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Factsheet

The Canada Elections Act: Frequently Asked Questions for Labour Organizations

Important Update Regarding Election Advertising on the Internet:

Elections Canada has just published their July 2015 handbook for third parties. It has new rules for election advertising over the internet:

http://www.elections.ca/pol/thi/ec20227/ec20227_e.pdf

Election messages communicated over the Internet during the writ period are election advertising only if they have a placement cost.

Placement cost is the cost charged to purchase advertising space (for example the cost of placing an advertisement in a newspaper or on a social media site, or the cost of running an advertisement on television or radio).

The following are not election advertising:

- Messages sent or posted for free on social media platforms such as Twitter and Facebook;
- Messages sent by e-mail or through other messaging services (including texts sent through a cellular or mobile network); and,
- Content posted on the third party's website.

Examples:

1. During the election, the third party sets up a website to promote a registered party. Even though there are costs to produce and host websites, these are not election advertising expenses.
2. The third party hires a media firm to place banners on websites and social media platforms during the election period, directing users to a video posted on YouTube. There is a placement cost for the banners; therefore, they are election advertising and have to be authorized by the third party. The authorization statement is displayed on the banners. Because there is no placement cost to post the video, the video itself is not election advertising.

3. A group page has been created by volunteers on a free social networking site. The volunteers manage the page and post articles related to the general election, supporting a registered party. This is not election advertising.

The third party has to authorize any election advertising transmitted to the public, and that authorization must be mentioned in or on the advertisement. Where the authorization statement cannot be included on the advertising message because of its size, this is acceptable if the statement is made immediately apparent to the viewer by following the link in the advertising message.

INTRODUCTION

The *Canada Elections Act* has undergone significant changes in the last decade. Bill C-24 (*An Act to Amend the Canada Elections Act and the Income Tax Act (political financing)*) took effect January 2004. Three years later, the *Federal Accountability Act* made significant changes to political financing rules after receiving Royal Assent in December 2006. In June 2014, the '*Fair Elections Act*' introduced further changes to election advertising rules and telephone contact with voters.

Can my Academic Staff Association contribute directly to a federal registered political party?

NO.

Elections Act: 404 (1)

Can my Academic Staff Association contribute directly to a local campaign, riding association or nomination contestant?

NO. Trade unions are prohibited from contributing any money or human resources to local candidates, campaigns or ridings.

Elections Act: 404 (1)

Can Academic Staff Association staff be released for election campaign purposes?

Yes, but they may **NOT** be paid by their employer or union and be directed to do such work. If a federal party chooses to purchase the time of that employee in order to carry out Party activities or elections, this is entirely possible. The wage must be of fair market value for the services provided.

If, however, union members choose to take their unpaid leave, accumulated vacation or overtime, their time is their own and they would be defined as a volunteer, thereby allowable under the Elections Act. Even in such circumstances, they **CANNOT** be directed to do partisan election work by their employer or union.

Can Academic Staff Association staff take paid leave from their employers to run as candidates?

YES. Any employer of a union or corporation is legally permitted to give a staff member **paid leave during the campaign period** to run for a nomination or to be a candidate. This is **NOT** considered a contribution to the political party by that union or business.

Elections Act: 404.2 (5)

Can an Academic Staff Association office offer goods and services to a candidate, riding or campaign? (i.e. photocopies, telephone usage, room rental, etc.)

To some degree. As long as the good or service provided is not ordinarily a good or service that the organization normally offers professionally for money and that the value does not exceed a fair market value of \$200, there will be no deemed contribution.

Elections Act: 2 (2)

Can Academic Staff Associations communicate with their membership and encourage them to support a political party?

YES. If it is **outside** the election period, union spending on this sort of communication is not restricted by the third-party election advertising rules. If it is **during** the election period, the union may directly transmit documents (e.g. flyers, pdf's, etc.) to members without this counting as election advertising, and without having to register with the Communications and Radio-television Commission (CRTC). If it is **during** the election period, the union may telephone members, but it must register with the CRTC and retain copies of its scripts and recordings.

Canada Elections Act: 319 (c), new s. 348.01, 348.07 to 09, 348.17 to 19

Can an Academic Staff Association pay the transportation, lodging and expenses of one of their members attending a meeting of a federal party?

YES. Elections Canada deems this as the equivalent of a consultation with the federal party and that there is nothing denying a political party from meeting with any corporation, business or union. Such expenses would not be considered contributions and therefore would be permitted under the Elections Act.

Academic Staff Associations may not, however, pay the delegate fees or make any directed contribution through one of its members. The union delegate at the federal convention would be required to pay her or his own delegate credential.

