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Ontario Chamber of Commerce

Handbook for Third Party Advertising in Ontario

***Note: This handbook is was last updated October 27, 2021 and is effective until December 31, 2021. It may be updated from time to time.**

Disclaimer

This handbook is intended to provide guidance for the Ontario Chamber of Commerce (the “OCC”) and its members prior to engaging in **third party advertising at the provincial level in Ontario**, which is regulated by the [Elections Finances Act](#). This handbook does not contemplate other regulated activities that may be regulated by the Act and is not intended to be exhaustive of all the relevant rules, regulations, and considerations. To the extent any conflict exists between this handbook and the Act and/or guidance provided by Elections Ontario, the Act and that guidance prevail.

The content in this handbook is for general information purposes only and does not constitute legal or other professional advice or an opinion of any kind. Users of this handbook are advised to seek specific legal advice regarding any specific legal issues. The authors or distributors of this handbook do not warrant or guarantee the quality, accuracy or completeness of any information in this handbook. Accessing or using this handbook does not create a lawyer-client relationship.

This handbook may contain links to third party web sites. Monitoring the vast information disseminated and accessible through those links is beyond our resources, and the OCC and its representatives do not attempt to do so. Links are provided for convenience only and the OCC and its representatives do not endorse the information contained in linked web sites nor guarantee its accuracy, timeliness or fitness for a particular purpose.

Online resources provided by Elections Ontario

The [Elections Ontario website](#) features tools that the OCC and its members can use. The website features information including:

- Filing guidelines
- Third party expense limits
- Registration and financial forms

Elections Ontario has also published a [CFO Handbook for Third Parties](#) which provides guidance on how to comply with the *Election Finances Act* and is effective until December 31, 2021, which is why this handbook is valid until December 31, 2021.

Elections Ontario can be contacted at 1-888-668-8683 or by email at info@elections.on.ca. For questions regarding compliance with the Act, contact electfin@elections.on.ca.

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1. Summary of rules

You are a third party if you are planning on advertising during any general election or by-election in Ontario, and you must comply with the provisions set out in sections 37.1 to 37.13 of the Act which apply to third party political advertising, with respect to registration and filing requirements as well as spending limits.

Every third party **spending \$500 or more** on political advertising in either the twelve months before a fixed date general election (the nonelection period) or during an election period must **register with Elections Ontario**. Registration is not required where the third party is spending less than \$500 on political advertising in either the non-election period or the election period.

Once registered, third parties must **promptly** remit an **Interim Report** to Elections Ontario for **every \$1,000 they spend**. Third parties must also remit a **Final Report** to Elections Ontario within **six months of Election Day**. Third parties must also remit an **Auditor's Report** if they spent \$5,000 or more on political advertising.

2. Background on elections in Ontario

Provincial elections in Ontario are governed by the [Election Act](#). However, third party advertising in Ontario is governed by [Elections Finances Act](#) (the “**Act**”).

There are two types of general elections: fixed date and non-fixed date general elections.¹

The 43rd general election in Ontario must be held on or before June 2, 2022. Accordingly, **this handbook captures the rules relevant to a fixed date provincial election**. Because we are less than 12 months away from the next fixed date election, as explained in more detail below, **the rules for the non-election period leading up to the next fixed date election currently apply**. Third parties like the OCC must take care to comply with the relevant rules and spending limits for this time period **now**.

3. Key concepts

Third party advertisers

A **third party advertiser** is any person or entity that is not a registered political party, registered candidate or registered constituency association, and that engages in political advertising. Third parties include, among other things, corporations, partnerships, unincorporated businesses, and associations.

¹ A **fixed date general election** is an election in all electoral districts, following the dissolution of the legislative assembly, where election day is scheduled. A **non-fixed date general election** is an election in all electoral districts, following the dissolution of the legislative assembly, where election day is not yet scheduled.

Political advertising

Political advertising means:

1. advertising
2. in any broadcast, print, electronic or other medium
3. that
 - a. has the purpose of promoting or opposing any registered party or its leader or the election of a registered candidate, **OR**
 - b. takes a position on an issue that can be regarded as closely associated with a registered party or its leader or a registered candidate.

