



## Stage 1 Interview Summary: Yves Côté, Mylène Gigou and Al Mathews

Yves Côté, former Commissioner of Canada Elections, Mylène Gigou, Senior Director of Enforcement, and Al Mathews, Strategic Advisor were interviewed by Commission counsel on March 18, 2024.

### Notes to reader

- Commission Counsel have provided explanatory notes in square brackets to assist the reader.
- This summary contains information that relates to the Commission's mandate under clauses (a)(i)(A) and (B) of its Terms of Reference. Information provided during the interviews that relates to other aspects of the Commission's Terms of Reference has been omitted from this summary, but may be adduced by the Commission at a later stage of its proceedings.

## 1. Background

### 1.1 Yves Côté

- [1] M. Côté est l'ancien **Commissaire aux élections fédérales (« CEF »)**. Il a occupé ce poste de 2012 à juin 2022. Avant d'occuper ce poste, il était sous-ministre délégué au ministère de la Justice du Canada. Avocat de formation, il a déjà agi comme Ombudsman des Forces armées canadiennes, a occupé différents postes au sein des Forces canadiennes (membre du bureau du juge-avocat général) et au ministère de la Justice et au bureau du Conseil privé.
- [2] Après avoir quitté ses fonctions de CEF, il a agi comme conseiller principal en politiques de la Commission d'enquête publique sur l'état d'urgence (« Commission Rouleau »).
- [3] M. Côté possède une accréditation sécuritaire de niveau « très secret ».

## 1.2 Mylène Gigou

- [4] Ms. Gigou is the Senior Director of Enforcement at the **Office of the Commissioner of Canada Elections (“OCCE”)**. Prior to that she was Director of Investigations, a position she held from March 2018 to April 2021. She joined the OCCE as a senior investigator in 2017. She previously held various positions at the Competition Bureau, where she had responsibilities, among others, for bid-rigging and price fixing under the *Competition Act*. She holds a law degree.
- [5] In her current role as Senior Director of Enforcement, she reports directly to the Executive Director of Enforcement, Carmen Boucher. Prior to this change in reporting, she reported directly to the Commissioner.
- [6] Ms. Gigou is responsible for all operational files, whether they are under review or investigation. Her responsibility begins once a complaint is assigned to the enforcement directorate. She noted that treating these files sometimes requires collaboration with other OCCE sectors, including the communication group legal services and the Deputy Commissioner.<sup>1</sup>
- [7] Ms. Gigou holds a top secret security clearance.

## 1.3 Al Mathews

- [8] Mr. Mathews has been a senior investigator/lead investigator at the OCCE, a position he has held since 2008. He now holds the title of Strategic Advisor. Prior to joining the OCCE, he spent 38 years in law enforcement with the RCMP, reaching the rank of superintendent before retiring from the force. He holds a law degree.
- [9] Mr. Mathews described himself as having the “institutional memory” of the OCCE, given the length of time he has spent at the office in investigations. During GE43, Mr. Mathews was a lead investigator and a general election coordinator. He held the same roles during GE44.
- [10] He holds a top secret security clearance.

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<sup>1</sup> M. Coté a expliqué que le structure du BCEF était composé de trois groupes principaux : le group du sous-commissaire, le groupe d’enquête et le groupe des services corporatifs.

## 2. Approach to Foreign Interference at the time of GE43 and GE44

- [11] M. Côté a expliqué que l'ingérence étrangère est devenue une préoccupation importante pour le BCEF au cours de l'année précédant les élections générales de 2019. Il avait à l'esprit les problèmes liés à l'élection présidentielle de 2016 aux États-Unis et certains problèmes liés aux élections en Europe également. Il n'avait aucune raison de croire que le Canada serait épargné. Le bureau a réfléchi à la manière dont le pays pourrait être affecté.
- [12] Le BCEF a pris des mesures proactives afin d'établir des liens plus étroits avec les services chargés de l'application de la loi et avec les services de sécurité et de renseignement (GRC, SCRS, CST et « GAC »<sup>2</sup>) afin que ces organismes connaissent mieux le mandat du BCEF.
- [13] Des consultations ont souvent eu lieu avec les bureaux des directeurs généraux des élections des différentes provinces (après leurs élections respectives) pour s'informer des éléments potentiels à signaler.
- [14] Afin de mieux sensibiliser ses enquêteurs, le BCEF a également invité un ancien ambassadeur canadien en Chine et un ancien directeur du SCRS, pour leur parler de leurs expériences et s'informer sur l'ingérence étrangère et ses différentes manifestations. Son bureau a également organisé des ateliers avec des professeurs et experts invités sur le sujet, ainsi qu'avec les avocats du ministère de la justice sur le processus de demande d'entraide internationale auprès des pays étrangers. Le BCEF a aussi maintenu des liens avec l'Association canadienne des chefs de police de manière à ce que l'information concernant son rôle et son mandat soit diffusée le plus largement possible au sein des différents corps policiers à travers le pays.
- [15] Avant les élections de 2019, des échanges ont aussi eu lieu avec un haut fonctionnaire australien œuvrant dans le domaine électoral (en stage chez Élections Canada),

