



# **2020 Municipal By-Election Guide and Information for Third Party Advertisers**

**This guide is prepared for information purposes only. Reference should always be made to the relevant legislation and regulation.**

[Municipal Elections Act, 1996](#)

[2018 Guide for third party advertisers issued by the Ministry of Municipal Affairs](#)

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## **PART A: General Information**

### **1. General Information**

Prior to 2018, third party advertising was not regulated for municipal council and school board elections. Those who wanted to advertise or distribute materials supporting or opposing a candidate did not have to identify themselves, were able to spend unlimited amounts of money, and did not have to report their advertising or financial activities to anyone.

Recent changes to the *Municipal Elections Act, 1996* created a framework of rules for third party advertising. This guide provides information about who can register to be a third party advertiser, what registration allows them to do, and the rules that third party advertisers must follow.

### **2. What is Third Party Advertising?**

Third party advertising refers to advertisements or other materials that support, promote or oppose a candidate, or support, promote or oppose a “yes” or “no” answer to a question on the ballot. Third party in this context is a person or entity who is not a candidate.

Third party advertising is separate from any candidate’s campaign, and must be done independently from a candidate. Any advertisements or materials that are made and distributed by a candidate, or under a candidate’s direction, are part of the candidate’s campaign.

Third party advertising is a way for those outside of the candidate’s campaign to express support of or opposition to candidates (or a “yes” or “no” answer to a question on the ballot) and to try to persuade voters to vote a certain way.

A third party advertisement is an advertisement in any broadcast, print, electronic or other medium that promotes, supports or opposes a candidate, or a “yes” or “no” answer to a question on the ballot. Advertisement includes traditional ads as well as materials such as brochures or signs.

### **3. What is not a third party advertisement?**

Activities that do not involve spending money, such as discussions or expressing an opinion about a candidate (or an answer to a question on the ballot) are not considered to be third party advertising. Examples include:

- speaking to friends and neighbours
- posting on social media, such as Twitter, Facebook or Instagram
- sending an email to a group or mailing list

Internal communications from an employer to their employees, a corporation to its shareholders, directors, members or employees or by a trade union to its members or employees are not considered to be third party advertising.

Advertising about an issue, rather than a candidate or a “yes” or “no” answer to a question on the ballot is not considered third party advertising. For example, signs saying “Support local businesses” or “Keep the waterfront green” would not be third party advertising, even if a candidate has made those issues part of their campaign.

### **4. When do the rules apply?**

The *Municipal Elections Act, 1996* sets out a restricted period for third party advertising. This restricted period runs from December 18, 2019 to the close of voting on Voting Day (March 23, 2020).

Candidates can begin filing their nominations on December 18, 2019. If any individual or group wanted to spend money before December 18, 2019 on signs or advertisements supporting someone who intended to become a candidate, or someone who they hoped would become a candidate, the third party advertising rules would not apply. However, once the restricted period begins on May 1, any signs or other advertisements would have to be taken down or discontinued.

### **5. Who can be a third party advertiser**

Only those who have registered can spend money on third party advertising. The following are eligible to register as a third party advertiser:

- any person who is a resident in Ontario
- a corporation carrying on business in Ontario
- a trade union that holds bargaining rights for employees in Ontario

If two or more corporations are owned or controlled by the same person or people, or if one corporation controls another, they are considered to be a single corporation. If the same person or people own or control multiple corporations, only one of those corporations may register to be a third party in a municipality.

There is no restriction against family members or campaign staff of candidates registering to be third party advertisers. However, third party advertising must be done independently of the candidate. If a person with close ties to a candidate wishes to register they should consider how these activities may look to the public and how they would be able to demonstrate that they were not working in co-ordination with the candidate.

## **6. Who cannot be a third party advertiser**

A candidate running for any municipal council or school board office cannot register to be a third party advertiser in any municipality.

Groups, associations or businesses that are not corporations are not eligible to register and may not spend money on third party advertising in municipal elections. For example, neighbourhood associations, clubs or professional associations cannot register and cannot make contributions to third party advertisers. Members may register as individual third party advertisers and may contribute individually.

Candidates in the provincial election cannot register. They may register after the provincial election, when they are no longer candidates.

Federal and provincial political parties cannot register to be third party advertisers. Political parties are not permitted to be financially involved in municipal elections.

