



ELECTIONS BC
Province of British Columbia

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Dear Vincent Gogolek and Micheal Vonn:

The Chief Electoral Officer has asked me to respond to your letter of February 2, 2017.

Elections BC carefully reviewed the decision of the Supreme Court of Canada (SCC) in drafting the bulletin on handmade election advertising and does not plan to revise the bulletin.

The SCC found that the election advertising sponsorship provisions of the *Election Act* do not apply to persons who convey individual self-expression through small-scale election advertising activities, as they are not election advertising sponsors. In response to the SCC's decision, we acknowledge that individuals conducting small-scale election advertising are not sponsors, and therefore are not subject to the registration and attribution requirements of the Act.

The intention of our bulletin is to provide clarity on what may or may not be small-scale election advertising, since neither the *Election Act* nor the SCC judgment provide a definition for "small-scale" or "organized". "Small scale" must be defined by the general tenor of the decision i.e. one person expressing themselves in a very modest manner and without financial or organizational backing.

The Chief Electoral Officer set the threshold of 25 copies of handmade signs or pamphlets to quantify a volume of advertising activities that constitute a larger, more organized campaign, as opposed to an individual engaged in small-scale political self-expression. Such guidelines are necessary to provide clarity and to ensure the requirements of the *Election Act* are administered consistently for all participants in the electoral process. Otherwise, as the SCC acknowledged in their judgment, it may be difficult to determine if a particular advertiser is caught by the definition of "sponsor".

Our review of the judgment leads us to conclude that only individuals, not organizations, can engage in election advertising without being sponsors. There are several references to "individual self-expression" that we believe only apply to individuals, not organizations. Furthermore, there are several instances where the Court refers specifically to individuals not being sponsors, without saying the same about organizations. For example, in paragraph 31 the Court writes, "Individuals who neither pay others to advertise nor receive advertising services without charge are not "sponsors". In paragraph 39, the Court specifically says that, "Individuals engaged in political self-expression do not come within the definition

of 'sponsor' in s. 229(1), and need not register." And in paragraph 40 it also refers only to individuals when it says, "An individual working entirely on his own, without paying for or receiving any service in the creation or dissemination of election advertising, is not required to comply with any of these provisions of the Act."

The purpose of the registration and attribution requirements established in the *Election Act* are to promote an informed electorate by increasing transparency, openness and public accountability. To meet these goals (that the SCC described as "pressing and substantial"), election advertising must not be conducted anonymously. We believe this view is supported in the judgment, particularly in paragraphs 35 and 40 that state, respectively:

The registration requirement was not aimed at curbing the expression of an individual who, in an act of self-expression, places a sign in his window or a bumper sticker on his car, or wears a T-shirt with a political message. The question of who is "behind" or immediately responsible for the content of the message does not — indeed, cannot — arise in such cases. Registration would serve no purpose.

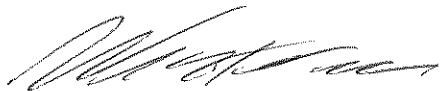
And,

An individual working entirely on his own, without paying for or receiving any service in the creation or dissemination of election advertising, is not required to comply with any of these provisions of the Act. This is consistent with the legislative purpose of the Act's third party advertising provisions, which, as I have discussed, is to provide the public with information about those engaged in organized advertising campaigns during an election period, not to put conditions on individual self-expression. When an individual himself distributes handmade flyers, there is no question of who is responsible for that advertising, and so the attribution and disclosure provisions — like the registration requirement — would serve no purpose.

Furthermore, as acknowledged by the SCC, the registration requirement is "minimally impairing" and the limited deleterious effects are outweighed by the benefits of permitting the public to know who is engaged in organized advocacy in their elections.

The registration process for election advertising sponsors is simple, and Elections BC supports all election advertisers to comply with the requirements of the *Election Act* (by providing information on how to complete the required forms, for example). It is worth noting that sponsors are only required to submit one basic form to register and only those who sponsor election advertising valued at \$500 or more are required to file a disclosure statement. It is free to register and submit a disclosure report and none of the required forms need to be notarized.

Sincerely,



M. Nola Western, CPA, CA
Deputy Chief Electoral Officer, Funding & Disclosure