

October 23, 2013

Submission to:
Ministry of Community, Sport and Cultural Development
localgovelectionreform@gov.bc.ca

Re: White Paper on Local Government Election Reform

We write to express strong concern about the third party advertising rules in the draft Local Elections Campaign Financing Act (LECFA). While we are in favour of a clear and balanced election finance framework for municipal elections, the proposed changes do not meet either test, and are likely to negatively impact “small spender” civil society organizations and the broader democratic process.

1. Municipal third party advertising framework modeled on problematic provincial version.

In both the 2009 and 2013 provincial elections, third party advertising rules (set out in the BC Election Act) led to extensive confusion and a chilling effect on public communication by civil society organizations. These problems were extensively documented in a 2010 research study (see attached, “Election Chill Effect: The Impact of BC’s New Third Party Advertising Rules on Social Movement Groups”) and in recent media reports (see attached examples, “Election law ‘chilling’ groups wanting to share info” and “BC election gag law criticized for silencing small groups”).

The confusion and chill stem mainly from two features of the provincial rules. First, the definition of election advertising is extremely broad and difficult to interpret. It includes any “advertising message” (an undefined term that Elections BC says is “broad”) transmitted to the public during the campaign period that takes a position on an issue associated with a political party or candidate (with several exceptions - see: <http://www.elections.bc.ca/docs/guidebooks/870.pdf>).

Second, third parties must register with Elections BC before they conduct any “election advertising” – even if their public communication activities cost zero dollars (for ex, posting comments on an organization’s Facebook page) and are not intended to influence the outcome of an election.

Together, these problematic features of the rules define a wide range of non-partisan public communication as election advertising, including much of the normal day-to-day educational and advocacy work carried out by civil society organizations. As a result, dozens of “small spender” groups (many of them charities, who by federal law are prohibited from engaging in direct or indirect partisan activity), get caught in a net ostensibly created to prevent big spenders from dominating election discourse. Indeed, in the 2009 provincial election, 59% of registered third party organizations spent less than \$500 on advertising, and more than three quarters spent less than \$2,000 (well below the limit for even a single constituency).

The wide net cast by the rules might be of less concern if the rules were easier to interpret and apply in practice. In the 2013 provincial election, our organizations spent inordinate amounts of time trying to understand how the rules relate to our non-partisan public communication, and we had to repeatedly consult with Elections BC in order to make determinations about most specific cases. For example, if an organization makes an editorial statement on its Facebook page about a provincial issue, but unrelated in a direct or explicit way to the election, is it advertising? Do they need to register first? What if they share a link to an article that is critical of a provincial government policy that was published by another organization? What if they publish an op-ed piece on their website after it appears in a newspaper – the version published in the newspaper falls under one of the exemptions in the definition of advertising, but once published on the organization’s website, does the material ‘become’ advertising?

We would challenge anyone involved in drafting these rules to actually apply them to the activities of civil society organizations with clarity and consistency, and without seeking Elections BC’s interpretation case by case. It is quite literally impossible. Yet as Justice Cole stated in a 2009 BC Supreme Court decision, “To essentially require third parties to seek a discretionary opinion from the Chief Electoral Officer as a condition of the exercise of political expression is simply not a suitable response to the overbreadth of the definition” of election advertising (see *BC Teachers’ Federation v. British Columbia (Attorney General)*, 2009, BCSC 436, p. 111).

The confusion these rules create has led many organizations to simply self-censor (for example, by taking down websites, or “going dark” during the election campaign). This is precisely the opposite outcome the rules were supposed to create — that is, limiting the influence of those with the deepest pockets.

The draft LECFA replicates the overbroad definition of advertising and fails to set out a minimum floor.

