
The Chief Electoral Officer of Canada

by Louis Massicotte

Among the senior officers appointed by Parliament, the Chief Electoral Officer stands out as the second-oldest position of that nature, having been created by the Dominion Elections Act of 1920. The Chief Electoral Officer is expected to ensure, from an administrative point of view, that federal elections will be conducted in a fair manner. To the extent that the legitimacy of the Government of Canada ultimately rests on the free expression of the electorate, this role is crucial. This article looks at the evolution of the office and its current responsibilities.

Historically, the conduct of elections in Canada had been quite decentralized, and rather politicized. Since the earliest general elections – the first one appears to have been for the House of Assembly of Nova Scotia in 1758 – returning officers appointed by the Executive have been in charge of conducting elections in their respective electoral districts. Appointment and removal of returning officers were prerogatives of colonial governors and with the advent of responsible government, fell into the hands of the Cabinet. In the 19th century, returning officers were expected to behave, and often did, as agents of the government of the day.

Prior to 1920, there was minimal administrative co-ordination of the electoral process at the top. An official known as the Clerk of the Crown in Chancery was appointed by the Executive. His duties in the area of elections were essentially formal and archival in nature: he received lists of electors from provincial authorities, got them printed and transmitted to incumbent Members, defeated candidates and returning officers, sent the writs

of election to returning officers, received their reports, published notices of election of Members in the *Gazette*, and kept election documents pertaining to previous elections. Parliament had no say at all on who supervised the electoral process, though of course adopting and amending election legislation remained some of its key prerogatives.

Elections in Canada were quite corrupt throughout the 19th century and beyond. The 1917 general election was arguably the worst since the 1841 campaign in the United Canadas. The rules had been altered shortly before Parliament was dissolved. The electoral register was subjected to what might be described today as a kind of ethnic cleansing, as immigrants from countries with which Canada was at war were disfranchised if they had been naturalized for less than 15 years. Women were enfranchised selectively, as only those with a relative in the military were given the right to vote at an election focused on conscription for military service overseas. Women who had already been enfranchised in a few provinces were excluded if they had no such relatives. There were allegations of tampering with the soldier vote. As Norman Ward put it, “the wartime franchise of 1917 could hardly fail to return a majority in Parliament for the party which enacted it”.¹ This exercise in wartime democracy left many scars, and may explain why the

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Unionist government felt afterwards the need to clean up electoral practices.

With this background in mind, one realizes that the creation of the office of Chief Electoral Officer in July 1920 was a mighty step towards a professional rather than political conduct of elections through a tighter and impartial co-ordination at the top. This new official, who replaced the Clerk of the Crown in Chancery, owed his position to the will of the House of Commons rather than to the whim of the Executive, and was protected against political interference. He was empowered to "properly direct" returning officers and, in case of incompetence or neglect of duty, to recommend their removal.

Five Chief Electoral Officers

The stature of the new position was evidenced by the appointment of its first incumbent. Colonel Oliver Mowat Biggar, K.C., was 44 at the time of his appointment. A lawyer of high calibre, he was a grandson of the well-known Liberal Premier of Ontario. After practising law in Edmonton for twelve years, he had joined the Army in 1915, becoming Judge Advocate General for Canada in 1918, and had been a member of the Canadian delegation to the Versailles Peace Conference in 1918-19. In derogation to standard practice, Colonel Biggar, then Parliamentary Counsel of the House of Commons, was designated in the Act as the first holder of the office, a feature that suggests that his appointment may have been part and parcel of an all-party package. His salary was made equal to that of a judge of the Supreme Court of Canada, a position that at that time commanded a salary of \$12,000. Ironically, Biggar quit in 1927 after having supervised three general elections, because he expected to make even more money by moving to the lucrative practice of patent law. To this day, he remains the only Chief Electoral Officer having a legal background.