## **7. Key Dates**

<b>Earliest Date to Register:</b>	December 18, 2019
<b>Last Date to Register:</b>	March 20, 2020
<b>Estimate of Maximum Third Party Advertising Expenses:</b>	Provided at time of Registration
<b>Certificate of Final Maximum</b>	February 10, 2020

**Expenses provided:**

**Advance Voting Days:** March 7, 2020  
Cambridge City Hall – Bowman Room  
10:00 a.m. – 3:00 p.m.

**Election Day:** March 23, 2020

**Campaign Period Ends:** May 7, 2020

**Deadline to File Financial  
Statements:** June 8, 2020 at 2:00 p.m.

## **PART B: Registration**

### **1. Registration**

An individual, corporation or trade union must register in person with the municipal clerk at Cambridge City Hall, 50 Dickson Street, 2<sup>nd</sup> floor in order to be a third party advertiser in the City of Cambridge. Third parties can register in any lower-tier or single-tier municipality (city, town, township, etc.). Third parties cannot register in an upper-tier municipality (i.e. The Regional Municipality of Waterloo).

Being registered in a municipality allows the third party to advertise to the voters in that municipality. A third party advertiser can support or oppose any candidate or candidates who will be voted on by the people in that municipality. This includes candidates running for local council, school trustee and candidates running for offices on an upper tier council.

Third party advertisers do not need to decide before they register which candidate or candidates they want to support or oppose, and they do not have to tell the clerk what their intentions are.

A third party can only advertise to voters in the municipality where they are registered. There is no limit on the number of municipalities where a third party can register. If a third party wants to advertise to voters in more than 1 municipality they must register in each municipality where they wish to advertise.

For example, if a third party wanted to advertise for or against a candidate running for an office that is voted on by people in more than one (1) municipality, such as a school trustee or regional chair, they would need to register in each municipality.

### **2. Deadline to register**

An individual, corporation or trade union can register to be a third party advertiser beginning on December 18, 2019, and can file a registration until the close of business on Friday, March 20, 2020.

#### **Where to register**

An individual or a representative of a corporation or trade union must file a Notice of Registration (Form 7) and a Declaration for Third Party Advertisers with the municipal clerk at Cambridge City Hall, 50 Dickson Street, 2<sup>nd</sup> floor in person or by an agent. It

must have an original signature. The form may not be a copy, and may not be scanned and submitted electronically. There is no registration fee.

The municipal clerk must be satisfied that that the individual, corporation or trade union is eligible in order to certify the registration, and will require that identification or additional documents be provided, including, but not limited to individual - valid ID; corporation - Articles of Incorporation; trade union – certificate issued by Labour Relations Board.

A person who is filing as the representative of a corporation or a trade union should make sure that they can provide proof that they are authorized to act on the corporation or trade union's behalf (e.g. a letter on letterhead signed by a company director or union president).

### **3. Responsibilities of registered third parties**

Third party advertisers are required to follow many of the same financial and reporting rules as candidates. Further details are provided later in this guide.

Unlike candidates, third party advertisers cannot appoint scrutineers to observe the voting, or to be present when votes are counted.

### **4. Identification on advertising**

A third party advertiser must provide the following information on all of its advertisements, signs and other materials:

- the legal name of the registered third party (if the third party is a corporation or trade union, the name of the corporation or trade union must appear, not the name of the representative who filed the registration)
- the municipality where the third party is registered
- a telephone number, mailing address or email address where the third party can be contacted

A registered individual cannot act on behalf of a group or organization that is not eligible to register as a third party advertiser. For example, if Chris Smith is the president of a business improvement association (BIA), the signs and materials must identify Chris Smith as the person responsible for the advertising, not the BIA.

If ads are going to be broadcast or published (e.g. on a radio station or in a newspaper), the ad must contain the information required above, and the third party advertiser must also provide the broadcaster or publisher with the following:

- the name of the registered third party
- the name, business address and telephone number of the individual who deals with the broadcaster or publisher under the direction of the registered third party
- the municipality where the third party is registered

## **5. Sign By-laws**

The municipality has the following regulations related to the usage of Election Signs:

- By-law 191-03 is the original by-law for prohibiting and regulating signs and other advertising devised within the City of Cambridge. Section 25 speaks directly to election signage;
- By-law 120-10 amends the original by-law to permit the erection of election signs 45 days prior to the election date;
- By-law 60-18 also amends the original by-law in relation to the usage of elections signs.

