



Interpretation Note: 2020-05

Partisan and Election Advertising on the Internet

Comments made during consultation period of June 19 to August 4, 2020

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>We provide one specific point for consideration:</p> <ol style="list-style-type: none"> On page 1 in the Issue section, second paragraph and second sentence, the footnote reference #1 is almost lost in the tail of the 'p' of the word platform on the line above. 	<p>The spacing has been adjusted so that the footnote is clearly visible.</p>
<p>We provide the following three conceptual points for consideration:</p> <ol style="list-style-type: none"> On page 2, item (3) states "Influencer marketing also qualifies as partisan or election advertising, if the influencer is being paid by the political entity." When influencers are paid for advertising, they may frequently include a simple disclaimer (i.e. '#ad') at the end of their post. In a situation where influencer marketing qualifies as partisan or election advertising, would it be considered inherent that the advertising would need to follow the requirements of partisan or election advertising with the need to include the political entity's tagline? The OGI is silent on this. 	<p>Yes, the influencer's paid post would need to include the political entity's tagline in or on the message. This is discernible in the interpretation box when items (3) and (4) are read together, but it has been made more explicit on page 11 with the addition of the text in bold: "the transparency objectives of the CEA and a level playing field during pre-election periods are better served by categorizing paid influencer posts as advertising and requiring the political entity's statement of authorization in or on the message. Simply adding a hashtag such as #ad to the post would not meet the tagline requirement."</p>
<ol style="list-style-type: none"> Also on page 2, item (3), the OGI states that the determining factor of influencer marketing being partisan or election advertising is whether or not the influencer is paid by the political entity. In August 2019 Elections Canada issued an updated <i>Political Financing Handbook for Third Parties, Financial Agents and Auditors</i>. Neither that Handbook nor this draft OGI provide clarity on political entities having conversations with influence marketers pertaining to posts that are not paid for by a political entity. 	<p>Elections Canada has clarified with the party that, in making this comment, the party would like to know the following: A) whether an influencer who occasionally or ordinarily receives compensation for non-political endorsements is limited in the political endorsements they can make; and B) if not, whether political parties are limited in approaching influencers about free endorsements.</p> <p>A) As mentioned in the note, an influencer can choose to post their personal political views as an individual without regulation. This includes a free political endorsement that is undertaken independently of a political entity.</p>

	<p>B) Elections Canada’s position is that a political entity simply asking for and receiving an influencer’s endorsement on social media will not trigger regulation under the <i>Canada Elections Act</i>. As the subject of this note is Internet advertising, the subject of interactions outside the advertising context between political entities and third parties such as influencers will be further developed in future versions of the political financing handbooks, notably in the next version of the <i>Political Financing Handbook for Third Parties, Financial Agents and Auditors</i>.</p>
<p>4. On page 2, item (6) discusses the need for an online platform meeting certain monthly visitor or user criteria to maintain a registry and an electronic copy of partisan or election advertising. As we saw in the 2019 general election, not all online platforms were prepared to create a registry, and hence they would not accept partisan or election advertising. Given an influencer is not an online platform, it may be helpful for the OGI to provide specific clarity on the practice of a political entity paying for partisan or election advertising through an influencer who operates on an online platform that otherwise does not maintain a registry.</p>	<p>Based on Elections Canada’s understanding of the online platform registry requirements, influencer advertising does not have to be captured in a registry. An influencer’s social media account is not an online platform under the Act (it is neither an Internet site, which would have its own domain name, nor a software application) and the social media platform itself is not being paid. This position has been added to item (6) on page 2 and to page 11 for greater certainty.</p>
<p>Comments received from the Marxist-Leninist Party of Canada</p>	<p>Elections Canada response to the Marxist-Leninist Party of Canada</p>
<p>The Marxist-Leninist Party of Canada (MLPC) has reviewed Draft Interpretation Note: 2020-05 on the above-cited subject. It serves its stated purpose of updating OGI 2015-04, which dealt only with election advertising on the Internet during the election period. It reiterates the legal issues related to Internet communications and applies Elections Canada’s previous interpretation to pre-election period communications and "social influencer" interventions in elections.</p> <p>We have no changes to propose, nor clarification requests.</p> <p>The Interpretation Note succinctly summarizes the two-factor approach taken by Elections Canada: “Election messages on the Internet that meet the statutory criteria of ‘promoting or opposing’ during a relevant period and that have a placement cost are advertising. Others are not.”</p> <p>It also clearly addresses the issue of “social media influencers” and the conditions under which their electoral communications will be deemed to be advertising, essentially with the same approach.</p>	<p>Elections Canada notes your comment.</p>

<p>In this regard, the Interpretation Note fulfills the stated aim of “providing clarity for political entities on determining which messages communicated over the Internet are subject to the rules governing partisan and election advertising” such as taglines and the election-day blackout, as much as the increasingly complex and incoherent provisions of the <i>Canada Elections Act</i> allow.</p> <p>As Elections Canada itself notes in the Consultation Paper entitled <i>The Regulation of Political Communications under the Canada Elections Act</i>, there was a significant lack of clarity during the 2019 Federal Election about “issue advertising.” There was concern about the “chilling effect” and a sense of frustration for politically engaged third parties, the document notes. This was notwithstanding the existence of handbooks and manuals for Third Parties, and led to the Chief Electoral Officer releasing a statement in August 2019 in an attempt to address uncertainty, conceding at the time that “the third party regime can be complex” and recommending that people call Elections Canada for clarification.</p> <p>In this regard, we look forward to participating in the Consultations on <i>The Regulation of Political Communications Under the Canada Elections Act</i>; <i>The Impact of Social Media Platforms in Elections</i>; and <i>The Protection of Electors’ Personal Information in the Federal Electoral Context</i>.</p>	
<p>Comments received from the Commissioner of Canada Elections</p>	<p>Elections Canada response to the Commissioner of Canada Elections</p>
<p>In general, the Commissioner of Canada Elections (Commissioner) agrees with the content of the Note as proposed. However, for the sake of further clarification, the Commissioner would recommend that the following changes be made:</p> <ol style="list-style-type: none"> 1. On page 7, in the second sentence of the second paragraph, it would be useful to clarify that promoting or opposing a regulated political entity by taking a position on an issue with which the regulated political entity is associated only applies to election advertising. Indeed, this element is expressly excluded from the definitions of “advertising” and “partisan advertising” found respectively at sections 349.01 and 2 of the Act. 	<p>This clarification has been made by adding the text in bold: “by taking a position in an election period on an issue with which they are associated.”</p>
<ol style="list-style-type: none"> 2. On page 10, under the heading “New: Application to Influencers”, the first sentence of the second paragraph could be reworded to indicate that it is production and distribution of organic content on their social media accounts by the political entity’s or third party’s paid employees that is not election advertising. 	<p>The wording in that section has been modified as suggested.</p>

<p>3. At page 11, in the second paragraph under “Conclusion”, it would also be useful to clarify that the transmission of a message on the Internet can only constitute advertising if it has or would normally have a placement cost.</p>	<p>The conclusion has been modified as suggested to match the existing wording in the interpretation box.</p>
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The following parties did not submit comments to Elections Canada regarding OGI 2020-05:

- Animal Protection Party of Canada
- Bloc Québécois
- Canada’s Fourth Front
- Canadian Nationalist Party
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- National Citizens Alliance of Canada
- New Democratic Party
- Parti pour l’Indépendance du Québec
- People’s Party of Canada
- Parti Rhinocéros Party
- Stop Climate Change
- The United Party of Canada
- Veterans Coalition Party of Canada