Political advertising does not include:

- the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news;
- the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;
- communication in any form directly by a person, group, corporation or trade union to their members, employees or shareholders;
- the transmission by an individual, on a non-commercial basis on the Internet, of his or her personal political views; or
- the making of telephone calls to electors only to encourage them to vote.

Factors to determine whether an advertisement is political advertising

The Act sets out factors that are used to determine if an advertisement is political advertising. Some indicators include:

- whether it is reasonable to conclude that the advertising was specifically planned to coincide with an election period;
- whether the advertising has historically occurred during the relevant time of the year;
- whether the formatting or branding of the advertisement is similar to a registered political party's or registered candidate's formatting or branding or election material;
- whether the advertising makes reference to the election, election day, voting day, or similar terms;
- whether the advertisement makes reference to a registered political party or registered candidate either directly or indirectly;
- whether there is a material increase in the normal volume of advertising conducted by the person, organization, or entity;
- whether the advertising is consistent with previous advertising conducted by the person, organization, or entity;
- whether the advertising is within the normal parameters of promotion of a specific program or activity; and

- whether the content of the advertisement is similar to the political advertising of a registered party, constituency association, nomination contestant, candidate or leadership contestant registered.

Election period

For a fixed date general election, the election period is the period commencing on the day the election is called, and terminating on polling (or election) day.

Non-election period

For third parties, the non-election period represents the 12-month period preceding the date a fixed date election is called. **Ontario entered the non-election period on June 14, 2021.**

Blackout period

The blackout period includes the day before polling day and polling day for all elections.

4. Requirements for third parties in Ontario

Third parties must comply with the requirements in sections [37.1 to 37.13](#) of the Act. Below is a summary of the key (but not all) requirements.

a. Appointing a Chief Financial Officer and auditor

Chief Financial Officer

Before filing its application for registration to become a third party, a third party must appoint a Chief Financial Officer (“CFO”).

The following persons are not eligible to be a CFO of a third party:

- a candidate;
- the CFO or auditor of a registered candidate, party, constituency association or leadership contestant; or
- a returning officer, deputy returning officer or election clerk.

The CFO is responsible for ensuring that:

- proper records are kept of all amounts received and all expenditures;
- contributions are placed in the appropriate depository;
- proper receipts are completed and dealt with in accordance with the Act;
- the third party political advertising report and the auditor’s report, if required, are filed with the Chief Electoral Officer in accordance with the Act; and
- contributions consisting of goods or services are valued and recorded in accordance with the Act.

Submit the [Third Party Registration and Change Notice Form \(TP-1\)](#) to Elections Ontario when appointing a CFO.

Auditor

A third party that incurs expenses in an aggregate amount of **\$5,000 or more** for third party political advertising during the election or non-election period must appoint an auditor without delay.

To be eligible, an auditor must be:

- a person licensed under the *Public Accounting Act*; or
- a firm whose partners resident in Ontario are licensed under the *Public Accounting Act*.

The following persons are not eligible to be an auditor for a third party:

- the third party's CFO;
- a person who signed the application for registration of the third party;
- a returning officer, deputy returning officer or election clerk;
- a candidate; or
- the CFO or auditor of a registered candidate, party, constituency association or leadership contestant or of another registered third party.

Upon appointment of an auditor, a third party must immediately notify Elections Ontario of the auditor's name, address, and telephone number by submitting the [Third Party Registration and Change Notice Form \(TP-1\)](#).

b. Registration

Registration with Elections Ontario is required where a third party has spent or intends on spending \$500 or more on political advertising during the non-election period (i.e., now) or the election period.

Registration is not required where the third party is spending less than \$500 on political advertising in either time period.

For a fixed date general election, Elections Ontario will register a third party at the time the application is received during the non-election or election period. Since the non-election period began on June 14, 2021, **third parties can now register**.

More information about the registration process can be found [here](#). The registration form can be accessed [here](#).

Approval of name

Elections Ontario may reject an application for registration if the third party's name or the abbreviation of its name is so close to that of a candidate, political party, political organization, or other third party that it is likely to cause confusion.

Governing bodies

If a third party has a governing body, its application for registration must include a copy of the resolution passed by the governing body authorizing the entity to incur third party political advertising expenses.

Changes in registration information

A third party must provide written notice of any change to its registration information by immediately filing a revised [Third Party Registration and Change Notice Form \(TP-1\)](#).

