning means and put more emphasis on campaigning online.

One of the popular traditional campaign methods is canvassing over the phone. The Canada Radio-Television Telecommunications Commission maintains a registry of voter calling services and entities which conduct outreach services, known as the Voter Contact Registry. Political parties are legally required to develop internal privacy rules, which must be made publicly available, related to the collection and maintenance of voters' personal data. The CEO and the Privacy Commissioner issued guidelines to political parties on how such data may be used.²²

The government, through the office of the Privy Council, renewed an agreement with online platforms including Facebook, Google, Microsoft, and TikTok committing these platforms to take steps to maintain a "healthy online ecosystem" and to mitigate election interference. Measures include identifying sources of political communications, labelling political advertising, flagging disinformation or manipulated media, as well as removing bots, and fake accounts.

H. CAMPAIGN FINANCE

The Elections Act regulates campaign finance and provides for public and private financing. Parties' and candidates' campaigns can be funded through state subventions, loans or donations from private citizens or permanent residents. Funding by foreign individuals or entities is prohibited. Elections Canada determines expenditure limits for parties and candidates in relation to the specific constituency contested. Candidates who are elected or receive at least 10 per cent of the valid votes are entitled to public reimbursement of up to 60 per cent of their campaign expenses and 90 percent of expenses relating to accessibility. Candidate expenses such as childcare, care for a person with a physical or mental incapacity, or expenses related to a candidate's disability are reimbursed to 90 percent of the expense incurred. For the upcoming election, additional campaign costs related to the purchase personal protective equipment as well as rapid tests are reimbursable. Parties which the ODIHR NAM met with did not indicate any concerns with the system of campaign finance regulation.

Elections Canada monitors and enforces campaign finance rules. Contrary to previous ODIHR recommendations, contestants are not obligated to report on their spending before election day, but parties and candidates must submit quarterly and annual reports. The deadlines for the submission of audited compliance reports on campaign expenses for parties and candidates are respectively, eight months and four months after election day. Non-compliance with campaign finance rules could result in fines, imprisonment, deregistration, liquidation of assets and barring from future elections.

²¹ Some ODIHR NAM interlocutors also referred to the 2009 [Duff Conacher and Democracy Watch v. the Prime Minister of Canada](#) court case, that raised similar concerns, however, the court did not question the legality of the power of the Prime Minister to call elections.

²² See the Privacy Commissioner of Canada [Guidance for Federal Political Parties on Protecting Personal Information](#).

Any third party which incurs more than CAD 500 in election expenses related to partisan activities, such as advertising or surveys, is required to register with Elections Canada. For the upcoming elections, third parties expenses may not exceed CAD 525,700 nation-wide, or CAD 4,506 in a given constituency.²³ Such third parties are subject to interim reporting requirements, and must report all contributions upon receipt. Political parties and third parties are prohibited from co-operating on campaign activities and expenditures.

I. MEDIA

Freedoms of expression and of the press are guaranteed by the Constitution. The Elections Act, the 1991 Broadcasting Act, and regulations of the Canadian Radio-Television and Telecommunications Commission regulate media coverage of the election campaign.

Canada enjoys a pluralistic media landscape with 250 television stations, nearly 1,200 radio stations, and a variety of print media. The Canadian Broadcasting Corporation (CBC) is the public broadcaster and operates in English and French, broadcasting on two national television channels and four radio networks. The CBC also broadcasts content in eight indigenous languages across its regional channels which also serve to provide coverage in areas that do not avail of commercial networks. Online media, and social networks in particular, are gaining dominance as important sources of political information.

Most ODIHR NAM interlocutors were generally satisfied with the balance in access to media and the coverage of elections and contestants and generally viewed public broadcasters as impartial. Some of them, however, alleged biases in favour of the current governing party. Several ODIHR NAM interlocutors noted that journalists, particularly women, have increasingly been subjected to online abuse. These interlocutors also raised concerns about disinformation campaigns in traditional and online media, as well as social networks, and cited the efforts to regulate online media and social networks and to educate the public as welcome.

