

**2018**

# **Guide for third party advertisers**

**Ontario municipal council and school board elections**

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## **General information**

Prior to 2018, third party advertising was not regulated for municipal council and school board elections. Those who wanted to advertise or distribute materials supporting or opposing a candidate did not have to identify themselves, were able to spend unlimited amounts of money, and did not have to report their advertising or financial activities to anyone.

Recent changes to the Municipal Elections Act, 1996 created a framework of rules for third party advertising. This guide provides information about who can register to be a third party advertiser, what registration allows them to do, and the rules that third party advertisers must follow.

### **The municipal clerk**

Every municipality has a municipal clerk who is in charge of running the election.

The municipal clerk is the main contact for registered third party advertisers and those who are interested in becoming registered.

The clerk's office is where forms such as the registration form and campaign financial statements must be filed. The clerk is also responsible for providing information about spending limits and filing deadlines to third party advertisers.

If your municipality does not have a website, you could visit or contact the town hall for more information.

A municipality may have specific rules regarding issues such as where and when election signs may be displayed and whether third party advertising activities may occur on municipal property.

Contact your municipal clerk if you have questions about the election in your municipality.

### **What is third party advertising?**

Third party advertising refers to advertisements or other materials that support, promote or oppose a candidate, or support, promote or oppose a "yes" or "no" answer to a question on the ballot. Third party in this context is a person or entity who is not a candidate.

Third party advertising is separate from any candidate's campaign, and must be done independently from a candidate. Any advertisements or materials that are made and distributed by a candidate, or under a candidate's direction, are part of the candidate's campaign.

- a corporation carrying on business in Ontario
- a trade union that holds bargaining rights for employees in Ontario.

If two or more corporations are owned or controlled by the same person or people, or if one corporation controls another, they are considered to be a single corporation. If the same person or people own or control multiple corporations, only one of those corporations may register to be a third party in a municipality.

There is no restriction against family members or campaign staff of candidates registering to be third party advertisers. However, third party advertising must be done independently of the candidate. If a person with close ties to a candidate wishes to register they should consider how these activities may look to the public and how they would be able to demonstrate that they were not working in co-ordination with the candidate.

### **Who cannot be a third party advertiser**

A candidate running for any municipal council or school board office cannot register to be a third party advertiser in any municipality.

Groups, associations or businesses that are not corporations are not eligible to register and may not spend money on third party advertising in municipal elections. For example, neighbourhood associations, clubs or professional associations cannot register and cannot make contributions to third party advertisers. Members may register as individual third party advertisers and may contribute individually.

Candidates in the provincial election cannot register. They may register after the provincial election, when they are no longer candidates.

Federal and provincial political parties cannot register to be third party advertisers. Political parties are not permitted to be financially involved in municipal elections.

### **Registration**

An individual, corporation or trade union must register with the municipal clerk to be a third party advertiser in a municipality. Third parties can register in any lower-tier or single-tier municipality (city, town, township, etc.). Third parties cannot register in an upper-tier municipality (a region or county).

Being registered in a municipality allows the third party to advertise to the voters in that municipality. A third party advertiser can support or oppose any candidate or candidates who will be voted on by the people in that municipality. This includes candidates running for local council, school trustee and candidates running for offices on an upper tier council.

- If the third party wants to use the same signs or the same advertisement in more than one municipality, the separate advertising campaigns can produce a “joint” advertisement. The advertisement would indicate that the third party is registered in both municipality A and municipality B, and each advertising campaign would pay for its share of the expense for the advertisement.
- The third party must file a separate financial statement in each municipality where they were registered. The financial statement must reflect the financial activities relating to advertising in that municipality.

## **Responsibilities of registered third parties**

Third party advertisers are required to follow many of the same financial and reporting rules as candidates.

Unlike candidates, third party advertisers cannot appoint scrutineers to observe the voting, or to be present when votes are counted.

### **Identification on advertising**

A third party advertiser must provide the following information on all of its advertisements, signs and other materials:

- the legal name of the registered third party (if the third party is a corporation or trade union, the name of the corporation or trade union must appear, not the name of the representative who filed the registration)
- the municipality where the third party is registered
- a telephone number, mailing address or email address where the third party can be contacted.

