

# INTERPRETATION BULLETIN No. 01

**AUGUST 30, 2021**

## Advertising by Government Departments and Provincial Corporations During Election and By-Election Periods

### Restrictions on Government Advertising During Elections

The *Election Act* has regulated government advertising during an election period or a by-election period since January 1, 2018. More recently, the *Election Act* has been amended to include limitations on government advertising during a referendum period. The *Election Act* now states that government departments and Provincial Corporations:

- Must not advertise or publish any information about their programs or activities during an **election period**; and
- Must not advertise or publish any information about their programs or activities that has a disproportionate impact on voters in the electoral division where a by-election is being held during a **by-election period**; and
- Must not advertise or publish any information about their programs or activities related to the subject matter of the referendum that has a disproportionate impact on voters in the areas of Alberta in which a referendum is being held during a **referendum period**.

This Interpretation Bulletin provides guidance on the above to aid government departments and Provincial Corporations in determining if and how they are impacted by the new legislation. This bulletin is not comprehensive. Please refer to the *Election Act* and other applicable legislation as needed.

### When do the Government Advertising Restrictions Apply?

The limitations on government advertising apply only during specified times, called election periods, by-election periods and referendum periods. An **election period** begins with the issue of a writ for a general election, and ends at the end of Election Day. A **by-election period** begins with the issue of a writ for a by-election and ends at the end of Election Day.





The beginning and end of a **referendum period** depends on whether the referendum is being held as a stand-alone referendum, being held in conjunction with a Provincial General Election, or being held in conjunction with a general election under the *Local Authorities Election Act*. The referendum period for a stand-alone referendum or a referendum being held in conjunction with a Provincial General Election begins when the referendum order is issued and ends at the end of Election Day.

The referendum period for a referendum being held in conjunction with a general election under the *Local Authorities Election Act* begins on the later of the date the referendum order is issued or 60 days before Election Day.

### Who Does the Legislation Apply To?

*Election Act* limits on government advertising during election, by-election and referendum periods apply to departments and Provincial Corporations. A **department** means a department established under section 2 of the *Government Organization Act*. A **Provincial Corporation** means a Provincial Corporation as defined in the *Financial Administration Act*.

#### This includes:

- (1) All government departments; and
- (2) Organizations whose shares are fully or partially controlled by or held in trust for the Crown, and their subsidiaries; and
- (3) Organizations for which a majority of the members or directors are appointed by the government created by the government, and their subsidiaries.

Alberta Health Services and management bodies under the *Alberta Housing Act* are not subject to *Election Act* limits.

Section 134.1(4) and (5) of the *Election Act* also places limits on the involvement of Members of the Legislative Assembly in government advertising during elections and by-elections.

This includes:

- In an **election period**, using the name, voice, or image of a candidate that was a Member of the Legislative Assembly prior to the writ being issued in any advertisement about its programs and services.
- In a **by-election period**, using the name, voice, or image of a candidate who was a member of executive council prior to the writ being issued in any advertisement about its programs and services.



During a **referendum period**, Members of the Legislative Assembly are permitted to publicly express their views on the subject matter of a referendum (section 134.1(3.2)).

## What Advertising is Exempt?

Four kinds of advertising are exempt from *Election Act* limits during **election periods**, as follows:

- Publications required by law. This refers to the fact that many government departments and Provincial Corporations are required by legislation to publish specific kinds of information at specific times, often in specific ways. For example, the Alberta Energy Regulator is required under the *Responsible Energy Development Act* and the Alberta Energy Regulator Rules of Practice to publish decisions on applications by posting them on its website.
- Publications relating to important matters of public health or safety. For example, this might include publications such as those needed to inform the public about the pandemic, an emergency situation, poor air quality, or fire bans.
- Publications required to solicit proposals, tenders for contracts, or applications for employment.
- Advertisements or publications that are a continuation of earlier publications or advertisements, and are required for ongoing programs. For example, ongoing programs or publications continuing might include informing the public about existing government programs, services or policies; or informing the public of their rights and responsibilities under the law.

Five kinds of advertising are exempt from *Election Act* limits during **by-election periods**, including the same four types of publications exempt from limitation during election periods (above), as well as publications dealing with matters before the Legislative Assembly, such as the Speech from the Throne, the budget, the introduction or passage of a bill, or an order or resolution of the Assembly.

Five kinds of advertising are exempt from *Election Act* limits during **referendum periods**, including the same four types of publications exempt from limitation during election periods (above). In addition, if the referendum occurs at a time when the Legislative Assembly is not dissolved and deals with matters before the Legislative Assembly, such as the Speech from the Throne, the budget, the introduction or passage of a Bill, or an order or resolution of the Assembly.





## Violations

Alleged violations of the above limitations are to be reported to the Election Commissioner. Actual violations may lead to the removal of the advertising, publication of the particulars of the violation, prosecution, and/or imposition of an administrative penalty. If there is a breach of the *Election Act*, the Election Commissioner may consent to prosecution, or impose an administrative penalty.

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Under Review

