



**Elections  
Ontario**

**Election Finances**

**CFO Handbook for Third Parties**

**2018**

Note: This handbook is effective from Jan 1, 2018 to Dec 31, 2018

## Disclaimer

This handbook is for the calendar year 2018. It provides guidance from Elections Ontario about how to comply with the *Election Finances Act*. To the extent that any conflict exists between this handbook and the *Election Finances Act*, the *Election Finances Act* prevails.

## Further information

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## Definitions

### Third party

Third party means any person or entity who is not a registered candidate, political party, or constituency association. [Act reference 1(1)] The Act does not affect government advertising by the Government of Canada, the Government of Ontario, the government of another province or territory of Canada, or the government of a municipality, or by any part of such a government.

### Election period

For a fixed date general election, the election period is the period commencing at 12:01AM on the day the writ is issued, and terminating on polling day.

For a by-election or general election with a non-fixed election date, the election period is the period commencing with the issuance of the writ for an election and terminating on polling day. [Act reference 37.1]

## General Elections

### Fixed date general election

An election in all electoral districts, following the dissolution of the legislative assembly, where election day is scheduled by sec 9.1 of the Election Act.

### Non-fixed date general election

An election in all electoral districts, following the dissolution of the legislative assembly, where election day is not scheduled by sec 9.1 of the Election Act.

### By-election

An election in an electoral district, between general elections.

### Non-election period

This only applies to fixed date general elections, and represents the six month period preceding the date the writs are issued.

## Roles and Responsibilities

### Chief Financial Officer

A chief financial officer (CFO) is a person appointed by a third party to record, report and keep financial information in accordance with the *Election Finances Act*. All third parties must appoint a CFO before registration. If the appointment ends for any reason, a new CFO must be appointed immediately and the Chief Electoral Officer (CEO) informed in writing immediately. [Act references 37.5(3), 37.5(4) and 37.6(1)]

### Selecting and appointing a CFO

The obligations of a CFO are significant. Because of the skills required, it is recommended that the CFO have knowledge of accounting or bookkeeping.

A CFO cannot be the auditor of his or her own third party, a returning officer, deputy returning officer, election clerk, registered candidate, or CFO or auditor of a registered candidate, political party, constituency association or leadership contestant. [Act reference 37.6(3)]

Submit the Third Party Registration and Change Notice Form (TP-1) to Elections Ontario when appointing a CFO.

### Responsibilities of the CFO

The CFO is legally responsible for:

- certifying any changes in registration information reported to Elections Ontario;
- keeping proper financial records of all income and expenditures, including deposit slips, invoices, etc.;
- ensuring that only eligible contributions are accepted, and corrective action is taken where ineligible contributions have been accepted;
- depositing all funds received in the financial institution on record with Elections Ontario;
- recording contributions consisting of goods and services at fair market value;
- keeping a list of all contributions received, including name, address, and class of contributors;
- filing the Third Party Political Advertising Report with Elections Ontario by the deadline date;
- authorizing and processing all payments on time;
- keeping all financial records for a minimum of six years as recommended by the Canada Revenue Agency (CRA) ; and
- transferring all financial records to the incoming CFO when leaving the position.

## Auditor

An auditor is appointed by a third party to provide an opinion on whether the Third Party Political Advertising Report presents fairly the information contained in the financial records. A third party must appoint an auditor if it intends to spend, or as soon as it has spent, \$5,000 or more on political advertising. Elections Ontario must be informed of the appointment in writing.

If the appointment ends for any reason, a new auditor must be appointed immediately and Elections Ontario informed in writing immediately. [Act references 37.7(1), 37.7(4), 37.7(5), 37.13(1) and 37.13(2)]

## Selecting and appointing an auditor

To audit a registered third party's political advertising reports, an auditor must be a person or firm whose partners living in Ontario are licensed under the *Public Accounting Act, 2004*. [Act reference 37.7(2)]

An auditor for the Third Party Political Advertising Report cannot be

- the third party's CFO;
- a person who signed the application;
- a returning officer, deputy returning officer or election clerk;
- a candidate; or
- the CFO or auditor of a registered candidate, political party, constituency association, leadership contestant or of another registered third party.

[Act reference 37.7(3)]

The appointment of an auditor must be communicated in writing by submitting the Third Party Registration and Change Notice Form (TP-1) to Elections Ontario. [Act reference 37.7(4)]

## Request for auditor's opinion

A third party that incurs \$5,000 or more in third party political advertising expenses shall include a report from the auditor [Act reference 37.7(1)]. The third party's auditor must report on the Third Party Political Advertising Report and must make any examination that will enable the auditor to give an opinion in the auditor's report as to whether the Third Party Political Advertising Report presents fairly the information contained in the accounting records.

