



Guideline: 2015-09

Election Advertising by Registered Parties

Comments made during formal consultation period June 18–July 3, 2015

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| <p>No comments were submitted by the Animal Alliance Environment Voters Party of Canada</p> | |
| <p>No comments were submitted by the Bloc Québécois</p> | |
| <p>Comments received from the Canadian Action Party</p> | <p>Elections Canada response to the Canadian Action Party comments</p> |
| <p>1. <i>Election advertising on the Internet:</i> Para #4: This applies equally to any party. To remove all their Webpages, Facebook sites, videos, etc., of content that has been on there for years is subjecting the small parties to the same expense as their candidates. I have to wonder if this is constitutional, even though I do understand that the present regime is indifferent to the constitution.</p> | <p>1. The requirements to report pre-existing online content as an election expense does not create a financial burden for a party.</p> <p>Based on this and other comments received, new text has been added to the handbook about how to report pre-existing property used during an election period. This section about online content has also been clarified to read as follows:</p> <p>“If online content such as a video, website or Facebook page stays online during the election period, it has to be reported as an election expense. Alternatively, the party</p> |

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| | may remove all online content before the election period.” |
| <p>2. <i>Broadcasting Time allocation:</i> Little needs to be added to what was said in Gatineau on June 8, 2015, except to confirm that this too is slanted away from equality and very partisan in approach.</p> | <p>2. Broadcasting time allocation is not related to the topic of this OGI. It is governed by Part 16 of the <i>Canada Elections Act</i>.</p> |
| No comments were submitted by the Christian Heritage Party of Canada | |
| No comments were submitted by the Communist Party of Canada | |
| Comments received from the Conservative Party of Canada | Elections Canada response to the Conservative Party of Canada |
| <p>“All pre-existing online content, such as videos, websites, Facebook pages, must be removed before the election period. If online content stays on during the election period, it has to be reported as election expense.”</p> <p>In reviewing this guideline we have identified two concerns:</p> <ol style="list-style-type: none"> 1. The guideline is not specific enough to be practically actionable in terms, such as date ranges or technical scope i.e. an online video produced in 2012 could by this definition be considered an elections expense. 2. The guideline does not specify what costs would need to be reported as an election expense. | <p>The paragraph has been modified to read as follows:</p> <p>“If online content such as a video, website or Facebook page stays online during an election period, it has to be reported as an election expense. Alternatively, the party may remove all online content before the election period.”</p> <p>New content has been added to OGI 2015-01, “Political Financing Handbook for Registered Parties and Chief Agents” to clarify how to report expenses for pre-existing property.</p> |
| No comments were submitted by the Green Party of | |

| Canada | |
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| Comments received from the Liberal Party of Canada | Elections Canada response to the Liberal Party of Canada comments |
| <p>Page 2:</p> <ul style="list-style-type: none"> • The OGI states that all pre-existing online content must be removed before the election period; otherwise, it will have to be reported as an election expense. In our view there should be some limited exceptions to this rule. For instance, some online content such as a leader’s past speeches constitute part of the official record of a party and, in our view, should be allowed to remain on the website without having to be reported as an election expense. • There needs to be discussion on the financial reporting treatment for re-used content, such as production for broadcasting. For example, while the full production costs of a YouTube video used in one election and then in another are reportable for both elections, how is this segmented on the return with respect to the calculation of the election expenses reimbursement? Even more granular, what is the treatment of production costs for a video used in a by-election and then in a general election? Should the costs reported in the two elections be ‘new’ expenditures eligible for an election rebate in the general election? • Discussion is also needed on the allocation of by-election costs of broadcasting. We do not believe that it is reasonable for a political party to include 100% of the cost of broadcasting a national advertisement against a by-election in which the voting electorate is only a small portion of the possible viewers. Allocations are commonplace in other contexts. For instance, the chief agent of a registered party allocates office expenses in accordance with the purpose of each activity to determine whether the costs incurred to carry out the activity are | <p>The paragraph has been modified to read as follows:</p> <p>“If online content such as a video, website or Facebook page stays online during the election period, it has to be reported as an election expense. Alternatively, the party may remove all online content before the election period.”</p> <p>In order for a party to preserve its official record, after the election has occurred, a party may choose to reinstate online content that was removed for the election period.</p> <p>The following text has been added to the <i>Political Financing Handbook for Registered Parties and Chief Agents</i>:</p> <p>Pre-existing property</p> <p>The party, as an ongoing political entity, might own property that is used in more than one election.</p> <p>In the case of a capital asset that is used during the election period, the election expense to be recorded is the lower of: a) the commercial value of renting a similar asset for the same period, and b) the purchase price.</p> <p>If a capital asset is reported at the commercial value of renting a similar asset during the election period, it will be eligible for the election expenses reimbursement each time it is used in an election.</p> <p>If a capital asset is reported at the purchase price (the commercial value), it will be reimbursed only once, after the election for which it was obtained.</p> |

