

THIRD-PARTY INTERVENTIONS DURING AN ELECTION PERIOD

Guide to understanding the rules governing the control of election expenses

This guide is designed to review the rules applicable to third-party interventions during an election period. These rules aim to ensure compliance with the relevant provisions of the *Election Act* (CQLR, c. E-3.3).

The interpretations presented in this guide do not take precedence over the provisions of the *Election Act* and are not intended to replace the official text. Where applicable, references to the provisions of the *Act* are given in parentheses. When interpreting or applying the *Act*, you should always refer to the text published by the Éditeur officiel du Québec, which is available at the following address:
<https://www.legisquebec.gouv.qc.ca/en/document/cs/e-3.3>.

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Introduction

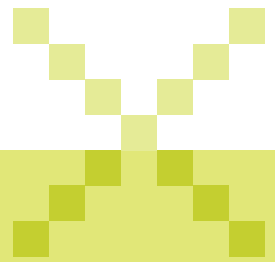
During the election period preceding any election, certain rules concerning political financing and the control of election expenses provide a framework for political debates.

Candidates and parties are required to comply with an election expense limit, establish an election fund drawn from authorized sources of financing and provide detailed accounting by filing a return of election expenses. Furthermore, the official agent of a political party or candidate is responsible for incurring and authorizing election expenses during the election period.

A key objective of measures for the control of election expenses is to ensure all candidates and parties enjoy fair and equal opportunities. Designed with the needs and interests of electors in mind, the system also aims to limit the influence of financial resources on political debates, ensure that parties and candidates remain the focus of attention during the election period, and promote public confidence in democratic institutions.

Citizens and businesses cannot use their financial resources in order to influence the political debate. Accordingly, third parties are not permitted to incur expenses to promote or oppose the election of a candidate or the candidates of a party during an election period.

Nevertheless, every elector has the right to vote in a free and informed manner, and the exchange of ideas is a cornerstone of a healthy democracy. The measures in force in Québec for the control of election expenses, as set out in the *Election Act*, therefore include **various exceptions** allowing third-party interventions during an election period. The following sections of the guide provide details regarding the application of these rules while noting relevant exceptions.



1 Definitions

The following definitions apply to various concepts discussed in the sections below.

Official agent

A person responsible for incurring and authorizing election expenses. This person is designated by a candidate, in the candidate's nomination paper, or by an authorized political party.

Election expenses

The cost of any goods or services used for the following purposes during an election period:

- promoting or opposing, directly or indirectly, the election of a candidate or the candidates of a party;
- propagating or opposing the program or policies of a candidate or party;
- approving or disapproving courses of action advocated or opposed by a candidate or party;
- approving or disapproving any act done or proposed by a party, a candidate or their supporters.

Such interventions are often described as having a partisan effect.

Authorized entity

A political party, party authority, independent Member of the Assemblée nationale or independent candidate authorized by the Chief Electoral Officer to solicit and collect contributions, incur expenses and contract loans.

Private intervenor

A qualified elector or an unincorporated group of natural persons, the majority of whom are qualified electors. The natural persons making up such a group work together to achieve a common goal.

Private intervenors are authorized to incur advertising expenses on a matter of public interest or to advocate abstention or the spoiling of ballots.

Section 3.4 of the guide relates to private intervenors.

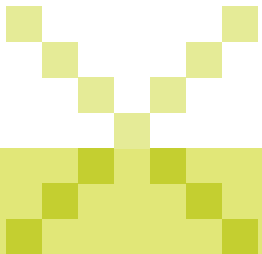
Election period

A period that begins on the day after the date of the election order and runs until the closing of the polling stations on polling day.

An election period lasts between 33 and 39 days.

Third party

An individual, legal person, organization or group that is not an **authorized entity** and is not acting on behalf of such an entity. Although not running for election, third parties seek to publicly engage in political debates. Political parties, party authorities, Members of the Assemblée nationale and candidates are not considered third parties.