## Responsibilities of the auditor

The auditor must:

- be familiar with the guidelines (Guidelines for Members Appointed as Auditors Under the Election Finances Act) prepared by the Chartered Professional Accountants of Ontario (CPA Ontario);



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### Roles and Responsibilities

- meet with the CFO of the registered third party to discuss the audit process well before the filing date to determine cut-off and closing procedures and to agree on a date when the auditor will be given access to all records, documents, books, accounts and vouchers of the third party that may be necessary to issue the auditor's report;
- provide an opinion on the Third Party Political Advertising Report of the registered third party;
- provide an opinion on the supporting schedules of the Third Party Political Advertising Report of the registered third party; and
- collect payment from the registered third party for the work performed.

## Registration

Every person or entity spending \$500 or more on political advertising in either the six months before a fixed date general election (the non-election period) or during an election period and who is not a registered candidate, political party, or constituency association, must register with Elections Ontario. Registration is not required where the third party is spending less than \$500 on political advertising in either the non-election period or the election period. [Act reference 37.5(1)]

### Examples:

For a fixed date general election scheduled for June 7, and writ issued on May 11,

- Third Party #1 spends \$300 in political advertising in the non-election period and is not required to register. During the election period, Third Party #1 spends \$450 on political advertising, and is not required to register.
- Third Party #2 spends \$300 in political advertising in the non-election period and is not required to register. During the election period, Third Party #2 spends \$550 on political advertising, and is required to register and submit a Third Party Political Advertising Report for the spending that occurred only during the election period.
- Third Party #3 spends \$700 in political advertising in the non-election period and is required to register. Third Party #3 is required to register and submit a Third Party Political Advertising Report that will include any political advertising spending for both the non-election and election period.

For a by-election with a polling date of June 30, and a writ issued on June 1:

- Third Party #4 spends \$475 in political advertising in the election period and does not have to register.
- Third Party #5 spends \$610 in June on political advertising, and would be required to register and submit a Third Party Political Advertising Report.

The registration timeframe will depend on the type of election:

- Fixed date general election: Elections Ontario may register a third party 6 months before the date of issuance of the writs. An application received prior to the 6 month period from the date of the issuance of the writs, will be deemed effective on the date that is 6 months before the day the writs are issued, providing the application is complete.
- Non-fixed date general elections and by-elections: Elections Ontario will register a third party no earlier than the day the writs are issued. An application received prior to the issuance of the writs, will be deemed effective on the day the writs are issued, providing the application is complete. A third party applying for registration after the writ is issued will be considered registered the day the application is received, providing approval of the application by Elections Ontario. [Act reference 37.5(6)]

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Elections Ontario will send written confirmation of registration to the third party. Elections Ontario will provide training materials and other information for the operations of the registered third party.

If the application of a third party is not approved, Elections Ontario will provide the third party with reasons for the refusal. [Act reference 37.5(6)].

### **Appointing a CFO and auditor**

A third party must appoint a CFO before registering with Elections Ontario. [Act reference 37.5(3)]

A third party must appoint an auditor if it intends to spend, or as soon as it has spent, \$5,000 or more on third party political advertising. [Act reference 37.7(1)]

Refer to the Roles and Responsibilities section which explains their duties.

### **Contents of application and filing methods**

#### **Application form**

The registration requirements are listed within the Third Party Registration and Change Notice Form (TP-1) and the Form Completion Guide. The Form TP-1 must be submitted at the time of application for registration. [Act reference 37.5(2)]

#### **Approval of name**

Elections Ontario will determine whether a proposed name and abbreviation is acceptable for registration based on the following criteria:

- the proposed name and abbreviation must not be so similar to another third party, candidate, political party or political organization active in Canada that it could cause confusion; and [Act reference 37.5(8)]
- the proposed name and abbreviation must not be abusive or offensive.

#### **Governing body**

Where a third party entity has a governing body, a copy of a resolution from that body authorizing the third party advertiser to incur third party political advertising expenses must be included with the application. [Act reference 37.5(5)]

#### **Application filing methods**

The completed and signed Third Party Registration and Change Notice Form (TP-1) can be sent to Elections Ontario by any delivery method so long as the application is complete. Examples of accepted delivery methods include mail, fax, email, or hand delivery.

## **Approval of application**

Elections Ontario, prior to approving an application, can request further information and undertakings from the third party as determined necessary to verify compliance with the *Election Finances Act*.

## **Change in registration information**

### **Written notice of changes**

Whenever there is any change of registration information, a registered third party must provide written notice of the change to Elections Ontario immediately by filing a revised Third Party Registration and Change Notice Form (TP-1). The revised form must be signed by the CFO and third party (or its officers).

A change in registration information includes a change to:

- the full name of the registered third party;
- the principal officers of a registered third party;
- the CFO of a registered third party;
- the auditor of a registered third party;
- the persons authorized by a registered third party to accept contributions;
- the address of the place or places in Ontario where records of a registered third party are kept and of the place in Ontario to which communications may be addressed;
- the name and address of every financial institution at which a bank account is held by a registered third party for holding contributions; and
- the signing officers responsible for each bank account.

### **Change in CFO or auditor**

When there is a change in CFO or auditor, the registered third party must immediately appoint another CFO or auditor and file a revised Third Party Registration and Change Notice Form (TP-1) containing the name, address, and telephone number of the new CFO or auditor. [Act references 37.5(4) and 37.7(5)]

For a change in CFO, the revised form must be signed by the incoming CFO and third party (or its officers).