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<sup>2</sup> La Gendarmerie royale du Canada (GRC/RCMP), le Service canadien du renseignement de sécurité (SCRS/CSIS), le Centre de la sécurité des télécommunications (CST/CSE) et Affaires mondiales Canada (Global Affairs Canada – GAC).

l'Australie étant également confrontée à la présence et à l'influence croissante de la Chine.

- [16] Le BCEF a aussi établi des liens avec les plateformes numériques, notamment Facebook, Twitter et Microsoft, pour établir des canaux de communication et des règles d'engagement claires au cas où, pendant une campagne électorale, il deviendrait urgent pour l'une des plateformes de traiter d'une demande formulée par le CEF.
- [17] Ms. Gigou explained that part of the mandate in 2019 and 2021 was to build relationships with the digital platforms, understand their internal mechanisms and what considerations applied in the event they were to request that content be taken down or should the OCCE be seeking information held by the platforms. There was good cooperation with the digital platforms.
- [18] Ms. Gigou explained that the OCCE also participated in collaboration initiatives led by partner agencies. These would then lead to OCCE-specific initiatives. For example, the OCCE engaged with LinkedIn as a result of contacts initiated by CSIS and with Microsoft and Google as a result of engagements with Elections Canada.
- [19] There was no contact with the WeChat platform specifically in preparation for either the 2019 or the 2021 elections. Ms. Gigou commented on extensive knowledge held by GAC on WeChat and information sessions provided by GAC to the OCCE.
- [20] With respect to social media, and the lead up to the 44<sup>th</sup> federal general elections, one concern held by the OCCE was the ongoing shift towards deplatforming and maintaining visibility on non-traditional platforms.
- [21] Le BCEF a également mené des actions de sensibilisation auprès des médias pour mieux faire connaître le Bureau au cas où ils recevaient des plaintes de la part des partis politiques ou de citoyens concernés. Cette action visait la sensibilisation du public par le biais des médias.
- [22] Le BCEF a travaillé fort pour augmenter sa visibilité auprès de la population canadienne. Néanmoins, M. Côté estime que relativement rares sont les citoyens ordinaires qui connaissent l'existence du bureau.

[23] Le BCEF a aussi travaillé directement avec les partis politiques, entre autres, par le biais du Comité consultatif des partis politiques, ainsi qu'en créant, pour chaque campagne électorale, un « hotline » 24/7 pour qu'une personne désignée par les partis puissent rejoindre les avocats du BCEF dans les plus brefs délais.

## 2.1 Foreign interference and the OCCE's mandate

[24] Le mandat du BCEF est de faire respecter la **Loi électorale du Canada (LEC)**. De façon plus large, le mandat est de s'assurer que les élections canadiennes sont intègres.

[25] La LEC ne prévoit pas d'infraction spécifique relativement à « l'ingérence étrangère », mais plusieurs articles peuvent s'appliquer à des cas d'ingérence étrangère.

[26] Un des problèmes relativement à l'ingérence étrangère est lié à ce que M. Côté qualifie de « *unknown unknowns* ». Il est facile de camoufler l'origine des fonds et difficile de découvrir ces éléments dans le cadre d'une enquête. M. Côté émet un cas hypothétique où une entité étrangère passerait par un intermédiaire complice pour faire une contribution financière, et ce, à l'insu du candidat ou de la campagne destinataire des fonds.

[27] Le **Centre d'analyse des opérations et déclarations financières du Canada (« CANAFE/FINTRAC »)** ne partage pas d'informations avec le BCEF. Il n'y a pas de protocole d'entente. Afin d'obtenir des renseignements de la part de CANAFE, le BCEF doit passer par la GRC. Pour que le BCEF reçoive ces informations, la loi habilitante de CANAFE devra être modifiée. Au cours du mandat de M. Côté, au meilleur de sa connaissance, le BCEF n'a pas reçu de renseignements portant sur le transfert d'argent par intermédiaire, tel que décrit au paragraphe 26.