election expenses. As noted at page 34 of the *Political Financing Handbook for Registered Parties and Agents*, the method of allocation can be based on any breakdown that results in a reasonable allocation of costs.

- In the case of by-election broadcasting costs, we believe that there are at least two options that would be reasonable. One option would be an allocation based on the number of electoral districts in which the advertising was viewable versus the number of electoral districts involved in the by-election. Another option, although more complicated, might be based on the number of viewers in the by-election territory versus the total number of viewers. The current view of Elections Canada is illogical and affects broader political party communications' strategies simply because there may be only a single by-election. We do not believe that Parliament intended to include the entire national buying cost of an advertisement in a single by-election district. There is also anecdotal evidence that the current view of Elections Canada on broadcasting costs has resulted in some registered political parties deciding not to field candidates in the by-elections, thus depriving voters of an opportunity to vote for the by-election candidate of their choice and also allowing parties to opt out of the rules applying to by-elections.

Property other than capital assets (for example, signs) can also be used for more than one election. If a registered party uses such property in a subsequent election, the election expense to be recorded is the current commercial value of equivalent property. Such election expenses are not eligible for the election expenses reimbursement.

Allowing advertising expenses to be allocated based on the broadcast area would be a drastic departure from Elections Canada's current position and would have significant consequences on how election expenses limits work for parties and candidates.

For example, a candidate who placed an ad in a local newspaper for which only 65% of the readership was within the electoral district would be able to report only 65% of the ad cost as an election expense subject to the limit. Such an approach would diminish the effectiveness of election expenses limits.

To clarify our position on election advertising during by-elections, the following text has been added to the *Political Financing Handbook for Registered Parties and Chief Agents*:

Limits for by-elections

For an advertising expense to be an election advertising expense, it must:

- promote or oppose a party that has endorsed a confirmed candidate in the election, and
- be transmitted during the election period.

All election advertising expenses, including the production, distribution or placement costs, are election advertising expenses subject to the election expenses limit. This includes costs for election advertising transmitted over the Internet.

Even though the advertising may be distributed to a broader

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| | <p>area than the electoral district, 100% of the production cost, plus the actual cost to transmit in the region that includes the electoral district (which may be a broader area than the electoral district), are election expenses.</p> <p>Example</p> <p>A party purchases an advertisement in a local newspaper that is distributed in a region that includes an electoral district where a by-election is underway. Despite the fact that the newspaper has a distribution area that goes beyond the electoral district, 100% of the production cost, plus the distribution cost for the area that includes the electoral district, are election expenses of the party, subject to the limit for the by-election.</p> <p>If multiple by-elections are underway at the same time, and the same election advertising is transmitted in more than one electoral district, a party may allocate the election expense among the affected electoral districts.</p> <p>Examples</p> <ol style="list-style-type: none"> 1. There are by-elections underway in three electoral districts. A party purchases election advertising that is transmitted in the broadcast area where the by-elections are underway. The party splits the production and transmission expenses evenly among the three electoral districts. 2. There are by-elections underway in three electoral districts. The electoral districts belong to different broadcast areas. A party purchases election advertising that is transmitted a different number of times in each of these broadcast areas. The party splits the production cost evenly among the three electoral districts and reports the actual transmission cost for each electoral district. |
| <p>No comments were submitted by the Libertarian Party of Canada</p> | |