For a change in auditor, the revised form must be signed by the CFO and third party (or its officers).

In addition, where there is a change in CFO, the person accepting the appointment shall receive the financial records of the registered third party from the outgoing CFO.

If these documents are not provided, the new CFO must write to advise Elections Ontario of the steps taken to secure the documents.

### **Responsibility for notification**

The responsibility for notifying Elections Ontario of changes in registration information lies with the registered third party. Elections Ontario will rely and act on information submitted by the third party and CFO last on record with Elections Ontario.

### **End of registration**

The registration of a registered third party ends on polling day when the election period ends. However, the third party must still file its third party political advertising report. [Act reference 37.5(10)]

## Contributions

Contributions are funds, goods, or services given to a registered third party for third party political advertising purposes outlined in the *Election Finances Act*. Contributions given to a registered third party are not eligible for tax receipts. There are restrictions as to the source and form of contributions. In addition, there are recording and reporting requirements for contributions.

### Eligible contributions

Only contributions solicited for third party political advertising purposes under the *Election Finances Act* will be considered to be a contribution. Contributions must be made using the contributor's own funds.

### Literature and communication used to solicit contributions

All literature and communication used to solicit third party political advertising contributions by or on behalf of a registered third party must clearly identify the third party receiving the contribution. The solicitation must also provide an opportunity for the contributor to determine that the contribution is to be used only for the purpose of third party political advertising or that the contribution may be used for the discretionary purposes of the registered third party.

### Sources of contributions

#### Eligible contributors

Contributions for the purposes of funding third party political advertising may be made to a registered third party only by:

- a person who is normally resident in Ontario, including a person serving in the armed forces, diplomatic service, or similar type of employment abroad if that person's normal home is in Ontario;
- a corporation carrying on business in Ontario that is not a registered charity; or
- a trade union.

[Act reference 37.10(1)]

#### Contributions from corporations

Any of the following criteria are considered acceptable evidence that a corporation is carrying on business in Ontario:

- The corporation keeps an office or establishment in Ontario for the purpose of carrying on its business activities to which one or more employees report to work;
- The corporation enters into contracts in Ontario on a regular basis either through its officers, employees, or agents having general authority to act on its behalf;

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- The corporation is an extra-provincial corporation may make contributions if it is carrying on business in Ontario in accordance with the requirements of sections 1 and 4 of the *Extra-Provincial Corporations Act*; or
- The corporation is taxable in Ontario under the *Taxation Act, 2007*.

CFOs must make reasonable efforts to satisfy themselves that the contributing corporation is entitled to make a contribution.

Associated corporations, so long as they each carry on active business in Ontario, are considered to be separate corporate contributors. [Act reference 1(2)]

A joint venture of two or more corporations may be a partnership, in which case contributions must be treated as coming from an unincorporated association or organization and the contribution must be recorded separately for each participating corporation.

A business operating as a partnership is treated as an unincorporated association or organization. A business operating as a sole proprietorship is treated as an individual for contribution purposes.

### **Contributions from trade unions**

A trade union is eligible to give contributions if it is a trade union as defined by the *Labour Relations Act* or the *Canada Labour Code* that holds bargaining rights for employees in Ontario to whom those acts apply and includes any central, regional, or district labour council located in Ontario. [Act reference 1(1)]

### **Contributions from unincorporated associations and organizations**

An unincorporated association or organization is any association or organization not incorporated under any corporation act or special act that gives the association or organization the status of a legal entity. The unincorporated association or organization must have an ongoing reason for existence such as business, professional, social, social action, fraternal, cultural, or other similar purposes and not be formed simply for the purpose of making political contributions.

#### **Example:**

Business and professional partnerships, joint ventures, clubs, and societies are examples of unincorporated associations and organizations.

An unincorporated association or organization, other than a trade union, cannot contribute as a group. For any contribution to a registered third party made through an unincorporated association or organization, the original person, corporation, or trade union providing the funds will be considered the contributor. As a result, each individual contributor must meet the eligibility requirements for contributions under the *Election Finances Act* to be able to contribute. [Act reference 37.10(5)]

The unincorporated association or organization must record details of the individual sources (name and address) and amounts making up the contribution by the unincorporated association or organization. A copy of these records must be provided to

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the CFO of the registered third party receiving the contribution for the third party's records. [Act references 37.10(3) and 37.10(4)]

### **Examples:**

A contribution from the partners of a professional partnership such as a firm of chartered accountants, lawyers, dentists, etc., must be broken down into its particular sources and amounts. The CFO must receive this information in writing before accepting the contribution.

