

Election Communication Policy

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Alberta Foundation for the Arts Election Communication Policy

1. Purpose

Election Act restrictions on government advertising and other communications activity exist to ensure that governments neither involve themselves in nor influence elections or referendums.

This policy is intended to ensure that the Alberta Foundation for the Arts, an agency of the Government of Alberta, understands its responsibilities under that act: how it can – and cannot – communicate before and during a provincial election, by-election, or referendum.

Failure to comply with these restrictions can result in the **removal of the advertising, publication of the particulars of the offence, prosecution, and/or an administrative penalty.**

2. General statement

Compliance with *Election Act* restrictions on government communications activity during an election, by-election or referendum must be taken very seriously.

Any activity that would make information about government programs or activities generally known during a general election or by-election must be considered communications activity and is covered by this policy. Similarly, during a referendum initiated by the Alberta government, any communications related to the referendum subject matter must also be considered covered by this policy.

While exemptions to communications restrictions exist, government departments and other covered entities must work from an assumption that their communications activity during an election or by-election, or subject-related communications during a referendum, are not approved unless they have been reviewed for compliance with the *Election Act* and have been approved:

- For other covered entities, this approval must be acquired under the entity's approved election communication policy.
- The Alberta Foundation for the Arts is a considered a covered entity (see section 5 for more information).

An exemption should only be claimed when no practical alternative to advertising or publishing exists. As a rule, discretionary communications activity will be postponed until the end of an election, by-election, or referendum period wherever possible.

3. Division of responsibilities

The Election Commissioner:

- ensures compliance with, and enforcement of, regulated entities under the *Election Act*
- is responsible for investigating complaints, levying administrative penalties, issuing letters of reprimand, entering into compliance agreements, and recommending prosecutions under the *Election Act*

The Deputy Minister of Executive Council:

- approves the Government of Alberta's Election Communication Policy
- rules on differing interpretations of this policy

The Managing Director of Communications and Public Engagement:

- reviews the claiming of election communication exemptions by the Government of Alberta
- creates the processes and procedures necessary to manage this policy
- supports Deputy Ministers in ensuring their department's compliance with this policy

Deputy Ministers:

- approves the claiming of election communication exemptions within their department
- ensures provincial corporations are aware of their responsibilities under the *Election Act*
- ensures their department's compliance with this policy, paying special attention to internal communications, correspondence, and public engagements

Heads of other covered entities:

- create, maintain, and enforce organization-specific election communication policies that address their organization's legal obligations under the *Election Act*

4. Time period covered

Election Act restrictions on government advertising and publishing begin with the dropping of the writ for a general election or by-election and conclude at the end of election day. This is described in this document and in legislation as the “election period” or “by-election period.”

For referendums, whether they are held in conjunction with general elections, local elections or stand-alone, *Election Act* restrictions on communications begin either when an order-in-council to conduct a referendum is issued, or 60 days before voting day, whichever is later, and conclude at the end of voting day. These timeframes are generally described in this document and in legislation as the “referendum period.”

Restrictions are on **materials being in market**. It is not sufficient to say the decision to communicate was made prior to the election, by-election, or referendum period.

Additionally, there is no “grace period” to remove materials from market when an election is called. Restricted communications activity that is in-market when a writ is dropped must be pulled from market until the end of voting. It is not sufficient to say that pulling materials in market will result in financial cost or penalty. For this reason, it is important that departments and other covered entities track impending writ drops or referendums and plan ahead.

While *Election Act* restrictions on government communications conclude after the end of voting, other policies and conventions must also be considered. If the election results in a change of government or an uncertain outcome, it is Government of Alberta policy that departments refrain from new communications activity until the outcome of the election is confirmed and/or a new government is sworn in.

General elections

The timing of a general election is set out in the *Election Act*. General elections are held on the last Monday in May every four years. The election period starts with the dropping of the writ, 28 days before election day.

To ensure compliance with the *Election Act*, departments and provincial corporations must make sure communications about programs or services that are planned to occur in May in a general election year are permissible under the act or can be postponed or cancelled without penalty.

By-elections

A by-election occurs when a seat becomes vacant between general elections. The timing of a by-election is controlled by Cabinet but, as set out in the *Legislative Assembly Act*, must be called within six months of the Chief Electoral Officer being informed of the vacancy – unless the legislature is dissolved before the date set for the by-election or the vacancy occurs within the last year of the legal life of the assembly.

Departments and provincial corporations should note when a vacancy in the legislature occurs and plan accordingly.

Referendums

As set out in the *Referendum Act*, the timing of referendums is controlled by Cabinet. Referendums may be held at the same time as general or local elections or at a separate time as a stand-alone vote.

Departments and other covered entities should note when referendums initiated by the Alberta government are happening and plan accordingly.