## 2.2 Dispositions de la LEC relative à l'ingérence étrangère

[28] Les avocats de la Commission ont ensuite orienté la conversation sur la manière dont le BCEF, pendant le mandat de M. Côté, a interprété certaines dispositions de la LEC pouvant être pertinentes en matière d'ingérence étrangère.

### 2.2.1 L'article 282.4 LEC

- [29] L'article 282.4 LEC interdit l'influence indue par des étrangers. Le concept « d'influence indue » implique, entre autres, d'engager « sciemment » des dépenses. Les exemples donnés sont les suivants : payer, assumer des frais, verser de l'argent pour réaliser l'objectif. La notion de « sciemment » requiert que l'on doive prouver l'intention coupable. Il s'agit d'un élément important.
- [30] Le simple fait d'exprimer une opinion ou le souhait que les électeurs soutiennent ou s'opposent à un candidat ou à un parti donné ne constituent pas de l'influence « indue » au sens de la LEC. Le paragraphe 282.4(3) comporte des exceptions significatives. Il est important de bien les comprendre.
- [31] Durant le mandat de M. Côté, plusieurs plaintes ont été examinées en vertu de cet article, mais aucune suite n'a pu être donnée [en raison de l'insuffisance de la preuve ou la portée de la disposition] et aucune accusation n'a jamais été portée.

### 2.2.2. L'article 349.02 LEC

- [32] L'article 349.02 LEC interdit aux tiers d'utiliser des fonds provenant d'une entité étrangère à des fins d'activité partisane ou de publicité électorale. M. Côté a expliqué que cette disposition est très complexe à faire respecter. Des acteurs sophistiqués peuvent faire ce que l'on appelle du « *comingling* » (l'emmêlement) des fonds. Un tiers peut faire une levée de fonds et recevoir une contribution d'une entité étrangère. Les fonds sont mélangés avec les autres fonds, de sorte qu'il devient difficile, voire impossible, de savoir d'où provient l'argent destiné à une activité partisane ou à une publicité électorale.

### 2.2.3 L'article 363 LEC

- [33] L'article 363(1) LEC prévoit que seuls les citoyens canadiens et les résidents permanents peuvent apporter ou faire une contribution à un candidat, un parti, un candidat à l'investiture ou à un candidat à la direction. Par conséquent, il est interdit aux étrangers de faire des contributions.
- [34] M. Côté a fourni un exemple d'une contravention à cette disposition qui serait difficile à détecter : une personne qui est inéligible à faire un don donne de l'argent à une personne

qui peut faire une contribution afin de contourner l'interdiction, enfreignant ainsi l'art. 368 LEC)

[35] Ms. Gigou notes that the **Canada Elections Act (“CEA”)** is a complex statute that contains more than 600 contraventions or prohibitions. It requires a big knowledge set and regular consultation with legal services. There are a number of provisions in the CEA that, depending on the fact scenario, could apply in a case of foreign interference and the deck shared with partner agencies such as the RCMP and CSIS contained provisions dealing with the core offences most likely to apply to allegations of foreign interference.

#### 2.2.4 L'article 282.8 LEC

[36] L'article 282.8 LEC interdit, par intimidation ou par la contrainte, de forcer ou de tenter de forcer une autre personne à voter d'une certaine manière ou de voter ou s'abstenir de voter. Il interdit également l'utilisation d'un prétexte ou d'une ruse afin d'exercer ou tenter d'exercer une influence sur une autre personne afin qu'elle vote ou s'abstienne de voter, de façon générale ou pour un candidat donné.

[37] M. Côté souligne que la liberté d'expression est à son maximum dans l'environnement électoral ou politique. C'est une considération qu'on doit toujours garder à l'esprit. On voit certainement des personnes qui peuvent être animées d'une intention malveillante visant par exemple à induire d'autres personnes en erreur ou à leur faire croire des choses fausses. Au Canada, il n'est pas rare, pendant des campagnes électorales, que des propos hautement partisans, chargés d'émotion et accusateurs soient utilisés. La barre est placée assez haut. Ce sont là tous des éléments qu'il faut considérer quand on doit déterminer si on se trouve en face d'une contravention à cette disposition. Il serait donc nécessaire de démontrer une conduite répréhensible (c'est-à-dire quelque chose d'autre que le discours ou l'expression politique).

[38] Les avocats de la commission ont demandé à M. Côté si cette disposition pouvait s'appliquer à une campagne de désinformation. Il répond que c'est possible et qu'il croyait se souvenir que les avocats du BCEF avaient produit une note à ce sujet.