- A business that is organized as a partnership and not as a limited company, such as Daniel & Rahul's Garage, which is a partnership of Daniel and Rahul, is an unincorporated organization. The CFO must be careful to determine that this is indeed an unincorporated business. The CFO must receive the information regarding the partners and the amounts of their contributions in writing before accepting the contribution.
- The Monday Afternoon Bridge Club, an unincorporated club, wishes to contribute \$1,500 to a registered third party. This contribution must be broken down into its particular sources and amounts. For instance, \$500 may have come from Suyin, \$500 from Brigitte, \$300 from Daniel, and \$200 from Rahul, who are some or all of the club's members. The CFO of the registered third party must receive this information in writing before accepting the contribution.

## **Ineligible contributions**

### **Ineligible contributors**

No registered third party may directly or indirectly knowingly accept contributions from an ineligible contributor.

Ineligible contributors to a registered third party include, but are not limited to:

- any source outside Ontario;
- registered charities;
- corporations not carrying on business in Ontario;
- members of the House of Commons living in Ontario but representing an electoral district outside Ontario;
- federal political parties and constituency associations; and
- political parties or constituency associations from other provinces.

### **Anonymous contributions**

A registered third party must not accept anonymous contributions. [Act reference 37.10(2)]

A registered third party must return anonymous contributions to the contributor. If the contributor cannot be identified, the funds must be paid to Elections Ontario.



## Conditional contributions

A registered third party may accept directed contributions so long as they are for the general or specific purposes of the third party.

### Examples:

- A contributor gives \$100 with the direction that it be used to place an advertisement in a newspaper; this is an acceptable contribution.
- A contributor gives funds to cover fees for meetings, seminars, workshops, or conferences that are sponsored by the third party and held in Ontario; this is an acceptable contribution.

However, a registered third party must not solicit or accept directed contributions that would contravene the *Election Finances Act*.

### Example:

If a potential contributor instructs that funds solicited are to be used for purposes outside of the *Election Finances Act* (for example, Save the Whales) or purposes specifically prohibited (for example, leadership contests), these are considered directed contributions contrary to the *Election Finances Act* and must not be accepted.

A registered third party must also not accept conditional contributions. A conditional contribution is where the contributor, as a condition of making the contribution, requires the recipient to give the contributor a material benefit.

### Example:

A contributor cannot donate \$200 on the condition that the recipient purchase a bicycle using those funds to give to the contributor.

## Contribution limits

There are no limits on the amount of contributions that may be accepted by a registered third party.

## Form of contributions

### Monetary contributions

A monetary contribution to a registered third party of up to \$25 may be given in cash. Any monetary contribution of more than \$25 shall not be contributed through cash. Such contributions must be made by any modern financial practice where the contributor and their account information can be confirmed. Such practices include payment by cheque, credit card, money order signed by the contributor, debit card, or online payment (i.e. PayPal) or cryptocurrency (i.e. Bitcoin). [Act reference 37.11(1)]

## **Non-monetary contributions**

### **Goods and services**

All goods or services provided by a supplier are considered a contribution with an offsetting expense if their total value is more than \$100. If the total value is \$100 or less, it is also considered a contribution unless the donor specifies otherwise. Goods or services not considered a contribution are recorded as other income with an offsetting expense.

Whenever goods or services have been provided, whether or not considered to be a contribution for the purposes of the *Election Finances Act*, an expense in the equivalent fair market value is considered to have been incurred.

An exception, where goods and services are not considered to be a contribution, is when goods and services are produced by voluntary labour.

### **Value of goods and services**

The value of goods and services is considered to be the fair market value for similar goods and services at the time they are provided.

If the contributor is in the business of supplying such goods and services, fair market value is the lowest amount charged by the contributor for an equivalent amount of goods and services at the same time and in the same market area.

Where the contributor is not in the business of supplying such goods and services, fair market value is the lowest amount charged at the same time by any other person or corporation providing similar goods on a commercial retail basis or similar services on a commercial basis in the same market area.

### **Goods and services provided for less than fair market value**

Where goods and services are provided for a price less than fair market value, including goods and services that are not paid for or where there is an agreement not to accept payment, the difference between the price and fair market value must be considered a contribution. However the rules regarding the eligibility of contributors still applies.

### **Supporting documentation for goods and services**

All contributions of goods and services must be supported by an invoice, statement of account, or receipt from the supplier of the goods and services.

When all or part of a fee is considered by the supplier to be a contribution, the supplier must submit a statement of account and indicate on it the amount considered to be a contribution. The supplier is responsible for reporting these amounts as income on the supplier's tax return.

## **Administering contributions**

### **Accepting contributions**

#### **Deposit of contributions**

Contributions will be considered accepted:

- if paid by cash, cheque, cryptocurrency (i.e. Bitcoin), money order, or debit card, at the time the contributions are deposited in the financial institution on record with Elections Ontario; or
- if paid by credit card, online payment (i.e. PayPal) or any other manner that associates the contributor's name and account with the payment, on the date of the transaction.

All money collected by or on behalf of a registered third party for the purposes of political advertising, must be deposited in the financial institution on record with Elections Ontario. [Act reference 37.11(2)]

Contributions received in an envelope postmarked prior to the end of a reporting period, or received on the last day of a reporting period that cannot be deposited because the financial institution is closed, must be recorded as an outstanding bank account deposit on the last day of the reporting period. Each outstanding deposit must be deposited on the next available banking day.