He was succeeded by Jules-P. Castonguay, a native of Vaudreuil, who had been working in the office of the Clerk of the Crown in Chancery since 1908, and had been Assistant Chief Electoral Officer under Biggar. Castonguay was appointed by way of a resolution of the House of Commons, under an amendment to the Act adopted at that time. He had little formal education, being described as a primary school drop-out, a feature that may explain why the salary attached to the office was at the same time decreased by half, though for Castonguay this meant a 67-percent increase. His abilities were essentially on the administrative side. He held the position until 1949, having conducted five general elections as well as the 1942 referendum and surviving two changes of government.

The position of Chief Electoral Officer is probably unique in the federal bureaucracy in having been held in direct succession by father and son. Nelson Castonguay had little more formal education than his father not claiming more in his biography than high-school studies, and service in the Royal Canadian Navy during World War II, where he ended the war as captain of a frigate. He had been working in the office since 1934, serving as executive assistant to his father. The Castonguay dynasty held on until 1966, when Nelson retired at the age of 53, after having supervised six general elections, three of which were held within his last four years in office. However, he continued to hold the office of Representation Commissioner, a new position created in 1963, until the abolition of that position in 1979.

Jean-Marc Hamel, a native of Lotbinière who was appointed in 1966, had the distinction of being the first professional public administrator to occupy the position. He held a BA and MA in Commerce from Laval University and a Master degree in Public Administration from Syracuse University (NY). An employee of the Civil Service Commission 1950-1964, he had joined the House of Commons as Director of Administration (1964-65) and was Assistant to the Under-Secretary of State for Canada upon his appointment. A brand new *Canada Elections Act* was adopted in 1970, which enfranchised Canadians aged 18 to 20, provided for a register of political parties and for the party affiliations of candidates to be indicated on ballot papers. Next came the *Election Expenses Act* of 1974, which increased his duties markedly in relation to the control of political contributions and election expenses. There were other major amendments in 1977 and 1982-83. From 1983 onwards, Hamel issued numerous statutory reports advocating adjustments to the Act, though Parliament found little time to act thereon until he retired in 1990 upon reaching the age of 65. He had supervised the conduct of no less than seven general elections, a record to this day. In addition, he acted afterwards as an advisor to the Lortie Royal Commission and to the Privy Council Office in the preparation of the referendum legislation.

The present incumbent is Jean-Pierre Kingsley, an Ottawa-born professional public administrator, with a record of service as director of hospitals in Edmonton and Ottawa, and the holder throughout the 1980s of various positions in the Ministry of State for Social Development, the Treasury Board Secretariat, the Department of Consumer and Corporate Affairs, and the Privy Council Office, where he was in charge of the implementation of the guidelines on conflicts of interests for Cabinet ministers and parliamentary secretaries. Like all previous appointments, Kingsley's was uncontroversial. Indeed, for the

first time, the motion appointing him was seconded by Members from the two Opposition parties. It followed only by a few months the appointment by the Mulroney Government of the Royal Commission on Electoral Reform and Party Financing, to be chaired by Montreal businessman Pierre Lortie. The report of the Commission, released in early 1992, ignited an era of reform that continues today. Important changes were brought to the Act in 1993, 1996 and 2000, including a new permanent register of electors.

Relationship with Parliament and with Government

The Chief Electoral Officer is appointed by way of a resolution of the House of Commons. All appointments except Hamel's were made in a majority government context. No qualified majority (two-thirds for example) is required, but there is no record of a government having used its majority in the House to force an appointment on a reluctant opposition, as all such resolutions were adopted *nemine contradicente*.

An original feature is that there is no fixed term of office. The Chief Electoral Officer ceases to hold office on reaching 65 years of age, and like federally-appointed judges, can be removed only for cause by the Governor General on address of the Senate and House of Commons, a dramatic move which Parliament fortunately never felt the need to accomplish. The concurrence of the Senate for removal is a supplementary protection against political whim, at least if and when the government does not have a majority in the Senate. Even in recent decades, the office has been filled for long periods of time (the average tenure so far has been 16.2 years, or 21 years excluding the first and present holders), which was not unusual prior to the 1960s, but stands in contrast with the contemporary practice of shuffling periodically the upper positions in the civil service. The Chief Electoral Officer and his Assistant are disqualified from voting, a situation that none of the incumbents seem to have resented, and which underlines the neutrality and impartiality they are expected to display.