Can an Academic Staff Association continue to transfer money to a federal political party from payroll deductions of their staff?

YES. Care must be taken to ensure that the employer (the union) is not requiring such contributions and that it is done of the free will of the employee. Directing or requiring such a contribution will run afoul of the legislation.

Furthermore, employers must not restrict the plan to contribute to a party or other political entity that is favoured by the employer.

It is also important to ensure that when the party is sent this money that a detailed list of the contributors, their addresses and the amounts they have given be provided as well. Employees must be eligible to make contributions (i.e. be a Canadian citizen or permanent resident).

Can an Academic Staff Association or business pay its employees a special bonus that can be redirected as an individual contribution to a federal political party?

NO. Funnelling money through individuals is illegal. The same is true for a wealthy individual who wishes to bypass the limits on their personal contributions—they will not be permitted to give money to others in order for them to give it to a political Party.

Elections Act: 405.3 (1)

Is it possible for an Academic Staff Association to purchase a table at a fundraising event?

NO. If the purpose of the event is to raise money and the other participants in the event will receive a tax credit for a contribution, the union cannot purchase a table for such a purpose. Similarly, a sponsorship arrangement in which a political party receives money in exchange for advertising or promotional opportunities directed at members or supporters would amount to a contribution, and unions are prohibited from contributing to political parties.

Is it possible for an Academic Staff Association to purchase merchandise from a political party such as mugs, t-shirts, etc.?

The union may purchase such merchandise and it is acceptable for the NDP to make a profit on such sales – so long as the purchase price does not exceed fair market value (i.e. there is no portion of the purchase price that could be deemed to be a contribution). It is important to note that if the union chooses to purchase the item(s) in bulk quantities, then the fair market value is determined as the bulk value, not the retail value.

Can Academic Staff Associations spend staff time recruiting members for the party?

Elections Canada tells us that this would be permitted so long as the work is done within their own membership (not the broader public) and that such communications with their members be done by their own organization and in their own interest. It is of particular importance that unions not work jointly on such membership projects with the party or such work will be deemed an illegal contribution to the party. During an election period, this should be done by email or in person, if possible; “the making of calls during an election period for any purpose related to an election” is defined as voter contact calling services, and requires registration with the CRTC.

Once again, unpaid time, vacation or overtime leave will be considered voluntarism and will not be considered a contribution.

The time spent calculating and administering the identification of NDP members within the union's rank will not be considered a contribution.

Canada Elections Act new s. 348.01

Please note: election advertising and telephone contact with voters are two separate issues, with separate definitions and rules.

THIRD PARTY ELECTION ADVERTISING

What counts as election advertising?

“Election advertising” is any advertising that takes place during an election period that “promotes or opposes a registered party or the election of a candidate”. “Election advertising” includes a message that takes a position on an issue with which a registered party or candidate is associated. This includes many topics that unions would normally discuss, such as the federal minimum wage, health and safety regulations, health care, childcare, etc.

Do the rules on third-party advertising apply to unions and groups formed by unions?

YES. ‘Third party’ refers explicitly to trade unions or “group of persons acting together by mutual consent for a common purpose.”

Canada Elections Act: s. 349

Does it count as election advertising if my Academic Staff Association promotes a party or position before a general election is called?

NO. Election advertising refers specifically to transmitting messages to the public during an election period.

Canada Elections Act: s. 319

Does it count as election advertising if my Academic Staff Association sends a newsletter or a leaflet directly to members during the election period?

NO. The definition of election advertising specifically excludes the transmission of a document directly by a group to its members. However, transmitting messages to members using something other than a document (e.g. website, video or webinar) could count as election advertising if there is a placement cost (see ‘Important Update’ at the beginning of these FAQs).

Canada Elections Act: s. 319(c)

During this election, my Academic Staff Association won’t be telling people which party or candidate to vote for – we’re only speaking to voters about the issues. Does this count as election advertising?

YES. “Election advertising” includes the transmission to the public—by any means during an election period—of an advertising message that takes a position on an issue with which a registered party or candidate is associated. The only exception is transmitting a document directly by a union to its members.

Canada Elections Act s. 319

Does it count as election advertising if my Academic Staff Association contacts members and supporters just to urge them to vote?

NO. The definition of ‘election advertising’ has been changed to specifically exclude making telephone calls to electors only to encourage them to vote. However, if it is during

the election period, unions will have to register with the CRTC under voter contact calling rules if they plan to telephone members and supporters to urge them to vote.

Canada Elections Act new s. 319(e) [Fair Elections Act 72]

What is the limit on election advertising expenses for third parties?