#### **Persons authorized to accept contributions**

Only the CFO or other authorized persons noted on the Third Party Registration and Change Notice Form (TP-1) filed with Elections Ontario may accept contributions. While the *Election Finances Act* permits other authorized persons on record to accept contributions, it is the CFO's responsibility to ensure that only eligible contributions are accepted and appropriately recorded. [Act references 37.9(1) and 37.9(3)]

Any contributions collected by others, for example, by means of a door-to-door canvass, must be turned over immediately to the CFO or other persons on record with Elections Ontario, along with a list of the names and addresses of the contributors and the amounts of their individual contributions.

### **Recording of contributions**

The details of all contributors (name, address and class) and contributions accepted on behalf of a registered third party for its third party political advertising must be recorded by the CFO.

### **Return of contributions**

A CFO may learn that a contribution has been made or accepted in contravention of any provisions of the *Election Finances Act*. These contraventions may include, but are not limited to:

- contributions from unidentifiable or anonymous sources;

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- contributions from ineligible sources;
- cash contributions in excess of \$25;
- contributions of funds not belonging to the contributor;
- contributions of funds from a federal political party or its organizations; or
- contributions of funds from a municipal candidate.

In these cases, the CFO must return to the contributor an amount equal to the sum contributed within 30 days.

Any such contribution not returned to the contributor or any anonymous contribution accepted by a registered third party must not be used for any purpose and must be paid to Elections Ontario.

### **Reporting of contributions**

#### **Public disclosure**

It is recommended that contributors donating more than \$100 be notified that their names and addresses will be recorded and submitted with the third party political advertising report, and that their names and amounts will be published by Elections Ontario on the Elections Ontario website. [Act reference 2(1)]

#### **Reporting on third party political advertising reports**

Recorded information regarding contributors and contributions greater than \$100 must be reported as part of the contributions schedule of the third party political advertising report to be filed with Elections Ontario. [Act reference 37.12(4)]

## Non-Contribution Income

### Use of own funds

A registered third party's own funds used for that third party's political advertising expenses must be recorded and reported separately in the Third Party Political Advertising Report. [Act reference 37.12(4)]

### Transfers

A registered third party must not transfer funds, goods or services from or to a registered candidate, nomination contestant, leadership contestant, political party, or constituency association.

A registered third party must also not transfer funds, goods or services from or to another registered third party.

### Loans

A registered third party must not accept loans from a registered political party or constituency association.

## Political Advertising

Third party political advertising is any political advertising that appears in the six months before a fixed date general election and during any election period and is placed by or on behalf of a registered third party.

The *Election Finances Act* imposes limits on political advertising by third parties in the six months before a fixed date general election and during any election period. [Act reference 37.1]

Third parties cannot engage in political advertising if it promotes a political party, nomination contestant, candidate, or leadership contestant and is arranged for in coordination with that political party, contestant, candidate, or relevant constituency association. [Act reference 37.10.1(4)]

### What is political advertising

Political advertising is defined as advertising in any broadcast, print, electronic, or other medium with the purpose of promoting or opposing any registered political party or its leader or the election of a registered candidate. [Act reference 1(1)]

Political advertising includes advertisements in newspapers, journals, and magazines; promotion on TV and radio; and advertisements placed on billboards, bus shelters, and the Internet (including websites, blogs, and social networking sites), etc.

Political advertising also includes advertising with respect to an issue of public policy during an election for which one or more registered political parties or candidates may also have taken a position.

Under the Act “third party political advertising” refers to political advertising placed by or on behalf of a third party, and “third party political advertisement” has a corresponding meaning.

The Chief Electoral Officer considers the following criteria to determine if an advertisement is political advertising:

- whether it is reasonable to conclude that the advertising was specifically planned to coincide with the period referred to in Spending Limits section;
- whether the formatting or branding of the advertisement is similar to a registered political party’s or registered candidate’s formatting or branding or election material;
- whether the advertising makes reference to the election, election day, voting day, or similar terms;
- whether the advertisement makes reference to a registered political party or registered candidate either directly or indirectly;
- whether there is a material increase in the normal volume of advertising conducted by the person, organization, or entity;

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- whether the advertising has historically occurred during the relevant time of the year;
- whether the advertising is consistent with previous advertising conducted by the person, organization, or entity;
- whether the advertising is within the normal parameters of promotion of a specific program or activity; and
- whether the content of the advertisement is similar to the political advertising of a party, constituency association, nomination contestant, candidate or leadership contestant registered under the Act.

### **What is not Political Advertising**

Political Advertising does not include:

- the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news
- 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
- communication in any form directly by a person, group, corporation or trade union to their members, employees or shareholders, as the case may be
- the transmission by an individual, on a non-commercial basis on the Internet, of his or her personal political views, or
- the making of telephone calls to electors only to encourage them to vote

### **Authorization on political advertising**

All third party political advertising must name the registered third party authorizing the advertising.

