



## **Election Advocacy - Your questions answered**

Nonprofits can participate fully in elections and seek to influence government decision-makers outside of election periods through lobbying. We strongly encourage all nonprofits to use their voices to represent their communities and make our democracy better.

On February 10th, the Ontario Nonprofit Network presented information about three key pieces of legislation that govern nonprofit and charities' advocacy during and outside of Ontario election periods. Below are questions we received during that webinar. To learn more about these laws check out our [Election Advocacy Toolkit](#).

### **Election Finances Act: The Rules That Govern Third Party Political Advertising During Ontario Provincial Elections**

**1. Would calling on the provincial government to enact a specific policy prior to the election (e.g. putting something in the provincial budget) be considered a 'closely associated' issue?**

The fundamental question Elections Ontario asks is whether the communications is intended to influence the outcome of an election. Policy advocacy that based on all the surrounding facts would clearly go on whether or not an election is going to happen is not generally considered "political advertising" for the purpose of the *Election Finances Act*.

**2. Is holding an all candidate debate, reviewing and commenting on platforms or hiring a survey company a no?**

Nonprofits are free to engage in all of these activities. However, spending money on some of these activities may require a nonprofit to register as a third party advertiser and follow certain rules like tracking their expenses.

- **Holding an all candidates debate** is specifically carved out and is not considered political advertising. Nonprofits therefore do not have to worry about tracking expenses associated with this.
- **Reviewing and commenting on platforms** can be political advertising depending on the form it takes when published. For example, "commentaries" and "editorials" are specifically carved out from being considered political advertising. On the other hand, if the review is transmitted in a format not specifically carved out, then the fact that it deals directly with issues closely associated with candidates would be a strong indicator that it is political advertising. Consequently, if the nonprofit spends money on creating or disseminating the review or comments in these non-carved out formats, these expenses may count towards requiring the nonprofit to register as a third party advertiser.

- **Hiring a survey company** may be an expense that counts towards causing a nonprofit to register as a third party advertiser, it depends on the contents of the survey and how the results are used. For example, if the survey concerns voting intention or an issue closely associated with a party or candidate and the results are used in an advertisement clearly intended from context to support or oppose a candidate or party or influence the outcome of the election, then it would be political advertising.

**3. Are op-ed pieces that critique current government fall under the carved out newspaper editorials or no?**

The content of the piece is not what's important. As long as it's an editorial transmitted to the public, it falls under the exception.

**4. If you utilize a published peer-reviewed academic paper in your election strategy and outreach tactics, is that considered political advertising? No guidance from Elections Ontario on transmission of academic published research, only on other things.**

Peer-reviewed articles (besides commentaries) are not specifically carved out by the Election Finances Act and therefore are subject to the general rules of what counts as political advertising.

**5. If the government releases a report on housing, does responding to this paper and sharing it with the community fall under the rules of advocacy if we are not making a partisan stance but raising questions about the implications?**

Political advertising is not limited to partisan communications. Advertising that address an issue closely associated with a party, candidate, or leader may be considered political advertising if it appears from context that it is intended to influence the outcome of the election. Furthermore, the format of the response also matters. If it is in the form of an editorial or commentary, then it may be carved out altogether.

**6. I was under the assumption that any advocacy on an issue "closely associated" with a party or candidate is considered political advertising?**

Yes, this is generally true. However, the Election Finances Act carves out certain exceptions that, regardless of their content, can never be considered political advertising (e.g. editorials, debates, etc.).

**Carved out formats (activities that are never considered as political advertising under Election Finances Act):**

- An editorial transmitted to the public,

- A debate transmitted to the public,
- a speech transmitted to the public,
- an interview transmitted to the public,
- a column transmitted to the public,
- a letter transmitted to the public,
- a commentary transmitted to the public,
- News transmitted to the public,
- 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,
- Direct communications to members or employees.
- Individuals communicating personal political views on the internet on a non-commercial basis.
- telephone calls to electors only to encourage them to vote;

**7. Does using a website or software that we already had/purchased prior to the pre-election period for outreach or advocacy work count as a third party expense?**

Expenses incurred prior to the pre-election period do not count towards the minimum spending requiring registration or the spending limits under the Election Finances Act.

**8. If you have been advocating for a particular policy position starting before the pre-election period, does staff time still count towards the \$500 ad spending max, or would it be considered to be like your web hosting costs - you use that all the time?**

Elections Ontario Handbook for Third Parties says as follows: "If the purpose of the advertising is to promote a pre-existing advocacy campaign, it is less likely that this will be viewed as political advertising. Where an advertisement may have more than one purpose, the Chief Electoral Officer considers whether the main purpose of the advertisement is related to an election."

**9. If we have asks in a one-pager that when published (for free on our webpage that incur no extra expenses) are not aligned with any party, and then during the election period a party publishes part of their platform that is the same as our ask, would that be "close association" and should we pull our ask down off our website. What if a political party takes your campaign and you were working on it first?**



Elections Ontario 2022 Handbook for Third Parties says as follows

“When election day is further away (for example, at the beginning of the “non-election period”), it will be less clear what issues are likely to be “closely associated” with a party, its leader, or a candidate in relation to the upcoming election. Advertising placed earlier in the non-election period is therefore less likely to constitute “political advertising” than advertising placed later in the non-election period or during the election period.”

