



Mr. Stéphane Perrault
Chief Electoral Officer
Elections Canada
30 Victoria Street
Gatineau, Quebec
K1A 0M6

Delivered via email

October 7, 2019

Dear Mr. Perrault,

I am writing on behalf of the Canadian Civil Liberties Association (CCLA) to request clarification regarding certain provisions in the *Canada Elections Act* that pertain to third parties. In a nutshell, there is too much confusion about third-party communications during this election period. That confusion is chilling free speech at the very time that democracy ought to encourage free expression. Your latest public bulletins on ‘partisan activity’ have failed to define those terms in a way that permits organizations like ours to steer clear of legal prohibitions. Partisan activity, to be sure, is inevitably in the eye of the beholder.

As a non-profit organization that advocates for fundamental rights including freedom of expression, we have become increasingly concerned about the impact that some of the new provisions of the *Act* may be having on civil society’s willingness to speak out about issues of concern. In our view, greater transparency is required with respect to how the third party provisions may be applied by your office and around which activities are regulated.

The potentially chilling impact of the third party spending regime was highlighted with the recent controversy over work that environmental organizations may be doing on climate change. We have reviewed your statement on third party issue advertising that sought to address the concerns, but cannot say that it provided much comfort. While we appreciate that there has been no substantive change to the definition of election advertising in the *Act*, the rules around issue advertising are necessarily vague and open to a variety of interpretations. How is one to know whether a particular issue is “associated” with a party or candidate? Does laying out facts about climate change (without commenting on proposed policies to tackle it), constitute “taking a position” on an election issue? These questions have not been adequately addressed.

Moreover, there is little that has been said publicly about the interpretation of the ‘partisan activity’ provisions of the *Act*, which are new additions that were only recently brought in under Bill C-76. As you know, ‘partisan activity’ is a new concept under the legislation and the potential breadth of its interpretation is stunning. In Elections Canada’s *Political Financing Handbook for Third Parties, Financial Agents and Auditors*, certain examples of regulated activities are provided, including the following:

A group page has been created by the third party on a free social networking site during the election period. Volunteers manage the page and post articles to update followers on election issues important to the third party. They ask followers to vote for candidates that share the third party’s views. Because the messages are posted for free, this is not election advertising. However,

it is a partisan activity. The expenses related to creating and posting the messages are partisan activity expenses subject to the limit for the election period.¹

First, it is not clear what expenses would be incurred in relation to a free social networking site where posts are put up by volunteers. While the *Handbook* talks about the labour costs of recruiting volunteers and a portion of overhead costs, we suspect many organizations would have a very difficult time trying to put dollar figures on some of these items in relation to an activity like this. Second, this scenario seems to assume that the third party is an organized group, but if a similar page was put up by an individual, with the page managed and posts written by friends and colleagues (or simply the individual themselves), it is not obvious that the activity would be excluded from the definition of a 'partisan activity' (even though an individual posting their political views on the internet is explicitly excluded from the definitions of "partisan advertising" and "election advertising"). The definition of 'partisan activity' also does not appear to require transmission to the public, and thus may be applied to restrict communications between organizations and their membership. Seeking to regulate and restrict this kind of activity raises significant concerns about the ability of individuals to express themselves during an election period and about limits placed on the constitutional freedom to associate.

Another concern we have relates to the role of websites. In the *Political Financing Handbook* there is a statement that an issue-based message is not regulated advertising during the pre-election period, but that "it will be partisan advertising if it promotes or opposes a political entity in any other way, including by showing a logo or *linking to a web page that identifies the entity...*"² This suggests that *any* communications with links to an organization's website (including emails with links in signature lines) may constitute partisan advertising (or election advertising during the election period) and will need to be accounted for and reported on if the \$500 threshold is met. The administrative burdens associated with registration are significant.

Finally, we understand that your office has taken the position that advertising by provincial governments does not constitute "election advertising" or "partisan advertising" for purposes of the *Act*. We have not found anything in the *Act* to support this interpretation and would appreciate clarification on how you have arrived at this determination. If the purpose of the third party provisions is to ensure a level playing field in communications around elections, the complete exclusion of provincial governments creates a gaping loophole.

While we appreciate that Parliament is the entity that passed the *Canada Elections Act* and recent amendments, it is your role to interpret these provisions and to assist members of the public in understanding their scope. We would be grateful if you could clarify the issues we have raised and would also welcome the opportunity to discuss these matters with you or your office.

Sincerely,



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