5. Entities covered

The *Election Act* states that all departments and provincial corporations (as defined in Section 1(1)(r) of the *Financial Administration Act*) must comply with these restrictions. This includes:

- all government departments
- organizations whose shares are fully or partially controlled by or held in trust for the Crown, and its subsidiaries
- organizations for which a majority of the members or directors are appointed by the government, and its subsidiaries

This puts **all departments and many agencies, boards, and commissions under the law**. This includes universities, consumer-facing corporations such as ATB and arms-length bodies such as the Workers' Compensation Board.

6. Impacted activities

During an **election period**, departments and other covered entities must not "advertise or publish any information about its programs or activities" unless such communications activity falls under one of the legislated exemptions described in Section 7 of this document. This includes communication on programs or activities that occurs outside the province.

During a **by-election period**, departments and other covered entities must not "advertise or publish any information about its programs or activities" that has a "disproportionate impact" on voters in impacted electoral divisions – unless such communications activity falls under one of the legislated exemptions described in Section 7 of this document.

During a **referendum period**, departments and other covered entities must not "advertise or publish any information about its programs or activities related to the subject matter of the referendum" that has a "disproportionate impact" on voters in the areas of Alberta in which the referendum is being held – unless such communications activity falls under one of the legislated exemptions described in Section 7 of this document. The same applies when a referendum is held during a general election.

"Advertise or publish" covers any direct or indirect action that makes something generally known. Government of Alberta interpretations for what should be considered an act to "advertise or publish" and what is considered "disproportionate impact" can be found in Section 8 of this document.

Use of an MLA's name, voice, or image

The use of the name, voice or image of an individual who was an MLA before the dropping of the writ in any communications during an election or by-election period is not allowed. This includes communications that are allowed under the exemptions outlined in Section 7 of this document.

Use of an unelected Cabinet minister's name, voice, or image

[BY-ELECTIONS ONLY] During a by-election, the use of the name, voice or image of an individual who has been appointed to Cabinet but was not an MLA before the dropping of the writ is not allowed. This includes communications that are allowed under one of the exemptions outlined in Section 7 of this document.

7. Exemptions

There are six exemptions to restrictions on advertising and publishing, five of which are available for all election periods and one of which is only available during by-elections and referendums.

1. **The advertisement or publication is required by law.** This includes publishing orders-in-council, making available data as required by FOIP, requirements to publish in the Alberta Gazette and other similarly mandated activities.
2. **The advertisement or publication is required at that time to solicit proposals or tenders for contracts or applications for employment.** This includes job postings, the posting of requests for proposals to Alberta Purchasing Connection (APC) and other like activity that cannot be delayed.
3. **The advertisement or publication is required at that time to inform the public on matters of public health or safety.** This includes campaigns related to emergencies, travel warnings, public health and other similar issues where leaving market could jeopardize health and safety. The use of this exemption by any government department requires consultation with CPE's Managing Director or designate.
4. **The advertisement or publication is a continuation of earlier advertisements or publications and is required for ongoing programs.** This includes activity such as the promotion of public health in schools. The use of this exemption by any government department requires consultation with CPE's Managing Director or designate.
5. **The advertisement or publication is an ordinary and routine part of the programs or activities of a department or a provincial corporation and is not made for a partisan political purpose.** This includes activity such as the marketing of exhibits at provincial museums, updates to web content such as regularly posted statistics and reports, distribution and display of print materials such as information on employment resources, and mass internal communications to staff. Additional Government of Alberta interpretations for what should be considered ordinary, routine and non-partisan can be found in Section 8 of this document.
6. **[BY-ELECTIONS AND REFERENDUMS ONLY] The advertisement or publication deals with a matter before the legislative assembly such as the speech from the throne, the budget, a bill or resolution of the assembly.** To fulfil government's duty to inform Albertans of ongoing legislative matters, advertisements and publications are permitted to broadcast the work of the legislature even if it is of a local nature. The use of this exemption by any government department requires consultation with CPE's Managing Director or designate.

MLA views on referendums

As set out in the *Election Act*, MLAs (including Ministers in their capacity as MLAs) are permitted to publicly express their views on the subject matter of a referendum. Such activity, however, may not be conducted using the communications resources of departments (e.g., social media accounts, webpages) or other covered entities.

8. Government interpretations

These definitions are an interpretation by the Government of Alberta and apply to the Alberta Foundation for the Arts Election Communication Policy. All activity is subject to review by the Election Commissioner on a case-by-case basis. When in doubt, consider the intent of the law – that governments and government entities should not influence elections. All questions or concerns should be directed to the Executive Director, Arts Branch, who will provide clarity or direction on activities for the Alberta Foundation for the Arts under this policy.

Interpretation: “Advertise or publish”

During an **election period**, departments and provincial corporations must not “advertise or publish any information about its programs or activities” unless such communications activity falls under one of the legislated exemptions described in Section 7 of this document.

During a **by-election period**, departments and provincial corporations must not “advertise or publish any information about its programs or activities” that has a “disproportionate impact” on voters in impacted electoral divisions – unless such communications activity falls under one of the legislated exemptions described in Section 7 of this document.