Elections Ontario looks at ads from the perspective of the time they are placed, and not necessarily what becomes of them. On the other hand, once it is clear that an issue is closely associated with a party, candidate, or leader, ongoing expenses (including the cost of production) may be considered election advertising. Consequently, if a nonprofit puts out a one-pager on issues it can reasonably expect parties or candidates to take a position on, then it may be prudent to be prepared to count those expenses towards registration (e.g. keep track of time and resources spent on production). However, there may be no need to register if ultimately no party or candidate in fact does take a position on the issue.

#### **10. Do volunteers need to register for advocacy?**

If an organization is entirely volunteer run and there are less than \$500 in expenses associated with the advertisements than they need not register.

#### **11. What are the main precautions for an Executive Director of a NFP to assist with or support a candidate - that is also a board member.**

Third parties are not allowed to collude with candidates and their advertising campaigns. Consequently, nonprofits must be careful not to coordinate advertising campaigns with the candidate. Where the candidate is known to be associated with the issue that the organization advocates on, this may affect the likelihood of the nonprofit’s issue-advocacy being treated as political advertisement.

#### **12. Are foundations that have charitable status not allowed to support election advertising as well?**

Correct. Registered charities, whether public foundations, private foundations, or charitable organizations are not allowed to make contributions to others to do political advertising. However, charities can do their own political advertisements, as long as they are nonpartisan and in furtherance of the charity’s stated purposes.



**13. If a national org has a website and that national group is located in another province, can they "loan" that website to the Ontario chapter for use in our provincial election campaign?**

Eligible contributions includes the contribution of money, goods, and services. If the website of an organization that is not resident nor carries on business in Ontario is "loaned" in a way which transfers a good or service to the third party, then they may be accepting an ineligible contribution.

**14. How do the rules differ when applied to municipal elections? Does the same \$500 limit apply before requiring registration?**

Third party advertising during municipal elections is governed by the *Municipal Elections Act*. The Government of Ontario [puts out a guide](#) for each election. The 2022 Guide has not been posted yet. Each municipality sets many rules that applies and provides further details on the rules that apply. The rules differ in a number of significant ways, such as.

- All third party advertisers must register.
- Registration is done with the municipality rather than provincial clerk.

**15. Does volunteer time count?**

No, volunteer time does not count as an expense towards political advertising.

**16. Advertising = social media? so no paying for Facebook ads?**

Nonprofits are allowed to pay for Facebook ads as well as any other form of advertisement. Where they pay more than \$500 for political advertisements during the election or pre-election periods, they must register as third party advertisers.

**17. I'd appreciate some clarity on the pre-election period subject to these rules**

This only applies to fixed date general elections. For third parties, the non-election period represents the 12-month period preceding the date the writs are issued (i.e. when the election officially starts).

**18. Are there restrictions on when a representative from an organization can meet with a candidate for a municipal election to discuss issues that organization is lobbying for (particularly issues the organization lobby for continually)?**

Meetings with decision-makers are not governed by the Election Finances Act. Additionally, Election Finances Act does not deal with municipal candidates. However, there may be local bylaws that deal with elections and lobbying which govern this.



**19. Does the Executive Director always rep the agency? and not just themselves?**

Yes, that is correct the Executive Director, as the Chief Officer creates an account for the entire organization. Information on staff members who report to her can be created.

**Lobbyist Registration Act: The Rules Governing Paid Work to Influence Senior Ontario Decision-Makers**

**20. is that more than 50 hours a year?**

Yes, an individual that lobbies or an organization with in-house lobbyists must register if either does more than 50 hours of paid lobbying a year.

**21. so it does not include municipal leaders?**

Correct. The Lobbying Registration Act deals with Provincial decision-makers. Municipalities have their own rules that govern lobbying. Some municipalities do not have rules dealing with lobbying.

**22. Does 50 hours per year relate to election or non-election periods? Or 50 hours per year regardless of if an election is happening?**

The Lobbyist Registration Act applies at all times and is in no way tied to the election periods set out in the Election Finances Act.

**23. Does the provincial Lobbyist registration apply only to advocacy/lobbying on provincial issues?**

No, it applies to lobbying activities on *any issues* to certain Provincial decision-makers (e.g. Ministers' and their office, MPPs and their office).

**24. I've heard some people concerned that the federal Lobbyist Registration, and it's requirements, limit the persons registered from future political positions (Running for office, working as a bureaucrat etc). Is that true?**

There are limitations on whether those who have held public office (or senior bureaucratic positions) in the past can lobby. However, to our knowledge there are no limits in the opposite direction (i.e. someone who has lobbied in the past is free to run for office or work as a public servant).

**DISCLAIMER:** The above is general legal information not advice specific to your situation. It is accurate to the best of our knowledge as of February 14th, 2022.