A registered individual cannot act on behalf of a group or organization that is not eligible to register as a third party advertiser. For example, if Chris Smith is the president of a business improvement association (BIA), the signs and materials must identify Chris Smith as the person responsible for the advertising, not the BIA.

If ads are going to be broadcast or published (e.g. on a radio station or in a newspaper), the ad must contain the information required above, and the third party advertiser must also provide the broadcaster or publisher with the following:

- the name of the registered third party
- the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the registered third party
- the municipality where the third party is registered.

Any additional content of signs is not regulated under the act.

## **Finance rules**

### **Third party advertising campaign**

This guide refers to activities related to third party advertising as the "advertising campaign".

### **Record keeping**

Every third party is responsible for keeping financial records related to their advertising campaign. The Municipal Elections Act, 1996 does not require that third parties use any specific accounting system. A third party may want to consult with an auditor or an accountant to make sure that they are using a bookkeeping and accounting system that will suit their needs.

The third party should also look through the financial statement (Form 8) that they will be required to file to make sure that they are keeping records of all the information that must be included on the statement.

Every third party is required to keep all of their advertising campaign financial records until November 15, 2022 when the next council or school board takes office.

A third party must keep the following campaign records:

- the receipts issued for every contribution including when the contribution was accepted and the date the receipt was issued (receipts must also be issued to the third party for any contributions made to their own advertising campaign)
- the value of every contribution, whether it is money, goods or services, and the contributor's name and address
- all expenses, including the receipts for each expense
- any claim for payment of an expense that the third party disputes or refuses to pay
- the funds raised and expenses incurred from each separate fundraising event or activity
- the terms of any loan received from a bank or other recognized lending institution.

### **Advertising campaign period**

A registered third party can only accept contributions or incur campaign expenses during their advertising campaign period.

The advertising campaign begins on the day the individual, corporation or trade union is registered as a third party advertiser. Third parties can register beginning on May 1, 2018 until the close of business on Friday October 19, 2018.

## **Things that are not contributions**

The value of volunteer labour (for example, if a team of volunteers helps to put up signs) is not considered to be a contribution.

A cash donation of \$25 or less received at a fundraising event is not considered to be a contribution, and the third party may accept such donations without keeping track of who gave them. The total amount of money received from these donations must be reported on the financial statement.

If the third party obtains a campaign loan from a bank or a recognized lending institution, the amount of the loan is not considered to be a contribution.

## **Who can contribute**

A third party can accept contributions from:

- any person who is a resident of Ontario
- corporations carrying on business in Ontario
- trade unions that hold bargaining rights for employees in Ontario.

If the registered third party is an individual, and their spouse is not normally resident in Ontario, the spouse can still make contributions to the third party's advertising campaign. They may not make contributions to any other registered third party, or to any candidates.

Groups such as clubs, associations or ratepayer's groups are not eligible to make contributions. The members of these groups may make individual contributions from their personal funds, as long as they are residents of Ontario.

## **Who cannot contribute**

The following are not allowed to make contributions to third party advertising campaigns:

- a federal political party, constituency association, or a registered candidate in a federal election
- a provincial political party, constituency association, or a registered candidate or leadership contestant
- a federal or provincial government, a municipality or a school board.

Third party advertisers are required to list the names and addresses of every contributor who gives more than \$100 total to the advertising campaign in their financial statement. The financial statement is a public document.

A third party should keep a record of the names and addresses of every contributor, regardless of the value of their contribution, because the same contributor may make multiple contributions that end up totalling more than \$100.

Contribution receipts are not tax receipts. Contributions to third party advertising campaigns cannot be credited against provincial or federal income taxes.

An easy way for third party advertisers to inform contributors of the contribution limits is to include the contribution limits on the receipt that is given for each contribution.

### **Review of contributions**

The contributions that are reported on third party advertisers' financial statements will be reviewed by the municipal clerk to see if any contributors have given too much.

If the contributions reported on the financial statements show that a contributor gave more than \$1,200 to an individual third party advertiser, or if they show that a contributor gave more than \$5,000 to third party advertisers registered in the same municipality, the clerk will report this to the compliance audit committee. The compliance audit committee will hold a meeting and determine whether the municipality will begin court proceedings against the contributor.

