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of Canada

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Canadian Radio-television and Telecommunications Commission

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# Memorandum of Understanding (CRTC and Commissioner of Canada Elections)

**THIS ARRANGEMENT**, made in duplicate

**BETWEEN**

THE COMMISSIONER OF CANADA ELECTIONS  
(HEREINAFTER REFERRED TO AS "THE COMMISSIONER")

**AND**

THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION  
(HEREINAFTER REFERRED TO AS "THE CRTC")

Collectively referred to as the "Participants"

## BACKGROUND

WHEREAS the *Canada Elections Act* (the CEA) contains substantive rules on communications with electors including offences and violations for various obligations and prohibitions;

WHEREAS Division 1.1 of Part 16.1 (the Division) of the CEA contains rules governing Voter Contact Calling Services;

WHEREAS, *inter alia*, the provisions of this Division require that Calling Service Providers and certain other parties engaged in voter contact calling services during a federal election file registration notices with the CRTC with identifying information and documents;

WHEREAS the provisions of this Division provide that the CRTC is responsible for the administration and enforcement of these registration requirements;

WHEREAS the provisions of this Division also require that the CRTC establish and maintain a Voter Contact Registry, in which the documents or information it receives in relation to Voter Contact Calling Services are to be kept;

WHEREAS, pursuant to section 509.2 of the CEA, the Commissioner's duty is to ensure that the CEA – aside from the registration rules applicable to Voter Contact Calling Services – is complied with and enforced;

WHEREAS section 348.15 of the CEA requires that the CRTC, on the request of the Commissioner, disclose to the Commissioner any document or information that it received, where the Commissioner considers this document or information necessary for the purpose of ensuring compliance with and enforcement of the CEA, other than the Division;

WHEREAS, pursuant to section 510.1 of the CEA, the Commissioner and any person acting under his direction must keep confidential any information relating to an investigation that comes to their knowledge in the exercise of their powers or the performance of their duties and functions under the CEA, including information that reveals or from which may be inferred the name of any complainant, any person whose conduct is being investigated, or any witness;

WHEREAS the Investigations Division of the office of the Commissioner of Canada Elections is an investigative body for the purposes of paragraph 8(2)(e) of the *Privacy Acts*;

WHEREAS the CRTC regulates unsolicited telecommunications, including those made to electors, pursuant to sections 41 to 41.7 and 72.01 to 72.15 of the *Telecommunications Act*, and the associated *Unsolicited Telecommunications Rules*; and

WHEREAS the Participants each play an important role in ensuring that communications with electors are undertaken in ways that comply with the above-noted legal frameworks;

# NOW THEREFORE THE PARTICIPANTS AGREE AS FOLLOWS:

## 1. DEFINITIONS

1.1. In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

1.1.1. "Arrangement" means this MOU;

1.1.2. "Calling Service Provider" has the same meaning as defined in section 348.01 of the CEA;

1.1.3. "Complaint" means information in writing about a potential offence under the CEA or *Telecommunications Act* or its regulations, or a written account of such information if it was not provided in writing;

1.1.4. "Division" means Division 1.1 of Part 16.1 of the CEA;

1.1.5. "Representatives" includes contractors;

1.1.6. "Voter Contact Calling Services" has the same meaning as defined in section 348.01 of the CEA; and

1.1.7. "Voter Contact Registry" means the registry established and maintained by the CRTC pursuant to section 348.11 of the CEA.

## 2. PURPOSE AND SCOPE

2.1 This MOU sets out the manner in which the Participants will carry out disclosure of information or documents pursuant to section 348.15 of the CEA, and treat Complaints relating to the Participants' respective mandates that are received by the other Participant.

### 3. OBLIGATIONS OF THE COMMISSIONER

3.1. The Commissioner undertakes to:

3.1.1 Within 10 days after the signing of this MOU, provide to the Voter Contact Services program at the CRTC a list of investigators or other Representatives whom he has authorized to request information or documents about Voter Contact Calling Services registrations and registrants;

3.1.2 On a timely basis, provide the CRTC with any required updates of the list provided pursuant to sub-clause 3.1.1; and

3.1.3 Without delay, transmit to the CRTC's Compliance and Enforcement Division any Complaint that the Commissioner has received that relates to enforcement of the *Telecommunications Act*, of its regulations, or of the Division.

### 4. OBLIGATIONS OF THE CRTC

4.1 The CRTC undertakes to:

4.1.1 Within 10 days after the signing of this MOU, provide to the Commissioner a list of representatives to whom requests under section 348.15 of the CEA may be made;

4.1.2 On a timely basis, provide the Commissioner with any required updates of the list provided pursuant to sub-clause 4.1.1;

4.1.3 Without delay, and on request by an investigator or representative authorized by the Commissioner whose name appears on the list provided pursuant to sub-clauses 3.1.1 or 3.1.2, provide the requested information or document to the investigator or representatives; and

4.1.4 Without delay, transmit to the Commissioner any Complaint that the CRTC has received that relates to enforcement of the CEA, other than Division 1.1 of Part 16.1.