The Chief Electoral Officer ranks as, and has all the powers of, a deputy head of a department. Formerly, his salary was specified in the Act, a feature that arguably exposed the Chief Electoral Officer to subtle pressure in inflationary times. In 1970, his salary was made equal to that of a judge of the Federal Court, which is specified by the *Judges Act* and is readjusted on an annual basis for inflation.

Other contacts of the Chief Electoral Officer with Parliament include the submission of reports to the Speaker of the House of Commons, and frequent appearances as a witness before the standing committee of the House

dealing with electoral matters and, occasionally, the Senate Standing Committee on Legal and Constitutional Affairs.

No Cabinet Minister has authority over the Chief Electoral Officer. Since the origins of the position, the Act has specified that the Chief Electoral Officer would communicate with the Cabinet through a specific minister, originally the Secretary of State for Canada, and since 1970, a minister designated by Cabinet for that purpose. Since 1997, Don Boudria, Leader of the Government in the House of Commons, has been ensuring this contact.

Discretionary Powers of the Chief Electoral Officer

Over the years, the Chief Electoral Officer has been granted by Parliament some discretionary powers. From 1921 onwards, the law specified that amendments to the Act would not come into force sooner than three months (since 1951: six months) after their enactment, unless the Chief Electoral Officer certified otherwise. In 1951, following disastrous floods in Manitoba, the Chief Electoral Officer was empowered to certify that by reason of a flood, fire or other disaster it was impracticable to carry out the provisions of the Act in a district where an election had already been called, in which case the Cabinet may order the postponement of the election in that district. In 1960, power was granted to the Chief Electoral Officer to adapt any provision of the Act as he considered necessary to meet the exigencies of the situation, if during the course of an election it appeared to him that an emergency, an unusual or unforeseen circumstance, or an error made it necessary. In 1977, he acquired the power to prescribe the forms required for the implementation of the Act, with the exception of the forms for the writ, the notice of election and the standard and special ballot papers, which still today are printed in a Schedule to the Act, as all election forms previously were.

Staff

The most senior official working under the Chief Electoral Officer is the Assistant Chief Electoral Officer who is appointed by the Cabinet with no fixed tenure. For a time, that position was filled by army officers who supervised military voting, though this tradition lapsed in 1981. Since then, the office has been filled by career civil servants. In the 1980s and 1990s, the Assistant Chief Electoral Officer was heavily involved in democratic electoral assistance overseas. He has no right of succession to the position: in case the Chief Electoral Officer dies, becomes incapacitated or neglects his duties while Parliament is not sitting, the Chief Justice of Canada must appoint a substitute Chief Electoral Officer to act as Chief Electoral Officer until 15 days at the beginning of the next

session of Parliament, or sooner if the Chief Justice so directs.

Two other key officials are mentioned in the Act. First, since 1983, there is a Broadcasting Arbitrator, who is appointed by the Chief Electoral Officer following formal consultation with two representatives from each of the registered parties represented in the House of Commons. Either there is a unanimous decision of party representatives, or the Chief Electoral Officer appoints the Arbitrator, whom in any instance he can remove from office only for cause. The term of the Arbitrator expires six months after each general election, though re-appointment is possible. At the 2000 election, the Broadcasting Arbitrator was Peter S. Grant, who had held that office since 1992. It is the duty of the Arbitrator to apportion broadcasting time among parties during election campaigns, whenever no unanimous agreement has been reached among party representatives. As no such agreement has ever been reached so far, the role of the Arbitrator is important, though his decisions must be based on the criteria set out in the Act.