Please note that the Region of Waterloo By-Law No. 183-013 also regulates municipal election signs on Regional roads. For more information, visit [www.region.waterloo.on.ca](http://www.region.waterloo.on.ca)

Further information regarding sign by-laws is available in the Sign Information for Candidates and Third Party Advertisers guide found on the [City's website](#).

All third party advertisers are responsible for removing all signs in accordance with the City of Cambridge and Region of Waterloo sign by-laws.

## **6. Advertising on voting day**

The *Municipal Elections Act, 1996* does not prohibit campaigning or advertising on voting day.

The act prohibits campaign material in a voting place. The Clerk is the lessee of the premises used as voting places, and deems that the premise includes the entire building and the property on which it is located. A third party is not allowed to have brochures, buttons, signs or any other advertising material in the voting place or anywhere on the property where voting is taking place.

## **7. Wrapping up the advertising campaign**

After voting day, the third party advertiser must remove any signs or other advertisements that have been put up, including online ads.

The advertising campaign must end on May 7, 2020, unless it has a deficit and the third party informs the clerk in writing that they are going to extend their campaign ([Notice of Extension of Campaign Period](#)). Once the campaign has ended, the third party should close the designated bank account and prepare the financial statement.

**NOTE:** Financial statements must be filed with the clerk by 2:00 p.m. on June 8, 2020.

## **PART C: Finance Rules**

This guide refers to activities related to third party advertising as the “advertising campaign”.

### **1. Record keeping**

Every third party is responsible for keeping financial records related to their advertising campaign. The *Municipal Elections Act, 1996* does not require that third parties use any specific accounting system. A third party may want to consult with an auditor or an accountant to make sure that they are using bookkeeping and accounting systems that will suit their needs.

The third party should also look through the [Financial Statement – Form 8](#) that they will be required to file to make sure that they are keeping records of all the information that must be included on the statement.

Every third party is required to keep all of their advertising campaign financial records until April 2024 when the next council or school board takes office.

A third party must keep the following campaign records:

- the receipts issued for every contribution including when the contribution was accepted and the date the receipt was issued (receipts must also be issued to the third party for any contributions made to their own advertising campaign)
- the value of every contribution, whether it is money, goods or services, and the contributor’s name and address
- all expenses, including the receipts for each expense
- any claim for payment of an expense that the third party disputes or refuses to pay
- the funds raised and expenses incurred from each separate fundraising event or activity
- the terms of any loan received from a bank or other recognized lending institution

### **2. Advertising campaign period**

A registered third party can only accept contributions or incur campaign expenses during their advertising campaign period.

The advertising campaign begins on the day the individual, corporation or trade union is registered as a third party advertiser. Third parties can register beginning on December 18, 2019, until 4:30 p.m. on Friday, March 20, 2020.

As the advertising is meant to influence voters, there is little point in continuing to advertise after voting day. However, the advertising campaign period runs until May 7, 2020. This extra time can be used to accept contributions if the campaign has not paid for all of its expenses.

If a third party is certain that they will not have any more financial activity after voting day, they can end their advertising campaign at any time between voting day and May 7, 2020.

### **3. Extended campaigns**

If the advertising campaign has a deficit, the third party can extend their campaign in order to do some additional fundraising. A third party can extend their campaign by notifying the clerk using the [Notice of Extension of Campaign Period – Form 6](#) on or before May 7, 2020. The end date for the extended period will be the earliest of:

- the day the third party notifies the clerk in writing that they will be ending their advertising campaign and not accepting any more contributions
- November 7, 2020

### **4. Bank account**

Every third party must open a bank account exclusively for the advertising campaign.

An individual cannot use an existing personal bank account for campaign finances, even if they are planning a very small advertising campaign. A corporation or trade union may not use an existing account.

All contributions – including contributions that the third party makes to itself – must be deposited into the third party advertising campaign bank account. All expenses must be paid for from the campaign account.

### **5. Contributions**

Contributions are any money, goods or services that are given to a third party for use in the campaign, including money and goods that the third party contributes to their own campaign.

If a third party sells tickets to a fundraising event, the cost of the ticket is considered a contribution.

If a third party obtains a loan from a bank or other recognized lending institution and guarantees the loan, and the advertising campaign is unable to repay the full amount, any unpaid balance is considered to be a contribution by the guarantor. If the third party is an individual, either they or their spouse may guarantee a loan.