2. Proposed local elections third party advertising framework raises new concerns.

- The registration process may be even more intimidating than under the provincial Elections Act, and therefore may act as a greater barrier. Notably, the applicant must certify that they understand all the third party advertising rules and intend to comply with them (s. 6.08 (3); 6.10 (3)). For organizations, the individual who makes this declaration is required to personally meet those legal requirements even if the organization is dissolved (s. 6.10 (5)).
- All “significant contributors” need to be listed in the disclosure statement (s. 6.15), but this is defined as anyone who gives \$100 or more (S-01) and does not specify a reporting time period. The BC Election Act requires disclosure of all contributions totaling \$250 or more in the six months prior to the campaign period, which is already a low threshold. The rationale for lowering the disclosure threshold further is unclear, and heightens existing concerns about donor privacy. Third party disclosure reports are made publicly available on Elections BC’s website, including the names and contribution amounts of private individuals. When a person donates

to a non-profit organization or charity, they have a different expectation of privacy than when contributing to a political party or candidate. Many non-profits and charities focus on sensitive issues (such as addictions or gender identity) where donor privacy is particularly important. This problem could be dealt with by requiring that specific contributor details be disclosed to Elections BC (in order to ensure the anti-pooling objective of the rules can be met) but removed from the versions that are made publicly available.

- The draft legislation defines two types of third party advertising: issue and directed. Issue advertising is about an issue of public policy and is not specifically related to a candidate (s. 1.08). This new distinction suggests some thought may have been given to treating issue advertising differently than directed advertising, but if so, it wasn't followed through. The term does not appear in any of the substantive sections of the draft legislation. As currently drafted, this new distinction only makes the framework more befuddling to apply in practice.
- It is unclear from the White Paper whether the relationship between local election advertising and regional or province-wide advertising has been considered. Will provincial level organizations engaged in public communication about any number of issues have to monitor local election campaigns in every community to ensure their issue does not become affiliated with a candidate somewhere in the province? Or, given that many provincial policy issues have local relevance, will provincial level organizations be forced to register as third parties in any number municipal elections, even if their focus is not on municipal policy per se. (For example, think of groups working on issues related to literacy, public libraries, or public education).

3. Third party advertising rules should not be introduced in the absence of a comprehensive campaign finance framework.

Perhaps the most troubling aspect of the proposed LECFA is that it introduces complex rules governing a broad range of communication by third parties but does nothing to limit contributions to, or spending by, candidates or elector organizations — leaving those with deep pockets free to wield unlimited influence in the electoral process.

The Supreme Court of Canada (see *Harper v. Canada (Attorney General)*, 2004, SCC 33) has made it clear that third party advertising rules are a justifiable infringement on speech rights *only* if they effectively serve the purpose of promoting “equality in the political discourse” by ensuring those with the most money cannot dominate.

Not only do the third party advertising rules as currently designed overregulate and chill small spenders (the very groups that should benefit from caps on advertising), without corresponding campaign finance rules, they promote inequality in political discourse. Non-profit organizations, charities, and grassroots citizen groups — those with comparatively less access to financial resources — are highly unlikely to contribute to political parties or candidates, yet must interpret and abide by the complex third party rules. In contrast, corporations, business groups and larger unions — those with comparatively deeper pockets — do contribute to candidates and elector organizations, and will remain free to do so without limit.

Recommendations:

- Do not introduce third party election advertising rules in the absence of a corresponding campaign finance regime that limits contributions to and spending by candidates and elector organizations.
- Improve the design of third party advertising rules so that they effectively target and limit advertising by big spenders and are more straightforward to apply. This can be achieved by introducing a reasonable minimum spending floor below which registration as an advertising sponsor is not required (as is the case federally); developing a clearer, less broad definition of election advertising; and giving further consideration to the issues raised in point 2 above.

Submitted by:

Canadian Centre for Policy Alternatives BC Office

West Coast Environmental Law Association

BC Healthy Living Alliance

First Call: BC Child and Youth Advocacy Coalition

ForestEthics Advocacy

ForestEthics Solutions

Pembina Institute

Ecojustice

Canadian Parks & Wilderness Society – BC Chapter

Georgia Strait Alliance

Wildsight

Dogwood Initiative

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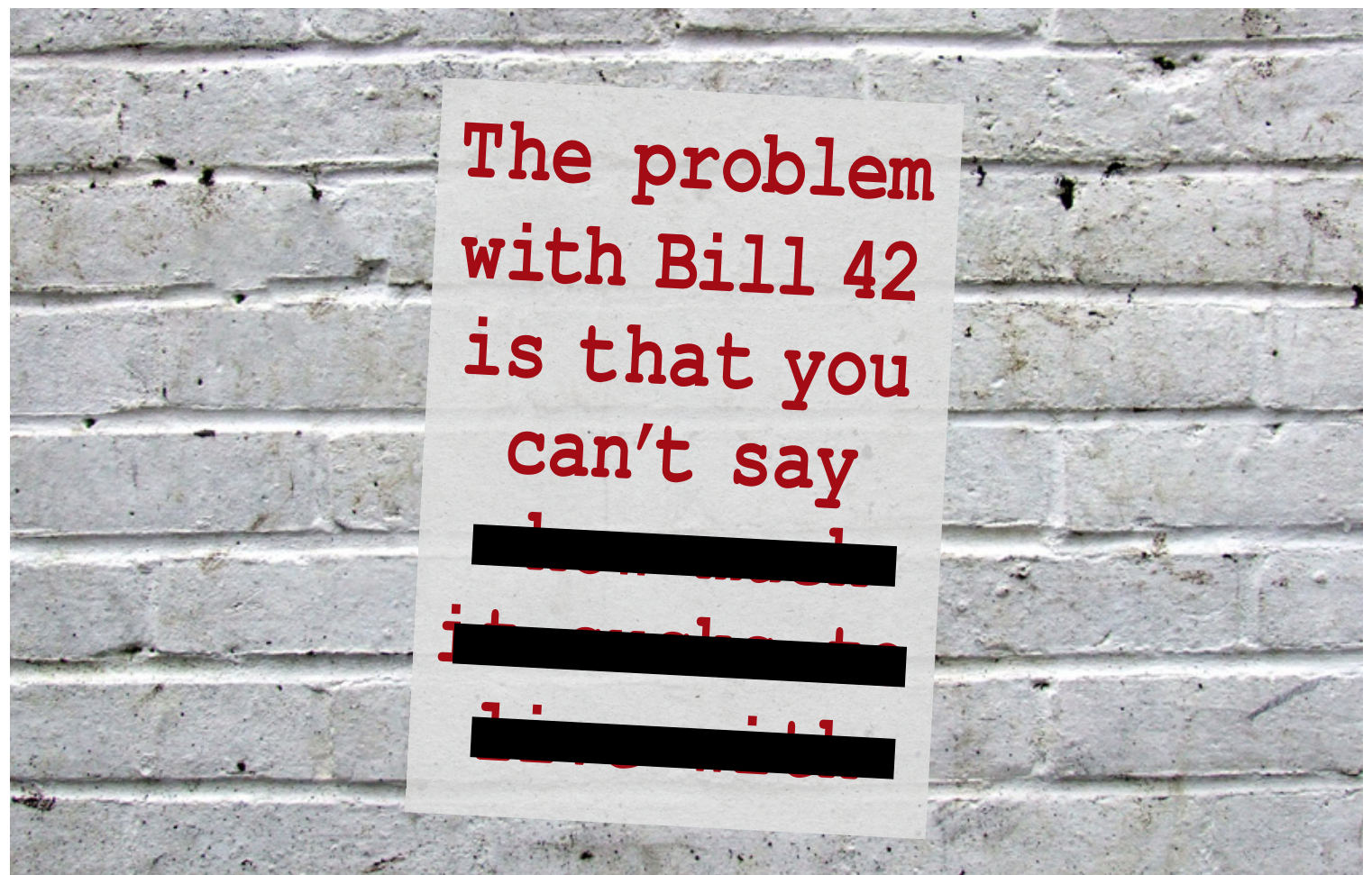
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Election Chill Effect

The Impact of BC's New Third Party Advertising Rules on Social Movement Groups

Summary

Download the full report at
www.policyalternatives.ca



by Shannon Daub and Heather Whiteside
October 2010



ELECTION CHILL EFFECT

Summary

“For groups to be scared to speak up about the government...or scared to know what they could and could not do, is really bad. It was not a good feeling.”

IN MAY 2008 THE BC GOVERNMENT PASSED BILL 42, the Election Amendment Act, which limits spending on election advertising by “third parties” (any individual or group other than political parties and candidates running for office).

