



**Elections
Ontario**

We Make Voting Easy.

**Election Finances
CFO Handbook for Third Parties**

2022

Note: This handbook is effective until December 31st, 2022.

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Non-Contribution Income

This section explains other forms of income that are not considered to be contributions.

Use of own funds

A 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 Final Report. [Act reference 37.12(4)]

Transfers

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

Loans

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

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.

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

The *Election Finances 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 37.10.1]

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(3)]

What is political advertising?

Political advertising is defined as advertising or communications 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. Political advertising includes advertisements in newspapers, journals, and magazines; promotion on TV and radio; and advertisements placed on lawn signs, billboards, bus shelters, and the Internet (including websites, blogs, and social networking sites), etc. [Act reference 1(1)]

The definition of “political advertising” encompasses election-related advertising or communications that are expressly or impliedly directed to political parties or their leaders, candidates or platforms. It includes election-related advertising that takes a position on an issue of public policy that is closely associated with a registered party or its leader or a registered candidate in relation to an upcoming election (sometimes called “issue advertising”).

The Act restricts advertising that is expressly or impliedly related to an election, i.e. directed at parties and their leaders, candidates or platforms. On the other hand, the Act does not restrict public campaigns for or against particular legislative or policy initiatives which are not election-oriented, even when that advertising coincides with a regulated period for third party political advertising. In other words, issue advertising on matters of public

importance that is not expressly or impliedly related to an election is not “political advertising” under the Act.

What is “closely associated”?

Determining whether a given issue is “closely associated” with a party, its leader, or a candidate will depend on which issues are likely to be addressed in the upcoming election campaign, or which are distinctly associated with a particular party, leader, or candidate in the public discourse, such that advertising relating to that issue is in effect an indirect advertisement for or against that party, leader, or candidate. A party’s own advertising, election platform, and talking points will all be relevant considerations in determining whether an issue is “closely associated” to a party, its leader, or a candidate. 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.

Whether issue advertising is election-oriented depends on the purpose for which the advertisement was placed. If the purpose of the advertising is to influence the outcome of an election, then the advertising falls within the definition of “political advertising”. 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.

In determining whether advertising (including issue advertising) is “political advertising” the Chief Electoral Officer considers the following criteria:

- 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;

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- 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.

The Chief Electoral Officer also considers any other relevant factors that may indicate that a particular advertisement is or is not related to an upcoming election.

While the Chief Electoral Officer will consider all of the circumstances relevant to any given advertisement, the Chief Electoral Officer considers it highly significant if the advertising includes any reference to the election, election day, voting day, or similar terms; or (ii) to a registered political party, its leader, or registered candidate (either directly or indirectly). Advertising that includes such references will generally constitute political advertising.

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 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

The following text explains the blackout period related to political advertising.

Blackout period

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

No 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 third party election advertisement to appear 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. Even in cases of unpaid internet advertising, the rules around blackout restrictions apply unless this exception (or another exception) applies;
- 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;
- lawn signs displayed and brochures distributed can appear at any time; and
- personal emails and similar personal communications on the Internet, mass or individual mailing, automated or individual telephone calls, and personal social media communications/posts.

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

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 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:

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- 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.

Restriction on election surveys

An election survey (more commonly called a “poll”) 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 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

This section explains political advertising expenses and spending limits for a third party.

All expenses incurred by a third party for political advertising purposes are to be recorded and reported on the Third Party Political Advertising Final Report.

What are third party political advertising expenses?

Third party political advertising expenses are expenses incurred in relation to:

- the production of a third party political advertisement (“production costs”): this includes research, design, drafting text (“writing copy”), and manufacturing (including printing); and
- the purchase of means of broadcast of a third party political advertisement to the public (“placement costs”): this includes fees charged to place an advertisement on traditional broadcast media, as well as the placement cost for online advertisements, rental cost for a billboard or similar display, or any other cost incurred to promote an advertisement.

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

Where a political advertisement is displayed, broadcast, transmitted, or otherwise communicated during a regulated period (the non-election period or an election period),

- the full amount of the production costs for the advertisement are counted as a political advertising expense incurred during that period; and
- the amount of any placement costs relating to the display, broadcast, transmission, or communication of the advertisement during the regulated period are counted as a political advertising expense incurred during that period.