### 3. Relationship with Elections Canada

- [39] M. Côté souligne qu'il a toujours maintenu des relations ouvertes et franches avec **Élections Canada (« EC »)**, tout en maintenant la séparation entre leurs rôles respectifs. Il a fait référence au protocole négocié avec le DGE qui énonce les principes directeurs gouvernant les relations entre leurs bureaux respectifs.<sup>3</sup>
- [40] The OCCE receives complaints from the EC in two forms: redirected complaints and referrals. Referrals are packaged by EC after their analysis (for example, following audits by EC of financial reports filed by campaigns). In essence, in those cases, EC becomes the complainant. Redirected complaints are those that are incorrectly made to EC (generally by members of the public) and fall within the proper jurisdiction of the OCCE and are redirected by EC to the OCCE.
- [41] OCCE does not monitor social media. However, EC does to some extent. On occasion, EC has referred to the OCCE information it identified on social media. OCCE can make specific requests to EC for information as part of a review or an investigation.
- [42] During the 2019 and 2021 elections, EC and OCCE had a system for ensuring the flow of information between the two bodies remained constant. Communications were generally split up between tier 1 and tier 2 calls. Tier 2 calls involved urgent matters that warranted significant attention. This was not specific to foreign interference. Ms. Gigou and Mr. Mathews were both involved in tier 2 calls.
- [43] There were also ad hoc calls outside of the structured engagement. Relationships were forged whereby there was no hesitation to call a counterpart in relation to a matter while maintaining separation of distinct roles, independence and confidentiality.

#### 3.1 Information flow

- [44] Information about reviews or investigations conducted by OCCE would not flow back to EC, except in cases where EC transferred a file to OCCE acting essentially as a

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<sup>3</sup> Ce protocole se trouve ici :  
<https://www.elections.ca/content.aspx?section=abo&dir=cce&document=princip&lang=f>



complainant, for example, through referrals. In such cases, OCCE would inform EC of how the files was dealt with.

- [45] The information typically flows one way: from EC to OCCE. An exception would be where the OCCE made a 'request for information' to EC, in which case EC would know that the OCCE is interested, for example, in a particular candidate, party or campaign.

## 4. Reviews and Investigations

- [46] Les avocats de la Commission ont demandé à M. Côté et à Mme Gigou de leur expliquer comment étaient prises les décisions relatives à l'ouverture d'une enquête à la suite de la réception d'une plainte à l'époque où M. Côté était Commissaire.

- [47] À la suite de la réception d'une plainte, il y a une première lecture et un premier tri pour s'assurer que le BCEF a la compétence pour agir. Lorsqu'il semble y avoir quelque chose de contraire à la LEC, le dossier est confié à quelqu'un dans le groupe d'enquête pour voir s'il y a matière à lancer une enquête. Si l'enquêteur est d'avis que le seuil requis est franchi, il prépare une recommandation écrite, qui est revue par les services juridiques, et remise au Commissaire. Celui-ci doit ensuite autoriser ou non l'ouverture d'une enquête.

- [48] Un examen est une analyse *prima facie*. S'il révèle que d'autres démarches sont nécessaires, celles-ci peuvent être entamées dans le cadre d'un examen, ou encore, une enquête peut être lancée si le seuil pour initier une enquête a été atteint.

- [49] Ms. Gigou added that there can be several investigative steps taken within a review. Considerations include whether the complaint falls within the OCCE's jurisdiction, whether there is information to support the allegation and whether a review or investigation is warranted.

### 4.1 Pouvoirs et techniques d'enquête

- [50] Le BCEF dispose de plusieurs pouvoirs et techniques d'enquête dans son coffre à outils. Outre recueillir des éléments de preuve et rencontrer des témoins, les enquêteurs du BCEF peuvent obtenir des ordonnances de communication et parfois même des mandats

de perquisition. Ils ont également le pouvoir, dans des circonstances bien circonscrites dans la législation, de demander l'émission d'une ordonnance d'un juge de la Cour supérieure pour contraindre une personne à répondre aux questions sous serment ou produire des documents.

