FILE NUMBER: 36495

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

B.C. FREEDOM OF INFORMATION AND PRIVACY ASSOCIATION

APPELLANT
(Appellant)

and

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT
(Respondent)

FACTUM OF THE INTERVENER BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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PART I: OVERVIEW AND STATEMENT OF FACTS

1. The Intervener, British Columbia Civil Liberties Association ("BCCLA") adopts the statement of facts set out at paragraphs 11 through 29 of the Factum of the Appellant and accepts, for the purposes of its submissions, the additional facts stated at paragraphs 16-35 of the Factum of the Respondent.

2. The BCCLA agrees with and adopts the argument of the Appellant, and will confine its submissions to the following aspects of this appeal:

(a) the relationship between marginalized persons and the use of modest signs, posters and handbills as personal means of political speech;

(b) the traditional role of anonymous speech in challenging the status quo and advocating controversial viewpoints;

(c) the costs and benefits of silencing of marginalized voices as measured against the Province's asserted objectives; and

(d) the error of the majority below in failing to carry out the critical third step of the test for justifying a *Charter* infringement under section 1 and, in the context of the fourth step, adopting an incremental "but-for" approach to assessing the deleterious effects of the impugned provision.

PART II: QUESTIONS IN ISSUE

3. The BCCLA agrees with the Appellant's statement of the questions in issue on this appeal.

PART III: ARGUMENT

A. Background and Legislative Scheme

4. At issue in this case is the constitutionality of s. 239 of the *Election Act*, R.S.B.C. 1996, c. 106, which obliges persons, whether individuals or organizations, to register with the Chief Electoral Officer ("CEO") in order to sponsor "election advertising" during a campaign period.

5. "Election advertising" is exceedingly broadly defined so as to encompass all forms of political speech, from a jacket pin to a roadside billboard, subject to certain specific exceptions

set out at paragraphs (a) through (d) of the definition.[1] The exceptions shed light on what is **not** excluded: the communication by an individual of his or her personal political views by internet, telephone or text messaging is excluded, whereas the communication of personal views by letter, handbill, poster or sandwich-board is not.

6. The statute draws no distinction between "election advertising" as it relates to a candidate or party and "election advertising" that expresses personal opinions regarding issues with which a party or candidate may be associated.[2]

7. A person must register with the CEO in order to "sponsor" any "election advertising".[3] "Sponsor" is defined broadly so as to include not only someone who pays for election advertising but also anyone who is the beneficiary of services that are provided free of charge.[4] There is no financial threshold for the registration requirement to apply. Thus, the registration requirement in s. 239 of the *Election Act* applies to virtually any form of communication associated with election issues, except as expressly excluded from the definition of "election advertising".

8. The CEO is an officer of the Legislature and holder of a government office.[5]

9. In order to register, a person must provide their full name, full address, a service address and a contact number to the CEO, and also provide a sworn statement.[6] The CEO is, in turn, statutorily required to make that registration information available to the public.[7] The register exists indefinitely.

B. Breadth of Section 239

10. The Respondent suggests that s. 239 may be interpreted as applying only where another third party provides a communication conduit or service having a market value to the third party "sponsor".[8] The BCCLA acknowledges that the concerns addressed in this factum would be diminished or even eliminated if the legislation, properly interpreted, did not apply to signs,

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[1] *Election Act*, s. 228.
[2] *Election Act*, ss. 228, 231, 239.
[3] *Election Act*, s. 239.
[4] *Election Act*, s. 229(1).
[5] *Election Act*, ss. 4-6.
[6] *Election Act*, s. 240.
[7] *Election Act*, s. 250.
[8] Factum of the Respondent, paras. 64-70.

