



**ELECTIONS BC**  
Province of British Columbia

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March 30, 2005

BY FAX: 604-984-8231

David D. Schreck  
145 East Windsor Road  
North Vancouver, BC  
V7N 1J9

Dear Dr. Schreck:

The Chief Electoral Officer has asked me to respond to your letter of March 29, 2005, and describe our current practice regarding registration of referendum advertising sponsors.

The referendum advertising provisions of the Electoral Reform Referendum Regulation are completely parallel to the election advertising provisions of the *Election Act*. Both the sponsors of election advertising and the sponsors of referendum advertising are required to register with Elections BC, include an authorization statement on their advertising and file financial disclosure reports if the value of advertising conducted is \$500 or more.

The Supreme Court of Canada has upheld provisions requiring registration and disclosure by third party election advertisers, most recently in the Harper decision of May 2004. In that decision the court found that the third party attribution, registration and disclosure provisions of the Canada Elections Act "add transparency to the electoral process and are, therefore, rationally connected to providing information to voters."

The Chief Electoral Officer did not issue the Referendum Regulation. It is a Cabinet regulation that reflects public policy as determined by Cabinet. Elections BC's role is to administer legislation and regulations as established by the Legislative Assembly and Cabinet in an impartial manner, and to ensure compliance with those rules. The MLAs and Cabinet are responsible for the content of the laws and the Regulation with respect to the referendum, and the public policies that they represent.

You are correct in stating that neither the *Election Act* nor the Electoral Reform Referendum Regulation specifically define the term "advertising". The definition of advertising used by Elections BC is "any promotional materials, including, but not limited to, leaflets, lawn signs, billboards, brochures, buttons, badges, newspapers, radio, television, newsletters, Web sites and public address systems". This definition is consistent with definitions used by the courts as found in the Dictionary of Canadian Law which defines advertise as "to make any representation to the public by any means whatever for the purpose of promoting directly or indirectly the sale of

.../2

a product." The cost of the representation is not relevant in determining whether something is advertising. Advertising may have little or no direct cost but it still remains advertising within both a common sense and legal definition.

Rapidly evolving technologies and the internet create challenges in determining political commentary vs. political advertising. However, Web sites created for promoting, directly or indirectly, a specific response in voting in the referendum do, in Elections BC's view, clearly constitute referendum advertising. Persons or organizations who create these sites must register as referendum advertising sponsors if the sites are accessible during the referendum campaign period. This approach is consistent with political party and candidate sites, which are a form of election advertising during an election campaign period.

We fully recognize that not all Web sites that express an opinion on the referendum are engaged in referendum advertising. Individuals' blogs, that were not established or created for the purpose of conducting referendum advertising or promoting a specific response in voting, would not generally be considered referendum advertising. However, with rapidly emerging technologies each situation must be reviewed and determined on its own merit, and a blog could, conceivably, be created as an effective advertising method.

Political commentary in the form of editorials, columns, letters to the editor or interviews is not advertising and individuals and organizations who engage in such activities are not required to register with Elections BC.

As an example of how we are applying our definition of advertising, we have not notified you advising that you must register as a referendum advertising sponsor. With our working definition of advertising in mind, we consider your site one of political commentary.

I trust this addresses your concerns regarding our administration of the referendum advertising provisions in accordance with current legislation and regulations.

Yours truly,



M. Nola Western, CA  
Director, Electoral Finance

c. Joe Easingwood