## 6. Things that are not contributions

The value of volunteer labour (for example, if a team of volunteers helps to put up signs) is not considered to be a contribution.

A cash donation of \$25 or less received at a fundraising event is not considered to be a contribution, and the third party may accept such donations without keeping track of who gave them. The total amount of money received from these donations must be reported on the financial statement.

If the third party obtains a campaign loan from a bank or a recognized lending institution, the amount of the loan is not considered to be a contribution.

## 7. Who can contribute

A third party can accept contributions from:

- any person who is a resident of Ontario
- corporations carrying on business in Ontario
- trade unions that hold bargaining rights for employees in Ontario

If the registered third party is an individual, and their spouse is not normally resident in Ontario, the spouse can still make contributions to the third party's advertising campaign. They may not make contributions to any other registered third party, or to any candidates.

**Groups such as clubs, associations or ratepayer's groups are not eligible to make contributions.** The members of these groups may make individual contributions from their personal funds, as long as they are residents of Ontario.

## **8. Who cannot contribute**

The following are not allowed to make contributions to third party advertising campaigns:

- federal political party, constituency association, or a registered candidate in a federal election
- provincial political party, constituency association, or a registered candidate or leadership contestant
- federal or provincial government, a municipality or a school board.

## **9. When contributions can be received**

A third party can only accept contributions once they have registered as a third party advertiser, and cannot accept contributions after the advertising campaign period has finished.

Any contributions received outside the advertising campaign period must be returned to the contributor. If the contribution cannot be returned to the contributor, it must be turned over to the clerk.

## **10. Contribution limits**

There is no limit on how much a registered third party (and, if the third party is an individual, their spouse) can contribute to their own advertising campaign.

There is a \$1,200 limit that applies to all other contributions. This amount includes the value of any goods or services donated to the third party advertiser. If an individual, corporation or trade union makes more than 1 contribution (e.g. contributes money, contributes goods, and purchases a ticket to a fundraising event), the total value of all the contributions cannot exceed \$1,200.

The maximum total amount that a contributor can give to third parties registered in the same municipality is \$5,000.

A contribution must come directly from the contributor – pooling contributions from others and giving them to a third party advertiser is not allowed. If a contribution is made from a joint account, it must be clear which person is making the contribution.

Only a contribution that is \$25 or less can be made in cash. All contributions above \$25 must be made by cheque, money order, or by a method that clearly shows where the funds came from (e.g. certain debit, credit or electronic transfer transactions).

Third party advertisers are required to inform every contributor of the contribution limits. Contributors should keep track of their donations to ensure they don't end up giving more than is permitted.

## **11. Contribution receipts**

Third party advertisers must issue a receipt for every contribution they receive. The receipt should show who made the contribution, the date, and the value. If the contribution was in goods or services, the third party must determine the value of the goods or services and issue a receipt for the full value.

If a third party receives a cheque from a joint personal account, the receipt must be issued only to the person who signed the cheque. The contribution can only come from one (1) person.

Third party advertisers are required to list the names and addresses of every contributor who gives more than \$100 total to the advertising campaign in their financial statement. The financial statement is a public document.

A third party should keep a record of the names and addresses of every contributor, regardless of the value of their contribution, because the same contributor may make multiple contributions that end up totaling more than \$100.

Contribution receipts are not tax receipts. Contributions to third party advertising campaigns cannot be credited against provincial or federal income taxes.

An easy way for third party advertisers to inform contributors of the contribution limits is to include the contribution limits on the receipt that is given for each contribution.

## **12. Review of contributions**

The contributions that are reported on third party advertisers' financial statements will be reviewed by the municipal clerk to see if any contributors have given too much.

If the contributions reported on the financial statements show that a contributor gave more than \$1,200 to an individual third party advertiser, or if they show that a contributor

gave more than \$5,000 to third party advertisers registered in the same municipality, the clerk will report this to the compliance audit committee. The compliance audit committee will hold a meeting and determine whether the municipality will begin court proceedings against the contributor.

### **13. Returning ineligible contributions**

Third party advertisers are required to return any contribution that was made or accepted in contravention of the act as soon as they learn that it was an ineligible contribution. If the contribution cannot be returned, it must be turned over to the clerk.