The other official is the Commissioner of Canada Elections. Created in 1974 as "the Commissioner", and restyled in 1977, this position is also filled by the Chief Electoral Officer, though no specific term is provided for. Whenever the Chief Electoral Officer believes on reasonable grounds that an offence under the Act has been committed, the Chief Electoral Officer directs the Commissioner to inquire. If the Commissioner believes on reasonable grounds that an offence has been committed, he may institute or cause to be instituted a prosecution. Most importantly, no prosecution for an offence under the Act may be instituted by a person other than the Commissioner without the Commissioner's prior written consent. Further, during an election period, if the Commissioner believes on reasonable grounds that a person has committed or is likely to commit an offence, he may apply to a competent court for an injunction.

In recent years, the administrative structure of Elections Canada also included five divisions: Operations; Election Financing and Corporate Services; Legal Services (including Planning, Policy and Partnerships as well as International services); Communications; and Register, Geography and Information Technology.

Another almost unique feature of the office of the Chief Electoral Officer is its pattern of spending. It tends to fluctuate according to a fairly standard pattern: it remains low and stable during the life of a Parliament, and increases enormously in election or referendum years. At the 1993 election, for example, the Chief Electoral Officer led an army of 200,000, composed of minor officials working in constituencies and polling subdivisions, as

revising agents, deputy returning officers, poll clerks and, at that time, enumerators. In 2000, the figure was 166,000.

There is also a trend towards increased spending and staff. Under the 1920 law, the permanent staff of the Chief Electoral Officer included only the Assistant Chief Electoral Officer and two stenographers, all appointed by the Governor-in-Council. According to the Public Accounts of 1923-4, all these employees then commanded salaries that in the aggregate were lower than the salary of the Chief Electoral Officer. The office of Assistant Chief Electoral Officer was left vacant from 1927 to 1936. In 1938, the permanent staff was expanded by adding three clerks to the positions listed above, and this cap was removed only in 1948. In contrast, Elections Canada permanent staff numbered 58 at the time of the 1992 referendum and 200 on the eve of the 2000 general election, expanding to 900 during the election period and its aftermath. In the 1920s, average yearly spending (in 2001\$) in non-election years was in the \$1.2 million range, rising to \$20.4 million on election years. In the 1990s, the corresponding figures were \$31 million and \$171 million. This led a scholar to liken the modern electoral system to "a loose-limbed colossus which lies dormant most of the time"², though Elections Canada staff would likely rush to add that this is true only at the constituency level.

Like all Chief Electoral Officers but the first one, the majority of Elections Canada employees are French-speaking, and this seems to have been the case most of the time. Even in the 1950s, when French Canadians were under-represented in senior federal positions, most highest-paid employees of the Chief Electoral Officer listed in the Public Accounts had French names. According to the statistics published by the Civil Service Commission for the years 1976 to 1992, the percentage of Francophones among permanent employees has been on average 79 percent, ranging from 69.7 percent to 86.2 percent. In recent years, however, the hiring of new staff has brought the ratio closer to two to one. In an area so sensitive as the management of elections, it was deemed indispensable that returning officers throughout the country could communicate with election officials in Ottawa in either of the country's official languages.

Historically, the Chief Electoral Officer never was a major player in Ottawa bureaucratic power circles. Budget and staff were quite small, and made a minute portion of all government expenditure and personnel. His salary was much lower than the Auditor General's. However, the office carries today great prestige because a competently-managed election allows Canadians to

have a meaningful say in the future of the country, and legitimates the working of the government.

One by one, provinces have come to emulate the federal model, each having now a Chief Electoral Officer with a staff supervising the work of local returning officers. Canadians are so familiar with that model that few are aware that it is quite rare for the management of elections to be entrusted to a single official: most countries prefer to have multi member commissions, often composed of representatives from the major political parties.