Bill 42 had significant and disturbing impacts on public debate in the lead-up to the 2009 provincial election, particularly for “social movement organizations:” charities, non-profits, coalitions, labour unions and citizens’ groups. These problems resulted from features of the third party advertising rules other than the spending limits themselves, in particular:

- *An extremely broad definition of election advertising:* The new definition covers a host of activities that most people likely would not think of as “advertising.” It includes non-partisan analysis of public policy issues and public communication that “takes a position on an issue with which a registered political party or candidate is associated.” The definition does not rule out free or low-cost tools like websites, social media, emails, petitions, or public forums.
- *Zero-dollar registration threshold:* Third parties must register with Elections BC before they conduct any “advertising,” even if they plan to engage *only* in free or low-cost activities; all registered third parties are publicly listed as election advertising sponsors on Elections BC’s website.
- *Volunteer labour defined as an election advertising “expense”:* If a third party uses volunteers in its advertising activities, the market value of their work must be reported as an expense. Political parties and candidates, in contrast, are not required to report volunteer labour as an election expense.
- *60-day pre-campaign period:* Rather than limit third party advertising during the official 28-day election campaign only, the new rules extended the limits to an additional 60-day pre-campaign period. The BC Supreme Court subsequently struck down the spending limits during this extra 60 days, but the requirement to register and report on advertising activities for the entire 88 days remains in force.

Bill 42 sparked heated media debate and a strong public reaction, mostly focused on how it would affect the speech rights of “big spenders” like corporations and large unions. Indeed, the new third party advertising rules were created, according to then-Attorney General Wally Oppal, to ensure electoral fairness—to level the playing field so those with the deepest pockets cannot dominate the election discourse. Contrary to this objective, however, the rules also extensively regulate the activities of “small spenders”—individuals and groups that spend little or nothing on election advertising.

This study examined the impact of BC’s new third party advertising rules specifically on social movement organizations in the lead-up to the 2009 provincial election. Sixty-five social movement groups participated in the research, 60 of which were aware of the new third party advertising rules prior to being contacted. Most are non-profit societies, 10 per cent are coalitions and 27 per cent are labour groups. Sixty-one per cent have annual budgets of less than \$500,000.

LEGISLATING CONFUSION

- The rules led to widespread confusion among study participants, which resulted in contradictory and incorrect interpretations, and arbitrary responses such as self-censorship.
- Participants had particular difficulty determining whether the very broad new definition of advertising and the inclusion of free and low-cost communication activities meant that their normal, mandate-driven education and advocacy work was suddenly re-defined as election advertising.
- Eighty-seven per cent of participants reported finding the definition of election advertising somewhat or very confusing.
- Confusion persisted for many groups despite expert advice from lawyers or Elections BC.

“Like other non-profit organizations, our website is our primary tool of communication with and information for our members and the general public...But with these rules, the very same website—unchanged—suddenly becomes election advertising. This is neither logical nor supportive of democracy.”

REGULATING THE WRONG GROUPS

- An analysis of the disclosure reports filed with Elections BC by 232 organizations registered as third party sponsors reveals that 59 per cent spent less than \$500 during the 2009 election campaign period. More than three quarters (76 per cent) spent well below even the \$3,000 limit for a single constituency.
- Because most non-profits are careful to remain non-partisan, and because registered charities are strictly prohibited under federal law from engaging in partisan activities, the prospect of being publicly labeled as a “third party advertising sponsor” created anxiety for many of the participant organizations.
- Six participant groups censored their public communication activities specifically in order to avoid having to register as advertising sponsors. Ten others did not register because they felt the law was illegitimate, as it does not distinguish between advertising versus information and analysis that contributes to healthy democratic debate.

- The third party advertising rules disproportionately burden small organizations, which are often entirely volunteer-run or have only one or two staff members. Small groups tended to spend inordinate amounts of time figuring out the rules and their potential reputational impact, tracking financial contributions and expenses and second-guessing their decisions—which disrupted their core activities and services.
- The rules were particularly problematic for small spenders and charities, many of which represent vulnerable citizens and less economically powerful interests—the very groups that should benefit from third party advertising limits.

CHILL EFFECT

“The term ‘election advertising’ is a misnomer; it’s actually ‘speaking out legislation.’”

The most troubling finding of this research is that a significant number of organizations self-censored in order to comply with the new election advertising rules—including both registered and non-registered groups. In other words, the rules cast an anti-democratic chill over election discourse. As a result, public debate during the months leading to the 2009 BC provincial election did not benefit from the full range of perspectives historically made available to voters by local charities, non-profits, coalitions and other social movement organizations.

