



ELECTIONS BC

A non-partisan Office of the Legislature

**GUIDE TO
REFERENDUM ADVERTISING
FOR THE
2009 REFERENDUM
ON ELECTORAL REFORM**

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This guide

The *Electoral Reform Referendum 2009 Act* sets the rules for the 2009 Referendum on Electoral Reform. This guide explains the sections of the Act and its Regulations that deal with referendum advertising. It outlines provisions regarding the conduct of referendum advertising, registration requirements and obligations of referendum advertising sponsors.

This guide is intended only as an aid to understanding the *Electoral Reform Referendum 2009 Act* and its Regulations. How the Act and Regulations apply to any particular case will depend on the individual circumstances of the case, and may change in light of new legislative and judicial developments. Where there is an inconsistency between this guide and the *Electoral Reform Referendum 2009 Act*, the Act and its Regulations will prevail.

You can view the *Electoral Reform Referendum 2009 Act* and its Regulations on the Elections BC website (www.elections.bc.ca) or you can buy a copy from Crown Publications (www.crownpub.bc.ca).

A glossary of terms related to referendum communications begins on page 14.

General information

Definition of referendum advertising

Referendum advertising is the transmission, by any means, of any advertising message to the public that:

- is transmitted during the referendum campaign period, beginning February 1, 2009 and ending at the close of general voting for the referendum, and
- promotes or opposes, directly or indirectly, a specific response in voting in the referendum.

The definition of referendum advertising is broad, and in some cases it can be difficult to determine if an item or activity is referendum advertising. Referendum advertising certainly includes signs, posters, leaflets, billboards, brochures, and advertisements in newspapers, magazines, newsletters, and on television, radio, and the internet.

Referendum advertising must not, directly or indirectly:

- promote or oppose a registered political party or the election of a candidate, or
- form any part of election advertising

unless it is sponsored by a registered political party or a candidate.

What referendum advertising does not include

Referendum advertising does not include:

- news, an editorial, an interview, a column, a letter, a debate, a speech or a commentary published without charge in a bona fide periodical or on a radio or television program
- the distribution or promotion of a book for no less than its commercial value, if the book was planned to be made public regardless of whether there was to be a referendum
- documents sent by a person or a group directly to their members, employees or shareholders
- the transmission by an individual of their personal views on the referendum, on a non-commercial basis on the internet, or by telephone or text messaging

Personal social networking pages and blogs are generally not referendum advertising, unless they are created to promote or oppose a specific response to voting in the referendum, or the blogger is operating their site on a commercial basis. If they are, the sponsor of the content must be registered with Elections BC.

Sponsoring referendum advertising

Definition of referendum advertising sponsor

The sponsor of referendum advertising is:

- the individual or organization who pays for it, or
- the individual or organization who receives the services of conducting the advertising without charge as a contribution.

If referendum advertising is paid for or the services are provided without charge on another individual or organization's behalf, the other individual or organization is the sponsor.

Who can sponsor referendum advertising

The *Electoral Reform Referendum 2009 Act* and its Regulations limit who can sponsor referendum advertising.

Referendum advertising can only be sponsored by the registered proponent and opponent groups and individuals and organizations who are registered as referendum advertising sponsors with Elections BC.

Candidates and registered political parties can sponsor referendum advertising and such advertising is deemed to be election advertising.

Referendum advertising cannot be sponsored indirectly. This means that referendum advertising cannot be sponsored through another individual or organization, or with another individual's or organization's property.

Who cannot sponsor referendum advertising

Registered referendum advertising sponsors must be independent, and must not sponsor referendum advertising on behalf of or together with any of the following:

- registered political parties
- registered constituency associations
- candidates and agents of candidates
- financial agents

Sponsorship must be indicated

Referendum advertising must not be sponsored, or published, broadcast or transmitted to the public unless it:

- identifies the name of the sponsor, or in the case of a numbered corporation or unincorporated organization, identifies the name of the organization and the name of a principal officer,
- states that it was authorized by the identified sponsor,
- indicates that the sponsor is registered, and
- gives a British Columbia telephone number or mailing address where the sponsor can be contacted.