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| No comments were submitted by the Marijuana Party | |
| No comments were submitted by the Marxist-Leninist Party of Canada | |
| No comments were submitted by the New Democratic Party | |
| No comments were submitted by the Party for Accountability, Competency and Transparency | |
| No comments were submitted by the Pirate Party of Canada | |
| Comments received by the Progressive Canadian Party | Elections Canada response to the Progressive Canadian Party comments |
| <p>The following comments are offered regarding the Interpretation and Approach of Elections Canada (EC) to election advertising by Registered Parties and Candidates.</p> <p>This is the first Canadian federal election in which the fixed date election law has been in effect to the end of the full four year fixed term for elections introduced by legislation receiving Royal Assent in 2007, Bill C-16. The Chief Electoral Officer (CEO) will be reporting to Parliament on findings concerning the October 19, 2015 election after the election is held.</p> <p>The fixed date election law raises important questions for the 2015 election. Registered parties and candidates and the promise of a fair election undistorted by monied interest will greatly benefit by by Elections Canada's advice and interpretation guidelines, and an understanding of the anticipated EC approach to the new fixed date election advertising</p> | <p>The <i>Canada Elections Act</i> does not regulate pre-writ advertising. The purpose of OGI's is to provide guidance on rules as they exist.</p> |

environment within the existing limited legislation.

Traditional election advertising by registered parties and candidates has historically been governed by regulation, interpretation and approaches administered by Elections Canada, defined by election campaigns conducted after the dropping of the writ at any point during the life of a Parliament even in the case of a majority government.

The implications of the fixed date election law for political parties, candidates, funding of advertising by registered parties and candidates during the election period and prior to dropping of the writ, and broadly for democracy in Canada, were subjects of discussion during the ACPP June 8-9, 2015 AGM, however, and will be important to the CEO's instructions to registered parties and candidates concerning their rights and obligations under the *Canada Elections Act* for the October 19, 2015 election.

This is because of the several ways in which the fixed date election law changes the practice and meaning of elections in Canada in ways which may impact election outcomes. Such changes include redefinition in practice of the length of election campaigns beyond the traditional legislated writ period and repurposing of pre-writ political advertising in consequence.

Election outcomes in Canada must remain expressions of the political choices or decisions of Canadians rather than outcomes of the intrusion of money into democracy. Election advertising is a principle way in which money can affect election outcomes. Experience in the US and in Canadian provinces where fixed date elections are in place indicate that impacts of money on elections and democracy increase with fixed date elections. Discussion of the benefit to democracy of limiting the impact of money by limiting political advertising generally may be a useful future discussion, informed by practices in the UK and other Commonwealth nations.

The 2015 election will be conducted within the existing legislative framework concerning election spending limits and fixed date elections.

Interpretative guidelines and the Approach to election advertising by Registered parties and Candidates specifically under the new fixed date election law is therefore of great importance to ensuring fair elections.

One example of where Elections Canada has anticipated this need is the requirement to remove prewrite paid online advertising in all forms when the writ is dropped unless the content and production is to be treated as an election expense. This does not, however, diminish the distorting effect on elections of a pre-writ advertising campaign extended through the election itself when tested and found effective before the writ is dropped.

It is widely reported that political parties or candidates are conducting political campaigns well in advance of the writ being dropped to begin the formal election period. At present, there is no limitation on the spending of political parties or candidates outside of the writ period. In other Commonwealth countries, notably the United Kingdom, political advertising outside of the writ period is subject to legislated “long campaign” and “short campaign” limits administered by the Elections Commission. This has not been paralleled by similar legislated limitations in Canada however the fixed date election law provides new territory and an opportunity for the Chief Electoral Officer to provide interpretative guidance to political parties and candidates. EC advice and interpretative instruction for the 2015 election is strongly recommended.

Advertising activities by the Government of Canada and government departments have included public service announcements of programmes “subject to parliamentary approval”. Such announcements may be deemed partisan advertisements funded by public monies and taxpayer dollars by the agencies contracting to issue such public service announcements because they concern proposals, generally by the governing party of the day, which have not received parliamentary approval. While comment on this practice is not strictly within the limits of guidelines and interpretations to be issued by Elections Canada and the Chief Electoral Officer to registered political parties and candidates at the time of the dropping of the writ in

2015, it would be negligent not to draw to the attention of EC and the CEO the concern these practices raise for participants in the ACPP AGM and members of the OGI Steering Committee. The Progressive Canadian party delegates did so during day one of the ACPP AGM, pointedly, and again through comment and advice as a member of the OGI Steering Committee.