In other words, where an advertisement is displayed, broadcast, transmitted or communicated both during and outside of a regulated period, placement costs may be pro-rated as between the regulated and non-regulated placement periods but the production costs may not.

Example 1 – pro-ration of placement costs

The non-election period comprises the 12-month period preceding the date the writs are issued. A third party places an advertisement with a broadcaster that is to be broadcast for 14 months, starting two months before the start of the non-election period and to continue to be broadcast for the entire 12-month non-election period. The placement costs for the advertisement are \$1,000 per month, totalling \$14,000. Placement costs may be pro-rated. Therefore, the placement cost for the two-month period prior to the non-election period (\$2,000), are not subject to the third party advertising spending limit and this portion is not reportable. The remaining \$12,000 in placement costs, covering the 12-month non-election period, are subject to the third party advertising spending limit and this portion must be reported to Elections Ontario.

Example 2 – no pro-ration of production costs

Using the example of the same advertising above, the production costs of the advertisement are \$50,000. Even though the advertisement was broadcast for two months outside of the regulated non-election period, the production costs may not be pro-rated. Therefore, the \$50,000 in production costs, covering the entire 14-months during which the advertisement is broadcast, are subject to the third party advertising spending limit and must be reported to Elections Ontario.

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 \$4,364 in the **election period in any electoral district** for the purpose of third party political advertising; or
- more than a total amount of \$109,100 **during an election period**, for the purpose of third party political advertising.

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

- more than \$4,364 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 \$26,184 **during a non-election period in any electoral district** for the purpose of third party political advertising; or

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- more than \$4,364 **during an election period in any electoral district**, for the purpose of third party political advertising; or
- more than a total amount of \$654,600 **during a non-election period**, for the purpose of third party political advertising; or
- more than a total amount of \$109,100 **during an election period**, for the purpose of third party political advertising.

2022 Spending Limit for Third Parties

The current spending limits are effective up to December 31, 2022. These amounts are indexed annually and our materials will be updated with the new amounts in January 2023. [Act reference 37.10.1]

Election Event Type	Period	Limit In any Electoral District	Total Spending Limit
Fixed date General Election	Non-Election Period (12-month period prior to Writ Day)	\$26,184	\$654,600
	Election Period (Writ Day to Polling Day)	\$4,364	\$109,100
By-election	Election Period (Writ Day to Polling Day)	\$4,364	Not Applicable
Non-Fixed date General Election	Election Period (Writ Day to Polling Day)	\$4,364	\$109,100

In addition to the any other applicable penalty, 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. [Act reference 46.0.2]

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,

- acting in collusion with another third party so that their combined political advertising expenses exceed the applicable limit;
- splitting itself into two or more third parties;
- colluding with, including sharing information with, a registered party, registered constituency association, registered candidate, registered

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leadership contestant, or registered nomination contestant or any of their agents or employees for the purpose of circumventing the limit;

- sharing a common vendor with one or more third parties that share a common advocacy, cause or goal;
- sharing a common set of political contributors or donors with one or more third parties that share a common advocacy, cause or goal;
- sharing information with one or more third parties that share a common advocacy, cause or goal; or
- using funds obtained from a foreign source prior to the issue of a writ for an election.
- Any contribution from one third party to another third party for the purposes of political advertising shall be deemed as part of the expenses of the contributing third party.

[Act reference 37.10.1]

To be clear, the various forms of conduct listed above are not prohibited in all instances. It is only where a third party acts for the purpose of circumventing (or attempting to circumvent) the spending limits.

Examples:

- Representatives from two trade unions meet at a conference and discuss issues of public importance that relate to an election. Provided that this information is not being shared for the purpose of circumventing (or attempting to circumvent) the spending limits.
- Two corporations both use the same social media platform to make posts of political advertising. While they may “share a common vendor”, unless there is evidence that this has been done in a coordinated manner for the purpose of circumventing the regulations set out in the Act, this conduct does not violate the Act. Sharing a common vendor would violate the Act where it is done for the purpose of obtaining a volume discount (or other preferential treatment) that would artificially lower a third party’s political advertising expenses.
- Where an organization splits itself into two legal entities and arranges for a political advertising campaign to be conducted

whereby each new entity incurs expenses up to the spending limit, this would constitute a violation of the Act.