- [51] Le BCEF ne fait pas de la surveillance physique. Il n'a pas non plus recours à de l'écoute électronique ou à des sources confidentielles.
- [52] Conformément au protocole d'entente, le BCEF peut faire appel à la GRC pour certaines demandes d'informations ou d'assistance.
- [53] Ms. Gigou added, for example, that the OCCE had concerns about the use of DeepFakes in the lead-up to both the 2019 and 2021 elections. In this area, the OCCE engaged with the RCMP to increase its understanding of the technology and the tools available.
- [54] Lorsqu'un dossier présente un volet international, le BCEF peut s'engager dans un processus afin d'obtenir un **mandat d'entraide internationale (« MLAT »)**. Cependant, même lorsqu'il s'agit d'un pays allié, le processus peut être long et compliqué. Dans l'éventualité où le BCEF reçoit l'information demandée, le problème de la traduction du suspect devant un tribunal au Canada demeure. Lorsque le BCEF a affaire à un pays duquel on ne s'attend pas à une grande collaboration ou dont on sait qu'il ne collaborera pas, le défi devient à toutes fins pratiques insurmontable.

## 5. Relationships with law enforcement and other services

### 5.1 RCMP

- [55] En ce qui concerne les relations entre le BCEF et les services chargés de l'application de la loi, les liens les plus tangibles sont ceux qui existent avec la GRC. M. Côté souligne que plusieurs enquêteurs du BCEF sont des anciens membres de la GRC. Il y avait un protocole d'entente en place avec la GRC en 2019, tout comme un autre avant cette période.

- [56] There were bilateral meetings with the RCMP in the lead-up to both federal elections. In a meeting with RCMP on March 21, 2019<sup>4</sup>, there was a discussion pertaining to the sharing of intelligence. In that meeting, RCMP representatives indicated that it would be preferable for the OCCE to get a **memorandum of understanding (“MOU”)** with CSIS. Subsequent to that, the BCEF made contact with CSIS to get this done, and Commissioner Côté had a meeting with Mr. Vigneault on this subject.
- [57] Over the years, the RCMP has, at times, inquired as to how certain rules and provisions of the CEA would apply to certain factual situations (e.g. how political contributions are tracked or accounted for, and whether funds can be hidden in a campaign’s bank account, etc). In these conversations, the RCMP does not share the nature or facts of any investigation they may be carrying out.
- [58] Ms. Gigou noted that the OCCE’s engagement with local and provincial police forces occur on a more ad hoc basis to the extent there were election-specific and riding-specific considerations, including potential parallel jurisdiction where *Criminal Code* provisions may be triggered.
- [59] The OCCE also held engagement activities with the Chief of Police Association in 2019 and 2021.

## 5.2 SCRS et CST

### 5.2.1 SCRS

- [60] M. Côté a fait état de bonnes relations de travail avec le SCRS. Le BCEF et le SCRS ont conclu un protocole d’entente en septembre 2019<sup>5</sup>. M. Côté et le directeur du SCRS, David Vigneault, se connaissaient avant d’occuper leurs fonctions respectives. Il y avait donc un historique de gens qui se connaissent et se respectent.
- [61] Il existait cependant plusieurs contraintes relatives à la communication du renseignement. Il y a des renseignements colligés par le SCRS à l’aide de techniques d’enquête qui sont privilégiées et qui doivent être protégées. Par conséquent, le

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<sup>4</sup> CEF0000049

<sup>5</sup> CEF0000043, CEF0000044.

renseignement qui provient de ces techniques ou de sources est partagé avec des mises en garde et limitations sérieuses. Même lorsque les renseignements sont divulgués, le défi consiste à déterminer ce que l'on peut en faire tout en respectant ces mises en garde et limitations. Très souvent, les informations qui peuvent être utilisées à la fin de l'exercice sont beaucoup moins substantielles que celles reçues à l'origine<sup>6</sup>.

- [62] Aucun des participants à l'entretien ne se souvient avoir reçu des renseignements du SCRS concernant l'ingérence étrangère en lien avec les 43<sup>e</sup> et 44<sup>e</sup> élections générales que le BCEF a pu utiliser aux fins d'une enquête.
- [63] Ms. Gigou added that the 'intelligence to evidence' challenge is not unique to the OCCE. She described the process of receiving the intelligence. This is either in the form of a briefing or a review of intelligence products. CSIS holds the record. The OCCE has no means of receiving, noting or storing the classified information at the top secret level. The information is reviewed with a view to determining whether or not it fits in the OCCE's mandate, and to consider the form of a potential 'use letter' if necessary.
- [64] In the lead up to the 2019 election, there were various contacts with CSIS for relationship building and establishing lines of communication. CSIS also shared some intelligence. In August 2019, there was a meeting with CSIS and RCMP to discuss deconfliction mechanisms. Ahead of the MOU, there were ongoing discussions with the understanding that even if there was no MOU in place before September 2019, they would proceed on an informal basis much like the terms of the eventual MOU.
- [65] CEF0000046 is a letter dated January 4, 2019 that refers to a meeting on November 21, 2018 between the OCCE and CSIS. In this letter, Ms. Gigou provides a brief overview of the OCCE and core CEA provisions applicable to foreign influence.
- [66] CEF0000056 is a document pertaining to notes to a telephone meeting that took place at the request of CSIS on January 13, 2020. The meeting concerned whether federal leadership party races fall within the CCE's mandate and whether it was covered by the CEA. The OCCE explained that leadership races are run according to party constitutions

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<sup>6</sup> Cette notion est souvent décrite comme le défi de « intelligence to evidence ».

and there is very little relating to leadership races that falls within the CCE's mandate, other than rules relating to political contributions and expenses.

