

INTERPRETATION BULLETIN No. 05

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Third Party Activities and Expenses

Introduction

The Chief Electoral Officer has developed this Bulletin to provide information for political participants and third parties with respect to organizing and promoting events generally, and registered party events specifically.

Links to the *Election Finances and Contributions Disclosure Act* (the EFCDA) and other bulletins are available on the Elections Alberta website at www.elections.ab.ca.

Key EFCDA Provisions

As a starting point it is important to be familiar with the definition of political advertising. Section 44.1(1)(g) of the EFCDA defines “political advertising” as follows:

44.1(1)(g) *“political advertising” means, subject to subsection (1.3), the transmission to the public by any means, at any time other than during an election advertising period, of an advertising message that promotes or opposes a registered party, the leader of a registered party, a member of the Legislative Assembly, a nomination contestant, a registered leadership contestant or the election of a registered candidate, and for greater certainty does not include*

- (i) *the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news,*
- (ii) *the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value,*
- (iii) *the transmission of a document or the communication directly by a corporation or a group to its members, employees or shareholders, as the case may be,*



- (iv) *the transmission by a person, corporation or group, on a non-commercial basis on the Internet, of the political views of that person, corporation or group,*
- (v) *the making of telephone calls to electors only to encourage them to vote, or*
- (vi) *advertising by the Government in any form;*

(1.3) *For the purposes of subsection (1)(g), “political advertising” includes*

- (a) *canvassing for the benefit of a registered party, the leader of a registered party, a member of the Legislative Assembly, a nomination contestant, a registered leadership contestant or a registered candidate, and*
- (b) *organizing events where a significant purpose of the event is to promote or oppose a registered party, the leader of a registered party, a member of the Legislative Assembly, a nomination contestant, a registered leadership contestant or a registered candidate.*

It is also important to be familiar with the definition of election advertising. Section 44.1(1)(d) of the EFCDA defines “election advertising” as follows:

44.1(1)(d) *“election advertising” means, subject to subsection (1.1), the transmission to the public by any means during an election advertising period of an advertising message that promotes or opposes a registered party or the election of a registered candidate, including an advertising message that takes a position on an issue with which a registered party or registered candidate is associated, and for greater certainty does not include*

- (i) *the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news,*
- (ii) *the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election,*
- (iii) *the transmission of a document or the communication directly by a corporation or a group to its members, employees or shareholders, as the case may be,*



- (iv) the transmission by a person, corporation or group, on a non-commercial basis on the Internet, of the political views of that person, corporation or group,*
- (v) the making of telephone calls to electors only to encourage them to vote, or*
- (vi) advertising by the Government in any form;*

(1.1) *For the purposes of subsection (1)(d), “election advertising” includes*

- (a) canvassing for the benefit of a registered party or registered candidate, and*
- (b) organizing events where a significant purpose of the event is to promote or oppose a registered party or registered candidate.*

The differences between election advertising and political advertising are two-fold. First, election advertising occurs during an election advertising period. If the advertising is outside of the election period, it may be political advertising but it cannot be election advertising.

Second, the definition of election advertising is broader than political advertising because election advertising includes “an advertising message that takes a position on an issue with which a registered party or registered candidate is associated”, also referred to as “issue advertising. Political advertising does not include issue advertising.

It is also important to understand the definition of a “third party”, which is defined at EFCDA section 44.1(1)(i) and reads as follows:

44.1(1)(i) *“third party” means a person, corporation or group, but does not include the following:*

- (i) a registered party;*
- (ii) a registered constituency association;*
- (iii) a registered candidate or member of the Legislative Assembly;*
- (iv) a nomination contestant;*
- (v) a registered leadership contestant.*



Section 41.41 of the EFCDA regulates certain activities of third parties by prohibiting third parties from incurring certain expenses:

Activities by third parties

41.41(1) *A third party shall not incur expenses to engage in any of the following activities that support the work of registered parties, registered candidates, nomination contestants or registered leadership contestants:*

- (a) selling memberships for a registered party;*
 - (b) fundraising for a registered party, registered candidate, registered leadership contestant or nomination contestant;*
 - (c) collecting or compiling information about electors or potential electors, including data and lists, where that information is shared with registered parties, registered candidates, registered leadership contestants or nomination contestants;*
 - (d) any other activity that would otherwise be part of the administrative activity of a registered party, registered candidate, nomination contestant or registered leadership contestant.*
- (2)** *Subsection (1) does not apply to*
- (a) volunteer labour provided by a person, so long as that person does not receive any compensation to volunteer,*
 - (b) a petition tabled in the Legislative Assembly in accordance with the Standing Orders of the Legislative Assembly of Alberta,*
 - (c) a contribution by a third party that is not prohibited from making a contribution under section 16, or*
 - (d) an activity where the expense incurred for that activity is an election expense under this Part.*

Promotion of Events by a Third Party

If a third party has members, that third party can promote events, including the events of a registered party, to its own members. However, if a third party promotes a registered party event to the public, this promotion is likely to fall within the EFCDA definition of “political advertising”.