No specific language is required for the authorization but it must be apparent what person or entity has caused the advertisement to appear and any other person or entity that has sponsored or paid for it.

An example of appropriate authorization wording is “Authorized by the XYZ entity”.

### **Sign placement**

The *Election Finances Act* does not address where signs can or cannot be placed. When placing signs on public property, consult the local municipality to see what local by-laws allow or, when placing signs near a highway, consult the Ministry of Transportation.

## **Advertising restrictions**

### **Blackout period**

A blackout period includes the day before polling day and polling day for all elections.

No registered third party may conduct paid commercial third party political advertising during a blackout period. [Act reference 37(2)]

No broadcaster or publisher may allow a paid commercial third party election advertisement to appear during a blackout period. [Act reference 37(3)]

Even in situations where Internet advertising is claimed to be free, the rules around blackout restrictions apply. Internet advertising established before, and not altered during the blackout period, can remain posted. In addition, further electronic distribution of that advertisement during the blackout period is also prohibited.

### **Exceptions to the blackout period**

The following advertising activities are permitted during the blackout period:

- genuine news reporting, including interviews, commentaries, or other works prepared for and published by any newspaper, magazine, or other periodical publication in any medium without any charge to the registered political party. A broadcaster may similarly broadcast genuine news stories; however, these are subject to the provisions of and regulations and guidelines under the Broadcasting Act (Canada);
- the publication of political advertising on polling day or the day before polling day, in a newspaper that is published once a week or less often and whose regular day of publication falls on that day;
- a political advertisement on the internet or in a similar electronic medium, if posted before and not altered or further distributed during a blackout period; and
- a political advertisement in the form of a poster or billboard, if posted before and not altered during a blackout period, such as advertisements on public transit buses, bus shelters, and subway stations.

[Act references 37(4) and 37(7)]

Lawn signs displayed and brochures distributed are not considered to be paid commercial third party political advertising and can appear at any time.

Personal emails and similar personal communications on the Internet, mass or individual mailing, automated or individual telephone calls, and social media communications are generally not considered third party political advertising and are not subject to the blackout period.

The following activities are also permitted during the blackout period:

- advertising public meetings in constituencies;
- announcing the location of registered candidates' and constituency associations' headquarters;



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- advertising for volunteer campaign workers;
- announcing services for electors, regarding enumeration and the revision of electors' lists, that are offered by candidates or constituency associations;
- announcing services for electors that are offered by registered candidates or constituency associations on polling day (for example, "Babysitting services provided while you go out to vote" or "Rides to the polling station"); and
- anything involving administrative functions of registered constituency associations.

[Act reference 37(5)]

Such advertisements or announcements that are paid commercial political advertising may contain the name of a registered candidate or political party and may include a picture of the candidate or the logo of the political party. However, mention of the particular exempt service or activity listed above must be the main feature of the advertisement or announcement. Also, the advertisement or announcement must not contain any slogan, motto, or other wording promoting the candidate or political party or opposing another candidate or political party, such as "Join the winning team," "Work for continued good government," "Our candidate is best qualified," "Vote for," etc.

### **Rates charged during campaign**

No publisher or broadcaster may charge any more for advertising at election time than it would normally charge anyone else for an equivalent amount of space or time during the same period. [Act reference 37(6)]

#### **Example:**

When selling radio time, the station may not charge "triple A" rates for mid-morning slots.

The media may not give special low rates either.

In certain media, advertising rates may depend upon the volume of time or space purchased over the year. For the purposes of the *Election Finances Act*, the lowest rate must refer to the lowest rate available to any other customer purchasing the same volume of advertising as the volume of political advertising carried on by a registered third party during the same period.

### **Information provided to broadcaster or publisher**

A third party election advertisement must not appear without providing the following information to the broadcaster or publisher, in writing:

- the name of the person, corporation, or trade union causing the election advertisement to appear;
- the name, business address, and telephone number of the individual dealing with the broadcaster or publisher on behalf of the person or entity causing it to appear; and

- the name of any other person, corporation, or trade union sponsoring or paying for the election advertisement.

## **Retention of records for broadcaster or publisher**

The broadcaster or publisher of a third party election advertisement must keep records for two years after the date the advertisement appeared and must permit the public to inspect the records during normal office hours. Records must contain:

- the name of the person, corporation, or trade union causing the advertisement to appear;
- the name, business address, and telephone number of the individual dealing with the broadcaster or publisher on behalf of the person or entity causing it to appear;
- the name of any other person, corporation, or trade union sponsoring or paying for the advertisement;
- a copy of the advertisement, or the means of reproducing it for inspection; and
- a statement of the charge made for its appearance.

[Act references 22(7), 22(8) and 22(9)]

## **Restriction on election surveys**

An election survey is defined as an opinion survey of how electors voted or will vote at an election or regarding an issue with which a registered political party or candidate is associated. [Act reference 36.1(3)]

No registered third party may publish, broadcast, or transmit to the public, in an electoral district on polling day before the close of all the polling stations in that electoral district, the results of an election survey that have not previously been made available to the public. [Act reference 36.1(1) and 36.1(2)]

## Political Advertising Expenses

All expenses incurred by a registered third party for political advertising purposes are to be recorded and reported on the third party political advertising report.