The CFO and third party (or its officers) must sign the revised form.

A change in registration information includes a change to:

- the full name of the registered third party;
- the principal officers of a registered third party;
- the CFO of a registered third party;
- the auditor of a registered third party;
- the persons authorized by a registered third party to accept contributions;
- the address of the place or places in Ontario where records of a registered third party are kept and of the place in Ontario to which communications may be addressed;
- the name and address of every financial institution at which a bank account is held by a registered third party for holding contributions; and
- the signing officers responsible for each bank account.

When there is a change in CFO or auditor, the registered third party must immediately appoint another CFO or auditor and file a revised form containing the name, address, and telephone number of the new CFO or auditor. The revised form must be signed by the incoming CFO and third party (or its officers).

In addition, where there is a change in CFO, the outgoing CFO must provide the financial records of the registered third party to the incoming CFO.

If these documents are not provided, the new CFO must write to advise Elections Ontario of the steps taken to secure the documents.

c. Authorization

A political advertisement in any medium must name:

- the person, registered party, registered constituency association or other organization or entity who is causing it to appear; and
- any other person, registered party, registered constituency association or other organization or entity who is sponsoring or paying for it.

In other words, a political advertisement must include a spoken or written line such as “authorized by the OCC” or “this advertisement was paid for by the OCC.”

d. Complying with the spending limits

The spending limits that apply to political advertising depend on the type of election and the period of time in which the third party’s advertising expenses, defined below, will be incurred.

The current spending limits set out in the table below and highlighted in blue are effective up to December 31, 2021. These amounts will be updated in January 2022.

| Electoral Event Type | Period | Limit in any Electoral District | Total Spending Limit (up to December 31, 2021) |
|---------------------------------|---------------------|---------------------------------|--|
| Fixed date General Election | Non-Election Period | \$25,488 | \$637,200 |
| | Election Period | \$4,248 | \$106,200 |
| By-election | Election Period | \$4,248 | Not Applicable |
| Non-Fixed date General Election | Election Period | \$4,248 | \$106,200 |

Third party advertising expenses

Third party political advertising expenses are expenses incurred in relation to the production of a third party political advertisement and/or the purchase of means of broadcast of a third party political advertisement to the public.

The expenses incurred for third party political advertising are determined based on the following rules:

- The amount paid by a third party for political advertising in a relevant election period, regardless if it was paid before, during or after the period.
- If a combined amount is paid for both third party political advertising in an election period along with other third party political advertising, the amount will be apportioned according to when the advertising appears.

When internal paid resources are used to produce and/or transmit political advertising, those resources constitute third party political advertising expenses for the purposes of the Act. For example, the expense for the design of a political advertisement produced by a third party's employee would include the proportionate cost of the employee's time to design the political advertisement.

e. Recording and reporting of expenses

Third parties must maintain and submit records of all third party political advertising expenses **only from June 14, 2021 forward**. The expenses must include the time and place of broadcast or publication of advertisements to which the expenses relate, to Elections Ontario through the [Third Party Political Advertising Interim Report](#) and the [Third Party Political Advertising Final Report](#).

Interim report(s)

Third parties must promptly report the amount spent or committed to any person or entity on political advertising. A separate report is required each time a third party's aggregate spending increases by an amount of at least \$1,000. When it has reached the applicable spending limit, every third party must report that fact to Elections Ontario.

A copy of the interim report template can be accessed [here](#).

Final report

Third parties must file the Third Party Political Advertising Final Report with Elections Ontario within 6 months of polling (election) day.

The final report must contain a list of:

- all third party political advertising expenses; and
- the time and place of broadcast or publication of the advertisements to which the expenses relate.

Third parties must also report recorded information regarding contributors and contributions greater than \$100 as part of the contributions schedule of the final report. This includes:

- the amount, by class of contributor (individuals/corporations/trade unions), of contributions received for third party political advertising purposes in the period beginning six months before the relevant period (i.e., non-election period for fixed date general elections) and ending three months after polling day;
- for each contributor who made contributions of a total amount of more than \$100 for third party political advertising purposes during the relevant period, their name, address and class, and the amount and date of each contribution; and
- the amount that was paid out of the third party's own funds for third party political advertising expenses.

A copy of the final report template can be accessed [here](#).