Paid and free airtime for political parties during the election period on public and private broadcasters are allocated by the Broadcasting Arbitrator, according to criteria established in the Elections Act.²⁴ The arbitrator also adjudicates on disputes between political parties and broadcasters that relate to paid and free advertising.²⁵ Some ODIHR NAM interlocutors indicated that the criteria for the allocation of airtime generally favours incumbent parties.²⁶ All parties can purchase additional airtime in private media, and political advertising must clearly indicate the sponsor. Broadcasters have the right to refuse to air messages that they deem obscene or of inciting hatred. Election-related broadcasts on radio or television from outside of Canada are prohibited.

Third parties are also permitted to purchase airtime for political advertising and are legally required to clearly identify their authorization of the message. Online media and social networks surpassing a

²³ 1 CAD is approximately 0.67 EUR.

²⁴ The Broadcasting Arbitrator is appointed by the CEO prior to each election after consultations with parliamentary political parties; the current Arbitrator was appointed in July 2020, replacing the previous and only arbitrator that held the position since 1992.

²⁵ Public television and radio are obliged to offer free airtime as are two private television stations due to their established practice when the law was adopted. All broadcasters must reserve 390 minutes of air time for paid political advertising, which is allocated in practice among parties by the Broadcasting Arbitrator.

²⁶ The current method for allocation of broadcasting time divides 50 percent of available time in relation to parties' shares in the last federal election and the remaining 50 per cent between all other parties seeking to purchase broadcasting time.

certain volume of domestic internet traffic are legally required to establish publicly available registries for paid political advertising.²⁷

Established in 2018 the Leaders' Debates Commission (LDC) organises two nation-wide debates during the election period, one in French and one in English.²⁸ In anticipation of an early federal election, the LDC opened public procurement tenders for producers for the 2021 leadership debates in February. While the debate broadcasters retain editorial independence in relation to the format and content of the debate, the LDC requires that they meet minimum accessibility requirements, including sign language interpretation and translation into 8 indigenous languages. The LDC has also waived online rights of the debates permitting video of both debates to be streamed online for free. Criteria for participating in the debates include representation in the current parliament or the intention to nominate candidates in 90 per cent of constituencies, at least 4 per cent of nationwide votes cast in prior elections or a "legitimate chance" of the party's nominated candidates to be elected.²⁹ This last criterion is the source of public debate and is further elaborated with several additional indicators. In addition to two nationwide debates, a third debate will be aired in French on the Quebecois private TV station *TVA*. Some ODIHR NAM interlocutors noted that the additional French debate would advantage certain parties over the others.

J. COMPLAINTS AND APPEALS

The Commissioner of Canada Elections is appointed by the CEO, for a non-renewable term of ten-years, to oversee compliance with the Elections Act and to conduct investigations into possible infractions.³⁰ The Commissioner reviews complaints, which can be submitted in-person, by phone, mail, or electronically, to ascertain whether there are grounds to initiate an investigation. The Commissioner also has the authority to impose administrative monetary penalties and to request a court order to compel testimony. Where an offence is deemed serious, the Commissioner may initiate a prosecution himself or through the Director of Public Prosecutions, who is responsible for all aspects of the prosecution and appeals. Contrary to a prior ODIHR recommendation, there are no election-specific timelines for the adjudication of such cases. Some ODIHR NAM interlocutors, however, viewed the possibility to impose the administrative monetary penalties rather than initiate usually long criminal proceedings, as an effective corrective mechanism during the electoral campaign.

The Elections Act elaborates upon the offences, thresholds for intentionality and sanctions for election related offences, the latter of which include fines, a period of imprisonment, or both. The Supreme Court is the final court of appeal and may review any case of public or juridical importance. Candidates and voters have the right to challenge election results at a competent court and appeals may be lodged with the Supreme Court within eight days. The Supreme Court is required to hear such cases without delay. ODIHR NAM interlocutors were generally confident in the election dispute resolution system in place and of the integrity and effectiveness of the Commissioner of Canada Elections.

²⁷ Online media must register their political adverts if they are visited in a 12-month period prior to the election period by a minimum of 3 million users per month for English language platforms, 1 million for French language platforms, and 100,000 for platforms in other languages.