- Forty per cent of participants altered their normal or previously planned activities as a result of the new rules. The spending limits themselves were only relevant to a few of these alterations (i.e., some reduced their activities in order not to over-spend the limits). Between 27 and 33 per cent of participants self-censored for other reasons, including confusion about the rules, decisions to err on the side of caution, and/or to avoid having to register as an election advertising sponsor.
- Most of the activities the participants altered had little to do with commercial advertising. For example, nine groups did not post new material on their websites; four removed previously posted material from their websites; four altered the tone or content of their communications; five temporarily halted an existing campaign or project; three refrained from using online social networking sites; four refrained from issuing or endorsing a call for changes to government policy or legislation; and one group withdrew from two coalitions.

Definition of Election Advertising in BC’s Election Act (S. 228)

“Election advertising” means the transmission to the public by any means, during the period beginning 60 days before a campaign period and ending at the end of the campaign period, of an advertising message that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated, but does not include

- (a) the publication without charge of news, an editorial, an interview, a column, a letter, a debate, a speech or a commentary in a bona fide periodical publication or a radio or television program,
- (b) 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,
- (c) the transmission of a document directly by a person or a group to their members, employees or shareholders, or
- (d) the transmission by an individual, on a non-commercial basis on the internet, or by telephone or text messaging, of his or her personal political views.

- Five groups refrained entirely from public commentary in the mainstream media, an activity that is explicitly exempt from the definition of “election advertising.”

KEY RECOMMENDATIONS

The following recommendations would, provided they are implemented together, clarify BC’s third party advertising rules and shift their focus away from small spenders. We are of the view, however, that if these recommendations are not implemented, Bill 42 should be repealed, as its harmful effects on the democratic process outweigh any benefits.

The provincial government should abandon its appeal of the BC Supreme Court ruling that struck down spending limits during the 60-day pre-campaign period, and amend BC’s Election Act to:

- Remove all references and requirements related to the 60-day pre-campaign period.
- Revise the definition of election advertising so that it is easier to interpret and focuses more narrowly on commercial advertising activities, rather than the broad range of political speech activities currently encompassed. A revised definition of election advertising should also adequately deal with the realities of online communication.
- Establish minimum spending thresholds, indexed to inflation, below which third parties would not be required to register. These should be set at \$1,000 for advertising within a single constituency, and \$5,000 for province-wide advertising.
- Require third parties to register only once they reach the threshold, as is the case in the Canada Election Act.
- Exempt charities from the third party advertising rules altogether, as they are already federally regulated and in order to achieve registered charity status must demonstrate that they are non-partisan and make a contribution to the public good.
- Exempt volunteer labour from the definition of an election advertising expense (as is the case federally, and as the BC Election Act does for political party and candidate expenses).

“We meet in each others’ homes, in our living rooms, and we do it all for free... I really think that these kinds of rules, it’s good to have them...for big corporations, for unions. ...But, it shouldn’t be about us small groups that are volunteer based that are doing things out of our living rooms for goodness’ sake.”

The following additional recommendations are particularly important if the provincial government does not fix the third party advertising rules prior to the next election:

- The provincial government should provide additional funds to Elections BC to improve administration of the rules.
- Elections BC should develop case examples that explain more clearly and concretely how the rules apply, in particular with regard to what kinds of communication activities and messages are covered.
- Elections BC should provide advance rulings to groups seeking clarity about how the rules work in relation to their specific communication activities.

Ultimately, third party advertising limits should not be enacted in a vacuum, but rather should be considered in the context of a broader examination of electoral reforms that can deepen democratic rights and increase participation in elections.



The BC Freedom of Information and Privacy Association (FIPA) is a non-profit society which was founded in 1991 to advance the ideals of open and accountable government, an informed electorate, and enhanced human rights and civil liberties, by promoting and defending the principles of freedom of information, freedom of expression and privacy protection in British Columbia. FIPA serves individuals and organizations through its helplines and programs of public education, research, public interest advocacy and law reform.