Contributions should be returned or paid to the clerk if the contribution is:

- made outside the campaign period
- from an anonymous source (except for donations of \$25 or less at a fundraising event)
- from an ineligible source (e.g. someone who doesn't live in Ontario, a business that is not a corporation, etc.)
- greater than the \$1,200 individual limit or the \$5,000 total limit
- a cash contribution greater than \$25
- from funds that do not belong to the contributor who gave them

### **14. Refunding unused contributions**

If the advertising campaign ends with a surplus, the third party can withdraw the value of contributions that they made to their own campaign. If the third party is an individual, they can also withdraw the value of contributions made by their spouse. If there is still a surplus once these contributions have been withdrawn, it must be turned over to the clerk.

A third party advertiser cannot refund any other unused contributions.

### **15. Fundraising**

Fundraising functions are events or activities held for the primary purpose of raising money for a third party's advertising campaign.

If a third party has created brochures or other advertising materials that include a sentence asking people to make a contribution or providing information about how to contribute, this would not be a fundraising brochure since its primary purpose is to persuade voters to vote a certain way, not to raise money.

Fundraisers can only be held during the advertising campaign period. Third party advertisers must record the gross income, including ticket revenue and other revenue, and the expenses related to each event and activity on their campaign financial statement.

If tickets are sold to the event, the ticket price is considered to be a contribution to the campaign and a receipt must be issued to each person who purchases tickets. If the ticket price is higher than \$25, tickets cannot be paid for in cash.

If the ticket price is more than \$100, these contributions must be included in Table 1 on the campaign financial statement (Form 8). If the ticket price is less than \$100 and a person who buys a ticket makes other contributions, making their total contribution more than \$100, these contributions – including the cost of the ticket – must be recorded in Table 1.

## **16. Campaign income**

If funds are raised by selling goods or services for more than fair market value, the difference between the fair market value and the amount paid is considered to be a contribution. If the good or service is sold for \$25 or less, the amount paid is considered campaign income, and not a contribution.

*Examples:* The campaign has 20 framed prints to sell at a fundraising function. The cost to the campaign is \$20 per print, and they are sold for \$50 each. Each person who purchases a print is making a \$30 contribution to the campaign.

The campaign has 100 t-shirts printed to sell at a fundraiser. The cost to the campaign is \$10 per shirt, and they are sold for \$25 each. Each person who purchases a shirt is not making a contribution. The \$2,500 that was raised by selling the shirts must be recorded as campaign income on the financial statement.

If goods (such as food and drink) are sold at market value, the revenue is not considered to be a contribution, but must still be recorded on the campaign financial statement as campaign income.

## **17. Expenses**

Campaign expenses are the costs that are incurred during the campaign. These include costs directly related to producing, distributing or publishing advertisements, as well as indirect costs such as hiring someone to keep track of contributions and issue receipts.

Goods and services that are contributed to the campaign are also expenses. They should be treated as if the contributor gave the third party money and the third party went out and purchased the goods and services at fair market value – both the contribution and the expense must be recorded.

*Example:* An individual spends \$120 on stakes for putting up signs and donates them to a third party's advertising campaign. The third party should record a contribution of \$120 in goods or services from the individual, and record an expense of \$120.

Expenses must be paid from the campaign bank account. If a credit card is used to pay for purchases, the third party should keep clear records showing that the expense on the credit card was reimbursed from the campaign account.

Any taxes such as HST paid on purchases should be included in the amount of the expense.

Third party advertisers can only incur expenses during their advertising campaign period, except for expenses related to the preparation of an auditor's report. If a third party advertiser is required to include an auditor's report with their financial statement, they may incur these expenses after the advertising campaign period has ended. These expenses must also be reported on the financial statement.

## **18. Spending limits**

The general spending limit for a third party's advertising campaign is calculated based on the number of electors who are eligible to vote in the municipality where the third party is registered. The formula to calculate the limit is \$5,000 plus \$0.05 per eligible elector, to a maximum of \$25,000.

There is a separate spending limit for expenses related to holding parties and other expressions of appreciation after the close of voting. This spending limit is calculated as ten percent (10%) of the amount of the general spending limit.

When a third party registers in a municipality, the clerk will give them an estimate of their general spending limit. This estimate will be based on the number of electors in the last election.

On or before February 10, 2020 the clerk must give a final general spending limit that is based on the number of electors on the voters' list for the current election.

If the initial spending limit estimate is different than the final spending limit received in September, the higher of the 2 becomes the official spending limit. The clerk will also provide the spending limit for expenses related to parties and other expressions of appreciation.

