

Government of Alberta

Election Communication Policy

As approved by the Deputy Minister of Executive Council on
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For more information on this policy, including how to claim the use of an exemption, please contact the Government of Alberta's Communications and Public Engagement Office (CPE).

Government of Alberta

Election Communication

Policy

1. Purpose

Election Act restrictions on government advertising and other communications activity exist to ensure that governments neither involve themselves in nor influence elections.

This policy is intended to ensure that staff across the Government of Alberta understand their responsibilities under that Act: how they can – and cannot – communicate before and during a provincial election or by-election.

The policy applies to *any activity* – whether traditionally considered to be a communications activity or not – which directly or indirectly makes information about government programs or activities generally known during an election.

Legislative restrictions apply to communications occurring in an election period (from the dropping of an election writ to the end of polling day). They apply to:

- government departments
- some agencies, boards and commissions (ABCs), and their subsidiaries
- any other organization whose shares are fully or partially controlled by or held in trust for the Government of Alberta, or that has a majority of members or directors appointed by the Government of Alberta

Failure to comply with these restrictions can result in the **removal of the advertising and publication of the particulars of the offence.**

2. General statement

Compliance with *Election Act* restrictions on government communications activity during an election must be taken very seriously.

Any activity that would make information about government programs or activities generally known during a by-election or general election must be considered communications activity and is covered by this policy.

While exemptions to communications restrictions exist, government departments and other covered entities must work from an assumption that their communications activity during an election is not approved unless it has been reviewed for compliance with the *Election Act* and has been approved:

- For departments, this approval must be acquired from the relevant Deputy Minister under the guidelines in this policy. The use of certain exemptions requires review by the Managing Director of the Communications and Public Engagement Office (CPE) or designate.
- For other covered entities, this approval must be acquired under the entity's approved Election Communication policy.

An exemption should only be claimed when no practical alternative to advertising or publishing exists; CPE's Managing Director will, as a general rule, counsel that communications activity be postponed until the end of an election period wherever possible.

3. Division of responsibilities

The Election Commissioner:

- ensures compliance with, and enforcement of, regulated entities under the *Election Act*
- is responsible for investigating complaints, levying administrative penalties, issuing letters of reprimand, entering into compliance agreements and recommending prosecutions under the *Election Act*

The Deputy Minister of Executive Council:

- approves the Government of Alberta's Election Communication Policy
- rules on differing interpretations of this policy

The Managing Director of Communications and Public Engagement:

- reviews the claiming of election communication exemptions by the Government of Alberta
- creates the processes and procedures necessary to manage this policy
- supports Deputy Ministers in ensuring their department's compliance with this policy

Deputy Ministers:

- approve the claiming of election communication exemptions within their department
- ensure covered entities are aware of their responsibilities under the *Election Act*
- ensure their department's compliance with this policy, paying special attention to internal communications, correspondence and public engagements

Heads of other covered entities:

- create, maintain and enforce organization-specific election communication policies that address their organization's legal obligations under the *Election Act*

4. Time period covered

Election Act restrictions on government making its programs or activities generally known **begin with the dropping of the writ** for a general election or by-election and **conclude at the end of polling day** (the day the vote takes place). This is generally described in this document and in legislation as the “election period.”

Restrictions are on **materials being in market**. It is not sufficient to say the decision to communicate was made prior to the election period.

Additionally, there is no “grace period” to remove materials from market when an election is called. Restricted communications activity that is in-market when a writ is dropped must be pulled from market until the end of polling day. It is not sufficient to say that pulling materials in market will result in financial cost or penalty. For this reason, it is important that departments and other covered entities track impending writ drops and plan ahead.

While *Election Act* restrictions on government communications end after polling day, other policies and conventions must also be considered. If the election results in a change of government or an uncertain outcome, it is Government of Alberta policy that departments refrain from new communications activity until the outcome of the election is confirmed and/or a new government is sworn in.

General elections

The timing of a general election is set out in the *Election Act*. Elections are held on a day chosen by cabinet between March 1 and May 31 every four years. An election period is 28 days, and will occur at some point between February 1 and May 31.

To ensure ability to comply with the *Election Act*, departments and other covered entities must make sure communications about programs or services (as defined by this policy) that are planned to occur between February 1 and May 31 in a general election year can be postponed or cancelled without notice and without penalty.

The government may provide additional direction on the timing of the election that narrows the February 1 to May 31 window. In such a situation, regular business can continue until the start of the election window provided.

By-elections

A by-election occurs when a seat becomes vacant between general elections. The timing of a by-election is controlled by cabinet but, as per the *Legislative Assembly Act*, must be called within six months of the Chief Electoral Officer being informed of the vacancy.

Departments and other covered entities should note when a vacancy in the legislature occurs and plan accordingly.

5. Entities covered

The *Election Act* states that all departments and provincial corporations (as defined in the *Financial Administration Act*) must comply with these restrictions. This includes:

- all government departments
- organizations whose shares are fully or partially controlled by or held in trust for the Crown, and its subsidiaries
- organizations for which a majority of the members or directors are appointed by the government, and its subsidiaries

This puts **all departments and many agencies, boards and commissions under the law**. This includes universities, consumer-facing corporations such as ATB and arms-length bodies such as the Workers' Compensation Board.

6. Impacted activities

During a **general election period**, departments and other covered entities must not “advertise or publish any information about its programs or activities” unless such communications activity falls under one of four legislated exemptions described in Section 7. This includes communication on programs or activities that occurs outside the province.

During a by-election period departments and other covered entities must not “advertise or publish any information about its programs or activities” that has a “disproportionate impact” on voters in impacted electoral divisions – unless such communications activity falls under one of five legislated exemptions described in Section 7.