Auditor's report

If a third party incurs **\$5,000 or more** in political advertising expenses, its auditor must report on the Third Party Political Advertising report and make any examination necessary to give an opinion as to whether the report presents fairly the information contained in the accounting records on which it is based.

An auditor must include any statement that the auditor considers necessary in the auditor's report when:

- the third party political advertising report that is the subject of the auditor's report does not present fairly the information contained in the accounting records on which it is based;
- the auditor has not received all the required information and explanations from the third party; or
- based on the auditor's examination, it appears that the third party has not kept proper accounting records.

Record retention

The third party's CFO is responsible for keeping all financial records for a minimum of six years, as recommended by the Canada Revenue Agency (CRA), and transferring all financial records to the incoming CFO when leaving the position.

5. Political advertising restrictions

The Act also sets out various restrictions on third parties and third party advertising. Below is a summary of the key (but not all) restrictions.

a. **Contributions**

Contributions are funds, goods, or services given to a registered third party for third party political advertising purposes outlined in the Act.

There are no limits on the amount of contributions that may be accepted by a registered third party. Contributions given to a registered third party are not eligible for tax receipts.

There are restrictions as to the source and form of contributions. In addition, there are recording and reporting requirements for contributions.

Monetary vs. non-monetary contributions

Contributions can take two forms: monetary and non-monetary.

Monetary contributions of up to \$25 may be given in cash to a third party. Any monetary contribution of more than \$25 must be made using a modern financial practice allowing for the contributor and their account information to be confirmed. Such practices include payment by cheque, credit card, E-transfer, money order signed by the contributor, debit card, online payment or cryptocurrency.

A third party receiving a monetary contribution must deposit it into a bank account registered with Elections Ontario.

Non-monetary contributions are goods and services provided by a supplier to a third party. Such contributions must be recorded and reported in accordance with the reporting and recording requirements set out in section [4e](#) above. Goods and services produced by voluntary labour are an exception and are not considered to be contributions.

The value of goods and services is considered to be the fair market value for similar goods and services at the time they are provided.

- If the contributor is in the business of supplying such goods and services, fair market value is the lowest amount charged by the contributor for an equivalent amount of goods and services at the same time and in the same market area.
- Where the contributor is not in the business of supplying such goods and services, fair market value is the lowest amount charged at the same time by any other person or corporation providing similar goods on a commercial retail basis or similar services on a commercial basis in the same market area.

Where a contributor provides goods and services for a price less than fair market value, including goods and services provided for free, the difference between the price and fair market value is considered a contribution.

All contributions of goods and services must be supported by an invoice, statement of account, or receipt from the supplier. When the supplier considers all or part of a fee to be a contribution, the supplier must submit a statement of account and indicate on it the amount considered to be a contribution. The supplier is responsible for reporting these amounts as income on the supplier's tax return.

Eligible contributions

Only contributions solicited for third party political advertising purposes are considered third party contributions. Contributions must be made using the contributor's own funds.

Contributions for the purposes of funding third party political advertising may be made to a registered third party only by:

- a person who is normally resident in Ontario, including a person serving in the armed forces, diplomatic service, or similar type of employment abroad if that person's normal home is in Ontario; or
- a corporation carrying on business in Ontario that is not a registered charity; or
- a trade union.

Ineligible contributions

No registered third party can directly or indirectly knowingly accept contributions from an ineligible contributor. Ineligible contributors to a registered third party include, but are not limited to:

- any source outside Ontario;
- registered charities;
- corporations not carrying on business in Ontario;
- members of the House of Commons living in Ontario but representing an electoral district outside Ontario
- federal political parties and constituency associations
- political parties or constituency associations from other provinces. Anonymous contributions;
- anonymous contributions; or
- conditional contributions, unless they are for the general or specific purposes of the third party.

Making contributions

Any contribution from one third party to another third party for the purposes of political advertising must be recorded and reported as part of the expenses of the contributing third party.

Accepting contributions

Before accepting contributions, CFOs must make reasonable efforts to satisfy themselves that the contributor is entitled to make a contribution in Ontario.

