

**INTERPRETATION
BULLETIN NO.**

ESKIB-2019/02

**DATE: AUGUST 1, 2019
(UPDATED APRIL 18, 2023)**

SUBJECT

ADVERTISEMENTS UNDER SECTION 215 OF *THE ELECTION ACT, 1996*

REFERENCE

SECTION 215 OF *THE ELECTION ACT, 1996*

Disclaimer

This interpretation bulletin sets out Election Saskatchewan’s current interpretation of provisions of *The Election Act, 1996* (the “Act”) and are issued to provide assistance and guidance in understanding and complying with the Act. The views expressed in interpretation bulletins are not law and are not intended to replace the official text of the Act. How the Act applies to any particular case will depend on the individual circumstances of that case. Elections Saskatchewan reserves the right to reconsider any interpretations expressed in interpretation bulletins, either generally or in light of the actual circumstances of any case, and in accordance with continuing legislative and judicial developments.

Introduction

This bulletin provides a reminder to parties and candidates of the statutory requirements contained in section 215 of the Act regarding election and campaign advertisements during an election or a by-election.

Context

The Act specifies that certain information must be included in election advertising. This information is required so that electors are aware of who is responsible for advertising. The definition of advertising for the purposes of this bulletin is found in section 215(1) of the Act:

215(1) In this section:

- (a) “**advertisement**” means any of the following that refers to any election or promotes the candidacy of a particular person:
 - (i) a visual publication, display or representation consisting of images or text;
 - (ii) any audio publication or representation;
 - (iii) any advertisement, hand bill, placard, poster, circular, circular letter pamphlet;
 - (iv) any electronic or digital display;
 - (v) any radio or television broadcast that refers to any election or promotes the candidacy of a particular person;
- (b) “**distribute**” means to do any of the following:
 - (i) print, or produce by any other process;
 - (ii) publish;
 - (iii) distribute by mail or otherwise;
 - (iv) post;
 - (v) disseminate or broadcast.

Any advertisement that meets the definition specified in section 215(1) must contain a statement that indicates that the advertisement has been approved by the candidate or the political party. The wording of the statement required can be found in section 215(2) of the Act:

(2) No person shall distribute or cause to be distributed any advertisement that promotes the candidacy of a particular person unless there is included in, or unless there appears on the face of, the advertisement:

- (a) the statement that the advertisement is “authorized by the financial agent for [name of the candidate to which the advertisement relates]”; or
- (b) if the name of the candidate is clearly indicated on the advertisement, the statement that the advertisement is “authorized by the financial agent for the candidate”.

(3) Subject to subsection (4), no person shall distribute or cause to be distributed an advertisement that refers to an election unless there is included in, or unless there appears on the face of, the advertisement the statement that the advertisement is “authorized by the chief official agent for [name of registered political party to which the advertisement relates]”.

An exception to this requirement is made if the advertisement was distributed for a purpose outlined in section 215(4) as follows:

- (4) Subsection (3) does not apply if the person establishes that the advertising was distributed:
- (a) to gain support for views held by the person on an issue of public policy, or to advance the aims of any organization or association, other than a political party or an organization or association of a partisan political character, of which the person is a member and on whose behalf the expenses were incurred; and
 - (b) in good faith and not to evade any provisions of this Act.

Chief Electoral Officer's Interpretation

The provisions of section 215 of the Act are plain and straightforward.

The term “advertisement” is defined broadly in clear terms in clause 215(1)(a), which is reproduced above. Keep in mind that message advertising (i.e. robocalls) will be considered to fall into the category of “any audio publication or representation”.

Note also that the authorization statements prescribed by clauses 215(2)(a) and (b) and subsection 215(3) of the Act, also reproduced above, are the same for all advertisements (whether visual, printed or audio).