## **19. Types of expenses**

Most expenses will be subject to the general spending limit.

Expenses are not subject to the spending limit if they are:

- related to holding a fundraising event or activity
- related to a compliance audit
- incurred by a registered third party who is an individual with a disability, and the expenses are directly related to the disability and would not have been incurred if not for the election
- audit and accounting fees

Any materials, events or activities must have fundraising as the primary purpose in order to be exempt from the spending limit. An incidental mention of contributions is not enough to qualify as fundraising.

## **20. When the spending limit applies**

The spending limit covers expenses that are incurred between the beginning of the advertising campaign (the day the third party is registered) and voting day. Expenses incurred between the day after voting day and the end of the advertising campaign period are not subject to the spending limit.

If a third party incurs an expense before voting day, but doesn't get around to paying for it until after voting day, it would still be subject to the spending limit.

Expenses related to parties and expressions of appreciation after voting are subject to the specific spending limit regardless of whether they are incurred before or after voting day.

## **21. Advertising campaign financial statement**

Every registered third party advertiser must file a complete and accurate financial statement on time.

The filing deadline is **2:00 p.m. on June 8, 2020.**

Third party advertisers must use Form 8. (Do not use Form 4, as that is the financial statement for candidates.)

If a bookkeeper or accountant completes the financial statement, the third party is still responsible for ensuring that it is complete, accurate and filed on time.

Financial statements require original signatures. Financial Statements must be filed in person – mailed, e-mailed or faxed statements will not be accepted.

If an individual, corporation or trade union registered in more than 1 municipality, they must file a separate campaign financial statement with each municipal clerk.

If a third party did not receive any contributions or incur any expenses, they are only required to fill out the first page of the financial statement and sign it.

If a third party received contributions or incurred any expenses, they must complete the relevant parts of the financial statement.

If the advertising campaign contributions or campaign expenses are greater than \$10,000, the financial statement must be audited and the auditor's report included when the financial statement is submitted to the clerk.

## **22. Filing early**

A third party can file their campaign financial statement after they have ended their advertising campaign. If a third party files a statement early and then discovers that there is an error in it, they can submit a corrected statement at any time before the filing deadline on June 8, 2020. The original statement is deemed to be withdrawn when the corrected statement is filed. A third party cannot withdraw a financial statement without submitting a corrected one at the same time.

## **23. Applying for an extension**

If a third party will be unable to file the financial statement by the deadline, they may apply for an extension to the Superior Court of Justice before June 8, 2020. The court may grant an extension of up to 90 days.

The third party shall notify the Clerk in writing before 2:00 p.m. on the last day of filing a financial statement indicating an application has been made.

## **24. Grace period for filing**

If a third party has not filed a financial statement by the deadline, they may file the financial statement within 30 days after the deadline if they pay the municipality a \$500 late filing fee. This 30-day grace period ends at 2:00 p.m. on July 9, 2020

## **25. Penalty for filing late**

If a third party has not filed a financial statement by the end of the 30-day grace period and did not apply to the court for an extension prior to the May 7, 2020 deadline, the individual, corporation or trade union will not be eligible to register as a third party advertiser in the municipality until after the 2022 election.

If a third party did not file a financial statement by the end of the 30-day grace period, they may still file it for the purposes of having their finances on the record. The clerk will accept the financial statement and make it available to the public. The penalty will still apply.

## **26. Extended campaigns**

If a third party extends their campaign they must file 2 financial statements:

- a financial statement reflecting the advertising campaign until May 7, 2020 (due June 8, 2020)
- a supplementary financial statement that includes the information from the primary statement and adds financial information from the extended campaign.

The supplementary financial statement must be filed with the clerk by 2:00 p.m. on December 7, 2020. There is also a 30-day grace period for this deadline in which the statement can be filed late provided the \$500 fee is paid.

## **27. Surplus and deficit**

If the campaign has a surplus after the third party has refunded contributions made by the third party (and, if the third party is an individual, their spouse), the remaining surplus must be paid over to the clerk when the financial statement is filed. The surplus will be held in trust, and the third party can use it if they incur expenses related to a compliance audit. If the surplus is not needed for these expenses, it becomes the property of the municipality.

If the third party's campaign expenses are greater than the campaign income, the campaign will be in deficit.