[67] CEF0000059 is a letter dated February 3, 2021 referring to a meeting on January 12, 2021 between OCCE and CSIS. In this letter, Ms. Gigou provides a brief overview of the OCCE and of the core CEA provisions applicable to foreign influence. The purpose of this correspondence was to remind her CSIS counterpart of key provisions under the CEA that can apply to foreign influence in federal elections.

[68] CEF0000064 is an email exchange between Ms. Gigou and CSIS where Ms. Gigou requests access to intelligence assessments previously shared by CSIS with the OCCE since 2018. The purpose of this request was to review the material in light of allegations that had been recently published in the news.

[69] Ms. Gigou indicated that the OCCE received classified briefings from CSIS with respect to foreign interference in connection with GE43 and GE44. The briefings involved a combination of fact-specific and general information. She estimates the OCCE participated in 15-20 meetings with CSIS between 2018 and 2024.

[70] Ms. Gigou described one instance of an urgent meeting requested by CSIS in October 2019 during the election period. This meeting was held on the Saturday before polling day, pursuant to the so-called one-vision process. This would likely have resulted in a classified intelligence 'use letter'. Ms. Gigou directed any questions regarding the content of the meeting to CSIS.

#### 5.2.2 CSE

[71] With respect to the CSE, there was not the same level of engagement. There was no MOU between the OCCE and the CSE. However, in the lead up to both the 2019 and 2021 elections, CSE did provide a briefing to the OCCE and there was a designated contact established for both organizations if communication was required.

### 5.3 SITE Task Force

- [72] There was no formal relationship between OCCE and SITE during the 43rd and 44<sup>th</sup> federal general elections. With the exception of two specific meetings (see paragraph 74 below), the engagement that took place was rather with SITE members but not SITE itself.
- [73] The OCCE did not receive any actionable information related to foreign interference from SITE. The OCCE did receive information from GAC RRM, in the form of analysis and reporting rather than actionable information.
- [74] CEF0000046 is notes prepared by Ms. Gigou from a meeting with SITE task force members held on March 15, 2019. Following the meeting, Ms. Gigou circulated to participants a copy of the OCCE presentation deck as well as a document outlining provisions pertaining to foreign influence in the CEA<sup>7</sup>. A workshop was also delivered by the OCCE to a larger group of employees of the organizations members of the SITE task force on May 1, 2019.

### 5.4 GAC and RRM

- [75] Asked about the relationship the GAC RRM, M. Côté redirected the question to Ms. Gigou. He would receive information from Ms. Gigou when necessary but he was not directly involved.
- [76] CEF0000062 contains a letter dated June 15, 2021 which references a meeting held between OCCE and GAC's RRM where they discussed current and future engagement. Ms. Gigou provided a general overview of the OCCE as well as an overview of the core provisions of the CEA pertaining to foreign influence. This was done to ensure that the RRM team had current information as to the OCCE's role and what it does.
- [77] Neither Mr. Mathews nor Ms. Gigou could recall an instance where the OCCE communicated information to the RRM during GE43 and GE44. Mr. Mathews did not recall ever receiving actionable information from RRM either.

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<sup>7</sup> CEF0000048.

[78] With respect to GAC, the OCCE obtained the authorization of the CCE to disclose information obtained pursuant to two complaints of a video allegedly originating from a Russian domain (.ru). After carefully reviewing the matter, the OCCE took the decision to disclose this information to GAC. This was done in the course of a meeting with GAC, during which GAC indicated that they were aware of the matter.

## 6. Files related to FI allegations springing from GE43

[79] Commission counsel inquired about the files containing allegations of foreign interference, springing from the 43<sup>rd</sup> general election.

CEF0000007

[80] This file comprised multiple complaints over a Time Magazine story published during the 2019 election cycle reporting on Justin Trudeau appearing in black/brownface costumes earlier in his life. The story became headline news during the 43<sup>rd</sup> general election.