For the period between April 1st, 2015 and March 31st, 2016, a third party may not have more than \$205,800 in total election advertising expenses, and \$4,116 with respect to a specific riding. These amounts apply to advertising expenses in relation to a general election.

That means that the cost of producing messages that are transmitted to the public during the election period are counted, even if those production costs were incurred before the start of the election period. The same applies to acquiring the means to transmit messages during an election period (e.g. placing a message on a website, if there is a placement cost – see “Important Update” at the beginning of these FAQs).

Canada Elections Act new 350(1) [Fair Elections Act 78(1)]

Do the limits on third-party election advertising expenses rise if the election period is longer than usual?

YES. For every day that the election period exceeds 37 days, the limit will increase by 1/37th of the maximum (e.g., in a 38-day election period, the \$205,800 overall limit would increase to \$211,974, and the \$4,116 per riding limit would increase to \$4,239.48).

Canada Elections Act new s. 350(6) [Fair Elections Act 78(1)]

If my Academic Staff Association purchases an ad placement on an internet website for election advertising before the election writ is dropped, is the cost of that placement included as an election advertising expense?

YES. Advertising expenses are defined as expenditures in relation to a general election. This includes the cost of producing and placing messages that are transmitted to the public during the election period, even if those production costs were incurred before the start of the election period.

The new legislation explicitly states that “if election advertising is transmitted during an election period, it shall be considered an election advertising expense, regardless of when it was incurred.”

Canada Elections Act new s. 351.2 [Fair Elections Act s. 78(1)]

My Academic Staff Association purchased radio ads two years ago. Is this included as an election advertising expense if our two-year-old radio ads are broadcast during the next election?

YES. The legislation specifically says that “if election advertising is transmitted during an election period, it shall be considered an election advertising expense, regardless of when it was incurred.”

Canada Elections Act new 351.2 [Fair Elections Act 78(1)]

VOTER CONTACT CALLING SERVICES

Do the new rules on voter contact calling apply to unions and third-party groups, or just political parties?

The voter contact calling rules apply to third parties (i.e. unions and labour groups).

During the next election, my Academic Staff Association wants to contact voters by telephone about the issues. Do we have to register?

YES. During an election period, a union that contacts voters by telephone, either through live calls or recorded announcements, on an issue that a party or candidate is associated with must register with the Canadian Radio-television and Telecommunications Commission (CRTC).

Canada Elections Act new s. 348.08(1), 348.08(1) (Fair Elections Act 76]

During the election, we'll be calling voters to urge them to vote. Do we have to register?

YES. Unions must register if they make calls (either live calls or recorded announcements) urging voters to vote, provide voting information (e.g. polling station locations and hours), or ask voters about their voting intentions or views on issues or political parties. This applies whether unions make the calls internally, or contract with a voter contact service provider.

Canada Elections Act new s. 348.01(b) [Fair Elections Act 75]

During the election period, my Academic Staff Association will only be calling members, and not the general public, on the issues at stake in this election. Do the rules on voter contact calling apply?

YES. The definition of voter contact calling services refers to "services involving the making of calls during an election period for any purpose related to an election."

Fair Elections Act s.75 (Canada Elections Act new s. 348.01)

So just to be clear, a telephone town hall meeting with members during the election period to discuss election issues would fall under the rules of voter contact calling?

YES.

Do the rules apply to just telephone calls, or other forms of communication (e.g. email blasts, texts, etc.)?

The rules only apply to live voice calls and automatic dialing-announcing calls made to telephone numbers, whether they are delivered by internal services—via an external voter contact calling service—or a combination of the two.

Canada Elections Act new s. 348.01

So, just to be clear, a web poll or mass emailing during an election period is not covered by the rules on voter contact calling?

Correct, the rules on voter contact call services apply only to voice messages transmitted to telephone numbers.

Canada Elections Act new s. 348.01

My Academic Staff Association is calling Canadians before the election period. Do we have to register with the CRTC?

NO. This requirement only applies to calls made during an election period.

Canada Elections Act new s. 348.01

If my Academic Staff Association hires a pollster during the election period, does the pollster have to register with the CRTC if the pollster contacts voters by telephone? Does the union also have to register with the CRTC?

YES. Both the union and the calling service provider (the pollster, in this case) would have to register with the CRTC.

Canada Elections Act new s. 348.06 (1), 348.07(1)

Are there any rules regarding contracting with calling services providers?

YES. Before entering into any agreement, the client (e.g. the union) must inform the calling service provider that the agreement is for voter contact calling services. The union must also provide (and the calling service provider must obtain) the name, address, and telephone number of the individual representing the union, and provide a copy of a piece of CRTC-authorized ID. The service provider must keep this information for a year after the election day.

