



**Guideline: 2015-08**

**Election Advertising by Candidates**

**Comments made during formal consultation period June 18–July 3, 2015**

<p><b>No comments were submitted by the Animal Alliance Environment Voters Party of Canada</b></p>	
<p><b>No comments were submitted by the Bloc Québécois</b></p>	
<p><b>Comments received from the Canadian Action Party</b></p>	<p><b>Elections Canada response to the Canadian Action Party comments</b></p>
<p><b>1. <i>Traditional election advertising:</i></b>          Examples          (1)          This section refers to candidates but if a party designs and produces a generic series of pamphlets or flyers for the election period, not promoting any particular candidate but promoting the party instead, are these subject to party expenses or to candidate expenses, and if purchased well in advance of the election period must they still be authorised by the Party chief agent?</p>	<p><b>1.</b> OGI 2015-09, “Election advertising by registered parties” contains a similar example that applies to a situation where the party distributes flyers. Note that each entity has to report the expenses it incurred for property or services it used during the electoral campaign. If the flyers are transferred or sold to a candidate’s campaign, they are expenses of the candidate. In addition, because the flyers are election advertising, they have to include an authorization message from the candidate’s official agent.</p>
<p><b>2. <i>Election advertising on the internet:</i></b>          Para #4</p>	<p><b>2.</b> The paragraph has been clarified to read as follows:</p>

<p>This entire paragraph is puzzling and very discriminating. It suggests to me that a small party candidate must remove all generic content (including policies and intentions) from his/her pages/sites and replace them with “chargeable” content. This is an absolute advantage to those well-heeled party-supported candidates and is in essence telling small party candidates that they will have to pay for their Webpages, Facebook, etc., during the election period if they choose to maintain those pages/sites. To some candidates this will be a crippling blow which we do understand is the intention of the current regime.</p>	<p>“If online content such as a video, website or Facebook page stays online during the election period, it has to be reported as an election expense. Alternatively, the campaign may remove all online content before the election period.”</p>
<p><b>No comments were submitted by the Christian Heritage Party of Canada</b></p>	
<p><b>No comments were submitted by the Communist Party of Canada</b></p>	
<p><b>No comments were submitted by the Conservative Party of Canada</b></p>	
<p><b>No comments were submitted by the Green Party of Canada</b></p>	
<p><b>Comments received from the Liberal Party of Canada</b></p>	<p><b>Elections Canada response to the Liberal Party of Canada comments</b></p>
<p><b>Pages 1 &amp; 2:</b></p> <ul style="list-style-type: none"> <li>On page 1 there is a short reference to the re-use of used signs, which mostly mirrors the text in the recently issued Candidate Manual. Perhaps there is merit in more granularity defining “current commercial value of equivalent signs”, or at least providing further guidance. For example, does a re-used sign with some blemishes carry the same value as a new sign? Additionally, how does one establish a commercial value</li> </ul>	<p>When establishing the commercial value of used signs, it is acceptable to use the commercial value of equivalent new signs. Therefore, from a reporting perspective, the used signs have the same value as new signs. Note that used signs are also reported as a non-monetary transfer or contribution from the entity that had possession of the signs; as such, the corresponding expense is not reimbursable.</p>

for a used sign if there is little market for specific-purpose used signs?	Reporting a depreciated value for used signs is not acceptable.
<p><b>Page 3:</b></p> <ul style="list-style-type: none"> <li>A brief explanation should be given as to why example 3 is not election advertising i.e. the candidate’s website is not “advertising” given that people choose to visit it. This same comment applies to OGI 2015-9 at page 2.</li> </ul>	<p>The “What is ‘advertising?’” section in OGI 2015-04, “Election advertising on the Internet” explains this point in detail.</p> <p>Elections Canada will consider inserting references to OGIs in the political financing handbooks during the regular update process.</p>
<b>No comments were submitted by the Libertarian Party of Canada</b>	
<b>No comments were submitted by the Marijuana Party</b>	
<b>No comments were submitted by the Marxist-Leninist Party of Canada</b>	
<b>No comments were submitted by the New Democratic Party</b>	
<b>No comments were submitted by the Party for Accountability, Competency and Transparency</b>	
<b>No comments were submitted by the Pirate Party of Canada</b>	
<b>Comments received by the Progressive Canadian Party</b>	<b>Elections Canada response to the Progressive Canadian Party comments</b>
The following comments are offered regarding the Interpretation and Approach of Elections Canada (EC) to election advertising by Registered	The <i>Canada Elections Act</i> does not regulate pre-writ advertising. The purpose of OGIs is to provide guidance on rules as they exist.