Goods and services

Election advertising expenses include not only cash payments made to outside vendors but also internal resources devoted to third party political advertising.

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.

Example:

If a third party's paid staff spend 10% of their time during a given period on activities related to the production or transmission of political advertising, the third party must record 10% of that employee's salary during the relevant time as an expense.

Approval of expenses

Every third party political advertising expense that is incurred by or on behalf of a 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 Interim Advertising Report and the Third Party Political Advertising Final Report.

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.

Reporting on Third Party Political Advertising Interim Report (TPAR-Interim)

Every third party must promptly file the following interim reports with the Chief Electoral Officer, in the prescribed form.

When it has paid or committed to any person or entity to spend any funds on paid political advertising, it must report the amount spent or committed, with

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a separate report being required each time its aggregate spending increases by an amount of at least \$1,000.

When it has reached the applicable spending limit, it must report that fact to Elections Ontario. [Act reference 37.10.2]

Third Party Political Advertising Final Report

This section explains the requirement for and filing of an advertising report for a registered third party, and the consequences for the failure to file.

Every registered third party must file a Third Party Political Advertising Final Report (TPAR-Final) within six (6) months of polling day. The accounting policies and procedures used for the Third Party Political Advertising Final 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 Final Reports submitted. [Act reference 37.12(1)]

When is an audit required?

The Third Party Political Advertising Final 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 Final 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 Final Report presents fairly the information contained in the accounting records on which it is based.

Content

The Third Party Political Advertising Final Report must include the following:

- 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 Final Report;
- signed auditor's report on the Third Party Political Advertising Final Report (if applicable);
- income and expense report;
- signed auditor's report on the supporting schedules of the political advertising report (if applicable); and
- supporting schedules for the following:
 - o operating loans,

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- o contributions accepted for third party political advertising purposes and contributions of over \$100 accepted for political advertising purposes,
- o political advertising expenses, and
- o 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 Final 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 Final Report.

Requirement for Certification

Every third party, in its Third Party Political Advertising Final Report must certify that the 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 Final Report format

A 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:
 - o Contributions are considered accepted when deposited and cleared through the bank.
- Accrual basis:
 - o The accrual basis of accounting must be used so that expenses are recorded when they are incurred.

- o 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:
 - o Furniture, fixtures, printing equipment, etc. must be charged to expenses when purchased.

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

Communication with the auditor (if applicable)

If a third party spends over \$5,000 on third party political advertising, the auditor must report on whether the Third Party Political Advertising Final 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.

Delivery of Third Party Political Advertising Final Report

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

Retention of records

The financial records must be kept for a minimum of six (6) years, as recommended by the Canada Revenue Agency (CRA).

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

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]

If an administrative penalty applies to any area covered by this handbook the maximum amount of the penalty, which is specified by the Act, will be shown.

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 third parties conducting political advertising.

- **Failure to register as a third party (if applicable).**
Maximum penalty is \$10,000.
- **Failure to include a copy of the authorizing resolution (if applicable).**
Maximum penalty is \$10,000.
- **Failure to include authorization on political advertising.**
Maximum penalty is \$10,000 for individuals and \$100,000 for corporations or other entities.
- **Violation of the blackout period.**
Maximum penalty is \$10,000 for individuals and \$100,000 for corporations or other entities.

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- **Publishing or broadcasting previously unpublicized election survey results.**
Maximum penalty is \$1,500 for individuals and \$5,000 for corporations or other entities.
- **Exceeding the applicable advertising spending limit.**
Maximum penalty is \$1,500 for individuals and \$5,000 for corporations or other entities.
- **Failure to file interim report.**
Maximum penalty is \$10,000 for individuals and \$100,000 for corporations or other entities.
- **Failure to file final report.**
Maximum penalty is \$1,500 for individuals and \$5,000 for corporations or other entities.
- **Failure to certify no coordination.**
Maximum penalty is \$10,000.