Canada Elections Act new s. 348.03, 348.04(1)

My Academic Staff Association is using internal services to call voters during the election period. Does it have to register with the CRTC?

YES.

Canada Elections Act new s. 348.08 (1)

What is the deadline for registering with the CRTC?

Registration must be filed with the CRTC no later than 48 hours after the first call is made.

Canada Elections Act new s. 348.08 (2)

What information must be included in the registration filing?

Both the calling service provider (e.g. a polling firm) and the client (e.g. the union) must provide the calling service provider's name, the name of the group contracting with the calling service provider, and the type of calls to be made. Where a union uses internal

resources to make live or recorded calls, it must file a statement that it is making live calls or making calls using an automated calling device. At the time of filing, the person providing the registration must give the CRTC their name, address and telephone number as well as show a piece of authorized ID.

Canada Elections Act new s. 348.06 to 348.09

What if we register but don't provide complete information?

The information provided must be complete; the union is deemed not to have registered if the information is not complete, and the union would then be in violation of the act.

Canada Elections Act new s. 348.07(4)

What will the CRTC do with this information?

The CRTC will maintain a Voter Contact Registry, which it will publish 30 days after election day.

Canada Elections Act new s. 348.12

Do scripts and recordings have to be provided to the CRTC? Will the CRTC publish these scripts and recordings?

NO. There is no requirement to provide scripts and recordings to the CRTC, and the CRTC will only publish the registration information.

Canada Elections Act new s. 348.12

What documents need to be kept by unions that use internal services or calling service providers to contact voters?

Unions must keep a copy of each unique script used in live voice calls and a record of every date on which the script was used. They must also keep a recording of each unique message conveyed by an automatic dialing or announcing device, and a record of every date on which it was conveyed.

Canada Elections Act new s. 348.17, 348.18 and 348.19

How long do Academic Staff Associations have to retain these?

For one year after the election.

What happens if my Academic Staff Association fails to keep each live-voice call script or recording of an automatic-calling message for one year after the election?

The union (or the official representative of the union) would be guilty of a strict liability offence, with a maximum punishment of a \$2,000 fine and/or three months imprisonment. If, however, prosecutors prove that the union knowingly violated the law, the maximum penalty following a summary conviction rises to a \$20,000 fine and/or imprisonment for one year. If indicted for the offence, the maximum penalty rises to a \$50,000 fine and/or five years imprisonment.

Canada Elections Act new s. 495.2, 500(2) and (5)

Appendix: CRTC Rules on Unsolicited Telecommunications

Note: the CRTC's rules on soliciting and telemarketing calls are separate from the *Canada Elections Act* and the *Fair Elections Act*, but unions and labour organizations should be familiar with the CRTC rules on unsolicited calling.

There are 3 main sets of unsolicited telecommunications rules that operate independently of one another:

1. *The rules surrounding the National Do-Not-Call list;*
2. *Rules for telemarketers (i.e., persons or groups that use telecommunications to contact people for the purpose of selling or promoting a product or service); and,*
3. *Rules regarding automatic dialing-announcing devices (ADADs).*

- 1) The first set of rules, concerning the National Do-Not-Call list, do not apply to telecommunications made on behalf of a federal, provincial or municipal registered political party, contestant or candidate.

These calls are exempt from the National Do-Not-Call rules. However, groups exempted from these rules are expected to maintain their own do-not-call list, and ensure that no telecommunication is made on their behalf to any person who has requested that they receive no telecommunication made on behalf of that person or organization (Telecommunications Act s. 47.1 (4)).

- 2) The second set of rules, concerning telemarketing, does not apply for purposes other than solicitation (i.e., selling or promoting a product or service). So calls to people simply to promote a political party or candidate would not be included under telemarketing rules.
- 3) The third set of rules, concerning telecommunications made using ADADs, apply to automated telecommunications made to people for purposes other than solicitation. In these cases, those making automated telecommunications to the public are required to:
 - a. not make calls to emergency lines and healthcare facilities;
 - b. restrict telecommunications to between 9am and 9:30pm weekdays, and 10am to 6pm on weekends;
 - c. restrict telecommunications to the hours prescribed in provincial legislation governing telecommunications;
 - d. begin the telecommunication with a clear message identifying the person on whose behalf the call is being made, and give a brief description of the purpose of the telecommunication; and,
 - e. include in the identifying message an email, snail-mail address, or phone number where the originator of the message (or the representative) can be reached.

Finally, union communications that are not commercial in nature, or that do not have commercial intent, are not commercial electronic messages for the purposes of Canada's Anti-Spam Legislation (CASL), and do not trigger CASL laws.