The Progressive Canadian Party was very active at the ACPP AGM in discussion of the impacts on Canadian elections of money, advertising, and the de facto extended election period under the fixed date election law. In particular, PC delegates drew to the attention of the Chief Electoral Officer, and to others attending, the arguments presented by the Progressive Canadian Party to the Standing Committee on Procedure and House Affairs (PROC) in September 2006 in the formally solicited submission to the Standing Committee on Bill C-16 when the legislation was proposed.

A copy of the 2006 PC Party submission to PROC on Bill C-16 is attached for reference and future guidance. ^

[NOTE: Elections Canada acknowledges having received as an attachment the September 28, 2006 submission of the Progressive Canadian Party to the Standing Committee on Procedure and House Affairs regarding Bill C-16]

Concerns raised by the PC Party to the Standing Committee on Procedure and House Affairs in 2006 pertaining to C-16 included the implications for Canadian elections of de facto creation of an election period extending from the end of the spring sitting of the House of Commons in June to the legislated October fixed date election in an election year.

Similarly, concern was raised by the PC Party at the ACPP AGM in June 2015 about the practical implications to Canadian elections and democracy in Canada of the greater costs and greater intrusion of money during the extended, unregulated pre-writ campaigns of the redefined election period, and repurposed pre-writ registered party and candidate advertising, under

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| <p>the fixed date election law.</p> <p>At the time of this submission to the OGI Steering Committee, July 3, 2015, unregulated pre-writ election advertising campaigns for the October 19, 2015 General Election by monied interest and parties are underway at a cost to democracy which may be supplied by direction from EC under existing legislation.</p> <p>It is felt this is particularly important to draw attention to these facts given the unprecedented nature of the 2015 election, which is the first Canadian federal election in which the fixed date election law has been in effect to the end of the full four-year fixed term for elections introduced by legislation receiving royal assent in 2007, Bill C-16.</p> <p>These opinions and advice are provided in conformity with the Mandate and Objectives provided in Annex 1: Terms of Reference for the Steering Committee on Written Opinions, Guidelines and Interpretation Notes (OGIs) of the ACPP.</p> | |
| <p>No comments were submitted by the Rhinoceros Party</p> | |
| <p>No comments were submitted by the United Party of Canada</p> | |
| <p>Comments received from the Commissioner of Canada Elections</p> | <p>Elections Canada response to the Commissioner of Canada Elections comments</p> |
| <p>Generally speaking, the Commissioner of Canada Elections agrees with the position taken by the Chief Electoral Officer in this note.</p> <p>However, in the note as proposed, “election advertising” is described as “the transmission to the public of an advertising message promoting or opposing the election of a candidate during the election period.” This description does not include all the elements of the definition at section 319 of the <i>Canada</i></p> | <p>The definition at section 319 has been modified in the handbooks to be more specific to the entity addressed in the document. Elements of the definition are used as they apply to candidates or registered parties.</p> <p>In the case of purchased property or services, Elections Canada agrees that expenses are to be reported at the amount charged.</p> |

Elections Act. For greater clarity, it is recommended that the text of the note reflect all the components of the definition at section 319.

In addition, on page 2, under Example 1, the beginning of the second sentence should be revised to include the following italicized words:

“The cost incurred or, at minimum, the commercial value of the flyers . . .”.

The relevant text proposed in the note suggests that expenses have to be reported to reflect commercial value, whereas the Act requires that the actual costs incurred be disclosed. In fact, commercial value is taken into account only when the actual cost of acquiring the good or service is less than its commercial value, as this then constitutes a non-monetary contribution. Accordingly, should a party acquire a good or service at a cost that is higher than its commercial value, its actual cost should be reported instead of its commercial value.

Generally, this amount is the commercial value of the property or service received. In cases where the amount charged for property or a service is less than its commercial value, the difference has to be reported as a non-monetary contribution, making the total expense amount equal to the commercial value of the property or service.