For example:

Authorized by Jane Doe, registered sponsor, 250-234-5678

Authorized by Good Guys Club; Jane Doe: registered sponsor, 250-234-5678

Advertising sponsors must make a person available to answer questions directed to the address or telephone number shown in the advertising.

The Chief Electoral Officer, or someone acting on the direction of the Chief Electoral Officer, may remove and destroy any referendum advertising that does not meet these requirements. The sponsor of the referendum advertising does not need to be notified if this happens.

The Chief Electoral Officer can exempt certain classes of referendum advertising from these requirements, including items that may reasonably be considered:

- clothing
- novelty items such as buttons, badges, wrist bands
- small items of nominal value intended for personal use, such as pens, mugs, magnets

Registering as a referendum advertising sponsor

How to register

Except for the registered proponent and opponent groups and registered political parties and candidates, all individuals and organizations who want to sponsor referendum advertising must register with Elections BC.

Individuals and organizations that are registered referendum advertising sponsors must be independent of registered political parties, registered constituency associations, candidates and their agents.

To register, applicants must complete an application form. Application forms are available on the Elections BC website (www.elections.bc.ca) or by contacting Elections BC.

The referendum advertising sponsor registration form requires:

- the applicant's full name, and, in the case of an organization, its usual name,
- the applicant's full address,
- in the case of an organization, the names of its principal officers or, if there are no principal officers, the names of its principal members,
- the address at which the applicant will receive notices and communications from Elections BC, and
- the applicant's telephone number.

The form must be signed by the individual applicant or, in the case of an organization, two principal officers. If the organization has no principal officers, the form must be signed by two principal members.

The form includes a solemn declaration stating that the applicant is not prohibited from registering. The solemn declaration must be witnessed by a Commissioner for Taking Affidavits in British Columbia or another individual authorized to witness the declaration. This includes the Chief Electoral Officer, notaries public, barristers, solicitors, District Electoral Officers and Government Agents. Solemn declarations will be taken at no charge by the Chief Electoral Officer, authorized staff of Elections BC, District Electoral Officers and Government Agents.

If any information about the referendum advertising sponsor changes, the sponsor must notify the Chief Electoral Officer in writing within 30 days after the change occurs.

Obligations of a sponsor

Recording contributions

Referendum advertising sponsors may accept contributions to help pay for referendum advertising.

For each contribution received during the referendum campaign period, certain information must be recorded, including:

- the date the contribution was made,
- the value of the contribution,
- the full name and address of the contributor,
- the class of the contributor (see below), and
- if the contributor is a numbered corporation or a class 3,4,5 or 6 contributor (see below), the full names and addresses of two people who are:
 - directors of the organization, or
 - principal officers or principal members of the organization.

The classes of contributors are:

1. individuals
2. corporations
3. unincorporated organizations engaged in business or commercial activities
4. trade unions
5. non-profit organizations
6. other identifiable contributors
7. anonymous contributors

If a contribution was made anonymously, the referendum advertising sponsor must record the date it was received, its value and, if applicable, the event at which the contribution was received.

Referendum advertising sponsors must keep track of all the contributions they receive. They may have to report the contributions they receive during the referendum campaign period.

At a minimum, referendum advertising sponsors must keep their contribution records for five years from the date of filing their disclosure reports. The Chief Electoral Officer can extend this period. Records must be kept in British Columbia.

Filing a disclosure report

An individual or organization must file a referendum advertising disclosure report if they sponsored referendum advertising worth, in total, \$500 or more during the referendum campaign period.

Referendum advertising disclosure reports must be filed within 90 days after General Voting Day. The filing deadline will be August 10, 2009.

If any of the information on the disclosure report changes, or if the referendum advertising sponsor learns that some information was wrong, they must file a supplementary report. Supplementary reports must be filed within 30 days of learning of the change or mistake.

30 day late filing period

A registered referendum advertising sponsor may file their referendum advertising disclosure report up to 30 days after the deadline if they pay a \$500 late filing fee.

