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Our File No.: 25402

January 4, 2013

BY EMAIL

Attorney General of British Columbia  
Ministry of Justice  
Legal Services Branch  
1301-865 Hornby Street  
Vancouver, BC V6Z 1G3

**Attention: Karen Horsman and Karrie Wolfe**

Dear Mesdames:

**Re: *Election Act*, RSBC 1996, c. 106**

As you know, we represent the Freedom of Information and Privacy Association of British Columbia. Our client, perhaps together with others, is considering launching a constitutional challenge to those provisions of the *Election Act* which require, during the “campaign period”, registration of third party election advertisers. The basis of the challenge will be that the Province’s failure to establish a minimum expenditure threshold which would trigger registration causes the registration provisions to be an overbroad, and thus an unjustifiable, infringement of the right to free expression under the *Charter*. As you know, minimum expenditure provisions for the purposes of registration are present in the *Canada Elections Act* and many similar acts in other provinces, and the Chief Electoral Officer of British Columbia has recommended such a minimum threshold be established. Our client’s position is that limiting expression below such a threshold is not reasonably necessary to support the objectives of the third party advertising limitations established under British Columbia’s *Election Act*.

In view of the Supreme Court of Canada’s reasons in *Harper*, it is clear that the registration requirements constitute a breach of section 2(b). What remains to be determined is whether there are reasons for the breach which would justify it under section 1 of the *Charter*. We raised this issue in the recent Court of Appeal reference concerning the pre-campaign period, but it has equal application to the campaign period. In the Court of Appeal, the government chose not to respond to our client’s concerns in a substantive way. We hope that it will do so now, because if the justification for the

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provisions is explained, our client will be able to assess whether it wishes to bring the matter to court for adjudication. In short, we would like to know what justification the government cites for maintaining the registration provisions without a minimum threshold requirement. If there is none, please advise if the government intends on amending the law to make it compliant with the *Charter* or if it will request that the Chief Electoral Officer not enforce that section of the legislation in the upcoming election.

Thank you for your attention to this. We would appreciate a substantive response no later than January 14, 2013.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



Sean Hern

SH/