In short, if a third party promotes an event

- where the event promotes or opposes a registered party, the leader of a registered party, a member of the Legislative Assembly, a nomination contestant, a registered leadership contestant or the election of a registered candidate, **AND**
- the third party promotes the event to the public,

the EFCDA rules respecting political advertising will apply.

Organizing Events Generally

The definition of “political advertising” specifically includes “organizing” events where a significant purpose of the event is to promote or oppose a registered party, the leader of a registered party, a member of the Legislative Assembly, a nomination contestant, a registered leadership contestant or a registered candidate. If a third party is the organizer of such an event, then the EFCDA rules that apply to political advertising by third parties will be triggered.

In determining whether a significant purpose of a particular event is to “promote or oppose” the EFCDA requires the following factors to be taken into consideration:¹

- (a) whether it is reasonable to conclude that the event was specifically planned to coincide with an election;
- (b) whether the formatting or branding of promotional materials for the event is similar to the formatting, branding or election material used by a registered party, the leader of a registered party, a member of the Legislative Assembly, a nomination contestant, a registered leadership contestant or a registered candidate;
- (c) the extent to which an election or any registered party, the leader of a registered party, member of the Legislative Assembly, nomination contestant, registered leadership contestant or registered candidate is referred to, either directly or indirectly, in promotional materials for the event or at the event;
- (d) whether the event is consistent with previous events held by that third party;
- (e) whether messages conveyed at the event are political messages associated with a registered party, the leader of a registered party, a member of the Legislative Assembly, a nomination contestant, a registered leadership contestant or a registered candidate.

¹ See section 44.1(1.4)

Paying Registration Fees for Registered Party Events

Only individuals that are ordinarily resident in Alberta can make contributions to registered parties.² Accordingly, if there is a contribution component to a registration fee for a registered party event, then third parties who are not individuals ordinarily resident in Alberta, are prohibited from paying that portion of the registration fee on behalf of one of the third party's members.

Notably, the EFCDA also prohibits individuals from making contributions with money that is not their own.

Paying for Expenses to Attend a Registered Party Event

There is no provision in the EFCDA that prevents a third party from reimbursing a person for expenses that person incurred to attend a registered party event so long as the individual is not:

- reimbursed for making a contribution to the registered party, or
- reimbursed for expenses (including the entire registration fee) to attend a registered party event, if that person is organizing, administering, or running the event.

For example, if a third party incurred expenses to reimburse members of the registered party's executive to attend a registered party event such as an AGM, this would likely be considered an "administrative activity of a registered party" under EFCDA section 41.41(1)(d).

Similarly, if a third party incurred expenses to reimburse a person tasked with organizing or running the registered party event, this would likely be considered "part of the administrative activity of a registered party" under EFCDA section 41.41(1)(d).

Third Party Activities During Senate Elections and Referendums

In addition to elections and by-elections, the EFCDA also regulates advertising by third parties during Senate election advertising periods and referendum advertising periods. The definition of a third party in the context of senate elections is the same as it is for general elections. Senate election advertising is:³

² See section 16 of the EFCDA

³ See Part 6.11, section 44.941(1)(e) of the EFCDA

44.941(1)(e) *“Senate election advertising” means, subject to subsection (3), the transmission to the public by any means during the Senate election advertising period of an advertising message that promotes or opposes the election of a registered candidate for Senate election, and for greater certainty does not include*

- (i) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news,*
- (ii) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be a Senate election,*
- (iii) the transmission of a document or the communication directly by a corporation or a group to its members, employees or shareholders, as the case may be,*
- (iv) the transmission by a person, corporation or group, on a non-commercial basis on the Internet, of the political views of that person, corporation or group,*
- (v) the making of telephone calls to electors only to encourage them to vote, or*
- (vi) advertising by the Government in any form;*

(3) *For the purposes of subsection (1)(e), “Senate election advertising” includes*

- (a) canvassing for the benefit of a registered party or registered candidate, and*
- (b) organizing events where a significant purpose of the event is to promote or oppose a registered candidate for Senate election.*

The definition of a third party in the context of referendums is slightly different from general elections and Senate elections because the Government of Canada and the governments of other provinces and territories are explicitly included in the definition of a third party.⁴

⁴ See Part 6.12, section 44.94993(1)(i)

The definition of referendum advertising is:

44.94993(1)(c) *referendum advertising” means, subject to subsection (3), the transmission to the public by any means during the referendum advertising period of an advertising message that promotes or opposes a question in a referendum, and for greater certainty does not include*

- (i) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news,*
- (ii) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be a referendum,*
- (iii) the transmission of a document or the communication directly by a corporation or a group to its members, employees or shareholders, as the case may be,*
- (iv) the transmission by a person, corporation or group, on a non-commercial basis on the Internet, of the political views of that person, corporation or group,*
- (v) the making of telephone calls to electors only to encourage them to vote, or*
- (vi) advertising by the Government in any form;*

(3) *For the purposes of subsection (1)(c), “referendum advertising” includes organizing events where a significant purpose of the event is to promote or oppose a referendum question.*

Any assessment of the significant purpose of an event, and whether the event falls within the meaning of “Senate election advertising” or “referendum advertising” will include an assessment of the factors set out above with respect to “election advertising”.

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