

Introduction to the Third Party Election Advertising Provisions of the Election Finances and Contributions Disclosure Act (Alberta)

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Introduction

Bill 205, the Election Finances and Contributions Disclosure (Third Party Advertising) Amendment Act (the “**Act**”) received royal assent on 26 November 2009, and will come into upon proclamation, which is expected before the next Alberta provincial general election. When proclaimed, Alberta will join British Columbia and Canada as the only jurisdictions that place limits on the amount that third parties may spend on election advertising.

Unlike the federal and British Columbia third party election advertising regimes that place a direct limit on the amount that third parties may spend on election advertising, the Alberta regime instead limits the amount that can be contributed to an election advertising account. As all third party election advertising expenses must be incurred through the account, this has the effect of indirectly limiting the amount that a third party can spend on election advertising to the amount that it receives in contributions.

The Act imposes a significant administrative burden on third parties that plan on paying for election advertising in an Alberta provincial election. Any third party, whether it is an individual or an organization, that spends \$1000 or more on political advertising during a provincial election in Alberta is required to register with the Chief Electoral Officer of Alberta (the “**CEO**”) and maintain an account through which all advertising expenses and contributions are processed. Political advertising run by a third party during the election must indicate its sponsor, and after each election a report regarding the advertising activities of the third party must be filed with the CEO.

This bulletin provides a brief introduction to the third party election advertising limits in Alberta. If you have any questions regarding these limits, please contact Clayton Whitman by [email](#) or at 604-661-1728.

What Types of Advertising are Regulated by the Act

The Act only applies to third party election advertising, which is defined in the Act as political advertising that appears during an election period and is placed by a third party.

The Act defines political advertising as advertising in any broadcast, print or electronic media including telephone, fax, internet, e-mail and text messaging with the purpose of promoting or

opposing any registered party or the election of a candidate, for which there is or normally would be a charge, including advertising that takes a position on an issue with which a registered political party or candidate is associated.

The Act specifically excludes the following forms of advertising from this definition:

- (i) the publication without charge of news, an editorial, an editorial comment, an interview, a column, a letter, a debate, a speech or a commentary in a bona fide periodical publication, a radio or television program or a website or online discussion forum,
- (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 in any form directly by a person or a group to their members, employees or shareholders or other persons who have given permission to the person or group to receive information from them, or
- (iv) advertising by the Government in any form.

Advertising that does not meet the definition of third party election advertising is not subject to regulation by the Act.

Who Must Register, and How

All third parties that spend or plan to spend \$1000 on third party election advertising are required to register with the CEO.

Registration is done with the CEO on a prescribed form. As part of registration a third party must include information about the applicant and its contact information, including the name and address of the applicant, the name, address and phone number of a chief financial officer who will be responsible for the advertising account, and an address and phone number in Alberta where the records of the applicant are maintained, and where communications can be addressed to. If the applicant is an organization the application must also include the names and telephone numbers of the principal officers or members.

Who is Prohibited from Registering

Certain people and organizations are prohibited from registering as a third party under the Act, including: numbered corporations, organizations that have carried on business for less than a year, organizations whose primary purpose is to engage in political advertising, registered charities and applicants not resident in or registered or carrying on business in Alberta. By prohibiting these people and organizations from registering as third parties, the Act prevents

them from running political advertising during an Alberta election without violating the law and being subject to a fine.

Contributions to Third Parties for the Purpose of Election Advertising

Third parties can only pay for election advertising through their accounts, which makes the receiving of contributions the determining factor in how much third parties can spend on advertisements. The Act places limits on both who can contribute to a third party election advertising account, and how much they can contribute.

The Act prohibits certain individuals and organizations from contributing to a third party, including:

- People normally resident outside Alberta;
- Corporations that are not registered in or do not do business in Alberta;
- Registered charities; and
- Employee organization or trade union that is not active in Alberta

By prohibiting certain individuals and organizations from registering as a third party and from contributing to a third party for the purposes of election advertising, the Alberta government is effectively taking away these prohibited entities right to freedom of political expression. This total restriction of freedom of expression is the most controversial part of the Act, and is the most vulnerable to constitutional challenge.

For those who are allowed to contribute the limit is \$15,000 in a calendar year where there is no general election, and \$30,000 in a calendar year where there is an election. Contributions to a third party for election advertising must be made through the chief financial officer for the third party, and must go into the third party's election advertising account.

Election Advertisements Must Identify the Sponsor

All third party election advertising must include the name of the third party that sponsors the advertisement and indicate that the third party authorizes the advertisement. The CEO has the power to establish rules on how this information must be indicated in an advertisement.

Third Parties Required to Maintain an Election Advertising Account

Third parties are required to open a separate bank account to manage the payment of all third party election advertising expenses and the receipt of all contributions. All contributions must be received by this account and all expenses must be paid through this account. Having a dedicated

account will make it easier for third parties to prepare the required reports of their advertising activities.

Reports to be Filed after the Election

Every third party that is required to be registered must file a third party election advertising report in the prescribed form within 6 months of polling day. This requirement applies even for third parties that incurred any advertising expenses.

The report must set out the amount of contributions received during the year, the name and address of each contributor of over \$375, a financial statement setting out income and transfers and total expenses, and the time and place of broadcast or publication of advertisements.

Financial Statements Required if Expenses over \$100,000

All third parties whose third party election advertising expenses are \$100,000 or more will be required to file audited financial statements with the CEO 6 months after polling day. These financial statements must be filed by the chief financial officer.

Offence Provisions

A third party that contravenes any of the third party election advertising provisions is liable for a fine of up to \$10,000 if the third party is an individual, and \$100,000 if the third party is a trade union, employee organization, corporation or other organization.

The chief financial officer of a third party that fails to file a third party election advertising report is liable for a fine of up to \$10,000.

This bulletin contains a summary of the third party election advertising limits contained in the Election Finances and Contributions Disclosure (Third Party Advertising) Amendment Act (Alberta). The information contained in this bulletin is general in nature and should not be relied on as legal advice. For more information on these limits, please contact Clayton Whitman by [email](#) or at 604-661-1728.