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Advocacy Regulations and the Election: Some thought on Political Activities, Elections Canada Rules and Lobbying Regulations

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Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions during and at end
- Logistics and timing

Political Activities - Three different sets of rules

- **Income Tax Act** limitations on registered charities
 - applies only to registered charities
- **Elections Act** and Third Party Advertising
 - applies to both NPOs and registered charities
- **Lobbying Act (Federal)**
 - applies to both NPOs and registered charities

Political Activities -old rules for registered charities

- Under the Income Tax Act, a registered charity used to be restricted to the amount of resources it could use for non-partisan political activities and was and still is prohibited from involvement with partisan political activities. (now called activities which support or oppose a political party or candidate)
- Could only spend a maximum of 10% of resources (except for smaller charities between 10-20%) and could average over 3 years (some groups could spend 60% in one year if no previous political activities)
- Could always set up affiliated non-profit that could do unlimited political including partisan activities
- Could not do partisan political activities and political activities had to be connected to the charity's legal objects or purposes. (no change)

Political Activities –new rules

- On December 13, 2018, the Trudeau government made several changes to the *Income Tax Act* (Canada) related to charities, especially with regards to political activities. The changes allow Canadian registered charities to conduct
 - unlimited public policy dialogue and development activities (PPDDA)
 - Which are connected to the legal purposes of the charity
 - as long as they are not directly or indirectly partisan.
- Although PPDDA is not defined in the Income Tax Act it will likely be viewed as what was historically referred to as allowable non-partisan political activities plus some charitable activities like private meetings with MPs.

Political Activities

- Draft CRA Guidance CG-027 **Public policy dialogue and development activities by charities**

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>

- CRA releases Q&A on public policy dialogue and development activities by charities

https://www.canadiancharitylaw.ca/blog/cra_releases_qa_on_public_policy_dialogue_and_development_activities_by_cha

Political Activities

- CRA did not appear that excited about dealing with the charities and political activity file
- With controversial charities that do lots of controversial PPDDA and receive lots of complaints from the public, CRA even if it were to audit the charity will not be reviewing whether a registered charity has spent more than 10% on political activities as that will be irrelevant but instead if there is an audit they will likely focus on
 - Is any activity of the charity directly or indirectly partisan?
 - Are all PPDDA related to the legal purposes of the charity?
 - Does charity cause more public harm than benefit?
 - Is registered charity complying with other compliance requirements?

Political Activities

- Many charities have not updated their legal purposes or objects in a long time and all PPDDAs have to be related to your purposes
- CRA will be looking at whether the group is complying with charity requirements in about 20 other areas - fundraising, receipting, T3010 filings and accuracy, objects, undue private benefits, business activities, dealing with non-qualified donees, etc.
- https://www.globalphilanthropy.ca/blog/canadian_charity_legal_checklist_by_mark_blumberg_april_2019

Third Party Election Advertising Registration Rules

What is a “Third Party”

- Canada Elections Act
- A third party is generally a person or group that wants to participate in or influence elections other than as a political party, electoral district association, nomination contestant or candidate
- Non-profits that are not registered charities and Canadian registered charities may fall under the definition of “third party”
- Non-profits that are not registered charities and registered charities will be affected differently by recent changes but the CEA makes no distinction between them

Timelines for Federal Election 2019

- **Pre-Election Period:** June 30, 2019 – day before Election is called
- **Election Period:** Day Election Called – Day Polls Close (probably October 21, 2019)

“Regulated Activities”

Type	Description
Partisan Activities	<p>Activities carried out by a third party that promote or oppose a political party, nomination contestant, potential candidate, candidate or party leader, other than by taking a position on an issue with which the party or person is associated.</p> <p>Note: Activities to fundraise for the third party are generally excluded from partisan activities.</p>
Election Surveys	<p>Surveys about voting that a third party conducts or causes to be conducted during the pre-election period or the election period. The survey results are used in deciding whether or not to organize and carry out regulated activities, or in the organization and carrying out of regulated activities.</p>

“Regulated Activities”, Cont’d.