What the disclosure report must contain

The disclosure report must be on forms provided by Elections BC and include:

- the value of the referendum advertising sponsored, reported by class,
- the amount of the contributions accepted during the referendum campaign period (February 1, 2009 to May 12, 2009),
- any amount of the sponsor's assets, other than the assets received by contributions, used to pay for referendum advertising,
- the amount of contributions received from each of the following classes:
 1. individuals
 2. corporations
 3. unincorporated organizations engaged in business or commercial activity
 4. trade unions
 5. non-profit organizations
 6. other identifiable contributors
 7. anonymous contributors, and
- the dates and amounts of any anonymous contributions and if applicable, the events at which they were received.

If a referendum advertising sponsor's records show that a contributor gave, in total, more than \$250 in money during the referendum campaign period, the referendum advertising sponsor must report:

- the contributor's full name,
- the contributor's class (see above),
- the value of each contribution and the date it was made, and
- if the contributor is a numbered corporation or a class 3,4,5 or 6 contributor, the full names and addresses of at least two individuals who are:
 - directors of the organization, or
 - principal officers or principal members of the organization.

Information to be open to the public

The disclosure reports filed by referendum advertising sponsors are available to the public. To view the disclosure reports, visit Elections BC in person between 8:30 a.m. and 4:30 p.m., Monday to Friday, or visit the Elections BC website (www.elections.bc.ca).

Referendum advertising limits

There are no spending limits for referendum advertising sponsors.

Restrictions on displaying referendum advertising, campaigning and opinion surveys

Referendum advertising on General Voting Day

On General Voting Day, referendum advertising must not be published, transmitted or broadcast in an electoral district until the close of all voting stations in the electoral district. Voting stations close at 8 p.m. (Pacific time), unless the District Electoral Officer extends the time for voting.

This restriction does not apply to:

- a message transmitted to the public on the internet before General Voting Day that is not changed before the close of voting stations
- the distribution of pamphlets, or the posting of signs, posters or banners

Campaign signs on highways

The sign policy of the Ministry of Transportation allows for the placement of election campaign signs along some provincial highways. Referendum advertising sponsors are advised to check with the Ministry regarding where referendum signs can be posted.

Individual municipalities may have additional rules about referendum posters and signs. Advertising sponsors should check the by-laws in any municipality where they wish to erect signs.

Referendum advertising in rental and strata units

Renters and strata owners may display referendum advertising posters in their residences.

Landlords and strata corporations can set reasonable conditions on the size and type of posters that can be displayed. They can also prohibit posters from being displayed in common areas.

Campaigning near election offices and voting places

Election offices

During the referendum campaign period, there is a 100-metre no-campaigning zone around the building where the office of the District Electoral Officer (DEO) is located. Within this zone, no one may post, display or distribute referendum advertising, unless it is with the authorization of the DEO.

Voting places

There is a similar 100-metre zone around any building where voting is being conducted during advance voting and general voting. Within this zone, no one may:

- post, display or distribute referendum advertising, unless it is with the authorization of the DEO
- canvass or solicit votes or attempt to influence how a voter votes
- carry, wear or supply flags, badges or anything else that indicates the user supports or opposes a specific response to the referendum question
- post, display, distribute or openly leave a representation of a ballot marked for the referendum question

While the 100-metre zone is in effect, no one may publish, broadcast or transmit referendum advertising by means of a public address system or loudspeaker that is within hearing distance of a voting place.

Definition of opinion survey

A referendum opinion survey is an opinion survey respecting the referendum or a matter of public discussion in relation to the referendum. This includes opinion surveys respecting an issue discussed publicly in the referendum.

Publishing referendum opinion surveys on General Voting Day

On General Voting Day, the results of referendum opinion surveys that have not previously been made public must not be published, broadcast or transmitted until all of the voting stations in the electoral district are closed.



Offences and penalties

Not filing a disclosure report

If a registered referendum advertising sponsor does not file a referendum advertising disclosure report with the Chief Electoral Officer within 90 days after General Voting Day, or does not file the report before the end of the 30 day late filing period and pay the \$500 late filing fee, the sponsor must pay \$500 for each day the report is unfiled.