²⁸ The English and French debates for this election are scheduled for 8 and 9 September respectively. According to some estimations the audience for the debates is expected to be 4 Million.

²⁹ Currently this is minimum 4 per cent average in a set of major recent nation-wide public opinion polls.

³⁰ The current Commissioner of Elections was appointed in July 2012.

K. ELECTION OBSERVATION

Candidates have the right to deploy their representatives as “scrutineers” to monitor voting procedures, as well as counting at the polling stations, the RO and Elections Canada offices. The election administration officials at different levels, met by ODIHR NAM, stated that they will ensure these representatives have unimpeded access for effective monitoring of all election day proceedings, however, they mentioned that that full adherence to COVID-19 pandemic protocols will be required from these scrutineers and their number and time of presence could be limited to ensure implementation of these protocols.

The law does not explicitly provide for citizen or international observation of elections. However, the authorities assured the ODIHR NAM that a potential ODIHR observation activity would be facilitated in line with OSCE commitments. Elections Canada informed the ODIHR NAM that as part of the legal requirements of the Canada Elections Act, auditors from the company Pricewaterhouse Coopers (PWC) will visit polling stations and other relevant electoral offices to perform an independent, statutory audit and report to the CEO after the elections on whether DROs, PCs and registration officers perform their roles in accordance with regulations.

IV. CONCLUSIONS AND RECOMMENDATIONS

The majority of the ODIHR NAM interlocutors welcomed a potential ODIHR election observation activity for the upcoming elections, emphasizing the added value of an external review. All ODIHR NAM interlocutors expressed full confidence in the electoral process noting professionalism and reliability in all aspects of the electoral administration. No concerns were raised with regard to respect for fundamental rights and freedoms, including the treatment of contestants by the authorities. Some ODIHR NAM interlocutors identified specific areas that would merit from an external review, such as the practical implementation of amended legal framework, the conduct of electoral operations under COVID-19 pandemic restrictions, including potential increase in postal voting as well as the campaign coverage and treatment of contestants by traditional and online media, and social networks.

On this basis, the ODIHR NAM recommends deploying an Election Expert Team (EET) for the upcoming early federal election, subject to the availability of resources. ODIHR also encourages the authorities to consider previous recommendations and issues of concern from its previous reports that remain unaddressed.

ANNEX: LIST OF MEETINGS

Global Affairs Canada

Kevin Hamilton, Director General, International Security Policy Bureau
Leonard Reil, Senior Policy Advisor

Privy Council Office – Democratic Institutions

Sarah Stinson, Director of Operations
Rachel Pereira, Director
Andrew Pearce, Policy Advisor
Matthew Fron, Analyst
David Ott, Senior Policy Officer

Office of the Chief Electoral Officer – Elections Canada

Stéphane Perrault, Chief Electoral Officer
Karine Morin, Chief of Staff
Stéphane Roberge, Manager-International, Provincial and Territorial Relations
Michal Khan, Analyst-International, Provincial and Territorial Relations

Elections Canada, Nepean Electoral District

Patricia DiMillo, Returning Officer

Office of the Chief Electoral Officer – Commissioner of Canada Elections

Yves Côté, Commissioner of Canada Elections
Marc Chénier – Deputy Commissioner and Chief Legal Services
Mylène Gigou – Senior Director, Enforcement
Michelle Laliberté – Director, Corporate Services

Broadcasting Arbitrator

Monica Song, Broadcasting Arbitrator

Public Broadcaster (CBC)

Shaun Poulter, Executive Director, Strategy and Public Affairs

Leaders Debate Commission

David Johnston, Commissioner
Michel Cormier, Executive Director
Kelly-Ann Benoit, Special Assistant to the Commissioner

Political Parties³¹

Sebastien Togneri, Office of Chief Opposition Whip, Conservative Party
Nathaniel Erskine-Smith, Member of Parliament, Liberal Party

Civil Society

Mark Garcia, Senior Policy Coordinator, Assembly of First Nations
Kalyne Beaudry, Jr. Policy Analyst, Assembly of First Nations
Eleanor Fast, President, Equal Voice
Brent Jolly, President, Canadian Association of Journalists

³¹ ODIHR offered meetings to all parliamentary political parties.