Co-ordinator of the Election Machinery

This is the core function of the Chief Electoral Officer, performed since the 1970s by the Division of Operations. "Co-ordinator" is the appropriate word, because returning officers, under the general direction of the Chief Electoral Officer, are responsible for the implementation of the Act in their respective districts. Except for a brief period in 1929-1934, when they were appointed by the Chief Electoral Officer, returning officers have always been appointed by the Cabinet. They are not necessarily election professionals, hence the importance of training. Returning officers are trained in Ottawa well in advance of election campaigns. Training sessions now require eight days in anticipation of a general election, while by-elections require two-day training sessions. There have been instances of persons resigning their commission as returning officers once they knew better about the requirements of the job. The Chief Electoral Officer has no control over the appointment of subordinate election officials in each electoral district, who are appointed by returning officers. Contact with returning officers is maintained through the Director of Operations at Elections Canada and his staff.

As writs are dropped without any warning from the Prime Minister, Elections Canada must be ready for an election at any time, especially in minority Parliaments. The Chief Electoral Officer must prepare and cause to be printed the scores of forms that are necessary for holding an election. He must also study carefully the provisions of the Act and prepare information manuals ("instructions") detailing the operations to be performed by each category of election officials, from returning officers and their assistants to revising agents, deputy returning officers and poll clerks. Forms and election materials must be shipped in each electoral district, even the most remote, as soon as an election is called.

Throughout the election campaign, the Chief Electoral Officer must maintain contacts with the 301 returning officers and provide assistance whenever problems arise. Hundreds of lawyers are involved in election work throughout the country, not all of whom agree on the

meaning of various provisions of the Act, some of whom eventually coming up with quite creative understandings of the Act. Elections Canada legal services must be prepared to provide their own expert interpretation of the legislation. Of all documents published by the Chief Electoral Officer, few are as familiar to political scientists as the huge (formerly blue) book detailing the results of the election for each polling station. In addition, since 1992, the Chief Electoral Officer has published detailed narrative reports relating to general elections and referendums, thus making accessible to a wider public data that previously were known by few outside Elections Canada.

All these operations must be repeated on a smaller scale throughout the life of a Parliament, as by-elections may be called at any time: no less than ten were held between the general elections of 1997 and 2000.

The Chief Electoral Officer is also in charge of postal voting. This originated during World War I, when soldiers were enfranchised for the duration of the war, and when procedures had to be devised so that they could vote even if they were serving overseas. In 1940, under the *War Measures Act*, emergency provision had to be made again for military voting. This was maintained in peacetime as well. As relatives of soldiers (1955), civil servants abroad (1970) all Canadians including those who have been living abroad for less than 5 years (1993), and some prison inmates (1993) have successively been granted the possibility of voting by mail, the Chief Electoral Officer has to maintain a registry of Canadians voting abroad, send to each of them voting kits together with the list of all candidates standing in their respective electoral districts, receive ballots and supervise their counting, and communicate to each returning officer on election night the results of "special voting" for his or her electoral district. In 2000, 149,223 electors requested special ballots in order to vote in their respective districts, 138,065 of which cast their ballot in time, while 33,679 "national electors" (i.e. electors absent from their district because they were living in Canada but in another electoral district) requested special ballots, 25,963 of which were returned in time to be counted. Some 19,230 special ballot papers were delivered to Canadians living abroad, 9,298 were returned, of which 7,700 were received in time to be counted. In addition, there were 57,082 registered electors in the Canadian Forces, who cast 19,080 ballots, of which 50 were received after the deadline.

Referendums

Before 1992, there were no standing federal legislative provisions governing referendums in Canada. However,

Chief Electoral Officers had been involved previously in this kind of operation.

First, there was the 1942 referendum on conscription for military service overseas, the conduct of which was supervised by Jules Castonguay, masquerading for the occasion as the "Chief Plebiscite Officer". In this capacity, he had been empowered by the legislation governing the referendum to adapt the provisions of the *Elections Act* for the referendum, and to oversee the work of local returning officers as well as summing up the results for the country as a whole.