If the sponsor is an unincorporated organization, its members will be jointly and severally liable to pay the \$500 per day penalty.

Court order for relief from filing obligations

A registered referendum advertising sponsor may apply to the Supreme Court of British Columbia for relief from an obligation to file a referendum advertising disclosure report or from a penalty in relation to the filing of a report.

Other advertising offences

It is an offence to:

- sponsor referendum advertising if not registered as a sponsor
- sponsor referendum advertising indirectly
- display referendum advertising that does not identify the sponsor
- campaign near election offices and voting places
- conduct referendum advertising on General Voting Day before the close of all voting stations in the electoral district

Individuals and organizations convicted of contravening the communications sections of the Act or Regulations are liable to a fine of up to \$10,000 or imprisonment for up to one year, or both.

Glossary

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| Advance voting | An opportunity to vote before General Voting Day. Advance voting is held between 8 a.m. and 8 p.m. on the Wednesday, Thursday, Friday and Saturday of the week before General Voting Day. |
| Chief Electoral Officer (CEO) | An independent Officer of the Legislature appointed by the Lieutenant Governor on the recommendation of the Legislative Assembly. The Chief Electoral Officer supervises and administers the provincial electoral process. |
| Constituency association | An organization formed for an electoral district as the local organization of a political party or as the local organization to support an independent Member of the Legislative Assembly for that electoral district. |
| Contribution | Money provided to a sponsor of referendum advertising, whether given before or after the sponsor acts or is registered as a sponsor. A “contribution” is not the same as a “political contribution” or a “referendum contribution”, and is not eligible for a tax receipt. |
| District Electoral Officer (DEO) | A person appointed by the Chief Electoral Officer to conduct elections in an electoral district. |
| Elections BC (EBC) | The usual name for the Office of the Chief Electoral Officer. Elections BC administers the electoral process in B.C. This includes provincial general elections and by-elections, provincial referendums, and recall and initiative petitions and votes. |
| Electoral district (ED) | A geographic area represented by a single Member of the Legislative Assembly (MLA). Electoral districts are also called constituencies or ridings. |
| Financial agent | An individual appointed to manage the finances of an individual or group. Registered political parties, registered constituency associations, candidates, leadership contestants, and recall and initiative participants must appoint a financial agent. |

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| General election | Elections called on the same date for all the electoral districts in the province. |
| General Voting Day (GVD) | The day on which the election is held. General Voting Day for the 2009 Referendum on Electoral Reform is May 12, 2009. Voting hours are from 8 a.m. to 8 p.m. |
| Political party | An organization that has as a primary purpose the fielding of candidates for election to the Legislative Assembly. |
| Referendum advertising | Advertising used during the referendum campaign period to promote or oppose, directly or indirectly, a specific response in voting in the referendum. |
| Referendum advertising sponsor | Organizations or individuals who sponsor referendum advertising. Other than registered proponent and opponent groups, all referendum advertising sponsors must register with Elections BC. |
| Referendum campaign period | The period beginning February 1, 2009 and ending at the close of general voting for the referendum (8 p.m. on May 12, 2009). |
| Time | All times referred to in the <i>Election Act</i> are local times, except for the close of nominations and voting hours on General Voting Day, which are Pacific time. |
| Value of referendum advertising | The value of referendum advertising is: <ul style="list-style-type: none">▪ the price paid for preparing and conducting the referendum advertising (including applicable taxes), or▪ the market value of preparing and conducting the referendum advertising (including applicable taxes), if no price is paid, or if the price paid is lower than the market value. |
| Voting place | The building or facility where advance voting is held or where voters of one or more voting areas are assigned to vote on General Voting Day. |

Writ of election

A formal order signed by the Chief Electoral Officer and the Lieutenant Governor that directs a District Electoral Officer to conduct an election. An election is called when the writ of election has been issued. In a general election, a writ is issued for every electoral district in the province.

Questions?

For more information

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or contact

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