

Guidelines for Election Communications by Third Parties: Assessing Content and Managing/Reporting Expenses

Overview:

A third party is a person or group, other than a political party, candidate or constituency association that promotes or opposes a registered party or a candidate during the pre-election period or the election period.

What is the definition of an “election communication” under *The Election Financing Act* (EFA)?

According to s.82 of the EFA, an “election communication” is a communication to the public during a pre-election period or an election period of a message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated.

What are the types of third party communications covered by the definition of “election communication” under the EFA?

- Partisan or express advocacy:
 - communications which expressly promote or oppose a candidate or registered party
- Issue advocacy:
 - communications that address issues which are clearly associated with a registered party or candidate
 - otherwise tend to promote or oppose a registered party or candidate

What is not covered by third party communications in the definition of “election communication” under the EFA?

- The following exclusions are not considered third party under the EFA:
 - the transmission to the public of an editorial, debate, speech, interview, column, letter, commentary or news item,
 - the distribution of a book, or the promotion of the sale of a book, for not less its commercial value,
 - the transmission by an individual, on a non-commercial basis on the Internet, of his or her personal views,
 - the transmission of a document or message directly by a person or a group to their members, employees or shareholders.

When must a third party register?

A third party must register with the CEO immediately after having incurred election communication expenses of more than \$2,500 in the pre-election or election period.

Practical guidelines for identifying an election communication.

The only communications that fall within the definition are those that promote or oppose a registered party or candidate including one that takes a position on an issue with which a registered party or candidate is associated.

Following are some questions that will help you identify an election communication.

Preliminary questions

- When was the communication made?
To be an election communication, the communication must occur during a pre-election period and/or an election period.
Pre-election period is defined as the 90 day period before the start of the election period of a fixed date election. Election period is defined as the period beginning the day the writ is issued and ending on Election Day.
- Was the communication made to the public?
What constitutes “the public” may vary depending on circumstances. It should be noted the definition of “election communication” [s.82 of the EFA], specifically excludes “transmission of a document directly by a person or a group to their members, employees or shareholders.”
Therefore, a document distributed internally at a company, workplace or among members of an association would not be an election communication.

Registered Party or Candidate

- Does the communication refer to or identify a registered party or candidate? The registered party or candidate needs to be clearly identified. Identification may be by:
 - Using the name, nickname, photograph, or logo of a registered party or candidate.
 - Making an unambiguous reference to a registered party or candidate, such as referring to a title or status such as “the government,” “the leader of the opposition,” or “the incumbent.” This might also include a reference to a unique view with which the registered party or candidate can be associated.
- Does the communication take a position on an issue with which a registered party or candidate is associated?

Promote or Oppose

- Does the communication promote or oppose the registered party or candidate referred to? At the very minimum, if “**trigger words**” such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for office,” “vote against,” “defeat,” or “reject” appear, the message may constitute partisan advocacy and would be considered an election communication.

Even if such trigger words do not appear, the entire message as a whole should be considered to determine whether it tends to **promote** by favouring, approving or otherwise giving preference to a particular registered party or candidate; or **oppose** by criticizing, disparaging or otherwise disapproving of a particular registered party or candidate.

Factors that may be considered when determining whether a message promotes or opposes a party or candidate include:

- Does it outline the position of a registered party or candidate on a specific issue?
- Does it state the views of a registered party or candidate?
- Does it outline a candidate’s qualifications?
- Are there any statements about a registered party’s/candidate’s record or position or views on any issue?
- Are there comments about a candidate’s character?
- Are any audio/visual techniques employed to influence the audience’s views of a registered party or candidate?
- If the message promotes an action, what is the effect of that action? Would it tend to encourage the election or defeat of a particular registered party or candidate, or would it cast a particular candidate or registered party in a negative or a favourable manner? If so, it is more likely that the communication promotes or opposes.

For your reference, a flowchart of the process for determining whether a message is an election communication is attached.

What are the spending limits?

There are three amounts to keep in mind that affect third parties.

- Pre-election period - \$100,000.
- Election period - \$25,000.
- Byelection - \$5,000.

What are election communication expenses?

An election communication expense is an expense incurred and the value of non-monetary contributions received to produce or transmit an election communication.

Examples of costs considered to be election communication expenses:

- The cost associated with placing an advertisement (such as a meeting announcement) in a newspaper, television, radio, internet etc.
- The costs associated with placing an advertisement on a website.

What are advertising expenses?

Expenses for advertising that promotes or opposes (directly or indirectly) a registered party or a candidate, such as:

- a) in newspapers, magazines or other periodicals, or on the Internet;
- b) on radio or television; and
- c) on billboards, buses or other property normally used for commercial advertising.

Advertising expenses also includes direct production expenses (i.e. the costs related to the production of a specific advertisement).

What are direct production expenses?

Direct production expenses refer to all material and labour costs (or other similar service costs) that can be directly attributed to the cost of producing a specific advertisement. Direct production expenses associated with the development of advertising may come from sources such as but not limited to:

- Project management; creative direction and design
- Media planning or buying.
- Typesetting firms;

- Photographers or photo studios and stock photography;
- Audio, video and digital production;
- Talent (agency or direct pay);
- Printers – specific to outdoor, bus boards, transit;

Who incurs the expense?