### **Returning ineligible contributions**

Third party advertisers are required to return any contribution that was made or accepted in contravention of the act as soon as they learn that it was an ineligible contribution. If the contribution cannot be returned, it must be turned over to the clerk.

Contributions should be returned or paid to the clerk if the contribution is:

- made outside the campaign period
- from an anonymous source (except for donations of \$25 or less at a fundraising event)
- from an ineligible source (e.g. someone who doesn't live in Ontario, a business that is not a corporation, etc.)
- greater than the \$1,200 individual limit or the \$5,000 total limit
- a cash contribution greater than \$25
- from funds that do not belong to the contributor who gave them

### **Refunding unused contributions**

If the advertising campaign ends with a surplus, the third party can withdraw the value of contributions that they made to their own campaign. If the third party is an individual, they can also withdraw the value of contributions made by their spouse. If there is still a



## **Campaign income**

If funds are raised by selling goods or services for more than fair market value, the difference between the fair market value and the amount paid is considered to be a contribution. If the good or service is sold for \$25 or less, the amount paid is considered campaign income, and not a contribution.

### **Examples:**

The campaign has 20 framed prints to sell at a fundraising function. The cost to the campaign is \$20 per print, and they are sold for \$50 each. Each person who purchases a print is making a \$30 contribution to the campaign.

The campaign has 100 t-shirts printed to sell at a fundraiser. The cost to the campaign is \$10 per shirt, and they are sold for \$25 each. Each person who purchases a shirt is not making a contribution. The \$2,500 that was raised by selling the shirts must be recorded as campaign income on the financial statement.

If goods (such as food and drink) are sold at market value, the revenue is not considered to be a contribution, but must still be recorded on the campaign financial statement as campaign income.

## **Expenses**

Campaign expenses are the costs that are incurred during the campaign. These include costs directly related to producing, distributing or publishing advertisements, as well as indirect costs such as hiring someone to keep track of contributions and issue receipts.

Goods and services that are contributed to the campaign are also expenses. They should be treated as if the contributor gave the third party money and the third party went out and purchased the goods and services at fair market value – both the contribution and the expense must be recorded.

### **Example:**

An individual spends \$120 on stakes for putting up signs and donates them to a third party's advertising campaign. The third party should record a contribution of \$120 in goods or services from the individual, and record an expense of \$120.

Expenses must be paid from the campaign bank account. If a credit card is used to pay for purchases, the third party should keep clear records showing that the expense on the credit card was reimbursed from the campaign account.

Any taxes such as HST paid on purchases should be included in the amount of the expense.

Third party advertisers can only incur expenses during their advertising campaign period, except for expenses related to the preparation of an auditor's report. If a third party advertiser is required to include an auditor's report with their financial statement,

- related to a compliance audit
- incurred by a registered third party who is an individual with a disability, and the expenses are directly related to the disability and would not have been incurred if not for the election
- audit and accounting fees

Any materials, events or activities must have fundraising as the primary purpose in order to be exempt from the spending limit. An incidental mention of contributions is not enough to qualify as fundraising.

### **When the spending limit applies**

The spending limit covers expenses that are incurred between the beginning of the advertising campaign (the day the third party is registered) and voting day. Expenses incurred between the day after voting day and the end of the advertising campaign period are not subject to the spending limit.

If a third party incurs an expense before voting day, but doesn't get around to paying for it until after voting day, it would still be subject to the spending limit.

Expenses related to parties and expressions of appreciation after voting are subject to the specific spending limit regardless of whether they are incurred before or after voting day.

### **Advertising campaign financial statement**

Every registered third party advertiser must file a complete and accurate financial statement on time.

The filing deadline is 2 p.m. on March 29, 2019.

Third party advertisers must use Form 8. (Do not use Form 4, as that is the financial statement for candidates.)

If a bookkeeper or accountant completes the financial statement, the third party is still responsible for ensuring that it is complete, accurate and filed on time.

Financial statements do not require original signatures. Contact the clerk for information about whether a financial statement can be filed by a method such as fax or email.

If an individual, corporation or trade union registered in more than one municipality, they must file a separate campaign financial statement with each municipal clerk.

If a third party did not receive any contributions or incur any expenses, they are only required to fill out the first page of the financial statement and sign it.

The supplementary financial statement must be filed with the clerk by 2 p.m. on Friday, September 27, 2019. There is also a 30-day grace period for this deadline in which the statement can be filed late provided the \$500 fee is paid.