Note: If the financial statement reports that the advertising campaign ended with a deficit, this is a deficit on paper only. The third party is still obligated to pay any vendors they owe money to. Ending the campaign with a deficit may result in questions being raised about how those vendors were paid.

## **28. Auditor's report**

A third party must have an auditor review the financial statement and provide a report if any of the following are true:

- the advertising campaign expenses exceed \$10,000
- the contributions received exceed a total of \$10,000
- both the expenses and contributions exceed \$10,000 each

The auditor's report must be prepared by an auditor licensed under the *Public Accounting Act, 2004*. Before a third party hires someone to prepare the report, they should ensure that the person is properly qualified.

A third party can incur expenses relating to the auditor's report after May 7, 2020. These expenses do not count toward the spending limit. These expenses should be included on the financial statement that will be filed.

## **PART D: Compliance and Enforcement**

### **1. Automatic penalties**

Under the *Municipal Elections Act, 1996* a penalty applies automatically if:

- a third party fails to file a financial statement by the end of the 30-day grace period or fails to apply to the court for an extension by the filing deadline
- the financial statement shows that the third party has exceeded a spending limit
- a third party fails to turn over their surplus to the clerk when they file their financial statement

The penalty is that the individual, corporation or trade union will not be eligible to register as a third party advertiser in the municipality until after the 2022 election.

### **2. Compliance audits**

Each municipality and school board must appoint a compliance audit committee.

If an eligible elector believes that a third party has not followed the election finance rules, the elector may apply for a compliance audit of the third party's advertising campaign finances. The application must be in writing, and must set out the reasons why they believe the third party did not follow the rules.

An application for a compliance audit must be submitted to the clerk of the municipality where the third party is registered within 90 days of the deadline to file the advertising campaign financial statement (September 7, 2020).

The compliance audit committee will consider the application and decide whether to grant or reject the application. The committee's decision may be appealed to the Superior Court of Justice within 15 days after the decision is made.

If the committee grants the application, it will appoint an auditor to conduct a compliance audit of the third party's advertising campaign finances. The auditor is entitled to have access to all of the financial records related to the advertising campaign. The auditor will produce a report, which the third party is entitled to receive.

The compliance audit committee will meet to consider the auditor's report. If the report concludes that there is an apparent contravention of the act, the committee will decide whether to commence legal action.

The compliance audit committee does not have any authority to set penalties. Only the court can decide if a third party contravened the act and, if so, which penalties should apply.

A person who does not want to or who is not able to apply for a compliance audit may decide to commence legal action on their own. A prosecution related to the 2020 by-election must be commenced before November 2024.

### **3. Penalties**

If a person is convicted of committing an offence, they may be subject to the following penalties:

- a fine of up to \$25,000
- up to 6 months in prison
- ineligibility to register to be a third party advertiser until after the next regular election
- ineligibility to vote or run in the next regular election (in the case of conviction for bribery or other corrupt practices)

If a corporation or trade union is convicted of committing an offence, they may be subject to a fine of up to \$50,000, and ineligibility to register to be a third party advertiser until after the next regular election.

If any third party advertiser is convicted of exceeding a spending limit, they may also be fined the amount by which they exceeded the limit.

## **PART E: Completing the Financial Statement**

Third party advertisers must use Form 8.

All registered third party advertisers must complete Box A: Name of Registrant and Box B: Declaration. If the third party did not receive any contributions or incur any expenses, check the box indicating this, and complete the Declaration in Box B. No further information is required.

If the third party did receive contributions or incur any expenses, fill in the information in Box C, Box D, Schedule 1, and Schedule 2 as appropriate. It may be easier to fill out the form by starting with the more detailed sections such as the tables in Schedule 1 before filling in the Statement of Campaign Income and Expenses.

Any contributors that give more than \$100 in total must be identified and recorded in the tables in Schedule 1. There are separate tables for contributions of money or goods and services, contributed by individuals or corporations and trade unions. Record each contribution in the appropriate table.

Contributors that give \$100 or less in total do not have to be individually identified. The total amount contributed from these contributors will be recorded as a lump sum.

If the third party received contributions or incurred expenses in excess of \$10,000, an auditor's report must be included with the financial statement.

The completed financial statement must be submitted to the clerk, in person, by **2:00 p.m. on June 8, 2020.**

Supplementary financial statements must be submitted to the clerk, in person, by **2:00 p.m. on November 7, 2020.**