

GUIDELINES ON INDEPENDENCE AND COLLUSION REQUIREMENTS FOR THIRD PARTY SPONSORS

The *Election Act* (the Act) establishes registration and other requirements for “third party sponsors.” Third party sponsors are defined in s. 1(1) of the Act to mean an individual or organization, other than a candidate, registered political party or registered constituency association, that sponsors election advertising. This means that third party sponsors conduct election advertising separately from candidates and political parties. They include individuals and organizations who advertise to promote or oppose a candidate or a party. They also include individuals and organizations who advertise to take a position on an issue associated with a candidate or party.

The Act requires third party sponsors to register with Elections BC before conducting election advertising. Third party sponsors must:

- be independent from registered political parties, constituency associations, and candidates, including their principal officers, official agents and financial agents;
- must not sponsor election advertising on behalf of or together with any of these entities; and
- not share information or act in collusion with a candidate, registered political party or constituency association.

These provisions ensure that individuals and organizations are not circumventing the provisions of the Act.

Independence:

In order to assess if an individual who applies for registration as a third party sponsor is independent, factors that may be considered by Elections BC include determining if the individual is:

- a candidate;
- an individual who resides with a candidate, and is a spouse, parent, child, or a relative of the candidate or the candidate’s spouse;
- a canvasser authorized by candidate under s. 228.01 of the *Election Act* to canvass voters and distribute candidate information on the candidate’s behalf;
- an official agent, financial agent or deputy financial agent of a candidate, registered political party or constituency association; or
- an individual who was an official agent, financial agent or deputy financial agent of a candidate, registered political party or constituency association during the 60 days immediately before the start of the campaign period.

Factors that may be considered if the applicant is an organization, include determining if one or more principal officers or members are:

- appointed as principal officers for a registered political party or constituency association;
- employees, financial agents, deputy financial agents or official agents of a candidate, registered political party or constituency association; or
- individuals who were employees, financial agents, deputy financial agents or official agents of a candidate, registered political party or constituency association during the 60 days immediately before the start of the campaign period.

Elections BC may request additional information or evidence if it is necessary to determine if an individual or organization applying to register as a third party sponsor is independent.

If it is determined that a registered third party sponsor is not independent, they may not be registered in the first instance, or may be deregistered by Elections BC, and if so, are not permitted to conduct election advertising.

Collusion

Campaign collusion involves two or more independent political entities knowingly working together to gain an advantage during an election that would not otherwise be available to them if they were operating their campaigns alone and/or whose activities are intended to circumvent the legislated provisions.

Potential collusion between a third party sponsor and a candidate, registered political party or constituency association may take a number of different forms. For certainty, the Act specifically prohibits sharing information or acting under the direction of a candidate, registered political party or constituency association when sponsoring election advertising.

In assessing collusion, factors that may be considered by Elections BC include the level of communication, coordination, cooperation and collaboration between a third party sponsor and candidate, registered political party or constituency association.

On their own, the following activities are not prohibited:

- endorsing a candidate, political party, constituency association or nomination contestant;
- receiving publicly available information;
- attending the same public event; or
- using the same vendor to provide a service.

Some activities that may suggest a third party sponsor has colluded with a registered political party, constituency association or candidate may include, but are not limited to:

- requesting or receiving directions from a candidate, registered political party or constituency association with respect to election advertising;
- being materially involved in decisions regarding the content, audience, dissemination or distribution of election advertising;
- holding joint formal or informal planning meetings to discuss or plan campaigning strategies;
- developing complementary election campaigns to optimize the reach or effectiveness of an advertising campaign;
- sending out communications that are so similar a reasonable person would have difficulty distinguishing which were created by the third party sponsor and which were created by a political party or candidate (e.g. common formatting or branding);
- arranging for the payment of an expense that would otherwise be an election expense if it was incurred by a candidate or party;
- sharing, formally or informally, information or other materials to assist with an election campaign (e.g. providing access to mailing or volunteer list); or
- distributing each other's election materials.

This is not an exhaustive list of factors which may be considered by Elections BC in determining if a third party sponsor has acted in collusion with a candidate or registered political party or constituency association. Campaign collusion will be assessed on a case-by-case basis, and determined based on the facts of a specific situation.

If a third party sponsor has colluded with a candidate, registered political party or constituency association in respect of the election advertising they conducted, the third party sponsor may be subject to penalties, as determined by the Chief Electoral Officer.

For more information contact Elections BC:

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