



**Elections  
Ontario**

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# **Handbook for Broadcasters and Publishers of Political Advertising**

**For the June 2022 Ontario Provincial General  
Election, including the 12-month period  
commencing May 4, 2021.**

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## Disclaimer

This handbook is for the June 2022 Ontario Provincial General Election, including the 12-month period commencing May 4, 2021. It provides guidance from Elections Ontario for the broadcasters and publishers of political advertising on their responsibilities and on 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

Elections Ontario’s staff is always available to provide assistance. Please contact the Compliance Division at:

Elections Ontario	Telephone: (416)325-9401
Compliance Division	Toll Free: 1-866-566-9066
51 Rolark Drive	Fax: (416)325-9466
Toronto, ON M1R 3B1	Email: ElectFin@elections.on.ca
Internet address: <a href="http://www.elections.on.ca">http://www.elections.on.ca</a>	

## Online resources provided by Elections Ontario

Elections Ontario will publish the interim advertising expenditure reports that are required to be filed by third parties on our web site, as well as the calculation of the percentage of the maximum permitted spending that has been spent or committed to be spent by each third party. This will enable the broadcasters and publishers of political advertising to maintain an awareness of when third parties are at risk of exceeding their spending limits, and to make informed decisions about selling advertising to third parties.

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## Introduction

This handbook describes the responsibilities of broadcasters and publishers of political advertising under the *Election Finances Act* (The Act), as well as the administrative monetary penalties recently introduced by Bill 254, *Protecting Ontario Elections Act, 2021*, that may apply to failure to comply with the Act.

It is important to note that, as well as other responsibilities under the Act, the Act requires that no person or entity shall sell advertising to a third party when the person should reasonably be aware, based on the information published by Elections Ontario, that the sale would cause the third party to exceed a spending limit.

## Political Advertising

This section explains political advertising: the authorization requirements, the blackout period and survey restrictions. It also explains the responsibilities of broadcasters or publishers.

Political advertising is any political advertising that appears in the twelve months before a fixed date general election and during any election period.

### 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 (1) or more registered political parties or candidates may also have taken a position.

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 the 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;
- 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:

- 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;
- 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.

## **Third party**

A third party is any person or entity that is not a registered political party, registered candidate, or registered constituency association, and that engages in political advertising. Third parties include corporations, partnerships, unincorporated businesses and associations, and many other groups. Political advertising conducted by third parties is subject to legislated spending limits.

### **Third party political advertising**

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



## Responsibilities of broadcasters or publishers

This section explains political advertising: the authorization requirements, the blackout period and survey restrictions. It also explains the responsibilities of broadcasters or publishers regarding the rates charged for advertising, and not selling advertising that would cause the third party to exceed the permissible spending limit.

### 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 entity during the same period.

### Authorization on political advertising

All political advertising must name the person or entity 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”.

### Blackout Period

No broadcaster or publisher shall allow an advertisement to be published during a blackout period. [Act reference 37(3)]

### 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 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 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;
- 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.

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

The broadcaster or publisher of political advertising 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 the publishing or broadcasting of 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 person, organization or entity 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)]

## 2021 Spending Limit for Third Parties

The current spending limits are effective up to December 31, 2021. These amounts are indexed annually, and our materials will be updated with the new amounts in January 2022. [Act reference 37.10.1]

Election Event	Period	Limit In any Electoral District	Total Spending Limit
2022 Ontario General Election	Non-Election Period (12-month period prior to Writ Day)	\$25,488	\$637,200
	Election Period (Writ Day to Polling Day)	\$4,248	\$106,200

For the June 2022 General Election, the non-election period will begin on Tuesday, May 4, 2021, and the election period will begin on Wednesday, May 4, 2022 with the issuance of the writs.

### No selling over the third party advertising spending limit

The broadcaster or publisher of third party election advertisements must be aware if the third party is at risk of exceeding its spending limit, and make informed decisions when selling advertising to the third party.

No person or entity shall sell advertising to a third party when the person should reasonably be aware, based on the reporting under this section, that the sale would cause the third party to exceed a limit imposed by section 37.10.1 of the Act.

### Information to assist broadcasters and publishers to make informed decisions related to third party advertising

Elections Ontario will publish on our web site the interim reports (TPAR-Interim) that are required to be filed by third parties, as well as the percentage of the maximum permitted spending limit that has been spent or committed to be spent by each third party to enable the broadcasters and publishers to make informed decisions when selling advertising to third parties.

## Administrative Penalties

This section explains penalties administered by the Chief Electoral Officer for certain contraventions of the Act.

The *Election Finances Act* was amended with the introduction of administrative monetary penalties on April 19, 2021. The payment of administrative penalties may be ordered by the Chief Electoral Officer for certain contraventions of the Act. [Act reference 45.1]

The application of administrative penalties and the amount of the penalty, subject to the legislated maximum, is entirely at the discretion of the Chief Electoral Officer. The Act sets out criteria that the Chief Electoral Officer must consider when deciding on an administrative penalty.

A person or entity who is served with an order to pay an administrative penalty may appeal the Chief Electoral Officer's decision by filing an application with the Superior Court of Justice within 30 days from the date the order was served.

If a person or entity who is required to pay an administrative penalty fails to comply with the requirement, the Chief Electoral Officer may file the order that requires payment with a local registrar of the Superior Court of Justice and the order may be enforced as if it were an order of the court.

## Applicable Administrative Penalties

The following administrative penalties are applicable to the broadcasters and publishers of political advertising.

- **The failure to include authorization.**  
Maximum penalty is \$10,000 for individuals and \$100,000 for corporations or other entities.
- **Violation of the blackout period.**  
Maximum penalty is \$1,500 for individuals and \$5,000 for corporations or other entities.
- **Publishing or broadcasting previously unpublicized election survey results.**  
Maximum penalty is \$1,500 for individuals and \$5,000 for corporations or other entities.
- **Selling advertising over the limit.**  
Maximum penalty is \$10,000 for individuals and \$100,000 for corporations or other entities.