Second, and less well known, under an amendment brought to the *Canada Temperance Act*, in 1919 the federal Cabinet was empowered to call a referendum on the prohibition of intoxicating liquors in a particular province or in Yukon, if the Legislative Assembly of that province or the Yukon Territory Council had so requested. In this case, the poll was held under the provisions of the *Dominion Elections Act*, as adapted by the Chief Electoral Officer of Canada. Such provincially-launched but federally-conducted referendums were held in all provinces and territories except Quebec, British Columbia, and the Northwest Territories, between 1920 and 1923. Provisions to that effect lapsed in 1985 when the statutes were revised.

More comprehensive legislation was assented to in June 1992. The *Referendum Act* now provides, on a permanent basis, for holding referendums on any question relating to the Constitution of Canada. The initiative for calling such referendums rests with the Prime Minister. The question to be put to the electorate must be adopted by both Houses of Parliament. An odd feature of the Act is that the referendum may be held in a single province, in some provinces or throughout the country, as directed by the Cabinet. As a result, the 1992 referendum on the Charlottetown Accord was held in nine provinces and in the territories under the federal *Referendum Act*, while Quebec conducted its own referendum on the same question at the same time, but under its own *Loi sur la consultation populaire*.

The role performed by the Chief Electoral Officer in relation to referendums is basically the same as performed regarding elections. It includes in addition the power to adapt the provisions of the *Elections Act* for the conduct of a referendum, subject to the strict guidelines found in Schedule 2 to the *Referendum Act*. Referendum Committees are registered with the Chief Electoral Officer and must report their expenses thereto. In 1992, 241 referendum committees (of which 205 supported the YES and 36 the NO) were registered.

Election Expenses and Political Contributions

Since 1970, the Chief Electoral Officer has to maintain a register of political parties and, since 1974, to implement the provisions of the Act dealing with election expenses and political contributions. During an election, this involves computing the amounts that may be spent in each electoral district and countrywide, receiving and verifying the election expenses and political contributions reports of parties and candidates, and providing reimbursement of part of their election expenses to eligible parties and candidates. In 2000, 25 seminars were held across the country in order to brief candidates on reporting requirements, election expenses and other election-related financial matters. The Chief Electoral Officer must receive each year the financial reports of political parties and make them accessible to the public. In 2000, there were 11 registered parties and 1,808 candidates, 685 of whom were entitled to a reimbursement of election expenses. A Director of Election Financing is responsible for these duties.

Electoral Redistribution

Prior to 1963, the Chief Electoral Officer had no role to play in the electoral boundary readjustment process, which for better or for worse remained a cherished prerogative of Members of the House of Commons. In that year, Nelson Castonguay was appointed to the newly-created position of Representation Commissioner. He went to Australia and New Zealand in order to study the redistribution procedures in force in these jurisdictions,³ and submitted a report thereon that influenced the drafting of the landmark *Electoral Boundaries Readjustment Act*. That legislation initially provided for the Representation Commissioner to be *ex officio* a member of each of the 10 provincial boundary commissions. This arrangement prevailed for the 1966 and 1976 redistribution as well as for the process launched in 1972 but aborted by Parliament the following year. It was not maintained when Mr. Castonguay retired in 1979, and the Chief Electoral Officer does not participate to the deliberations of the boundary commissions. However, he must compute how many seats in the House of Commons each province and territory is entitled to under s. 51 of the *Constitution Act, 1867*, and his office provides support to the electoral boundary commissions by way of extensive technical expertise and services, including doing the mapping work, conducting the advertising campaign, and taxing their accounts. At the end of the process, it is his duty to submit the Representation Order describing the new boundaries to the Cabinet for proclamation. As Parliament may see it fit to alter the rules for

redistributing seats among provinces (it did in 1946, 1952, 1974 and 1986), the Chief Electoral Officer has been repeatedly asked to provide technical assistance to the Executive and to members of the House of Commons dealing with that topic. Both Jean-Marc Hamel and Jean-Pierre Kingsley were extensively consulted in 1984-85 and 1994-95 on possible alterations to the redistribution process.

