



October 10, 2013

Local Government Election Reform
Ministry of Community, Sport and Cultural Development
P.O. Box 9847 Stn Prov Govt
Victoria, BC V8W 9T2

BY E Mail: localgovelectionreform@gov.bc.ca

Re: Submission on White Paper

Dear Minister Oakes,

I am writing to you in response to the consultation your ministry is running on local government election reforms. More specifically, I am writing to you to let you know that the proposals you are putting forward regarding third party spending limits are unconstitutional.

The BC Freedom of Information and Privacy Association (BC FIPA) is currently challenging equivalent provisions in the provincial *Election Act* as infringing the right to freedom of expression contained in section 2(b) of the *Charter of Rights and Freedoms*. More specifically, the absence of a threshold below which spending does not require registration renders the legislative scheme unconstitutional.

A minimum spending threshold is something the Local Government Elections Task Force suggested in its 2010 report. It can be found at page 15 of the report in the first recommendation:

- *Establish that third party advertisers must register and must disclose what they spent on ads and who contributed to them (possibly for advertising expenditures over a certain threshold)*

The government's White Paper contains no such threshold. This means that anyone doing anything that falls within the very broad definition of election advertising is required to register with Elections BC before exercising their constitutional right to speak on election issues. That definition includes communication-by almost any means- of a message not just related to candidates, but also taking a position on an issue with which a candidate or party is associated. That could be almost anything.

One example is a handwritten sign related to a municipal issue put in a window by an individual. If the individual has not registered with Elections BC as a Third Party Advertising Sponsor, they have committed an offence and are liable to a \$5000 fine and up to a year in jail.

For your convenience and information, we have included a link to our Notice of Claim in our challenge to similar provisions in the provincial *Election Act*. It sets out in some detail why the failure to include a lower spending threshold is clearly unconstitutional.

http://fipa.bc.ca/library/Legal_Submissions/FIPA_FiledNOC_ElxnAct.pdf

As you can see, if the provincial election law restricting freedom of speech during elections is struck down by the courts, it will have implications for the constitutionality of the law you are proposing. In fact, because your government has decided to delay the imposition of spending limits on politicians running for office, the justification of these draconian restrictions on third parties is even more tenuous.

Therefore, you should not be proceeding with this restriction on freedom of expression during elections until the courts have ruled on the question.

We would be pleased to provide you with additional information if you require it.

Sincerely,

Vincent Gogolek
Executive Director
BC FIPA