posters or pamphlets (for example) setting out the maker's own views and produced at the maker's own expense without the involvement of a commercial third party conduit. However, the Attorney General's submissions do not appear to go so far (see, for example, paragraphs 102 and 119 of the Respondent's Factum). Moreover, such an interpretation is not easily reconciled with the definition in s. 228 of the *Election Act* of "value of election advertising", which requires a market value to be attributed to the work of preparing or conducting advertising when no money is paid. It is also difficult to reconcile with the definition of "election advertising" in s. 228, the provisos to which exclude some, but not all, forms of direct personal expression. For example, as previously noted, the definition excludes the transmission by an individual of his or her personal views by the internet, telephone or text messaging but not, for example, the transmission of such views through leaflets even if produced and delivered by the author at his or her own expense. Finally, the Attorney General's suggestion is inconsistent with the views expressed by the CEO (see BCCA decision para. 22). It is the CEO, not the Attorney General, who has interpretative authority regarding the statute.[9]

C. Propositions Relevant to the Section 1 Analysis

(1) Disproportionate Impact of Registration Requirement

11. The Attorney General asserts that "logic and reason" can be relied upon to assess the impact of election legislation on human behaviour.[10] The BCCLA agrees. The BCCLA submits that it is self-evident that the very group of persons most likely to use modest modes – such as posters, signs and handbills – to communicate their views, are also most likely to be deterred by the registration requirement. Those with little power, little money and a view that challenges the status quo are more likely to experience the burdens of registration as something more than "insubstantial".[11]

12. The majority in the Court below noted that registration obliges one to provide a statutory declaration and that registration information is available to the public and may be so indefinitely. However, the majority did not consider the fact that registration obliges one to interact with, and effectively report oneself and the fact of one's political activity to **the government**. People with little money, little power and views that challenge the status quo are often incentivized by their

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[9] *Election Act*, ss. 12(2).
[10] Respondent's Factum, paras. 91-93.
[11] AR, p. 75 (CA Reasons, para. 57).

circumstances to avoid government. For example, individuals on parole or in receipt of government disability benefits may be reluctant to draw the government's attention to themselves, let alone specifically to their political activity; the homeless may be deterred by the fact that they do not have an address or contact number to provide; those who owe money – whether to government or to less savoury elements – have reason to be hard to find. The prior restraint effect of registration will more sharply impact on those on the margins of society.

(2) Historical Users of Modest Modes

13. As observed by this Court in *Ramsden v. Peterborough (City)*, postering has historically been an effective and inexpensive means for communicating ideas that challenge the status quo. In *Ramsden*, the Court adopted the following characterization of the relationship "between the message and the forum":

> .. Posters are traditionally used by minority groups to publicize new ideas or causes. Posters are both a political weapon and an educational device. ... Posters have always been a medium of communication of revolutionary and unpopular ideas. They have been called "the circulating libraries of the poor." ... Their modern day use for effectively and economically conveying a message testifies to their venerability through the ages.[12]

14. Another means of personal expression that has historically been associated with unorthodox and dissenting views is the pamphlet or leaflet:

> The distribution and circulation of leaflets has for centuries been recognized as an effective and economical method of both providing information and assisting rational persuasion. It has long been used as a means to enlist support. ... The distribution of leaflets and posters is typically less expensive and more readily available than other forms of expression. As a result, they are particularly important means of providing information and seeking support by the vulnerable and less powerful members of society. ... Leafleting, like the postering at issue in *Ramsden*, is a form of expression that has historically been used by vulnerable and disadvantaged groups.[13]

(3) The Value of Anonymous Expression

15. The link between anonymity and the expression of controversial ideas is also a historically recognized one. As observed by Mr. Justice Black for the majority of the United

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[12] *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084 at 1102.
[13] *U.F.C.W., Local 1518, v. KMart Canada Ltd.*, [1999] 2 SCR 1083 at para. 28.

States Supreme Court in *Talley v. State of California*[14]: "Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. ... It is plain that anonymity has sometimes been assumed for the most constructive purposes."