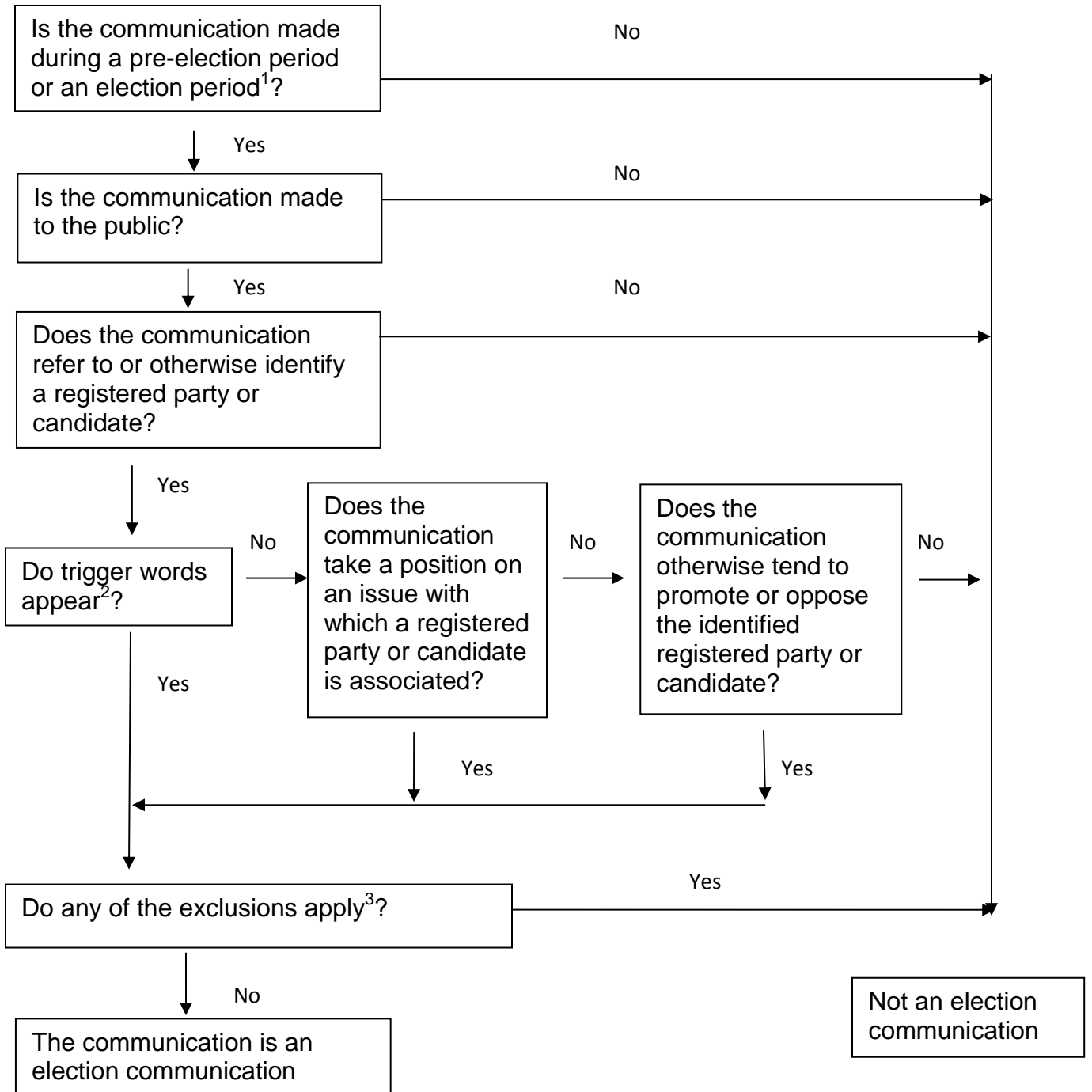
A third party incurs the election communication expense, however, if the registered party had knowledge and consent of the expense, those expenses are considered to be advertising expenses of the registered party and are subject to the parties limits.

Proration of election communication expenses

The cost of the election communication expenses can be prorated according to the following:

- The full direct production expense must be included in the cost. This applies to all election communication expenses, even if the election communication is used for other purposes before the pre-election period, election period, or will continue to be used after the election.
- For broadcasting or distribution costs, include only the portion that is actually used or distributed during the pre-election period or election period.

Determination of whether a communication is an election communication



¹ Pre-election period is defined as the 90 day period before the start of the election period of a fixed date election. Election period is defined as the period commencing on the date of issue of a writ for an election and ending on Election Day.

² Trigger words refer to phrases or terms such as "vote for", "elect", "support", "cast your ballot for", "vote against", "defeat" or "reject".

³ Exclusions refer to the exclusions in the EFA definition of 'election communication' - page 1

Please Note:

This guide references some of the important concepts with respect to third party communications.

The guide should be read in conjunction with *The Election Financing Act (EFA)*, which is the legislation that sets the legal rules governing the financing of provincial elections in Manitoba. In the event of a conflict or inconsistency between the guide and the EFA, the EFA prevails.

The guide, in some cases, provides only general information, which may or may not be useful for a particular circumstance. You are strongly advised to request an interpretation where clarification is needed. Requests should be in writing and should include sufficient details in order that a specific response may be provided.

Legislative references in this guide are to the EFA unless otherwise stated.