Type of Activity	Description
Partisan Advertising	The transmission to the public by any means during the pre-election period of an advertising message that promotes or opposes a political party, nomination contestant, candidate or party leader, other than by taking a position on an issue with which the party or candidate is associated.
Election Advertising	The transmission to the public by any means during the election period of an advertising message that promotes or opposes a registered party or candidate, including by taking a position on an issue with which the party or candidate is associated.

NPO vs charity or registered charity

- Generally NPO can carry out partisan activities and therefore all 4 regulated activities may apply to it.
- A charity or registered charity cannot carry out partisan activities and therefore generally only “issue advertising” under “Election Advertising” would be applicable

Election Advertising

- “The transmission to the public by any means during the election period of an advertising message that promotes or opposes a registered party or candidate, including by taking a position on an issue with which the party or candidate is associated.”
- Examples:
 - hire a media firm to design election advertising that will be distributed during the election period.
 - having staff produce election advertising messages and pay for them to be distributed on radio, TV, newspapers, magazines, website banners, billboards, etc.
 - paid, sponsored or boosted messages communicated over the Internet

What is NOT Election Advertising

- messages sent or posted for free on social media platforms such as Twitter and Facebook
- messages sent by email or through other messaging services (including texts sent through a cellular or mobile network)
- videos posted for free on social media platforms such as YouTube and Instagram
- content posted on the third party's website (the ongoing expenses for creating and maintaining a website are not placement costs)

Example of Election Advertising

- “The third party runs a national radio ad during the election period, promoting a policy issue with which one registered party is closely associated but not naming the party. This is election advertising. The advertisement has to include an authorization statement from the third party. The expense for the advertisement—including its scripting, recording and transmission—is an election advertising expense subject to the limit for the election period. (As issue advertising, this particular advertisement would not be a regulated expense if it ran only during the pre-election period.)”

Registration Requirements

- A person, corporation or group must register with Elections Canada as a third party immediately after incurring expenses:
 - totalling \$500 or more for regulated activities that take place during a pre-election period, or
 - totalling \$500 or more for regulated activities that take place during an election period
- The following are eligible to become registered third parties:
 - an individual who is a Canadian citizen or a permanent resident, or lives in Canada
 - a corporation that is incorporated in Canada or carries on business in Canada
 - a group, if the person responsible for the group is a Canadian citizen or permanent resident, or lives in Canada

Registration Requirements

- Groups can register now for pre-election period which started June 30. For an election period, you can register the day the general election or by-election is called.
- A person, corporation or group can also register as a third party if they **intend** to incur expenses totalling \$500 or more for regulated activities in one of the periods.
- A third party that registers during the pre-election period and is also required to register during the election period is deemed to be registered for the election period.

How to Register

- A third party that is required to register with Elections Canada has to:
 - open a separate bank account with a Canadian financial institution or certain authorized foreign banks, as defined by the *Bank Act*
 - appoint a financial agent, who must sign a declaration accepting the appointment
 - appoint an auditor without delay, if it has incurred expenses totalling \$10,000 or more for regulated activities
 - submit the *General Form—Third Party* to Elections Canada

How to Register

- If the third party is a trade union, corporation or other entity with a governing body, the application must include a signed copy of a resolution authorizing it to incur expenses for regulated activities.
- For example, the resolution could read: “The board hereby authorizes <name of the third party> to incur expenses regulated by the *Canada Elections Act* during the <pre-election period, election period or both> for the election held on <election date>. This resolution was approved by the majority of the board members.”