16. As the U.S. Supreme Court has further noted:

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority.[15]

17. Anonymity also serves other political values:

> ... On occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent. [16]

D. Section 1 Analysis in the Decision Below

18. The majority in the Court below placed considerable weight on its view that the incremental impact of s. 239 was minimal in light of the disclosure required by s. 231 of the *Election Act*, which requires that "election advertising" must identify its sponsor:

> It is true, of course, that the registration requirement is only one of the series of "attribution, registration and disclosure" provisions and that even if registration were not required, **a third party sponsor would still be required by s. 231 to identify himself or herself as the sponsor of any election advertising and give his or her telephone number or mailing address as part of the advertisement.**
>
> ...
>
> At the end of the day we are faced not with a clash of conflicting *Charter* values or even a conflict between important principles per se, but a close balancing of some rather subtle circumstances – **the fact that the registration requirement is not terribly onerous**; the fact that although it could be used to assist the CEO in enforcing the advertising restrictions, it seems at least at present to be used only for administrative convenience; **the fact that third parties are already required, by s. 231, to identify themselves in election advertising**; the fact that advertisers might choose to disobey that requirement and might be easier to locate by means of the registration requirement; and the fact that registration may, as the intervenor contends, "delay or limit spontaneous political expression".

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[14] 362 U.S. 60 at 65 (1960).
[15] *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 at 357 (1995)
[16] *McIntyre v. Ohio, supra*, at 342.

> At the end of the day, I am persuaded that s. 239 must be considered in its legislative context just as its federal counterpart was in *Harper*. Given the insubstantial burden it places on third parties during an election period, I conclude that it falls within the "zone of discretion" that should be accorded to the Legislature in promoting equality of participation and influence among the proponents of political views and furthering the other objectives found to be pressing and substantial in *Libman* and *Harper*.[17]
>
> [emphasis added]

19. The BCCLA submits that the majority erred in its approach to this issue in the following respects:

(a) the relevant question is not whether registration is onerous in an administrative sense, but whether it is a requirement of a kind and nature that is likely to dissuade some persons from participating in the political process;

(b) the majority erred by equating the impact of disclosure under s. 231 of the *Election Act* with that of registration under s. 239;

(c) the majority misapplied the *Oakes* test for justification of a *Charter* infringement by collapsing the third and fourth steps, thereby reducing the constitutional issue before it to a simple balancing of interests; and

(d) the majority imposed a "but-for" test whereby the impact of a law on a constitutionally protected right is judged by comparing the statutory *status quo* with a hypothetical legal regime excluding only the challenged law and incorporating, for the purpose of the analysis, all existing statutory impairments of the right that have not been challenged in the litigation. This "but-for" test is, in the BCCLA's submission, inappropriate at any stage of the *Oakes* analysis.

(1) The Correct Approach to Assessing Impact

20. The effect of the impugned provision is not merely to "delay or limit spontaneous political expression". The impact is not merely temporal. Some persons and, in particular, the poor, the powerless and those with views challenging the status quo, will be altogether dissuaded from participating in the political marketplace of ideas. The silencing of marginalized voices is

[17] A.R., Vol. 1, pp. 74-75 (CA Reasons, paras. 55-57).

not only anathema to our concept of democracy, but in direct opposition to the *Election Act*'s rationale and justification for imposing ceilings on the sponsorship of election advertising, as will be discussed in more detail below. No breach of freedom of expression should be harder to justify than a restriction on minority political expression.[18]

(2) The Impact of Registration versus Disclosure

21. It is also an error to equate disclosure and registration for purposes of anonymity in political speech. It is quite conceivable that a person might be prepared to circulate a handbill to 20 or a 100 people in their immediate neighbourhood with identifying information on it, accepting the risk that general recirculation might bring her some undesired attention, but be unwilling to publicly register with the government as a condition of expressing any views at all. That is, there will be a category of people for whom the relative anonymity of limited circulation will be sufficient to keep them in the political arena. Section 239 may deter people who would not have been deterred by s. 231. The existence of s. 231 does not neutralize the impact of s. 239.

22. However, even if the majority's equation of the impact of ss. 231 and 239 were valid, its section 1 analysis remains flawed.