Without limiting the overall scope of these provisions (e.g. use of the word “person”), the following policy decisions are a direct result of this interpretation:

1. If a political party distributes an advertisement that refers to an election, typically one that promotes the political party, the advertisement must contain that statement that the advertisement is “authorized by the chief official agent for [name of registered political party to which the advertisement relates].”
2. If a candidate distributes an advertisement that promotes the candidate and the name of the candidate is not clearly indicated on the advertisement, the advertisement must contain that statement that the advertisement is “authorized by the financial agent for [name of candidate to which the advertisement relates].”
3. If a candidate distributes an advertisement and the name of the candidate is clearly indicated on the advertisement, the advertisement must contain that statement that the advertisement is “authorized by the financial agent for [name of candidate to which the advertisement relates]” or “authorized by the financial agent for the candidate.”
4. If an advertisement promotes both the party and candidate(s), the advertisement must contain the statement that the advertisement is “authorized by the chief official agent for [name of registered political party to which the advertisement relates] and by the financial agent for the candidate(s)” if the name(s) of the candidate(s) is clearly

indicated on the advertisement or “authorized by the chief official agent for [name of registered political party to which the advertisement relates] and by the financial agent for [name of candidate(s)]” if the name(s) of the candidate(s) is not clearly indicated on the advertisement.

5. Any authorization statement contained on an advertisement containing written or printed text must be provided legibly in a colour that contrasts sufficiently with the background to make it visible, in a font colour and size that it reasonably legible.
6. Should a registered political party and/or its respective candidates fail to strictly comply with section 215 on **all** forms and types of electoral “advertisements,” the Office of the Chief Electoral Officer (“the Office”) shall deny expenditures incurred for such advertising from reimbursement under sections 264 and/or 265 of the Act. Contravention of section 215 is also an offence under the Act.

Political parties and candidates should refer to Interpretation Bulletin ESKIB2019/02 Party vs. Candidate Expenses to determine if an advertisement expense is an expense for the party or the candidate.

Consider the following examples:

Financial Agent of Candidate A:

- a) A 2-page pamphlet promoting the candidate’s election platform;
- b) A billboard asking people to vote for the candidate; and
- c) A vehicle wrap with the candidate’s picture on it.

If examples **a** and **c** clearly indicated the name of the candidate, they would need to include the statement “Authorized by the financial agent for the candidate.” If the name of the candidate was not clearly indicated, they would need to include the statement “Authorized by the financial agent for [name of the candidate to which the advertisement relates].”

Example **b** clearly indicates the name of the candidate. The billboard advertisement would be required to include the statement “Authorized by the financial agent for the candidate.”

Party B has:

- d)** A TV ad promoting the accomplishments of the party as the best reason to elect them;
- e)** A website encouraging young voters to participate in the upcoming election;
- f)** A newspaper ad featuring the party leader and candidate(s) asking voters to vote for the candidates in their respective constituencies in the upcoming election; and
- g)** A radio advertisement that refers to the party but mentions neither an election nor a candidate.

In order to satisfy the requirements of section 215 of the Act and allow the cost of the above advertisements to be eligible for reimbursement, the following would need to occur:

Examples **d)** and **e)** refer to an election. These advertisements would need to include the statement “Authorized by the chief official agent for [name of the registered political party to which the advertisement relates].”

Example **f)** refers to an election and references both the party and candidate(s). This advertisement would need to include the statement “Authorized by the chief official agent for [name of the registered political party to which the advertisement relates] and by the financial agent for the candidate(s).”

Example **g)** refers to neither a candidate nor an election. In this example, strictly speaking, no authorization statement would be required. However, the Office recommends that an authorization statement be added as a precaution in all cases during the election period in order to safeguard against inadvertent breaches of section 215 of the Act.

Impact

Should a registered political party and/or its respective candidates fail to strictly comply these guidelines and with section 215 on **all** forms and types of electoral “advertisements,” the Office will deny expenditures incurred for such advertising from reimbursement under sections 264 and/or 265 of the Act. A contravention of any provision of the Act is also an offence.

A handwritten signature in blue ink that reads 'Michael D. Boda'.

MICHAEL D. BODA, D.PHIL., PH.D.
CHIEF ELECTORAL OFFICER
PROVINCE OF SASKATCHEWAN