[81] Mr. Mathews explained that there is a misguided perception among members of the public that any foreign commentary on an election is illegal. However, that is not what the CEA is designed to do. Publications, commentary, editorials, opinions are all excepted from the prohibition against undue foreign influence [s. 282.4(3) CEA].

[82] Mr. Mathews also noted that any expenses incurred by Time Magazine to publish the story is not a relevant consideration given the exceptions under s. 282.4(3) CEA are absolute.

[83] The review of the facts in this case did not warrant launching an investigation. Once the OCCE received the last wave of complaints, staff made the recommendation to close the file, which the Commissioner signed off on. The Commissioner was also involved in the review of the proposed responses to the complainants given the profile of the allegations (the leader of one of the recognized parties in the House of Commons) and the high level of public interest in the matter.

CEF0000008

[84] Ce dossier concernait des plaintes selon lesquelles un Américain s'était engagé à couvrir les frais relatifs à la sécurité pour un évènement du Parti populaire du Canada. Un enquêteur du BCEF a contacté l'agent principal du parti qui l'a informé que les coûts seraient couverts par l'association de circonscription locale. Après avoir examiné les faits recueillis, le BCEF a estimé qu'aucune contribution monétaire ou non-monétaire n'avait été effectuée de la part du ressortissant américain – et donc aucune infraction à la LEC – et l'affaire a été classée.

[85] Mr. Mathews added that foreign volunteers coming to work on Canadian electoral campaigns is not per se illegal. The CEA does not prohibit buying and paying for services, whether provided by Canadians or foreigners. There may be however a campaign financing problem if the campaign is undervaluing or underreporting the costs of their services.

CEF00000015

[86] This matter involved a complaint about a Chinese-language news video broadcast from inside a poll that raised concerns of foreign interference in Canadian elections.

[87] The matter was closed because 1) the CEA prohibits a candidate's representatives from taking a photograph or recording audio or video at a polling station, but not media or members of the public; 2) the video originated from Fairchild TV, which is a Canadian broadcaster that broadcasts in Cantonese; and 3) there was some evidence that the broadcast may have been from a previous election.

CEF00000016

[88] This file comprised multiple complaints over tweets made by former US president Barack Obama endorsing Justin Trudeau on Twitter. Once the OCCE received the last wave of complaints, the matter was closed as the activity was not prohibited under the s. 282.4 CEA. For each of these complaints, the complainants received a letter informing them of the OCCE's decision.



[89] Commission counsel asked Mr. Côté, Ms. Gigou and Mr. Mathews about such complaints that fall clearly outside the OCCE's mandate or that contain broad and high-level allegations without specific or tangible information to support the allegations. The interviewees responded that it is not unusual.

Liberal Party nomination contest in Don Valley North

[90] Commission counsel then asked whether the OCCE conducted any investigation into the allegations of irregularities related to the Liberal nomination contest in Don Valley North, and whether Mr. Côté was aware of such allegations during his tenure as CCE. Both questions were taken under advisement.

## 7. Files related to FI allegations springing from GE44

[91] Commission counsel then inquired about the files containing allegations of foreign interference, springing from the 44<sup>th</sup> federal general election.

CEF0000033

[92] This matter involved a complaint with respect to certain comments about the Canadian elections made by the Chinese ambassador to Canada in a news interview. After a review of the facts, the matter was closed as the statements fell into one of the exceptions provided for by s. 282.4(3) CEA.

CEF0000032

[93] This matter involved a complaint alleging Chinese agents posting messages on a Chinese-language social media forum strongly urging Chinese Canadians not to vote for the Conservative Party of Canada (CPC). The complaint enclosed screenshots of social media posts and articles in Chinese. The matter was reviewed for a potential contravention of s. 282.4 CEA and s. 282.8 CEA.

[94] The OCCE investigator observed that different views were being exchanged for and against the CPC. Furthermore, it was noted that there was nothing offensive or violent in the language. It was argumentative, in the course of an exchange among people expressing firm views. The matter was closed, as the review did not identify tangible

evidence to substantiate the elements of the offence of undue foreign influence and the publications fell into one of the exceptions under s. 282.4(3) CEA.