Parties and Candidates.

This is the first Canadian federal election in which the fixed date election law has been in effect to the end of the full four-year fixed term for elections introduced by legislation receiving Royal Assent in 2007, Bill C-16. The Chief Electoral Officer (CEO) will be reporting to Parliament on findings concerning the October 19, 2015 election after the election is held.

The fixed date election law raises important questions for the 2015 election. Registered parties and candidates and the promise of a fair election undistorted by monied interest will greatly benefit by Elections Canada advice and interpretation guidelines and an understanding of the anticipated EC approach to the new fixed date election advertising environment within the existing limited legislation.

Traditional election advertising by registered parties and candidates has historically been governed by regulation, interpretation and approaches administered by Elections Canada, defined by election campaigns conducted after the dropping of the writ at any point during the life of a Parliament, even in the case of a majority government.

The implications of the fixed date election law for political parties, candidates, funding of advertising by registered parties and candidates during the election period and prior to dropping of the writ, and broadly for democracy in Canada, were subjects of discussion during the ACPP June 8-9, 2015 AGM, however, and will be important to the CEO's instructions to registered parties and candidates concerning their rights and obligations under the *Canada Elections Act* for the October 19, 2015 election.

This is because of the several ways in which the fixed date election law changes the practice and meaning of elections in Canada in ways which may impact election outcomes. Such changes include redefinition in practice of the length of election campaigns beyond the traditional legislated writ

Elections Canada acknowledges having received as an attachment the September 28, 2006 submission of the Progressive Canadian Party to the Standing Committee on Procedure and House Affairs regarding Bill C-16.

period and repurposing of pre-writ political advertising in consequence.

Election outcomes in Canada must remain expressions of the political choices or decisions of Canadians rather than outcomes of the intrusion of money into democracy. Election advertising is a principle way in which money can affect election outcomes. Experience in the US and in Canadian provinces where fixed date elections are in place indicate that impacts of money on elections and democracy increase with fixed date elections. Discussion of the benefit to democracy of limiting the impact of money by limiting political advertising generally may be a useful future discussion, informed by practices in the UK and other Commonwealth nations.

The 2015 election will be conducted within the existing legislative framework concerning election spending limits and fixed date elections. Interpretative guidelines and the Approach to election advertising by Registered parties and Candidates specifically under the new fixed date election law is therefore of great importance to ensuring fair elections.

One example of where Elections Canada has anticipated this need is the requirement to remove pre-writ paid online advertising in all forms when the writ is dropped unless the content and production is to be treated as an election expense. This does not, however, diminish the distorting effect on elections of a pre-writ advertising campaign extended through the election itself when tested and found effective before the writ is dropped.

It is widely reported that political parties or candidates are conducting political campaigns well in advance of the writ being dropped to begin the formal election period. At present, there is no limitation on the spending of political parties or candidates outside of the writ period. In other Commonwealth countries, notably the United Kingdom, political advertising outside of the writ period is subject to legislated “long campaign” and “short campaign” limits administered by the Elections Commission. This has not been paralleled by similar legislated limitations in Canada; however, the fixed date election law provides new territory and an opportunity for the

Chief Electoral Officer to provide interpretative guidance to political parties and candidates. EC advice and interpretative instruction for the 2015 election is strongly recommended.