(3) Minimal Impairment

23. The majority failed to properly consider the third step of the *Oakes* test (minimal impairment). It did not consider whether s. 239 was reasonably necessary in order to achieve the objectives of the legislation, but rather whether it was helpful:

> ... it does not seem particularly useful when viewed in context. ... The CEO ... describes the registration system as an administrative burden that facilitates contacting third parties ... [H]owever, I would have thought the requirement to provide [information] under oath could help to ensure the veracity of the identification information required in their advertising – and thus ... "serve the interests of transparency".[19]

That finding constitutes, at most, the finding of a salutary effect to be balanced against the deleterious effects of the legislation at the fourth and final stage of the *Oakes* analysis.

24. It is a serious error to skip over minimal impairment and proceed directly to the balancing exercise contemplated by the fourth step (proportionality of effect). As Professor Hogg has

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[18] See: Appellant's Factum, para. 69.
[19] AR, pp. 71-72 (CA Reasons, para. 49) (emphasis in original).

noted, it is at the third step of the *Oakes* test that the majority of unconstitutional laws are determined to be invalid.[20] Few laws fail at the first step of the test (pressing and substantial objective), or at the second (rational connection). At these stages, as the Appellant has noted, it is reasonable to accord considerable deference to the legislator. Thus, the third step is critical, as the constitutionality of questionable laws is not to be decided based merely on the weighing of interests that takes place at the fourth and final step:

> At the heart of the *Oakes* structure is the step 3 finding that the limiting law should impair the right no more than is reasonably necessary to accomplish the (sufficiently important) objective of the law. To move to the balancing exercise of step 4 without having made that crucial finding entails the risk that the balancing exercise might result in the upholding of a law that was a more drastic infringement of the right than was necessary to accomplish the objective.[21]

25. It is only if the challenged law is found to minimally impair the constitutional right in question that the analysis proceeds to the question of proportionality of effect. In other words, the proportionality analysis may invalidate a law that has passed steps 1 through 3 of the *Oakes* analysis, but may not validate a law that has not passed all three steps, including having been found to minimally impair the right in question.[22]

26. In the present case, s. 239 of the *Election Act* imposes an absolute ban on expression by the unregistered, subject only to the specific exceptions carved out by the definition of "election advertising" in section 228. The question which ought to be asked at the minimal impairment stage is whether the pressing and substantial objectives of the Act could be achieved without such an extensive ban – whether they could be achieved, for example while still permitting (within limits) those modest forms expression, such as pamphlets and posters, which the courts have recognized as particularly associated with the disadvantaged, the unpopular and the oppressed.

27. In short, the question before the Court on the minimal impairment stage is whether s. 239 goes no further than is necessary; not whether some (or even all) of its negative impact is duplicative of the impact of another (unchallenged) provision.

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[20] Peter W. Hogg, *Constitutional Law of Canada*, 5th ed (looseleaf), Rel. 1, 2015 (Toronto: Carswell), Vol. 2, sec. 38.11(a).
[21] Hogg, *supra*, at sec. 38.12.
[22] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567 at paras. 76-78.

(4) The Court of Appeal's "But-For" Test for Assessing Deleterious Effects

28. Finally, the BCCLA submits that it is irrelevant that other legislative provisions, whether found in the same statute or otherwise, and whether challenged in the litigation or not, also impact anonymous expression. The effects of an impugned law, as regards a constitutional right, cannot be assessed by reference to a hypothetical universe that is less unjust only to the degree that it does not contain that law. The presumption of constitutionality cannot be taken so far. Such an approach would prevent the law from aspiring to the maximal achievement of the *Charter*'s objectives and would inhibit constitutional review on an incremental, case-by-case basis. Canadians must be able to challenge laws that impair their constitutional rights against a standard that reflects a constitutional ideal, not an unjust status quo, even if the legislature is not expected to perfectly achieve the ideal in every case.