CEF0000156

- [95] This matter involved complaints received during the 2021 general election over a lunch event for the Liberal Party candidate in the electoral district of Vancouver East. It was alleged that the lunch event was paid for by a person known to be active in the Chinese community in the Greater Vancouver area.
- [96] The allegations and the facts met the threshold for initiating an investigation. OCCE investigators found that it was the Liberal Party campaign that reached out to the organizer of the lunch. The candidate expected to meet 10 people or so, but there were over 100 people attending the event. The organizer of the lunch indicated through his lawyer that he paid \$1,500 for the lunch. The restaurant in question refused to provide a receipt of the lunch.
- [97] The facts collected indicated that the campaign failed to report the expense associated with the lunch or any non-monetary contribution for this event. The investigation was completed during Mr. Côté's tenure as Commissioner, but the compliance assessment remained under review. The matter was recently concluded under Ms. Simard's tenure as Commissioner, and resulted in an **Administrative Monetary Penalty ("AMP")** being issued to the official agent for not reporting the lunch event paid for by a contributor as a non-monetary contribution, nor as an election expense on the campaign Return.
- [98] Ms. Gigou noted that this file, pursued under the administrative regime, is an example of how the OCCE has limited tools to compel the production of documents (i.e. evidence associated to the costs of the lunch) when proceeding under the administrative regime.

CEF0000159

- [99] This matter involved a complaint submitted during the 2021 general election expressing concern that foreign agents affiliated with the Chinese Communist Party may be interfering in the election. The complaint enclosed three screenshots of social media messages in Chinese. Some of these posts were described by OCCE staff as being

critical of the **Conservative Party of Canada (“CPC”)** and referenced the “potential impact” of Bill C-282 tabled by MP Kenny Chiu.

[100] The matter was reviewed for a potential contravention of s. 282.4 CEA [undue influence by foreigners]. Investigative steps included attempting to contact the complainant identified in the complaint. Extensive open-source research was also conducted by an OCCE analyst that identified ties between the individuals related to the posts and publications, and ties to China-based entities with potential links to the **Communist Party of China (“CCP”)**.

[101] Despite the investigative steps taken and alleged links identified, the review did not identify tangible evidence to substantiate the essential elements of the offence of undue foreign influence or link the facts to any other offence under the provisions of the CEA. Further, the OCCE could not reach the complainant. It is not clear whether that was because there was a mistake in identity or the individual whom investigators did reach was the complainant but who had since got cold feet about the continuing with the complaint.

[102] A meeting of the OCCE’s **Strategic Enforcement and Compliance Initiative Committee** [referred to by its French acronym as “**CISOCA**”] was held at the end of March 2022. The Commissioner sits on this committee that deals, among others, with complex files. Other members of the Committee include representatives of the Legal Services branch. There was a frank and open discussion as to next steps for files 2021-0533<sup>8</sup>, as well as two 2021-817<sup>9</sup> and 2021-825<sup>10</sup>.

[103] There was a consensus that file 2021-0533 [CEF0000159] was severely limited by the situation of the complainant. Another consideration, which was also an element taken into account in the decision-making process with respect to this file, was that neither MP Kenny Chiu, nor anyone on his behalf, brought a complaint or contacted the OCCE in relation to this matter. The Commissioner ultimately decided to close this file. The other two files were closed as well, based on other legal considerations.

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<sup>8</sup> CEF0000159

<sup>9</sup> CEF0000158

<sup>10</sup> CEF0000157

[104] The open-source research report produced by the OCCE analyst in file 2021-0533 [CEF0000159] was not shared with partner agencies in law enforcement, or the security and intelligence services. The Commissioner was not asked to authorize disclosure to a partner agency. While the OCCE assumed that CSIS would have the information contained in the report given that it was collected using open-source research, Ms. Gigou also indicated that except in one specific instance outside the scope of this inquiry, she does not recall being informed by CSIS of parameters of information that they would be interested in receiving from the OCCE. Ms. Gigou indicated that because of the obligations of confidentiality and the independence of the OCCE, disclosure of information would be carefully assessed based on the criteria in the CEA.

[105] The OCCE sees itself primarily as a recipient – rather than a provider – of information, similar to how most investigative bodies and police forces operate. It was noted in that regard that the CEA contains strict confidentiality provisions. RCMP and CSIS may look at matters involving elections that fall outside the scope of the OCCE mandate, and may make inquiries to OCCE.

## 8. Final comments

[106] Mr. Mathews noted that foreign interference in elections was not a major issue prior to the 2016 US election and the subsequent presidency of Donald Trump in the United States. With increased awareness following these events, foreign interference became a concern in the lead up to the 2019 and 2021 elections.

Ms. Gigou noted that the 2021 election was distinct as it required delivering an early election during the COVID pandemic with the accompanying public health restrictions and climate of increased polarization. For example, one of the concerns the OCCE had was that the voting process might be interfered with in various ways by protesters. This was seen as a serious risk to the electoral process that deserved a high level of priority.