

Guidelines on Communications during an Election

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Purpose and Framework

The Election Financing Act (C.C.S.M c. E27), or “the EFA”, provides the legislative framework for the fair and transparent funding of candidate and third-party campaigns during provincial elections in Manitoba.

Section 92 of the EFA (Restrictions on Government Advertising) details restrictions in place to ensure government resources are not used to support an election campaign, while outlining exceptions to the rule that allow for the continuation of government business.

This document serves as the Guidelines required under Section 92(5) of the Act and aims to ensure that staff throughout Manitoba’s Public Service (including core, allied and broader public servants) understand their responsibilities under the Act: how they can – and cannot – communicate before and during a provincial election or by-election.

The Act and these Guidelines apply to any activity – whether traditionally considered communications or not – which directly or indirectly makes information about government programs or activities generally known during an election.

Restrictions apply to communications by departments or Crown agencies¹ occurring in an election period:

- for a fixed-date election – in the 60 days before election day and on election day;
- for a general election called before the fixed-date election day – for the duration of the election set by writ, and for any other advance period that Cabinet may determine; or
- for a by-election – for the duration of the by-election set by writ.

Further, communications must be brought before the Committee for review if they are planned for a day on which there is a reasonable expectation that an Order in Council might be issued calling for an election (general or by-election).

The failure of government departments or Crown agencies to adhere to the Act and the Guidelines can undermine public trust in the electoral process and may result in formal complaints to the Elections Commissioner or an application to the Court of Queen’s Bench.

Ensuring compliance with the requirements of the Act and these Guidelines is an important responsibility for everyone involved in government communications. If at any time a public servant is unsure about how the Act or these Guidelines apply to their communications activity, it is their responsibility to seek direction, escalating appropriately.

These Guidelines provide the best current advice to public servants, based on the Act and past decisions of the Commissioner.

¹As defined by *The Legislative Assembly Act*, Crown agency means any board, commission, association, or other body, whether incorporated or unincorporated, all the members of which, or of the board of management or board of directors of which,
(a) are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council,

or

(b) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are directly or indirectly, responsible to the Crown, or any corporation the election of the board of directors of which is controlled by the Crown, directly or indirectly, through ownership of the shares of the capital stock thereof by the Crown or by a board, commission, association, or other body which is a Crown agency within the meaning of this definition.

Roles and Responsibilities

Compliance with *The Election Financing Act* restrictions on government advertising or publications during an election must be taken seriously. Any advertisement or publication 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 the Act and these Guidelines.

While exceptions to the restrictions on advertisements or publications exist, government departments and Crown agencies must work from an assumption that their communications activity during an election is not permitted unless it has been reviewed for compliance with the Act by the respective Head of Communications and approved to proceed by the relevant Executive Authority.

There are five key roles involved in compliance with the Act and these Guidelines:

- **Public Servants:** All staff of government departments and Crown agencies are responsible for ensuring compliance with the Act and these Guidelines in their area of work;
- **Executive Authority:** In each department or agency, the relevant Executive Authority is accountable for ensuring their staff and Crown agencies are familiar with the Act and these Guidelines, reviewing their organization's communications in relation to the Guidelines, and for escalating communications that require further consideration by the Communications Review Committee. In the case of departments, the Executive Authority is the Deputy Minister or their delegate, and in the case of Crown agencies it is the Chief Executive Officer or their delegate;
- **Head of Communications:** In each department or agency, the most senior communications official is responsible for providing review and feedback on their organization's communications, making recommendations to their Executive Authority for approvals, and for identifying for the Executive Authority any communications that may require further review and consideration by the Communications Review Committee. In the case of departments the Head of Communications is the Manager of Engagement for the department, and in the case of Crown agencies it is the most senior executive responsible for communications;
- **Communications Review Committee:** A committee, consisting of the Clerk of Executive Council, the Assistant Deputy Minister of the Communications and Engagement Division of Manitoba Finance, and Legal Services Branch, is responsible for reviewing any communications that have been escalated for feedback, providing advice to the relevant Executive Authority on how to proceed; and
- **Assistant Deputy Minister, Communications and Engagement Division:** The ADM of the Communications and Engagement Division of Manitoba Finance is responsible for ensuring these guidelines are up-to-date, and that processes, forms or other resources are in place to support compliance with the Act and these guidelines.