E. Disproportionate Impact

29. The BCCLA submits that, even accepting the objectives ascribed by the Respondent to s. 239 of the *Election Act*, the section cannot withstand scrutiny under the final step of the s. 1 analysis, which asks whether the "benefits of the impugned law are worth the costs of the rights limitation". This is the step that takes into account the "severity of the deleterious effects of a measure on individuals or groups".[23]

30. The statute does not suggest that the unregulated modest expression of personal views is significantly, let alone fundamentally, inconsistent with achievement of its transparency and accountability objectives. To the contrary, the statutory definition of "election advertising" excludes the non-commercial expression of personal views over the internet, telephone or text message. Moreover, the *Election Act* does not mandate the inclusion of disclosure information on items of nominal value intended for personal use. Thus, the benefit obtained by requiring registration by modest election advertisers cannot be significant.

Election Act, ss. 228, 231(2), 283

31. The majority below found that registration and the requirement for an oath contributed to transparency.[24] The relative value of transparency regarding the identity of an advertiser varies in relation to the value of the information that can be inferred from sponsorship. Where an

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[23] *Alberta v. Hutterian Brethren, supra*, at para. 76
[24] AR, pp. 71-72 (CA Reasons, para. 49)

advertiser spends generously, the advertiser's identity may allow the public to infer that the candidate's or party's agenda (or the sponsored issue) aligns with the advertiser's self-interest. One might also infer that a candidate or party may be indebted to an advertiser for sponsorship. However, there is no equivalent "added value" inference to be drawn where the advertiser's sponsorship is of nominal value, and therefore registration of such advertisers provides little public benefit.

32. The registration requirement in s. 239 also contributes little to accountability when applied to the modest personal advertiser. On the Attorney General's evidence, registration information is not used proactively to monitor compliance, but rather to provide information to advertisers and respond to complaints. As regards adherence to the sponsorship maximums, it is s. 244 that mandates disclosure of the amount spent once the $500 threshold is exceeded. Section 244's disclosure obligation stands and operates independently of the obligation to register.[25]

33. With regard to the objective of a better informed public, as applied to the modest personal advertiser, the chilling effect silences marginalized voices in particular. Rather than levelling the playing field, registration may drive marginalized persons to cede the field – to the detriment of the public's interest in being informed of a wide-range of ideas. Thus, the impugned provision has effects that are significantly contrary to its own objective.

PART IV: SUBMISSIONS REGARDING COSTS

34. The BCCLA seeks no order as to costs, and asks that no award of costs be made against it.

PART V: ORDER SOUGHT

35. The BCCLA requests permission to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 22nd day of August, 2016.

Sheila Tucker

Sheila M. Tucker

Joanne R. Lysyk

[25] AR, pp. 61-62 (CA Reasons, para. 24).

PART VI: TABLE OF AUTHORITIES

PART VII: STATUTORY PROVISIONS

Election Act, R.S.B.C. 1996, c. 106

Part 2 — Election and Other Officials

Division 1 — Chief Electoral Officer

Appointment of chief electoral officer

4 (1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as Chief Electoral Officer an individual who has been unanimously recommended for the appointment by a special Committee of the Legislative Assembly.

(2) The chief electoral officer is an officer of the Legislature.

Impartiality

5 (1) Before beginning to perform the duties of office, the chief electoral officer must make a solemn declaration before the Clerk of the Legislative Assembly to faithfully and impartially exercise the powers and perform the duties of office.

(2) The chief electoral officer is not entitled to vote in an election.

(3) The chief electoral officer must not

(a) hold another office or engage in other employment,

(b) be a member of, hold a position with or make a contribution to a registered political party, a registered constituency association or a political party or constituency association seeking registration, or

(c) in relation to the individual's candidacy, hold a position with or make a contribution to an individual who is, intends to be or was a candidate in an election.

Term of office

6 (1) The term of office for the chief electoral officer is from the date of appointment until 12 months after the date set for the return of the last writ for the second general election for which the chief electoral officer is responsible.

(2) The chief electoral officer may be reappointed to further terms of office.

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Duties and powers of the chief electoral officer

12 (1) The chief electoral officer has the following duties in addition to all others established by this Act:

(a) to provide guidance and supervision respecting the voter registration process and the conduct of elections and plebiscites;

(b) to ensure that all other officials appointed under this Act carry out their duties with fairness and impartiality;

(c) to provide information to the public regarding the voter registration and other electoral processes under this Act.