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Download the full report at
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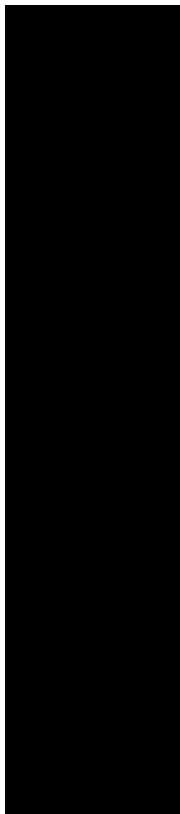


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BC Office

The Canadian Centre for Policy Alternatives is an independent, non-partisan research institute concerned with issues of social and economic justice. Founded in 1980, it is one of Canada’s leading progressive voices in public policy debates. The CCPA is a registered non-profit charity and depends on the support of its more than 10,000 members across Canada.

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<http://thetyee.ca/News/2013/04/22/Election-Law-Chill/>

Election Law 'Chilling' Groups Wanting to Share Info

Complex, 'crazy making' third party advertising restrictions sow confusion.

By [Andrew MacLeod](#), 22 Apr 2013, TheTyee.ca

For four years Judy Wigmore in Kamloops has run the Pesticide Free BC website to share information on an important issue she thinks people should know about. Now she feels forced to make it unavailable until the provincial election is over, her free speech stifled.

"I think people should be able to go to a website like mine and make their own conclusions," Wigmore said in a phone interview not long after the writs were issued to start the official election campaign. "To me it's wrong that individuals' efforts are silenced."

She's among many people and organizations across the province trying to figure out how election advertising laws affect them. Breaking those laws can result in a \$10,000 fine and up to a year in jail, putting a deep chill on what people can say during the campaign.

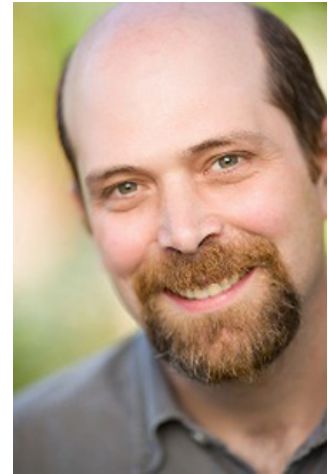
Wigmore said Elections BC officials warned her the pesticide information site likely contravened restrictions that come into play during the 28-day campaign period from when the writs are issued until election day.

Her website included factual information about pesticide laws and the debate about introducing a province-wide ban in British Columbia. Today just three sentences are publicly available on the site as it [explains](#) why it is offline: "The website contains third party advertising because it identifies the party that supports a pesticide ban and the one that continues to ignore BCers."

It promises to return, but not until after British Columbians have made their decision on May 14.

No business as usual

Wigmore acknowledges she could have registered for free as an election advertising sponsor with Elections BC, but chose not to. "I'm taking the easy way out," she said. Instead she'll volunteer on the NDP campaign in [Kamloops-South Thompson](#).



West Coast Environmental Law Association staff lawyer Andrew Gage: 'This is having a chilling effect on public discussion.'

For the Sierra Club of BC, registering was not an option, said interim executive director Sarah Cox.

Once registered, if an organization spends more than \$500 it is required to file a financial report that includes information about donors. Cox said it would be very easy to spend that much and trigger the need for a report, which would mean publishing the names of anyone who gave the Sierra Club \$250 or more during the past seven months.

The organization wouldn't release people's names without checking with them first, and nobody has time to do that, she said.

Also, the Sierra Club received legal advice that registering would be a bad idea at a time when Prime Minister Stephen Harper's government in Ottawa is cracking down on charities they think are spending too much time doing political work. Said Cox, "Registering would be akin to saying we're involved in political activities."

Instead, based on advice from Elections BC, the conservation group has frozen much of its website and removed the "Take Action" section, said Cox.

"I understand why the third party election advertising rules are in place," Cox said. It makes sense to restrict people or groups with deep pockets from buying undue influence in an election, but there's something wrong with how it affects small groups, she said.

"I think it unfairly restricts the activities of conservation groups like the Sierra Club of BC," she said. "We can't continue business as usual during the election campaign."

Rules 'crazy making'

Figuring out what they can and can't do has been time consuming, Cox said. "Some of the restrictions are crazy making."