### What are third party political advertising expenses

Third party political advertising expense is defined as expenses incurred in relation to:

- the production of a third party political advertisement, or
- the purchase of means of broadcast of a third party political advertisement to the public.

The expenses incurred for third party political advertising during a period are determined using the following rules:

- An amount paid by a third party for political advertising in a relevant election period, regardless if it was paid before, during or after the period; and
- If a combined amount is paid for both third party political advertising in an election period along with other third party political advertising, the amount will be apportioned according to when the advertising appears.

A third party shall apply for registration under this section immediately after having incurred expenses of a total amount of \$500 for third party political advertising during a period. The registration of a third party ceases to be valid at the end of every election period in respect of which the third party was registered, but the third party continues to be subject to the requirement to file a third party political advertising (refer to Registration section for details on effective dates of registration).

### Spending limit

The limits for spending will depend on the type of election. For non-fixed date general elections, a third party must not spend:

- more than \$4,072 in the election period in any electoral district for the purpose of third party political advertising, or
- more than a total amount of \$101,800 during an election period, for the purpose of third party political advertising

For a by-election, a third party must not spend:

- more than \$4,072 in the election period in any electoral district for the purpose of third party political advertising

For a fixed date general election, a third party must not spend:

- more than \$4,072 during an election period in any electoral district for the purpose of third party political advertising; or
- more than \$24,432 during a non-election period in any electoral district, for the purpose of third party political advertising; or

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- more than a total amount of \$101,800 during an election period, for the purpose of third party political advertising; or
- more than a total amount of \$610,800 during a non-election period, for the purpose of third party political advertising.

Third party spending limit as of 1<sup>st</sup> Jan 2018:

The current spending limits are effective up to December 31, 2018. These amounts are indexed annually and our materials will be updated with the new amounts in January 2019.		
	<b>In any Electoral District</b>	<b>In Total</b>
<b>Election Period</b>		
Writ day to Polling day		
By-election	\$4,072.00	N/A
General Election	\$4,072.00	\$101,800.00
<b>Non-Election Period</b>		
Starts 6 months immediately before the issue of the writs for a fixed date General Election and ends on writ day.	\$24,432.00	\$610,800.00
For the June 7, 2018 General Election the non-election period begins on November 9, 2017.		

[Act reference 37.10.1]

Any third party that does not comply with the spending limits mentioned above is liable to a further fine not exceeding five times the amount by which the third party exceeded the applicable limit.

**No combination to exceed limit**

No third party shall circumvent, or attempt to circumvent, a limit set out in this section in any manner, including by splitting itself into two or more third parties for the purpose of circumventing the limit or acting in collusion with another third party so that their combined political advertising expenses exceed the applicable limit or by colluding with a registered political party, registered constituency association, registered candidate, or registered nomination contestant for the purpose of circumventing the limit.

[Act reference 37.10.1(3)].

## **Goods and services**

All goods or services provided that relate to third party political advertising, whether or not they are considered to be a contribution for the purposes of the *Election Finances Act*, are considered to be third party political advertising expenses incurred at fair market value.

## **Prepaid expenses**

Pre-election political advertising literature purchased by a registered third party for use after the writ must be accounted for as a political advertising expense of the third party. Only those prepaid third party political advertising expenses that are consumed during the election period constitute a third party political advertising expense.

## **Approval of expenses**

Every third party political advertising expense that is incurred by or on behalf of a registered third party must be authorized by its CFO or other authorized persons noted on the Third Party Registration and Change Notice Form (TP-1) filed with Elections Ontario. [Act references 37.9(2) and 37.9(3)]

## **Recording and reporting of expenses**

Records of all third party political advertising expenses, including the time and place of broadcast or publication of advertisements to which the expenses relate, must be maintained and reported to Elections Ontario on the third party political advertising report. [Act reference 37.12(2)]

## Third Party Political Advertising Report

Every registered third party must file a Third Party Political Advertising Report. The accounting policies and procedures used for the Third Party Political Advertising Report are prescribed by Elections Ontario for compliance with the *Election Finances Act*. The Act also requires Elections Ontario to examine and review all Third Party Political Advertising Reports submitted.

### Content and filing date

A Third Party Political Advertising Report (Form TPAR-1) and supporting documentation must be filed by a registered third party with Elections Ontario within six months of polling day. [Act reference 37.12(1)]

The third party political advertising report includes the following:

- registered third party information;
- certification of non-coordination by the third party (or its principal officer) and CFO of the information reported in the third party political advertising report;
- signed auditor's report on the third party political advertising report;
- statement of income and expenses;
- signed auditor's report on the supporting schedules of the political advertising report;
- supporting schedules for the following:
  - operating loans
  - contributions accepted for third party political advertising purposes and contributions of over \$100 accepted for political advertising purposes.
  - political advertising expenses
  - certification regarding no coordination

[Act references 37.12(2), 37.12(4) and 37.12(8)]

The supporting schedules are an integral part of the Third Party Political Advertising Report. It is important that each schedule agrees with the primary statement.