(d) to ensure that this Act is enforced.

(2) The chief electoral officer has the following powers in addition to all others given by this Act:

(a) to make recommendations to the Legislative Assembly respecting amendments to this Act or other enactments affecting election matters;

(b) to issue to persons appointed or retained under this Act any information and guidelines the chief electoral officer considers necessary to ensure effective implementation of this Act;

(c) to require election officials and voter registration officials to follow the directions of the chief electoral officer regarding the performance of their duties and the exercise of their powers;

(d) to assign duties and related powers under this Act to election officials and voter registration officials;

(e) to delegate in writing to an individual appointed under section 10 (1), 18 (1) or (1.1) or 22 (1) the authority to exercise any power and perform any duty assigned to the chief electoral officer by this Act, other than the power to make regulations, subject to any limits or conditions imposed by the chief electoral officer;

(f) to prepare directives and guidelines for registered political parties, registered constituency associations, candidates, financial agents and auditors respecting this Act.

(3) The deputy chief electoral officer may perform the duties and exercise the powers of the chief electoral officer, other than the power to make regulations.

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Part 11 — Election Communications

Division 1 — General

Election advertising

228 For the purposes of this Act:

"contribution" means a contribution of money provided to a sponsor of election advertising, whether given before or after the individual or organization acts as a sponsor;

"election advertising" means the transmission to the public by any means, during 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;

"value of election advertising" means

(a) the price paid for preparing and conducting the election advertising, or

(b) the market value of preparing and conducting the election advertising, if no price is paid or if the price paid is lower than the market value.

Tenant and strata election advertising

228.1 (1) A landlord or person acting on a landlord's behalf must not prohibit a tenant from displaying election advertising posters on the premises to which the tenant's tenancy agreement relates.

(2) A strata corporation or any agent of a strata corporation must not prohibit the owner or tenant of a strata unit from displaying election advertising posters on the premises of his or her unit.

(3) Despite subsections (1) and (2), a landlord, a person, a strata corporation or an agent referred to in that subsection may

(a) set reasonable conditions relating to the size or type of election advertising posters that may be displayed on the premises, and

(b) prohibit the display of election advertising posters in common areas of the building in which the premises are found.

Sponsorship of election advertising

229 (1) For the purposes of this Part, the sponsor of election advertising is whichever of the following is applicable:

(a) the individual or organization who pays for the election advertising to be conducted;

(b) if the services of conducting the advertising are provided without charge as a contribution, the individual or organization to whom the services are provided as a contribution;

(c) if the individual or organization that is the sponsor within the meaning of paragraph (a) or (b) is acting on behalf of another individual or organization, the other individual or organization.

(2) Where this Part requires the inclusion of a mailing address or telephone number at which a sponsor can be contacted,

(a) any mailing address given must be within British Columbia,

(b) any telephone number given must be that of a place within British Columbia, and

(c) the sponsor must make available an individual to be responsible for answering questions from the public that are directed to the address or telephone number.

(3) Where this Part requires a sponsor to be identified, for a numbered corporation or an unincorporated organization the identification must include both

(a) the name of the organization, and

(b) the name of an individual director or, if there are no individual directors, an individual who is a principal officer or a principal member of the organization.

(4) On request of the chief electoral officer,

(a) an individual identified as a sponsor, or

(b) an individual identified as a director, principal officer or principal member of an organization identified as a sponsor

must file with the chief electoral officer a solemn declaration that the identified sponsor is in fact the sponsor and that the sponsor has not contravened this Part.

No indirect sponsorship of election advertising

230 An individual or organization must not sponsor election advertising with the property of any other individual or organization or indirectly through any other individual or organization.