General Guidance

“A government department or agency must not advertise or publish any information about its programs or activities”

“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
- distribution of printed material

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

- planning advertising or publishing activity to occur after the election period ends
- 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
- responses to media inquiries
- responses to public or client inquiries

Further, these Guidelines refer to the use of government resources to promote or advertise information. These include, but are not limited to:

- Staff of the public service, including political staff;
- ICT resources, including computers, phones and networks;
- Websites, social media accounts or other digital platforms operated by public servants, including political staff;
- Government funding; and
- Facilities, equipment and other real property.

The Act provides for four exceptions to the restriction outlined above:

1. **Required By Law:** where an Act or Regulation specifically requires advertising or publication it may proceed; this generally applies to legal and public notices;
2. **Public Health and Safety:** where communication is necessary to ensure the health and wellness of Manitobans; this may include urgent or emerging issues as well as ongoing public health information campaigns;
3. **Matters Before the Assembly:** communications relating to the throne speech, the budget, the introduction or passage of a bill or an order or resolution of the Assembly; and
4. **Usual Operations:** where communications in relation to the usual operations of a government department or Crown agency :
 - are in continuation of earlier advertising or publications about an ongoing or recurring program or activity,
 - solicit proposals or tenders for a contract, or
 - are a job advertisement or promotion at or about a job fair.

An advertisement or publication is in continuation of earlier advertising or publications if:

- it is the same advertisement/publication as one that was previously in market/available; or
- 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; or
- 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.

In order for the exception to apply, an advertisement or publication in continuation of earlier advertising or publications must be about an ongoing or recurring program or activity and cannot include information about new government programs or activities.

During a by-election, the exceptions listed as 2, 3 and 4 above do not apply if the communications disproportionately target the residents of the electoral division in which the by-election is being held. That is to say, even if the communications are usual operations, health and safety or related to matters before the Assembly, they are not permitted to continue if they disproportionately affect the electoral district where the by-election is being held.

Activity-Based Guidance

The following guidance is provided to assist Heads of Communication and Executive Authorities in reviewing communications within their department or Crown Agency. These Guidelines provide the best current advice to public servants, based on the Act and past decisions of the Commissioner.

At all times, if there is any doubt or uncertainty regarding the application of the Act, an escalation to the Communications Review Committee is required.

1. Announcements and Press Conferences

All announcements should be avoided, unless it relates to important matters of public health or safety.

In particular, departments or Crown agencies should not publicly announce policy changes, new programs or funding commitments.

2. Media Engagement

Media should continue to have access to government information over the course of an election period. Ministers cannot use government resources (financial, staff or otherwise) to initiate contact with the media, including interviews and news releases. In response to inquiries, however, Ministers may provide verbal or written statements to the individual or organization making the inquiry. Similarly, government staff involved in media engagement may continue to provide responses to media requests for information on an individual basis.

In rare circumstances, where multiple members of the media are seeking similar information, government has coordinated these requests through a single conference call or availability for a spokesperson. Such circumstances require the review of the Communications Review Committee.

3. Recurring Task Force / Technical Briefings

Technical briefings with government officials that had been routinely held prior to the election period may continue provided the focus of these briefings is on factual explanations of what is happening or has been done by government on the subject. This includes updates to dashboards and reports that have been routinely updated prior to the election period.

Announcements about program, policy or funding changes that will not have an immediate affect on the public health and safety of Manitobans during the election period should be withheld until after the election.

Announcements of new initiatives being undertaken by a task force/team to improve the public health and safety of Manitobans *may* be acceptable if there is a timely need for the public to be aware of the work happening (e.g. in order to access a new service or because the public will be expected to take an action). Executive Authorities are encouraged to consult with the Review Committee on these matters.

4. Meetings, Public Events and Stakeholder Relations

Ministers retain their responsibilities and powers throughout this period and thus should attend or host meetings that they would normally attend or host. Meetings on behalf of the Minister by staff with stakeholders or members of the public related to ongoing departmental and agency operations can continue. In addition, meetings required to gather data, reports and other information related to ongoing operations are still appropriate.

Caution should be taken, however, to ensure new policy, program or funding announcements are not made through these meetings.

When Ministers attend meetings or events, government resources should not be used to advertise or publish the Minister's speaking event, to invite people to that event, or to publish the contents of their speech after it is made.