For instance, the Sierra Club can send out press releases and talk to media, but it can't post those notices or clippings of any stories on its website, she said, adding, "That's crazy."

The group can hold regularly scheduled events or put out publications that appear periodically, but it can't put out any one-page fact sheets on specific issues that might be associated with a candidate or party, she said.

It's okay to mention on Twitter that spirit bears live in the Great Bear Rainforest, but not to say the area needs to be protected, she said. The Sierra Club has a large social media following, she said. "It's a shame we can't continue doing that."

The restrictions on advertising have become the subject of discussion among groups very recently, she said. "It's only come to our attention in the last week, so it's been a scramble and different groups are doing different things."

A 2010 Canadian Centre for Policy Alternatives [report](#) found the B.C. laws had a "chill effect" on advocacy groups during the 2009 B.C. election.

One of the authors of that report, the CCPA's communication director Shannon Daub, said this time around she's heard from at least four organizations who are removing or restricting content that she would consider in the public interest.

"Some people are finding the rules too complicated, so they just opt out," she said.
"People want to comply with the law, so they shut down out of an abundance of caution."

The CCPA registered, but Daub said it has taken several days to figure out the nuances of how the law does or doesn't apply. The think tank can leave existing videos about issues up on its website, but it can't promote them through social media or they become election advertising and count towards the spending limits, she said.

It can publish an editorial on its Policy Notes blog, since that's considered a bona fide periodical publication, but could not add the same piece to its main website, she said.
"The problem is fundamentally the rules don't make a lot of sense the way they're structured."

Spike in calls to Elections BC

B.C.'s Election Act is written and passed by the government, but it is interpreted and enforced by Elections BC.

"We've been working really hard to get the message out for groups like that," said Nola Western, the deputy chief electoral officer with Elections BC, noting they ran workshops that some 60 people attended earlier this year.

"I do get a sense there's more awareness out there that there are rules because we have seen a spike in calls around 'is this election advertising or isn't it,'" she said.

As of April 18 her office had handled 550 calls and email inquiries about the rules, she said. Two people were working full time dealing with them. The office had also received 258 registrations from election advertising sponsors, with more pending, she said.

The Election Act defines "election advertising" as "The transmission to the public by any means... of an advertising message that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate." It specifically includes "an advertising message that takes a position on an issue with which a registered political party or candidate is associated."

"The definition is broad," acknowledged Western. "Right now we don't even know what all the issues are going to be for this campaign."

The definition does not include an individual sharing their personal views, but it would restrict what an organization could say on social media, she said.

Asked about a group feeling it couldn't put its press releases on its website, Western said the test is what the group would regularly do outside of an election period. "If they normally have a section on their website that is for press releases, they could do that," she said.

But if they instead put it on their homepage or distribute it to people who are not in the media, she said, "Then it could be advertising."

Organizations are free to send information to their members or shareholders, however, and it won't be considered election advertising regardless of its content, she said.

Silencing debate?

On April 19, the West Coast Environmental Law Association published a [blog post](#) by staff lawyer Andrew Gage asking, "Are B.C.'s election advertising rules silencing public debate?"

Targeting communications based not on whether they are intended to influence the election but on whether the parties or candidates may have taken a position on the issues raised is a mistake, he wrote. "That goes too far," he said. "In our view, this is having a chilling effect on public discussion at the very time when we most need public discussion."

Gage pointed out, "The rules favour commercial interests and the wealthy over non-profits and other organizations that receive funding from broad and diverse sources."

The Freedom of Information and Privacy Association has been [fighting](#) in the Supreme Court of B.C. to have the law changed so that anyone spending under a certain amount of money doesn't have to register. Most jurisdictions in Canada have a floor of \$500 and in Alberta it's \$1,000, said Vincent Gogolek, FIPA's executive director.

FIPA tried to have the case heard before the election, but the judge agreed with the government's argument that the case is complicated and shouldn't be expedited. "It's moving very slowly forward," said Gogolek.

He said he's confident FIPA will eventually win the case. "It's pretty obviously an infringement on the Charter right of freedom of speech," he said. "We're talking about political speech during an election when we choose our government. I don't see how they can possibly justify this."