Election advertising must identify sponsor

231 (1) Subject to subsection (2), an individual or organization must not sponsor, or publish, broadcast or transmit to the public, any election advertising unless the advertising

(a) identifies the name of the sponsor or, in the case of a candidate, the name of the candidate's financial agent or the financial agent of the registered political party represented by the candidate,

(b) if applicable, indicates that the sponsor is a registered sponsor under this Act,

(c) indicates that it was authorized by the identified sponsor or financial agent, and

(d) gives a telephone number or mailing address at which the sponsor or financial agent may be contacted regarding the advertising.

(2) Subsection (1) does not apply to any class of election advertising exempted under section 283.

(3) The chief electoral officer, or a person acting on the direction of the chief electoral officer, may

(a) remove and destroy, without notice to any person, or

(b) require a person to remove or discontinue, and destroy,

any election advertising that does not meet the requirements of subsection (1) and is not exempted under subsection (2).

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Division 3 — Registration of Sponsors

Election advertising sponsors must be registered

239 (1) Subject to subsection (2), an individual or organization who is not registered under this Division must not sponsor election advertising.

(2) A candidate, registered political party or registered constituency association is not required to be registered as a sponsor if the individual or organization is required to file an election financing report by which the election advertising is disclosed as an election expense.

(3) An individual or organization who is registered or required to be registered as a sponsor must be independent of registered political parties, registered constituency organizations, candidates, agents of candidates and financial agents, and must not sponsor election advertising on behalf of or together with any of these.

Registration with chief electoral officer

240 (1) An individual or organization who wishes to become a registered sponsor must file an application in accordance with this section with the chief electoral officer.

(2) An application must include the following:

(a) the full name of the applicant and, in the case of an applicant organization that has a different usual name, this usual name;

(b) the full address of the applicant;

(c) in the case of an applicant organization, the names of the principal officers of the organization or, if there are no principal officers, of the principal members of the organization;

(d) an address at which notices and communications under this Act and other communications will be accepted as served on or otherwise delivered to the individual or organization;

(e) a telephone number at which the applicant can be contacted;

(f) any other information required by regulation to be included.

(3) An application must

(a) be signed, as applicable, by the individual applicant or, in the case of an applicant organization, by 2 principal officers of the organization or, if there are no principal officers, by 2 principal members of the organization, and

(b) be accompanied by a solemn declaration of an individual who signed the application under paragraph (a) that the applicant

(i) is not prohibited from being registered by section 247, and

(ii) does not intend to sponsor election advertising for any purpose related to circumventing the provisions of this Act limiting the value of election expenses that may be incurred by a candidate or registered political party.

(4) The chief electoral officer may require applications to be in a specified form.

(5) As soon as practicable after receiving an application, if satisfied that the requirements of this section are met by an applicant, the chief electoral officer must register the applicant as a registered sponsor in the register maintained by the chief electoral officer for this purpose.

(6) If there is any change in the information referred to in subsection (2) for a registered sponsor, the sponsor must file with the chief electoral officer written notice of the change within 30 days after it occurs.

(7) A notice or other communication that is required or authorized under this Act to be given to a sponsor is deemed to have been given if it is delivered to the applicable address filed under this section with the chief electoral officer.

Obligations of registered sponsor

241 (1) The identification of a registered sponsor referred to in section 231 must be a name filed by the sponsor under section 240 with the chief electoral officer.

(2) An individual or organization who is registered or required to be registered as a sponsor must maintain records of the following information in respect of contributions received by the sponsor:

(a) in the case of anonymous contributions, the date on which the contributions were received, the total amount received on each date and, if applicable, the event at which they were received;

(b) in other cases, the information referred to in section 190 (1) (a) to (e), with the class of contributor recorded in accordance with section 245 (2).

Voluntary deregistration

242 (1) A registered sponsor may apply to the chief electoral officer for deregistration in accordance with this section.

(2) As an exception, a sponsor may not apply for deregistration under this section if the sponsor is subject to deregistration under this Part or has not yet paid a penalty under this Part.

(3) An application for deregistration must be in writing and must be signed, as applicable,

(a) by the individual applicant, or

(b) in the case of an applicant organization, by 2 principal officers of the organization or, if there are no principal officers, by 2 principal members of the organization.