## 5. CONFIDENTIALITY AND USE OF INFORMATION

5.1 Each Participant undertakes to:

5.1.1 Use the information provided by the other Participant solely for the purpose of:

- Ensuring compliance with and enforcement of the CEA other than the Division, in the case of the Commissioner; and
- Ensuring compliance with and enforcement of the *Telecommunications Act*, its regulations and the Division, in the case of the CRTC;

5.2 Treat information received from or provided to the other Participant in confidence and take all reasonable measures to preserve its confidentiality and integrity and to safeguard the information against accidental or unauthorized access, use or disclosure;

5.3 Mark the information provided with the appropriate security protection or classification;

5.4 Treat information received from the other Participant in accordance with the security markings on it and to undertake to provide equivalent protection to it while it is in the receiving Participant's possession;

5.5 Attach terms, conditions, or caveats to the information supplied, as the supplying Participant deems appropriate;

5.6 Abide by all caveats, conditions or terms attached to the information;

5.7 Maintain appropriate records concerning the transmission and receipt of information exchanged;

5.8 Not disseminate the information to any third party without the prior written consent of the supplying Participant (or agency from which the information originated, as appropriate), except as required by law or in the course of normal activities that are expected in the delivery of their respective mandates under either the *Canada Elections Act* or the *Telecommunications Act* and its regulations; and

5.9 Limit access to the information to those of its Representatives whose duties require such access, who are legally bound to keep confidences and who have the appropriate security clearance or reliability status.

## 6. INFORMATION MANAGEMENT

6.1 The information disclosed under this Arrangement will be administered, maintained, and disposed of in accordance with the law that applies to record retention and personal information and all applicable policies and guidelines, including *the Privacy Act*, *the Access to Information Act*, *the Library and Archives of Canada Act* and *the Policy on Government Security*.

6.2 Each Participant will:

6.2.1 Securely transmit and not retain a copy, the information mentioned in sub-clauses 3.1.3, 4.1.3 and 4.1.4;

6.2.2 Dispose of the information mentioned in sub-clauses 3.1.3 and 4.1.4 that it successfully transmitted to the other Participant in accordance with these sub-clauses, unless the information also relates directly to one of the Participant's operating programs or activities;

6.2.3 Promptly notify the other of any unauthorized use or disclosure of the information exchanged under this Arrangement and will furnish the other Participant with details of such unauthorized use or disclosure. In the event of such an occurrence the Participant responsible for the safeguarding of the information will take all reasonably necessary steps to prevent a re-occurrence;

6.2.4 Immediately notify the other if either receives a request under the *Privacy Act*, *the Access to Information Act* or other lawful authority, for information provided under this Agreement and consult the other Participant on the potential release of information pursuant to such a request; and

6.2.5 Return any information that should not have been provided to it by the other Participant.

## 7. ACCURACY OF INFORMATION

7.1 Each Participant will:

7.1.1 Use its best efforts to transmit accurately and completely any Complaint provided to the other Participant under this Arrangement;

7.1.2 Promptly notify the other Participant if it learns that inaccurate or incomplete information may have been provided or received, and take all reasonable remedial steps.

## 8. PARTICIPANT REPRESENTATIVES

8.1 The following officials are designated as the Participant representatives for purposes of this Arrangement and any notices required under this Arrangement will be delivered as follows:

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<b>For the Commissioner:</b>	Mylène Gigou Director of investigations  30, Victoria Street, Gatineau, QC (819) 939-2060
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<b>For the CRTC:</b>	Alain Garneau Director, Telecommunications Enforcement  1 Promenade du Portage, Gatineau, QC (819) 997-6143
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8.2 Changes to the designated Participant representative will be upon written notification thereof to the other Participant.

## **9. LIABILITY:**

9.1. Each Participant will be responsible for any damages caused by the conduct of its Representatives or agents in carrying out the terms of this Arrangement.

## **10. DISPUTE RESOLUTION:**

10.1. In the event of a dispute arising from the interpretation or operation of this Arrangement, it will be referred to the Participants' representatives set out above, who will use their best efforts to resolve the matter amicably.

## **11. MONITORING:**

11.1. Upon request by a Participant, The Participants will meet within 90 days after polling day for the next federal general election to review and assess the operation and effectiveness of this Arrangement.

## **12. FINANCIAL ARRANGEMENTS:**

12.1. Each Participant will bear its own costs and expenses incurred in connection with this Arrangement.

## **13. TERM:**

13.1. This Arrangement will commence upon execution by the Participants and will remain in effect until October 31, 2024 unless terminated in accordance with the provisions below.

## **14. TERMINATION:**

14.1. This Arrangement may be terminated by either Participant upon thirty (30) days written notice. Termination does not release a Participant from any obligations which accrued while the Arrangement was in force. Moreover, it does not release the CRTC from the application of



section 348.15 of the CEA.

## 15. AMENDMENT TO THE ARRANGEMENT:

15.1. This Arrangement may only be amended by the written consent of the Participants.

Signed by the authorized officers of the Participants:

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### **For the Commissioner:**

Yves Côté  
Commissioner of Canada Elections

30 Victoria Street,  
Gatineau, QC  
(819) 939-2060

14 June 2019

### **For the CRTC:**

Ian Scott  
Chairman and Chief Executive Officer

1 promenade du Portage,  
Gatineau, QC  
(819) 997-3430

20 June 2019

**Date modified:**

2020-06-05