Refer to the Form Completion Guide for directions on how to complete this Third Party Political Advertising Report.

## Third Party Political Advertising Report

The CFO of every registered third party must file a Third Party Political Advertising Report in the prescribed form with Elections Ontario within six months after polling day for an election for which it registered.

A Third Party Political Advertising Report shall contain a list of all third party political advertising expenses and the time and place of broadcast or publication of the advertisements related to the expenses. If a third party has not incurred third party political advertising expenses, this will be indicated in its Third Party Political Advertising Report.

The Third Party Political Advertising Report must include,

- a) the amount (by class of contributor) of contributions for third party political advertising purposes received in the period beginning six months before the *relevant* period and ending three months after polling day;

Reporting of contributions accepted during the *relevant* period:

- For a **non-fixed date general election** or a **by-election**, contributions accepted in the period starting six months before the date the writ is issued and ending three months beyond polling day.
- For a **fixed-date general election**, contributions accepted in the period starting 12 months before the date the writ is issued and ending three months beyond polling day.

- b) for each contributor who made contributions of a total amount of more than \$100 for third party political advertising purposes during the period referred to above), their name, address and class, and the amount and date of each contribution; and
- c) the amount (other than the contribution referred to in (a)), that was paid out of the third party's own funds for third party political advertising expenses

If the CFO is unable to identify which contributions were received for third party political advertising purposes during the period referred to in (a), the Third Party Political Advertising Report shall list the names and addresses of every contributor who donated a total of more than \$100 to the third party during that period.

At the request of Elections Ontario, a third party must provide the original of any bill, voucher or receipt in relation to a third party political advertising expense that is more than \$50.

## **Requirement for Certification**

Every registered third party, in its Third Party Political Advertising Report, must certify that the registered third party and its agents, employees, and independent contractors did not act in coordination with any registered political party, registered candidate, registered constituency association, registered nomination contestant, or registered leadership contestant, or any of their agents, employees or independent contractors.

## **Third Party Political Advertising Report format**

A registered third party may keep computerized records of the information required by the statutory disclosure provisions and generate the statements from computers.

Computer-generated statements must contain all the required information in a format substantially similar to Elections Ontario's forms.

## **Accounting methods to be followed**

The accounting methods set out below are prescribed by Elections Ontario for use in preparation of the Third Parties Political Advertising Report:

- Cash basis for contributions:
  - Contributions are considered accepted when deposited and cleared through the bank.
- Accrual basis:
  - The accrual basis of accounting must be used so that expenses are recorded when they are incurred.
  - The accrual basis of accounting takes into account:
    - expenses incurred but not paid or for which bills have not yet been received (accounts payable);
    - income on investments that has been earned but not yet received; and
    - contributions received in the mail after the end of the period in envelopes postmarked in the reporting period.
- Furniture and other equipment
  - Furniture, fixtures, printing equipment, etc. must be charged to expenses when purchased.

All figures contained in Third Party Political Advertising Reports may be rounded to the nearest dollar.

## **Communication with the auditor**

If a registered third party spends over \$5,000 on third party political advertising, the auditor must report on whether the Third Party Political Advertising Report and supporting schedules fairly presents the information contained in the financial records. If this is the case, it is necessary that the CFO and auditor meet to discuss the audit and filing process.

It is recommended that the two meet before the period-end date to determine cut-off and closing procedures and to agree on a date when the auditor will be given access to all records, documents, books, accounts, and vouchers of the third party that may be necessary to issue the auditor's reports. [Act reference 37.13(4)]



Note that there is no audit subsidy available from Elections Ontario for the cost of the auditor's services.

## **Request for auditor's opinion**

The Third Party Political Advertising Report of a third party that incurs \$5,000 or more in third party political advertising expenses shall include a report from the auditor.

The third party's auditor must report on the Third Party Political Advertising Report and must make any examination that will enable the auditor to give an opinion in the auditor's report as to whether the Third Party Political Advertising Report presents fairly the information contained in the accounting records on which it is based.

Every registered third party must file a Third Party Political Advertising Report. The accounting policies and procedures used for the Third Party Political Advertising Report are prescribed by Elections Ontario for compliance with the *Election Finances Act*.

## **Delivery of Third Party Political Advertising Report**

Elections Ontario will accept Third Party Political Advertising Report by any delivery method so long as the filing is complete. Examples of accepted delivery methods include: mail, fax, email, or hand delivery.

Mailed Third Party Political Advertising Reports that are postmarked, or courier receipted on or before the filing date, will be accepted as 'on time' so long as they are complete.

## **Retention of records**

The financial records must be kept for a minimum of six years, as recommended by the CRA.

The financial records must be retained at the place where records are kept on file with Elections Ontario.

## **Failure to file Third Party Political Advertising Report**

If a CFO knowingly fails to file a Third Party Political Advertising Report, this may be an offence under the *Election Finances Act*. [Act reference 46.0.1].