(4) On being satisfied that an application for deregistration is authorized by the sponsor, the chief electoral officer must deregister the sponsor.

(5) As a limit on subsection (4), if during a campaign period a registered sponsor has sponsored election advertising, the sponsor may not be deregistered until the election advertising disclosure report for the sponsor has been filed.

Reregistration

243 In order to be reregistered, an individual or organization must file any outstanding reports and pay any outstanding penalties under this Part.

Division 4 — Disclosure of Independent Election Advertising

Independent sponsors must file disclosure reports

244 (1) Subject to subsection (3), if during a campaign period an individual or organization sponsors election advertising that has a total value of $500 or a higher amount established by regulation, the sponsor must file with the chief electoral officer an election advertising disclosure report in accordance with this section and section 245.

(2) An election advertising disclosure report under subsection (1) must be filed within 90 days after general voting day for the election to which it relates.

(3) A candidate, registered political party or registered constituency association is not required to file a report under this section if the individual or organization is required to file an election financing report by which the election advertising is disclosed as an election expense.

(4) A sponsor must file a supplementary report with the chief electoral officer if any of the information required to be disclosed in an election advertising disclosure report changes or if the sponsor becomes aware that the report does not accurately and completely disclose that information.

(5) A supplementary report under subsection (4) must be filed within 30 days after the sponsor becomes aware of the circumstances requiring the report to be filed.

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Information to be open to the public

250 The information filed under this Part with the chief electoral officer since the general election before the previous general election must be available for public inspection at the office of the chief electoral officer during its regular office hours.

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Regulations of the chief electoral officer

283 Subject to section 16 (2) (e), the chief electoral officer may make regulations as follows:

(a) establishing procedures to be followed by the Election Advisory Committee;

(b) prescribing forms for the purposes of this Act and information that may be included or requested on them;

(c) prescribing information that must be included in an application for registration as a voter, in an application for updating voter registration information or on a certification envelope used for voting;

(d) [Repealed 2002-60-12.]

(e) prescribing identifying information that may be used for the purposes of section 35 (1) (d) in an application for registration as a voter;

(f) specifying a form or other document under another enactment for the purposes of section 38;

(g) respecting types of documents that are authorized for the purpose of section 41 (3);

(h) establishing classes of special voting opportunities and restrictions on who may vote at each for the purposes of section 77 (2);

(i) prescribing information that must be included

(i) under section 155 (3) (o) in an application for registration of a political party,

(ii) under section 157 (3) (m) in an application for registration of a constituency association, or

(iii) in a class of report under Part 9 or 10;

(j) prescribing classes by which income, expenditures, election expenses and contestant expenses must be reported in a report under Part 9 or 10;

(j.1) respecting a method of accounting to be used for the purposes of preparing reports under Part 10;

(k) specifying expenses that are to be included as personal election expenses of a candidate under section 183 (4) (f);

(l) specifying expenses that are to be included as personal contestant expenses of a nomination or leadership contestant under section 184 (4) (f);

(m) specifying election expenses for the purposes of section 203 (1) (i) that are not to be included when determining whether an organization or individual has complied with an election expenses limit;

(m.1) exempting from the requirements of section 231 (1) classes of election advertising that may reasonably be considered clothing, a novelty item or an item intended for personal use;

(n) prescribing information that must be included in

(i) an application under section 240, or

(ii) an election advertising disclosure report under section 244;

(o) prescribing classes of advertising for the purposes of section 245 (1) (a);

(p) for the purposes of section 275,

(i) establishing restrictions on provincial, municipal or federal electoral purposes for which information under this Act may be used under that section and, in relation to this, requirements for access to and use of the information, and

(ii) specifying purposes for which information under this Act may be used under that section and, in relation to this, requirements for access to and use of the information;

(q) establishing procedures for conducting a plebiscite under section 282;

(r) establishing higher amounts than those specified in this Act, where these higher amounts are contemplated by this Act;

(s) for any other purpose for which regulations are contemplated by this Act.