
ENFORCEMENT POLICY CHIEF ELECTORAL OFFICER

PURPOSE

The purpose of this policy is to explain the process followed by the Chief Electoral Officer (CEO) in the event that a complaint is filed regarding an action that may constitute an offence under the *Elections and Plebiscites Act*.

OBJECTIVE

The objective of the CEO is to assist in maintaining the confidence of the public in the fairness of the territorial electoral system.

This objective is realized through the resolution of any alleged contravention of the *Elections and Plebiscites Act* either through dismissal or remediation.

PRINCIPLES

Accessibility: the right to file a complaint applies to all persons.

Independence: the authority to investigate any matter that may constitute an offence rests solely with the CEO.

Objectivity: the CEO handles complaints and remediation in a fair and impartial manner.

Timeliness: parties to a complaint should expect a matter to be resolved in a timely manner.

ACCOUNTABILITY

The CEO is responsible for investigating any matter that comes to his attention in respect of an act or omission of an election officer, candidate, official agent, voter, or any other person where that act or omission may constitute an offence under the *Elections and Plebiscites Act*.

The CEO is responsible for reviewing any complaint, determining the extent of investigation warranted, entering into a compliance agreement, and/or commencing prosecution.

The CEO is the public spokesperson regarding the general nature of any complaints, investigations, compliance agreements or prosecutions; the CEO is also the public spokesperson concerning this enforcement policy.

PROVISIONS

REVIEW

The purpose of a review is to determine whether sufficient and reasonable grounds exist to pursue an investigation, to determine whether an investigation is in the public interest, and to notify a complainant of the intentions of the CEO.

Initiative

A review may result from either:

- (1) the CEO having received a written complaint; and/or,
- (2) the CEO having reason to suspect that an infraction may have occurred.

Validity

The first step in a review is to determine the validity of an allegation.

- (1) Does the timing of the complaint or suspicion fall within the legally prescribed statute of limitations? (i.e., within one year after polling day).
- (2) Does the allegation or suspicion relate to an act or omission that falls within the jurisdiction of the CEO? (i.e., under the *Elections and Plebiscites Act*.)

Dismissal or Investigation

The second step in a review is to determine if an allegation warrants further action. Following a review, the CEO with either:

- (1) dismiss the complaint; or,
- (2) initiate an investigation.

Communications

Any person who files a complaint will receive a response in writing from the CEO in order to confirm that the complaint has been received and that it is being reviewed.

If the CEO finds a complaint invalid or, after review, dismisses the complaint, the CEO:

- (1) Will issue a letter to the person who alleged the infraction advising on the decision, including a brief explanation of the reason for the decision; and,
- (2) May issue a letter to the subject of the complaint advising them of the existence of the complaint, the decision taken, and a brief explanation of the reason for the decision.

Reasons for dismissing a complaint may include:

- the allegation is frivolous, vexatious, unfounded, or vague
- the complaint is of a type so minor that investigation would not be in the public interest
- the likelihood of the collection of sufficient and reliable evidence is so in doubt as not to warrant the expenditure of public funds
- although the allegation may appear to be founded, there is no indication of intent
- corrective action has already been taken

If the CEO determines that an allegation warrants an investigation, the CEO:

- (1) May issue a letter to the person who alleged the infraction, advising of the decision to investigate;
- (2) May issue a letter to the subject of the allegation, advising of the decision to investigate; and,
- (3) May inform the public that an investigation has been initiated.

INVESTIGATION

Investigations shall only be initiated and/or discontinued by the CEO.

Investigations are conducted by professional investigators, which may include independent legal counsel.

An investigative team working on behalf of the CEO will collect evidence according to professional standards and compile a report for the CEO.

The report will include a summary of relevant facts and findings as well as a recommendation to the CEO concerning further proceedings.

REMEDIATION

After receiving an investigative report, the CEO will decide either to:

- (1) enter into a compliance agreement;
- (2) recommend prosecution; or,
- (3) take no further action

Compliance Agreement

Compliance agreements are voluntary agreements that the CEO may enter into with a contracting party in order to establish certain actions to ensure compliance with the Act and respect for the law.

A compliance agreement is not an admission of guilt, but is an admission of responsibility.

Compliance agreements can be used to prevent someone from acting who is likely to commit an offense or can be used as an alternative to prosecution for someone who the CEO believes has committed an offence.

During the negotiation of a compliance agreement, a contracting party may be represented by legal counsel.

A compliance agreement will contain:

- a brief explanation of the action in question
- an admission of responsibility by the contracting party
- a remedy
- consent by the contracting party to publish the agreement, including the name of the contracting party, the act or omission in question, and a summary of the compliance agreement.

If voluntary agreement cannot be reached, the CEO may recommend prosecution.

If the CEO is of the opinion that a compliance agreement has been complied with, written notice to that effect shall be provided to the contracting party.

If the CEO is of the opinion that the contracting party has failed to comply with the agreement or that all material facts were not disclosed at the time of agreement, written notice of default shall be issued and prosecution may ensue.

Prosecution

The CEO is responsible for commencing prosecution.

No Further Action

Where no further action is to be taken, the CEO:

- (1) Will issue a letter to the person who alleged the infraction, advising of the decision not to take further action and a brief explanation for the decision;
- (2) May issue a letter to the person who was the subject of the investigation to explain the allegation, the decision not to take further action, and a brief explanation for the decision; and,
- (3) Will issue a public statement that briefly outlines the allegation, the decision not to take further action, and a brief explanation for the decision.

The reasons for a decision to take no further action may include:

- if allegations are unsubstantiated or are rebutted by available evidence
- where possible scenarios, other than the one alleged, appear to explain the conduct of a suspect
- where there does not appear to be intent
- whether a successful defense appears open to the suspect and thus the reasonable prospect of conviction is low
- where the public interest does not support further action

Please read sections 279 - 285 as well as 351 - 356 of the *Elections and Plebiscites Act* for more detail about enforcement.