It's frustrating how much time is wasted on this, including by FIPA, in the courts, at Elections BC and in countless offices trying to interpret the rules, said Gogolek. "This

should have been fixed by now," he said. "It seems like the B.C. government is 100 per cent committed to this."

Asked if the government's goal may in fact be restricting free speech, he said, "It's not hard to connect the dots."

Hey little spenders

Told of Judy Wigmore's decision to bar access to her Pesticide Free BC website, FIPA's Gogolek said, "That's a classic example. That's the chill in action."

It's wrong that people feel they have to make that decision, he said. "They hear about this and they shut up shop for the time we're supposed to be exercising our democratic right. It's ridiculous."

In 2010 the Chief Electoral Officer, the head of Elections BC, recommended the government bring the threshold up to \$500 to match the federal government. "Having a consistent registration threshold would prevent the considerable confusion and administrative burden that currently exists," his [report](#) said.

Daub said a threshold of \$1,000 would make a big difference. The law is justified based on limiting the ability of people or groups with deep pockets from influencing the outcome of an election, she said. But the CCPA's 2010 report found that the majority of registrations in 2009 were for advertising sponsors that spent less than \$500, she said. More than three-quarters of them spent less than \$2,000.

She asked, "If it's about the big spenders, why are you regulating the people who have very little money to spend?" 🍌

Read more: [BC Politics](#), [BC Election 2013](#)

Andrew MacLeod is The Tyee's Legislative Bureau Chief in Victoria. Find him on [Twitter](#) or reach him [here](#).

B.C. election gag law criticized for silencing small groups

by [Stephen Thomson](#) on Apr 19, 2013 at 5:02 pm

B.C. nonprofit groups and rights advocates are criticizing a provincial law on third-party political advertising for threatening the free speech of smaller organizations.

The rules impose maximum spending limits on election advertising in an effort to stop groups with deep pockets from dominating public debate during the campaign period.

However, the legislation has caused concern for smaller groups who are unclear if the routine messages they send the public fit the broad definition of election advertising.

Elections B.C., which enforces the rules, says the definition could cover communication via websites, social media, or email, as well as traditional methods like print and radio.

The rules also contain penalties including fines and prison time for groups that engage in sponsoring election advertising without first registering with Elections B.C.

The Sierra Club B.C. has decided, based on legal advice, to not register as an official third-party election advertiser out of fear it could jeopardize its status as a charity.

Under federal law, registered charities are prohibited from conducting any partisan political activity.

Sarah Cox, Sierra Club B.C. interim executive director, said the group has instead decided to self-censor during the election campaign period.

Cox said the nonprofit environmental group will be limiting what it publishes through its website, email, and newsletter until after the May 14 vote.

"It's certainly curtailed our ability to communicate to the public about environmental issues in this campaign. We'll be back on May 15," Cox told the *Straight*.

The provincial rules apply to individuals or groups who are not political parties, candidates, or riding associations.

Under the legislation, the definition of election advertising includes messages that take a position on parties, candidates, or political issues in the campaign.

However, there are exceptions for material published in newspapers, broadcast in newscasts, and personal political views shared online, among others.

Like the Sierra Club B.C., the Canadian Parks and Wilderness Society B.C. has also decided to not register with Elections B.C.

Executive director **Nicola Hill** said the nonprofit conservation group has opted to restrict what it says to the public until after the election.

“For an organization like ours, because we do so much public education and engagement and we’re active around the province, we decided that we would have to limit our communication during the election period which is unfortunate because I think you want those voices to be heard during an election,” Hill told the *Straight*.

The provincial legislation, which was also in place during the 2009 general election, has been condemned by rights groups.

In January, the B.C. Freedom of Information and Privacy Association launched a constitutional challenge of the law.

The group has argued against the requirement for “small spenders” to register with Elections B.C. and called for exemptions for such groups, as in other jurisdictions.

“Our political speech is the most highly protected type of speech that we have and it’s being restricted during the time when we choose our leaders for the next period of time,” association executive director **Vincent Gogolek** told the *Straight*.

Justice Minister **Shirley Bond** could not be reached for comment.

According to Elections B.C., there are more than 250 registered third-party election advertising sponsors so far during this election campaign period.

Nola Western, deputy chief electoral officer, said the provincial agency has made efforts to inform groups about the rules and will work with them to help them comply.

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