5. Federal-Provincial-Territorial (FPT) and Inter-Governmental Meetings

Ministers may attend FPT meetings during an election period. However, no news releases should be provided directly from Manitoba using government resources (financial or otherwise). Any communiqués that are issued from the meeting as a whole with Manitoba's participation are permitted. Ministers may attend media availabilities to respond to questions, provided Manitoba has not organized any such session and no government resources have been used to organize the availability.

6. Ministerial Correspondence

Routine correspondence can continue during the election period. Where possible, correspondence should be delegated to the deputy minister to ensure that the flow of correspondence continues to be handled in a timely manner.

Responses to correspondence should remain fact-based, and care must be taken to avoid inadvertently making a policy, program or funding announcement through a piece of correspondence.

7. Social Media and Web Updates

Fact-based updates to websites (data dashboards, reports, other information) that were made on an ongoing or recurring basis prior to the election period may continue to be posted to websites and social media.

Material changes to design, information architecture or web content should not be advanced during an election period, and caution should be exercised to ensure that web and social media content updates are limited to recurring / continuing matters, and does not inadvertently announce new government policy, programs or funding, or promote the decisions or positions of government.

8. Public Consultations

Public consultations that were already underway when the election period began may continue, however new consultations, or new phases of consultation should not begin at this time.

Consultations underway should not be further promoted during the election period without the review of the Communications Review Committee.

Reporting the outcomes of a consultation, even if it began prior to the election, should wait until after the election period.

9. Email Newsletters

Cyclical/ongoing email newsletters to pre-established mailing lists of public, stakeholders and public service can continue during the election period. Exercise caution to ensure the newsletters remain fact-based, do not include messages or reference to Ministers in name or image, and that they do not announce new government programs, policy or funding.

10. Matters Before the Assembly

The Act provides an exception for matters before the Assembly, providing examples such as the throne speech, budget or the introduction of legislation. All matters under this exception will be reviewed by the Communications Review Committee to ensure alignment with the Act and any additional guidance on this exception will be provided on a case-by-case basis by the committee.

11. Recruitment

The Act provides an exception for job advertisements, recruitment activities and information shared at or about job and career fairs. The Executive Authority of a department or agency must ensure recruitment activities do not inadvertently make a government announcement of a new program, policy or direction.

Consideration by the Communications Review Committee is required if a position to be posted or promoted has substantially changed in title or responsibility since its last posting, or if the position was newly created in response to government policy or program changes.

12. Procurement

The Act provides an exception for soliciting proposals or tenders for a contract. The Executive Authority of a department or agency must ensure procurement activities do not inadvertently make a government announcement of a new program, policy or direction.

Consideration by the Communications Review Committee is required if tender or request for proposals could be seen to signal a change to government policy or programs, or is seeking proponents for a yet-unannounced project.

13. Grant Notification

Where possible, notification to grant recipients should be completed prior to the election period, or should wait until after the election period concludes.

If notification during the election period is required in order to execute government programs in a timely way, grant notification should be provided by the Deputy Minister and should not be announced or promoted.

14. Presentations and Seminars by Public Servants

Public Servants are regularly called upon to do presentations about programs and policies to groups and organizations that interact with government. These targeted presentations have continued during previous pre-election periods and may continue. Please ensure the information that is shared is factual, not promotional.

Processes for Monitoring, Review and Approval

When an election period begins, it is the obligation of Approving Authorities and Heads of Communications to establish processes within their department or Crown agency to ensure the thorough and adequate review and approval of all communications and engagement activity.

At the same time, the ADM of Communications and Engagement will provide all Deputy Ministers an updated copy of these Guidelines, and an overview of the process for escalating to the Communications Review Committee. Deputy Ministers must subsequently share this information with Crown agencies for which their department is responsible.

It is the responsibility of the ADM of Communications and Engagement to undertake broader education and awareness activities across government leadership regarding the Act and these Guidelines.

Guideline Review and Feedback

These Guidelines will be reviewed and updated regularly, with a more focused review completed immediately prior to, and immediately after, an election period.

Feedback on these Guidelines can be submitted to the Communications and Engagement Division of Manitoba Finance at CED@gov.mb.ca or by calling Manitoba Government Inquiry at 1-866-MANITOBA.