Advertising activities by the Government of Canada and government departments have included public service announcements of programmes “subject to parliamentary approval”. Such announcements may be deemed partisan advertisements funded by public monies and taxpayer dollars by the agencies contracting to issue such public service announcements because they concern proposals, generally by the governing party of the day, which have not received parliamentary approval. While comment on this practice is not strictly within the limits of guidelines and interpretations to be issued by Elections Canada and the Chief Electoral Officer to registered political parties and candidates at the time of the dropping of the writ in 2015, it would be negligent not to draw to the attention of EC and the CEO the concern these practices raise for participants in the ACPP AGM and members of the OGI Steering Committee. The Progressive Canadian party delegates did so during day one of the ACPP AGM, pointedly, and again through comment and advice as a member of the OGI Steering Committee.

The Progressive Canadian Party was very active at the ACPP AGM in discussion of the impacts on Canadian elections of money, advertising, and the de facto extended election period under the fixed date election law. In particular, PC delegates drew to the attention of the Chief Electoral Officer, and to others attending, the arguments presented by the Progressive Canadian Party to the Standing Committee on Procedure and House Affairs (PROC) in September 2006 in the formally solicited submission to the Standing Committee on Bill C-16 when the legislation was proposed.

A copy of the 2006 PC Party submission to PROC on Bill C-16 is attached for reference and future guidance.

Concerns raised by the PC Party to the Standing Committee on Procedure and House Affairs in 2006 pertaining to C-16 included the implications for

<p>Canadian elections of the de facto creation of an election period extending from the end of the spring sitting of the House of Commons in June to the legislated October fixed date election in an election year.</p> <p>Similarly, concern was raised by the PC Party at the ACPP AGM in June 2015 about the practical implications to Canadian elections and democracy in Canada of the greater costs and greater intrusion of money during the extended, unregulated pre-writ campaigns of the redefined election period, and repurposed pre-writ registered party and candidate advertising, under the fixed date election law.</p> <p>At the time of this submission to the OGI Steering Committee, July 3, 2015, unregulated pre-writ election advertising campaigns for the October 19, 2015 General Election by monied interest and parties are underway at a cost to democracy, which may be supplied by direction from EC under existing legislation.</p> <p>It is felt this is particularly important to draw attention to these facts given the unprecedented nature of the 2015 election, which is the first Canadian federal election in which the fixed date election law has been in effect to the end of the full four year fixed term for elections introduced by legislation receiving royal assent in 2007, Bill C-16.</p> <p>These opinions and advice are provided in conformity with the Mandate and Objectives provided in <b>Annex 1: Terms of Reference for the Steering Committee on Written Opinions, Guidelines and Interpretation Notes (OGIs) of the ACPP.</b></p>	
<p><b>No comments were submitted by the Rhinoceros Party</b></p>	
<p><b>No comments were submitted by the United Party of Canada</b></p>	

Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections comments
<p>Generally speaking, the Commissioner of Canada Elections agrees with the position taken by the Chief Electoral Officer in this note.</p> <p>However, in the note as proposed, “election advertising” is described as “the transmission to the public of an advertising message promoting or opposing the election of a candidate during the election period.” This description does not include all the elements of the definition at section 319 of the <i>Canada Elections Act</i>. For greater clarity, it is recommended that the text of the note reflect all the components of the definition at section 319.</p> <p>In addition, on page 2, under Example 1, the beginning of the second sentence should be revised to include the following italicized words:</p> <p style="padding-left: 40px;"><i>“The cost incurred or, at minimum, the commercial value of the flyers . . .”</i></p> <p>The relevant text proposed in the note suggests that expenses have to be reported to reflect commercial value, whereas the Act requires that the <u>actual costs</u> incurred be disclosed. In fact, commercial value is taken into account only when the actual cost of acquiring the good or service is less than its commercial value, as this then constitutes a non-monetary contribution. Accordingly, should a party acquire a good or service at a cost that is higher than its commercial value, its actual cost should be reported instead of its commercial value.</p>	<p>The definition at section 319 has been modified in the handbooks to be more specific to the entity addressed in the document. Elements of the definition are used as they apply to candidates or registered parties.</p> <p>In the case of purchased property or services, Elections Canada agrees that expenses are to be reported at the amount charged. Generally, this amount is the commercial value of the property or service received. In cases where the amount charged for property or a service is less than its commercial value, the difference has to be reported as a non-monetary contribution, making the total expense amount equal to the commercial value of the property or service.</p>