



## Written Opinions, Guidelines and Interpretation Notes

### Interpretation Note: 2018-05

#### Communication Expenses of Registered Parties in a By-election

#### Comments made during formal consultation period of July 13 to 27, 2018

| Comments received from the Liberal Party of Canada   | Elections Canada response to the Liberal Party of Canada   |
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| <p>From a broad principles perspective, this OGI mirrors some concepts used in OGI 2018-4, <i>Pre-existing Web Content of Registered Parties in an Election</i>. While this works for most of the party activities discussed in OGI 2018-5, it fails with respect to broadcasting.</p> <p>Elections Canada is correct in acknowledging that political parties, particularly the larger parties with a Parliamentary presence, have ongoing national activities. When a by-election is called, it is quite possible these ongoing activities may be affected as a result of political financing rules pertaining to the by-election. The OGI's discussion about a party's communications with respect to leadership contests, policy dissemination (including a policy convention), volunteer recruitment, fundraising (including communications to donors), and communications to members/supporters are sound. The position Elections Canada has taken with respect to these forms of communication is correct.</p> <p>With respect to advertising Elections Canada is correct that newer trends to digital advertising can be controlled because platforms such as Facebook and Google allow an advertiser to segment advertising by region. While it is possible to have some overlap into a by-election constituency as noted previously by Elections Canada because postal codes and other reference points may not be 100% accurate with respect to the boundaries of electoral districts, the overlap should be minimal and could generally be accommodated by excluding any questionable postal code in an advertising program during a by-election.</p> <p>The OGI also correctly states that with respect to broadcasting, some outlets such as speciality channels offer only one option and that is a national</p> | <p>Elections Canada does not believe there is a rationale for treating broadcast advertising differently from other media in this regard. For example, a party could pre-purchase advertising in national newspapers and find themselves with increased exposure during a by-election.</p> <p>If there are indications that a party has planned its ongoing communications to coincide with by-elections, the party will have to count them as election expenses and risk exceeding its spending limit. The Commissioner of Canada Elections has the authority to open an investigation, examine the relevant factors and take whatever compliance or enforcement action may be warranted based on the facts.</p> <p>Additional indications that a communication is planned to coincide with a by-election could be when the party enters into the contract for advertising—for example, with only one month left before a by-election must be called—and whether there is a pattern of the party's advertising coinciding with by-elections, especially in a year when few by-elections are held. These indicators have been added to the interpretation note for greater clarity on what may factor into a communication being considered an election expense.</p> |

advertisement. Larger networks can be broken down more narrowly by regions, but these regions may be as large as a province or a number of provinces, which might not be helpful. The OGI discusses that an ongoing broadcast advertising program might be purchased well before a by-election is called and might not be able to be stopped or there might be a requirement to still pay for the time and not run the advertisement. While this is possible, through proper and prudent contract negotiation, clauses could be incorporated into a contract that if a by-election were to be called, for the advertisements that were to otherwise be run during the by-election period, they would be credited back to the party or deferred until after the by-election.

As timelines narrow after a vacancy, parties may also be able to surmise the probable likelihood a by-election might be called in a certain upcoming time period. Using the guidance as proposed in the OGI, a party could purchase an advertising program in advance of a by-election and not include the advertising in the party's by-election costs as it could be claimed it was part of an ongoing advertising program that did not anticipate the by-election, even if that party had no other advertising during the year. In certain circumstances, this could be cause for concern with respect to the expense limits.

In a recent by-election in the Province of Quebec, there was evidence one of the parties had pre-purchased a regional advertising broadcast program that overlapped into the by-election constituency during the by-election. While it could be argued that the advertising was part of the party's ongoing communications in the province to persuade voters in anticipation of the 2019 general election, the outcome was that this party seemed to have had significantly more airtime during the by-election in the by-election constituency that did not need to be accounted for in the party's by-election costs and hence created an uneven playing field.

While we agree with the concepts and principles discussed in the OGI, we believe that without further specificity it is important to carve out broadcast advertising from this new position as it has the possibility for abuse and inequities.

| Comments received from the Commissioner of Canada Elections  | Elections Canada response to the Commissioner of Canada Elections |
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| <p>We are in agreement with the content proposed in the interpretation note, in particular the justification offered for applying different rules to the political parties during a by-election. We note that, from an electoral fairness perspective, the justification provided is particularly relevant when we consider that the party in power is at a significant advantage given that it is the Prime Minister who chooses both the date for the by-election and the length of the election period. Thus, if all party communication activities are subject to the spending limit, a by-election could be called with a view to preventing opposition parties from fully participating in debates on important issues by limiting their ability to incur expenses for their communications activities during a by-election.</p> | <p>Elections Canada notes your comment.</p>                       |

The following parties did not submit comments to Elections Canada regarding OGI 2018-05:

- Alliance of the North
- Animal Protection Party of Canada
- Bloc Québécois
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- Marxist-Leninist Party of Canada
- New Democratic Party
- Progressive Canadian Party
- Rhinoceros Party