Maintaining the Permanent Electoral Register

By tradition, the preparation of lists of electors was done under the direction of local returning officers during election campaigns, and did not require too much involvement from the Chief Electoral Officer except the preparation of instructions for enumerators and revising agents. In 1996, Parliament created a permanent register of electors which expanded dramatically the duties of the Chief Electoral Officer in this area. The Chief Electoral Officer is now in charge of maintaining the register of electors. The original register was prepared by way of an enumeration conducted in 1997 in all provinces but Alberta and Prince Edward Island, where lists used at recently conducted provincial elections were used. However, permanent lists require periodical updating: it has been computed that for an average year, 80 percent of the population require no change, 16 percent move, new additions due to reaching the age of 18 are 2 percent, new citizens are one percent, while one percent of the population have died and must be deleted.

To update the register, the Chief Electoral Officer must not only rely on information supplied by electors themselves, but also establish formal contacts with existing data sources, like Revenue Canada and provincial and territorial drivers' licence files (for Canadians who moved or turned 18), Citizenship and Immigration Canada (for new citizens) and vital statistics files (for deleting people who died). The Chief Electoral Officer is empowered to conclude agreements to share the register with provincial, territorial, municipal and school-board jurisdictions as well as with his counterparts in the provinces and territories, provided that the information is used only for electoral purposes. Inevitably, the revision process is considerable: during the 2000 election campaign, there were 3,671,491 changes to the register, including 413,428 corrections, 416,393 deletions and 2.8 million additions or changes of address. Further, one million electors registered on voting day.

Informing the Public

Only in 1993 was providing information to the public added to the list of duties of the Chief Electoral Officer in the *Elections Act*. However, the Chief Electoral Officer

had been doing that at least since the 1970s, and the legislative amendment only formalized a well-established practice.

Over the years, Elections Canada has been editing leaflets and brochures on various topics including the electoral system, the history of the vote, the office of the Chief Electoral Officer. An exhibition on the history of the vote in Canada was prepared in 1989 in collaboration with the Public Archives of Canada, and some of its exhibits have been shown in various Canadian cities. Since 1995, Elections Canada has been maintaining a sophisticated website, which provides abundant information on the electoral process, and probably makes life easier for the staffers previously in charge of answering thousands of phone calls and requests for information. Young Canadians have been targeted: Elections Canada developed an interactive CD-ROM, *Exploring Canada's Electoral System*, 16,000 copies of which were distributed. The staff is often invited to lecture students on the basics of the *Charter* and electoral democracy.

International Election Assistance

There is no specific provision in the Act governing international electoral assistance, but Elections Canada has played an important role in this area. It began in the 1980s when the Assistant Chief Electoral Officer was invited to observe elections conducted in some Central American countries. The early 1990s witnessed a virtual explosion, necessitating the creation of a specific division, as Canada was deluged with requests not only for observing elections (now a prerogative of MPs), but also for conducting pre-election assessments and advising foreign governments on electoral arrangements. Another dimension of that assistance is greeting foreign delegations interested in the Canadian electoral process. The Chief Electoral Officer now sits on the board of directors of the Washington-based International Foundation for Electoral Systems (IFES) and has established close contacts with his Mexican counterparts.

The Development of Election Law

Over the previous two decades, litigation has become a growing industry within Elections Canada. The coming into force of the *Canadian Charter of Rights and Freedoms* (1982) has provided a new weapon for individuals or groups who are dissatisfied with existing provisions of the Act and feel unable to convince parliamentarians to make the changes they believe to be necessary. As a result, court decisions have become a second channel for developing election law, and Parliament has lost its previous monopoly in this area. Notably, court decisions have enfranchised prison inmates, mentally disabled

persons and judges; allowed third parties to spend money during election campaigns; and forced Parliament to lower the threshold for becoming a registered party.

