



Written Opinions, Guidelines and Interpretation Notes

Interpretation note: 2015-11

Application of election advertising rules to telephone calls

Comments made during formal consultation period November 2–27, 2015

Comments received from the Canadian Action Party	Elections Canada response to the Canadian Action Party
<p>1.</p> <p>A. Previous interpretation of the rules by Elections Canada</p> <p>Elections Canada has in the past advised election stakeholders that the tagline requirement applies to telephone calls and that such calls, whether live calls or robocalls, require an authorization statement. I would like to see the actual name of the Official Agent responsible included in that statement.</p> <p>Comparison with other oral live communications</p> <p>It could therefore be argued that, outside of the circumstances described in section 165, anyone is free to speak to electors to promote a particular party without being subject to any CEA-imposed limits, including by phoning them. If this is to be the case, I would suggest that such calls should not be made without complete identification of the caller and their authority to make such a call.</p> <p>B. Creating a level playing field</p> <p>The Supreme Court of Canada has held that the limits imposed on</p>	<p>1.</p> <p>A. The position proposed in this OGI is that communications which are not caught by election advertising rules do not require a tagline. However, Canadian Radio-television and Telecommunications Commission (CRTC) rules still apply.</p> <p>B. Elections Canada notes your disagreement with the legislation.</p>

<p>third parties under these rules serve three interconnected objectives:</p> <p>... first, to favour equality, by preventing those with greater means from dominating electoral debate; second, to foster informed citizenship, by ensuring that some positions are not drowned out by others (this is related to the right to participate in the political process by casting an informed vote); third, to enhance public confidence by ensuring equality, a better informed citizenship and fostering the appearance and reality of fairness in the democratic process.</p> <p>This is a thinly disguised appearance as those with the means can simply form new groups to avoid the \$500 limit. Thus, the appearance of fairness is shown but the actuality is still hidden.</p> <p>My view and I think that of CAP is that all telephone calls should be made by volunteers (or candidates) and that robocalls should be outlawed. Simply shovelling them out of one jurisdiction to another is avoiding the reality of mass advertising for or against by impersonal and impartial entities for profit.</p>	
<p>Comments received from the Liberal Party of Canada</p>	<p>Elections Canada response to the Liberal Party of Canada</p>
<p>2. The draft opinion clearly discusses the subject matter and we have no comment.</p>	<p>2. —</p>
<p>Comments received from the Marxist-Leninist Party of Canada</p>	<p>Elections Canada response to the Marxist-Leninist Party of Canada</p>
<p>3. The Elections Canada draft interpretation of the <i>Canada Elections Act</i> on telephone calls poses the issue: "Whether the election advertising rules in the <i>Canada Elections Act</i> ('CEA') apply to live voice calls ('live calls') and calls made using an automatic dialing-announcing device ('ADAD' or 'robocalls')."</p>	<p>3. Elections Canada notes your agreement with the position.</p>

The Marxist-Leninist Party of Canada (MLPC) appreciates the comprehensive background information provided by Elections Canada, which includes the record of Elections Canada's own conflicting interpretations at various points.

In the MLPC's view, the confusing and incomprehensible character of much of the *Canada Elections Act* stands out sharply in the background information. It is a symptom of the years and years of amendments that have been introduced for self-serving reasons. Of note in this regard is the *Fair Elections Act* amendment to specifically exclude "the making of telephone calls to electors only to encourage them to vote" from the definition of "election advertising" [section 319(e)]. Who would make such neutral telephone calls is yet to be seen. Aside from this exemption and the CRTC phone call registry regime, the *Canada Elections Act* is silent on the regulation of phone calls.

We are in agreement with Elections Canada's interpretation: "Telephone calls, whether live calls or robocalls, do not fall within the definition of 'election advertising' in section 319 of the CEA regardless of their content or purpose."

The impact of this interpretation would mean that:

- a) there is no official agent authorization required in telephone calls;
- b) telephone calls will not be captured by the prohibition of advertising on polling day;
- c) third parties would be able to conduct unlimited numbers of telephone calls since the limits they face relate only to "election advertising."