### **Surplus and deficit**

If the campaign has a surplus after the third party has refunded contributions made by the third party (and, if the third party is an individual, their spouse), the remaining surplus must be paid over to the clerk when the financial statement is filed. The surplus will be held in trust, and the third party can use it if they incur expenses related to a compliance audit. If the surplus is not needed for these expenses, it becomes the property of the municipality.

If the third party's campaign expenses are greater than the campaign income, the campaign will be in deficit.

Note: If the financial statement reports that the advertising campaign ended with a deficit, this is a deficit on paper only. The third party is still obligated to pay any vendors they owe money to. Ending the campaign with a deficit may result in questions being raised about how those vendors were paid.

### **Auditor's report**

A third party must have an auditor review the financial statement and provide a report if:

- the advertising campaign expenses exceed \$10,000, or
- the contributions received exceed a total of \$10,000, or
- both the expenses and contributions exceed \$10,000 each.

The auditor's report must be prepared by an auditor licensed under the Public Accounting Act, 2004. Before a third party hires someone to prepare the report, they should ensure that the person is properly qualified.

A third party can incur expenses relating to the auditor's report after December 31, 2018. These expenses do not count toward the spending limit. These expenses should be included on the financial statement that will be filed.

A person who does not want to or who is not able to apply for a compliance audit may decide to commence legal action on their own. A prosecution related to the 2018 election must be commenced before November 15, 2022.

### **Penalties**

If a person is convicted of committing an offence, they may be subject to the following penalties:

- a fine of up to \$25,000
- up to six months in prison
- ineligibility to register to be a third party advertiser until after the next regular election
- ineligibility to vote or run in the next regular election (in the case of conviction for bribery or other corrupt practices).

If a corporation or trade union is convicted of committing an offence, they may be subject to a fine of up to \$50,000, and ineligibility to register to be a third party advertiser until after the next regular election.

If any third party advertiser is convicted of exceeding a spending limit, they may also be fined the amount by which they exceeded the limit.

## **Where to find forms**

Copies of forms can be obtained from the municipal clerk or downloaded from the Government of Ontario's Central Form Repository at [www.forms.ssb.gov.on.ca](http://www.forms.ssb.gov.on.ca).

Please note that this list only provides forms applicable to registering and fulfilling requirements for third party advertisers. For an exhaustive list of all forms applicable to municipal elections, please use the direct link.

[Direct link to all forms](#)

[Notice of Registration – Third Party \(Form 7\)](#)

[Financial Statement – Auditor's Report – Third Party \(Form 8\)](#)

[Financial Statement – Subsequent Expenses \(Form 5\)](#)

[Notice of Extension of Campaign Period \(Form 6\)](#)

**Ministry of Municipal Affairs**  
© Queen's Printer for Ontario, 2018

ISBN 978-1-4868-1943-0 (HTML)  
ISBN 978-1-4868-1944-7 (PDF)

04/18

Disponible en français

## **Information for broadcasters and publishers**

Broadcasters and publishers have new responsibilities related to the campaign advertisements of candidates and third party advertisers. The campaign period begins on May 1 and ends on December 31.

### **Advertisements by candidates or third party advertisers:**

If a candidate is advertising, you must collect in writing:

1. the candidate's name
2. the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the candidate (Note: this individual may be the candidate themselves)

If a registered third party is advertising, you must collect in writing:

1. the name of the registered third party (Note: this may be the name of an individual, a corporation, or a trade union)
2. the municipality where the third party is registered
3. the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the registered third party

**You must not broadcast or publish any campaign advertising without recording this information.**

Broadcasters and publishers must maintain records of:

1. the information collected in writing
2. a copy of the advertisement (or the means of reproducing the advertisement for inspection)
3. a statement of the charge made for its appearance

These records must be kept for 4 years after the date the advertisement appears. The public must be permitted to inspect the records.

Third party advertising is restricted from the start of the campaign period on May 1 until the close of voting on October 22, 2018. Broadcasters and publishers are not required to collect information or retain records for advertisements that appear before May 1.

[Read the guide for third party advertisers to learn about the rules.](#)

## **Contact us**

If you have questions, please [contact us](#) or contact your regional [Municipal Services Office](#).