During a **referendum period**, departments and provincial corporations must not “advertise or publish any information about its programs or activities related to the subject matter of the referendum” that has a “disproportionate impact” on voters in the areas in which the referendum is being held – unless such communications activity falls under one of the legislated exemptions described in Section 7 of this document.

“Advertise or publish” covers any direct or indirect action that makes information about government’s programs or activities generally known. This includes, but is not limited to:

- paid advertisements such as:
 - broadcast (radio, television)
 - print (newspaper, magazine, inserts, etc.)
 - digital (display, boosted social)
 - out-of-home (billboards, etc.)
 - events and street teams (handing out information in a public place)
 - sponsorships
 - direct mail (flyers or letters delivered to homes)
- material updates to web content
- social media posts
- mass-email or distribution of a newsletter
- town halls or other public meetings
- phone blasts (IVR or live caller) or activation of phone trees
- news releases and statements
- speeches
- announcements
- responses to media inquiries
- distribution of previously printed material

Before proceeding, the above activities should be reviewed for compliance with the *Election Act* and this policy. If necessary, an exemption should be obtained as set out in Section 7 of this document.

The following activities are not likely to be considered advertising or publishing for the purposes of the *Election Act*.

- planning advertising or publishing activity to occur after the election period ends
- technical maintenance of a website that hosts previously published content
- emails sent to a single individual or limited groups of individuals
- private meetings or conference calls
- physical displays of brochures or publications already available to the public

Interpretation: “Disproportionate impact”

[BY-ELECTIONS ONLY] During a by-election, provincewide and regional communications may continue unless they may have a disproportionate impact on voters in the electoral district where the by-election is occurring. Disproportionate impact is not defined in legislation. It is the position of the Government of Alberta that advertisements or publications disproportionately impact an electoral district if:

- It is an announcement of a past, present, or future action within the electoral district (e.g., building a school or hiring nurses for a local hospital).
- It is a stand-alone activity that occurs within the electoral district.
- It is an activity that is part of a broader campaign, but when compared with like activity in other regions is not comparable in aesthetic, tone and/or scale.
- In the case of paid advertising, spends are being geographically targeted at a higher rate (per capita or per customer) in the electoral district than in other regions.
- In the case of paid advertising, spends are being targeted in a way that has the effect of geographically targeting (e.g., “provincewide,” but towards employees at a certain workplace).

In absence of the above, it is the position of the Government of Alberta that the following do not have a disproportionate impact on voters of an electoral district:

- Local variants of broader campaigns (such as changing the place name on advertisements or referencing the closest post-secondary institution, etc.).
- Demographically targeted campaigns (such as towards immigrants or young Albertans, who may be found in higher volume in some regions than others).

[REFERENDUMS] During referendums, advertising or publishing related to the subject matter cannot have a disproportionate impact on referendum voters. Similar considerations as have been identified for by-elections will be applied.

Interpretation: “Continuous” and “required”

The *Election Act* provides an exemption for advertisements or publications that are a continuation of earlier advertisements or publications and are required for ongoing programs. **Claiming of this exemption requires the program to meet both criteria.**

It is the interpretation of the Government of Alberta that an advertisement or publication is continuous if:

- It is the same advertisement/publication as one that was previously in market/available.
- It is an advertisement/publication that is part of a broader campaign, and is comparable in aesthetic, tone, scale, and cost to what was previously in market/available.
- It is an advertisement/publication that is recurring based on time of year (or similar trigger), has run before, and can be shown to have been previously planned to run during this time.

It is the interpretation of the Government of Alberta that an advertisement or publication can be considered required if:

- ongoing programs would fail or could not continue without the advertisement/publication, and
- no reasonable mitigations are available to meet program objectives without advertising or publishing.

Interpretation: “Ordinary,” “routine” and “not for a partisan political purpose”

The *Election Act* provides an exemption for advertisements or publications that are an ordinary and routine part of the programs or activities of a department or provincial corporation and are not made for a partisan political purpose. **Claiming of this exemption requires that both criteria be met.**

It is the interpretation of the Government of Alberta that an advertisement or publication is ordinary and routine if:

- It is the same as, or similar to, an advertisement, publication, or activity that has previously been in market/available/conducted.
- It is comparable to that previous advertisement/publication/activity in terms of aesthetic, tone, scale, cost, and content.

- It is recurring based on time of year (or similar trigger), occurs on a regular basis such as monthly, or can be shown to have been done previously as part of routine department practices.

It is the interpretation of the Government of Alberta that an advertisement or publication is not “for a partisan political purpose” if:

- The advertisement/publication deals with factual information and does not include any content, commentary or statements of opinion that may, or may appear to, promote or create an advantage for one party over another.

In general, advertising is considered a non-routine activity. Where an option exists, the Executive Director, Arts Branch will recommend under this policy that advertising for the Alberta Foundation for the Arts be deferred until after voting day.