Where expenses are incurred for making the phone calls, they would still be an expense subject to limits for political parties and candidates.

<p>The MLPC trusts Elections Canada’s legal reading of the specific exemptions in section 319, such as clause 319(e), not being meant as an exhaustive list of what is to be excluded from the definition of “election advertising.” Section 319(e) does not mean that all other telephone calls that do more than encourage electors to vote should be treated as “election advertising.”</p> <p>The MLPC is convinced by Elections Canada’s argument that phone calls are a form of communication “analogous to door-to-door canvassing during an election.” We agree, with some reservation, that “live calls are one of the purer forms of political speech during an election: they raise the potential for an exchange of political ideas between a potential voter and someone speaking on behalf of a candidate, registered party or third party.” Since door-to-door canvassing is not treated as “election advertising” and never has been, it follows that phone calls would be treated accordingly.</p> <p>The MLPC is of the opinion that there are already too many regulations that have a chilling effect on the participation of the people in the electoral process, some real, some based on speculation of what is and is not allowed. We are in favour of an interpretation that favours liberating political activities that do not warrant regulation from the grips of the <i>Canada Elections Act</i>.</p>	
<p>Comments received from the Party for Accountability, Competency and Transparency</p>	<p>Elections Canada response to the Party for Accountability, Competency and Transparency</p>
<p>4.</p> <p>A. On the matter of telephone calls, we agree that these methods of promotion should be differentiated from advertising, regardless of whether they are live calls or robocalls. We believe that this position was intended by Parliament through the creation of the definition of “voter contact calling services”, subject to Part 16.1 of the CEA. We also take this position based on the fact that these promotional messages, by the nature of the communications medium used, are not distributed to the public or to large groups,</p>	<p>4.</p> <p>A. Elections Canada notes your agreement with the position.</p>

but to persons and households, making this a method of direct promotion rather than advertising. The definition of election advertising in section 319 of the CEA would not apply because these messages were individually sent to constituents by directly addressing their person or household, making these privately distributed messages.

In contrast, what should be considered advertising and regulated as such should be messages that are distributed through either a free or paid medium that is accessible by the public, such as signs visible from public spaces, print advertisements, radio advertisements and television advertisements. By the nature of the communications medium which is the telephone, independent of the portion of the public these messages reach, calls are only accessible to those whom they have been addressed to.

The messages in telephone calls can also be customized for the very small audience which they are intended for, and can be used as an interactive tool to reach constituents. Therefore, it is our assessment that telephone calls, as well as other methods of direct promotion, such as mail, text messaging, multimedia messaging and email, should be considered and regulated differently from advertisements. Live conversations through these mediums would be akin to door-to-door canvassing or conversing with constituents at organized events. As for formatted messages that are distributed by private communications media towards a large audience, such as robocalls and email newsletters, these messages are also addressed directly to an individual or household because of the nature of the communications medium, making these private communications despite the message distributed being uniform in nature.

B. However, on the subject of regulating these direct promotional methods, we believe that the guidelines to regulate these electoral messages should be the jurisdiction of public bodies that also have the jurisdiction to regulate elections. In this case, besides the regulations enacted by the CRTC for communications, such as the

B. Elections Canada notes your suggestions for legislative changes.

National Do Not Call List rules, we believe that Elections Canada should have the role of providing further guidelines that relate specifically to election messages, and of enforcing any infringement of such guidelines, in collaboration with the CRTC.	
Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections
5. Please note that the Commissioner has made no comments on the draft interpretation note 2015-11 regarding the application of election advertising rules to telephone calls.	5. —

The following parties did not submit comments to Elections Canada on OGI 2015-11:

- Alliance of the North
- Animal Alliance Environment Voters Party of Canada
- Bloc Québécois
- Canada Party
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Democratic Advancement Party of Canada
- Forces et Démocratie
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- New Democratic Party
- Pirate Party of Canada
- Progressive Canadian Party
- Rhinoceros Party
- Seniors Party of Canada
- The Bridge Party of Canada
- United Party of Canada