“**Advertise or publish**” covers any direct or indirect action that makes something generally known. Government of Alberta interpretations for what activity should be considered an act to “advertise or publish” and what is considered “disproportionate impact” can found in Section 8.

Use of an MLA’s name, voice or image

The use of the name, voice or image of an individual who was an MLA before the dropping of the writ in any communications during an election period is not allowed. This includes communications that are allowed under the exemptions outlined in Section 7 of this document.

Use of an unelected cabinet minister’s name, voice or image

[BY-ELECTIONS ONLY] During a by-election, the use of the name, voice or image of an individual who has been appointed to cabinet but is not an MLA is not allowed. This includes communications that are allowed under one of the exemptions outlined in Section 7 of this document.

7. Exemptions

There are five exemptions to restrictions on advertising and publishing, four of which are available for all election periods and one of which is only available during by-elections.

1. **The advertisement or publication is required by law.** This includes publishing orders-in-council, making available data as required by FOIP, requirements to publish in the Alberta Gazette and other similarly mandated activities.
2. **The advertisement or publication is required at that time to solicit proposals or tenders for contracts or applications for employment.** This includes job postings, the posting of requests for proposals to Alberta Purchasing Connection (APC) and other like activity that cannot be delayed.
3. **The advertisement or publication is required at that time to inform the public on matters of public health or safety.** This includes campaigns related to emergencies, travel warnings, public health and other similar issues where leaving market could jeopardize health and safety. The use of this exemption by any government department requires consultation with CPE's Managing Director or designate.
4. **The advertisement or publication is a continuation of earlier advertisements or publications and is required for ongoing programs.** This includes activity such as the promotion of public health in schools. The use of this exemption by any government department requires consultation with CPE's Managing Director or designate.
5. **[BY-ELECTIONS ONLY] The advertisement or publication deals with a matter before the legislative assembly such as the speech from the throne, the budget, a bill or resolution of the assembly.** To fulfil government's duty to inform Albertans of ongoing legislative matters, advertisements and publications are permitted to broadcast the work of the legislature even if it is of a local nature. The use of this exemption by any government department requires consultation with CPE's Managing Director or designate.

8. Government interpretations

These definitions are an interpretation by the Government of Alberta. All activity is subject to review by the election commissioner on a case-by-case basis. When in doubt, consider the intent of the law – that governments should not influence elections – and consult with CPE’s Managing Director.

Interpretation: “Advertise or Publish”

During an **election period**, departments and other covered entities must not “advertise or publish any information about its programs or activities” unless such communications activity falls under one of four legislated exemptions described in Section 7.

“Advertise or publish” covers any direct or indirect action that makes information about government’s programs or activities generally known. This includes, but is not limited, to:

- paid advertisements such as:
 - broadcast (radio, television)
 - print (newspaper, magazine, inserts, etc.)
 - digital (display, boosted social)
 - out-of-home (billboards, etc.)
 - events and street teams (handing out information in a public place)
 - sponsorships
 - direct mail (flyers or letters delivered to homes)
- material updates to web content
- social media posts
- mass-email or distribution of a newsletter, including mass-email to staff
- town halls or other public meetings
- phone blasts (IVR or live caller) or activation of phone trees
- news releases and statements
- speeches
- announcements
- responses to media inquiries
- distribution of previously printed material

The following activities are not likely to be considered advertising or publishing for the purposes of the *Election Act*:

- planning advertising or publishing activity to occur after the election period ends
- technical maintenance of a website that hosts previously published content
- emails sent to a single individual or limited groups of individuals
- private meetings or conference calls
- physical displays of brochures or publications already available to the public

Interpretation: “Disproportionate Impact”

[BY-ELECTIONS ONLY] During a by-election, provincewide and regional communications may continue, but such communications cannot have a disproportionate impact on the electoral district where the by-election is occurring. Disproportionate impact is not defined in legislation and guidance has not been provided by Elections Alberta. It is the position of the Government of Alberta that advertisements or publications disproportionately impact an electoral district if:

- It is an announcement of a past, present or future action within the electoral district (eg. building a school or hiring nurses for a local hospital).
- It is a stand-alone activity that occurs within the electoral district.
- It is an activity that is part of a broader campaign, but when compared with like activity in other regions is not comparable in aesthetic, tone and/or scale.
- In the case of paid advertising, spends are being geographically targeted at a higher rate (per capita or per customer) in the electoral district than in other regions.
- In the case of paid advertising, spends are being targeted in a way that has the effect of geographically targeting (eg. “provincewide,” but towards employees at a certain workplace).

In absence of the above, it is the position of the Government of Alberta that the following do not have a disproportionate impact on voters of an electoral district:

- Local variants of broader campaigns (such as changing the place name on advertisements or referencing the closest post-secondary institution, etc.).
- Demographically targeted campaigns (such as towards immigrants or young Albertans, who may be found in higher volume in some regions than others).

Interpretation: “Continuous” and “required”

The Election Act provides an exemption for advertisements or publications that are a continuation of earlier advertisements or publications and are required for ongoing programs.

Claiming of this exemption requires the program to meet both criteria.

It is the interpretation of the Government of Alberta that an advertisement or publication is continuous if:

- It is the same advertisement/publication as one that was previously in market/available.
- It is an advertisement/publication that is part of a broader campaign, and is comparable in aesthetic, tone, scale and cost to what was previously in market/available.
- It is an advertisement/publication that is recurring based on time of year (or similar trigger), has run before, and can be shown to have been previously planned to run during this time.

It is the interpretation of the Government of Alberta that an advertisement or publication can be considered required if:

- ongoing programs would fail or could not continue without the advertisement/publication
- no reasonable mitigations are available to meet program objectives without advertising or publishing.