Taglines

- A third party must identify itself in or on any election advertising and indicate that it has authorized the advertising.
- The tagline must include the third party's name, phone number and civic or Internet address. It must be clearly visible or otherwise accessible. Tagline must also indicate that the third party authorized the ad, suggested wording is: "Authorized by <name of third party>, <civic or internet address>, <phone number>."
- For advertising on the Internet, where the authorization statement cannot be included on the advertising message because of its size, this is acceptable if the statement is made immediately apparent to the viewer by following the link in the advertising message

Other points

- \$500 is not just cash but could also be donated supplies or services (non-monetary contributions) – valued at commercial value
- The way to determine commercial value varies based on whether or not the contributor is in the business of providing the property or service. If in the business, it is the lowest amount they would charge, if not in the business it is the lowest amount a commercial provider in the area would charge.
- Cannot use contributions if you don't know the type of contributor, name and address of contributor
- If you need to report then will report each contributor over \$200.

Other points

- Contributions can be accepted from:
 - Canadian citizens or permanent resident
 - business and other organizations that operate in Canada
- There are no contribution limits
- Third parties may also use their own funds to pay for regulated activities

Prohibition on using foreign funds

- “A third party must not use funds from a foreign entity to pay for regulated activities. It must not circumvent, or attempt to circumvent, the prohibition or collude with any other person or entity for that purpose.”

Other requirements

- Expense limitations per electoral district and nationally
- A third party must not collude with a party or a candidate to:
 - (1) circumvent the party or candidate expenses limits
 - (2) influence the third party's regulated activities - including through sharing information.
- “Caution about collusion A third party must not collude with a registered party, a candidate, a potential candidate or a person associated with a candidate’s or potential candidate’s campaign (including the official agent) in order to influence the third party in its regulated activities. When organizing and carrying out partisan activities, third parties must be careful to act independently.”

Reporting Requirements

- Reporting requirements triggered once a person incurs \$500 or more for regulated activities during the pre-election or election period
- If over the \$500 threshold, must register as a third party with Elections Canada
- Person who incurs \$10,000 or more in expenses for regulated activities during pre-determined time periods are required to file one or more “interim campaign returns” with Elections Canada
- After election day, all third parties required to file “electoral campaign return”
- If third party spends more than \$10,000 on regulated activities, must also file an auditor’s report with Elections Canada after the election

Summary

- \$500 of expenditures is very low limit – for either pre-election period or election period.
- What was an impediment for 35 days for NPOs is now almost 4 months, still same 35-50 days for registered charities
- Many non-profits and charities will need to register
- Be very careful about avoiding foreign money for political advertising and collusion

For More Information

- For more information, see the Political Financing Handbook for Third Parties by Elections Canada
 - https://www.elections.ca/pol/thi/ec20227/ec20227_e.pdf

Lobbyist Registration - Federal

Lobbying the Canadian Federal Government

- Lobbying Act and Office of the Commissioner of Lobbying of Canada
- lobbying defined broadly, applies to charities
- Lobbying Act and ITA very different
- For charities, registration is required when lobbying “duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.”

Lobbying Federal Government (continued)

- What is “significant part of duties”
- Commissioner says:
- when lobbying takes up 20% of an employee’s time or efforts or
- if you add all the employees together more than 20% of one full
- time employee’s overall duties.

<https://lobbycanada.gc.ca/eic/site/012.nsf/eng/00115.html>

Federal Lobbying Database



Office of the Commissioner of Lobbying of Canada Commissariat au lobbying du Canada



Office of the Commissioner of Lobbying of Canada
www.ocl-ccl.gc.ca

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Communications Log - Search Results

To view a Communications Log entry, click on the communication date.

To change the order of the search results, select a criteria and click **Apply**.

[Return to Public Registry](#)

Results: 1-37 of 37

Date	Activity Description	Designated Public Office Holders
2010-06-22	In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number:551-151578	Stephen Harper Prime Minister Paul Wilson Director Julie Gaudreau Stakeholder Relations Jason Ransom Official Photographer Andrew MacDougall Deputy Press Secretary
2010-06-18	In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number:551-151580	David McGovern Assistant Deputy Minister
2010-06-18	In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number:551-151579	Andrew MacDougall Deputy Press Secretary Julie Gaudreau Special Assistant