As the Executive is ultimately responsible for proposing election legislation to Parliament, the Chief Electoral Officer acts as an advisor to the Executive in this regard, and carries great weight in the absence of a specific department or unit within the Privy Council Office dealing with this topic. However, experience indicates that election legislation and redistribution of electoral districts are some of the few remaining areas where individual backbenchers have a meaningful impact, which necessitates close interaction with parliamentarians as well. While effort is made to reach consensus among parties on legislative amendments, there have been recent instances of governments imposing their will on the opposition over election law issues.⁴

Wholesale revisions of the Act were carried in 1920, 1934, 1938, 1960, 1970 and 2000, while numerous amending bills were passed in-between. The standard practice since the mid-1930s has been for the Chief Electoral Officer to work closely with members of a special or standing committee of the House of Commons. As a servant of Parliament, the Chief Electoral Officer must exercise caution when advising the government and legislators, as he might be reminded that he is no "Minister of Democracy". On the other hand, he has better knowledge than most of the weaknesses of the legislation and is well positioned to make recommendations to Parliament.

Some aspects of the electoral process are so political that Chief Electoral Officers should refrain from giving their opinion unless specifically asked to do so: this includes, for example, the issue of which electoral system would be best for the country. And there are other aspects where any recommendation of the Chief Electoral Officer is likely to be controversial. Yet, there is no reason for the Chief Electoral Officer not to be proactive. In particular, he is best equipped to explore the options available once Parliament has opted for some general course of action. In 1983, Jean-Marc Hamel explored the consequences of the coming into force of the *Charter*, listed the provisions of the Act that were vulnerable to court challenges, and identified provisions of the Act that should be changed. These recommendations were stated again in subsequent statutory reports in 1985 and 1986. With greater success, Jean-Pierre Kingsley issued a bulky set of recommendations in 1996.

An interesting new clause (18.1) was added to the Act in 2000, whereby the Chief Electoral Officer may carry out studies on voting, "including studies respecting alternative voting means, and may devise and test an elec-

tronic voting process". Within Elections Canada, a Planning and Policy unit gathers documentation on election laws in other countries and may inspire the Chief Electoral Officer in his recommendations.

Conclusion

The office of Chief Electoral Officer has come a long way since its creation. The days are long gone when the position could be dismissed as a glorified warehouse manager. Elections Canada has become a huge organization with a professional staff that has a worldwide reputation in the area of the conduct of elections. That all provinces in turn have opted for that formula, and that the office greets so many international visitors on each year, suggest that it has worked properly. It is to be hoped that the principle that elections should be managed in a non-partisan and professional way will one day be carried to its logical conclusion in constituencies, with returning officers being appointed on the merit principle.

At the beginning of a new millennium, Canadians are facing a paradox. Never in the past has so much money been spent in relation to the administrative conduct of elections, never has the franchise been so wide, and probably never have voters been provided with so many opportunities to exercise their right to vote. Yet, the 1990s have witnessed a steady erosion of electoral turnout, which fell from 75 percent in 1988 (its postwar average) to a record 61 percent in 2000. There is no evidence that the legislation, or those who implement it, are to be faulted for that trend, which has been observed in most other democratic countries during the same decade. This provides nevertheless a sobering background: the electoral machinery, however well-oiled it may be, is only one piece of the democratic process, and deed-seated social factors beyond the immediate reach of legislators are now seemingly leading voters to abstain in higher numbers than ever.

Notes

1. Norman Ward, *The Canadian House of Commons*, University of Toronto Press, Toronto, 1963 p 227.
2. *Ibid.*, p 203.
3. See John Courtney. "Theories Masquerading as Principles: Canadian Electoral Boundary Commissions and the Australian Model", p. 135-72 in J.C. Courtney (ed.), *The Canadian House of Commons, Essays in Honour of Norman Ward*, the University of Calgary Press, Calgary, 1986.
4. Louis Massicotte "Electoral Reform in the Charter Era" in Alan Frizzell and John H. Rammett (eds) *The Canadian General Election of 1997*, Dundurn Press, Toronto, pp 167-91.