For **corporations**, any of the following criteria are considered acceptable evidence that a corporation is carrying on business in Ontario:

- The corporation keeps an office or establishment in Ontario for the purpose of carrying on its business activities to which one or more employees report to work;
- The corporation enters into contracts in Ontario on a regular basis either through its officers, employees, or agents having general authority to act on its behalf;
- The corporation is an extra-provincial corporation carrying on business in Ontario in accordance with the requirements of sections 1 and 4 of the Extra-Provincial Corporations Act; or
- The corporation is taxable in Ontario under the Taxation Act.

A **trade union** is eligible to make contributions if:

- It holds bargaining rights for employees in Ontario to whom the *Labour Relations Act* or the *Canada Labour Code* apply, and
- It includes any central, regional, or district labour council located in Ontario.

An **unincorporated association or organization**, other than a trade union, cannot contribute as a group. The original person, corporation, or trade union providing the funds is considered to be the contributor. As a result, each individual contributor to an unincorporated association or organization's contribution must meet the eligibility requirements for contributions under the Act.

b. Advertising in the blackout period

Third parties cannot conduct paid commercial third party political advertising during the blackout period.

The following activities do not usually constitute paid commercial advertising and are therefore not subject to the blackout period:

- lawn signs displayed and brochures distributed; and
- personal emails and similar personal communications on the Internet, mass or individual mailing, automated or individual telephone calls, and social media communications.

Advertising activities that are permitted during the blackout period include:

- Genuine news reporting, including interviews, commentaries, or other works prepared for and published by any newspaper, magazine, or other periodical publication in any medium without any charge to the registered political party;

- The publication of political advertising on polling day or the day before polling day, in a newspaper that is published once a week or less often and whose regular day of publication falls on that day;
- Advertising on the Internet or in a similar electronic medium, if posted before and not altered or further distributed during a blackout period;
- Advertising in the form of a poster or billboard, if posted before and not altered during a blackout period, such as advertisements on public transit buses, bus shelters, and subway stations;
- Advertising public meetings in constituencies;
- Announcing the location of registered candidates' and constituency associations' headquarters;
- Advertising for volunteer campaign workers;
- Announcing services for electors, regarding enumeration and the revision of electors' lists, that are offered by candidates or constituency associations;
- Announcing services for electors that are offered by registered candidates or constituency associations on polling day (for example, "Babysitting services provided while you go out to vote" or "Rides to the polling station"); and
- Anything involving administrative functions of registered constituency associations.

Such advertisements or announcements that are paid commercial political advertising may contain the name of a registered candidate or political party and may include a picture of the candidate or the logo of the political party. However, **mention of the particular exempt service or activity listed above must be the main feature of the advertisement or announcement**. Also, the advertisement or announcement must not contain any slogan, motto, or other wording promoting the candidate or political party or opposing another candidate or political party.

c. Coordinating with political actors

Third parties cannot engage in political advertising if it promotes a political party, nomination contestant, candidate, or leadership contestant **and** is arranged for in coordination with that political party, contestant, candidate, or relevant constituency association.

Coordination occurs if a registered political party, candidate, constituency association, nomination contestant or leadership contestant, or any of their agents, employees or independent contractors:

- requests or suggests that that a third party create, produce or distribute an advertisement, or assents to its creation, production or distribution;
- is materially involved in decisions regarding the content, audience, dissemination, or distribution of a third party's advertisement;
- engages in substantial discussions regarding the advertisement with the third party or its agents, employees or independent contractors that were material to the creation, production, or distribution of the advertisement; or

- conveys information about the plans or needs of a registered political party, candidate, nomination contestant or leadership contestant for the purpose of contributing materially to the creation, production or distribution of a third party's advertisement.

d. Circumventing the spending limits (collusion)

The Act prohibits third parties from circumventing or attempting to circumvent spending limits. Specifically, a third party is not allowed to:

- act in collusion with another third party so that their combined political advertising expenses exceed the applicable limit;
- split itself into two or more third parties;
- collude with, including sharing information with, a registered party, registered constituency association, registered candidate, registered leadership contestant, or registered nomination contestant or any of their agents or employees for the purpose of circumventing the limit;
- share a common vendor with one or more third parties that share a common advocacy, cause or goal;
- share a common set of political contributors or donors with one or more third parties that share a common advocacy, cause or goal;
- share information with one or more third parties that share a common advocacy, cause or goal; or
- use funds obtained from a foreign source prior to the issue of a writ for an election.