2 Third-party interventions and measures for the control of election expenses

[Election Act, sections 401, 402, 403, 413, 415 and 417]

During an election period, a third party may not incur expenses to promote or oppose the election of a candidate or party. This rule applies to all third parties, including citizens, businesses, legal persons, associations and unions.

Accordingly, a third party cannot incur expenses related to any intervention that has a **partisan effect**.

Interventions have a partisan effect if they:

- promote or oppose the election of a candidate;
- propagate or oppose the program or policies of a candidate or party;
- approve or disapprove courses of action advocated or opposed by a candidate or party;
- approve or disapprove actions taken or proposed by a candidate or party.

When an intervention occurs **during an election period**, the associated costs constitute an election expense, even if the expense was incurred before the start of the election period.

→ BE CAREFUL!

Any expense incurred **to give visibility** to a candidate or political party—regardless of whether the visibility is positive, neutral or negative—constitutes an election expense.

Even if it provides visibility to all candidates or parties in a fair manner, the intervention still constitutes an election expense. However, costs associated with a public meeting or a program comparison are not considered election expenses if they meet the conditions set out in **directives D-20 and D-31**.

Whatever its form—mobile application, website, event, advertisement, press conference, etc.—any intervention that has both a partisan effect and associated costs must be authorized and paid by the official agent of a candidate or political party. This includes the design, production, publication and broadcast of the intervention.

→ *Why are only official agents allowed to incur election expenses?*

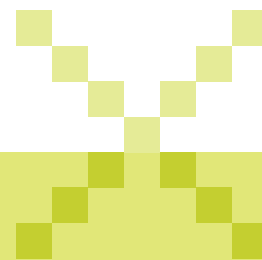
It is a matter of **fairness**. Indeed, all candidates in a given electoral division and all political parties must adhere to the same election expense limits.

To maintain **transparency** and promote public **confidence**, all expenses must be accounted for in a return of election expenses.

Interventions that have a partisan effect but that occur **before the start** of an election period are not considered election expenses.

In cases where an intervention involves the use of goods or services **both before and during** an election period, that portion of the cost associated with use during the election period also constitutes an election expense.

Goods or services constituting an election expense may not be used by a third party without the authorization of an official agent.



3 Exceptions to the notion of election expenses

[*Election Act*, sections 402, 404(1), 404(3), 404(12) and 423]

The *Election Act* provides for exceptions to the notion of election expenses that allow third parties to intervene during an election period.

Certain rules governing the application of the *Election Act* allow third parties to participate in political debates by helping keep electors informed.

3.1 Public and other meetings

Public meetings

Under certain conditions, a third party may hold a **public meeting** without having the associated costs considered election expenses. Public meetings are generally defined as meetings held before an audience. For example, a public meeting might feature a debate, a roundtable discussion or a speech.

The public meeting must be organized and held as part of the third party's regular activities, and the topics addressed must relate to the organization's mission. Furthermore, the public meeting must not be organized directly or indirectly on behalf of any party or candidate. No partisan advertising may be conducted or distributed at the event.

The public meeting may be held virtually, broadcast simultaneously or recorded for broadcast at a later time.

Other meetings

A third party may hold one or more **meetings** provided that all related expenses incurred during the entire election period do not exceed \$200. However, such meetings must not be organized directly or indirectly on behalf of a candidate or party.

→ **Directive D-20** lists all rules applicable to the organization and holding of public meetings during an election period. The directive is available on the Élections Québec website.

3.2 Political program comparisons and the use of hyperlinks

A third party may publish or broadcast a political program comparison intended to inform electors about the positions of all candidates in a given electoral division or all authorized political parties.

A political program comparison serves to share information compiled by the third party. The information may be gathered by means of a questionnaire sent to political parties or candidates, or through consultation of their official documents or websites.

Different conditions must be met to ensure the comparison is conducted and presented in a neutral and impartial manner.

The political program comparison must equitably represent, in both qualitative and quantitative terms, all authorized political parties or all candidates in a given electoral division. It may not be accompanied by any commentary or analysis expressing approval or disapproval of the content referred to, nor may it promote or oppose the election of any candidate or party. Accordingly, the third party cannot give preferential treatment to or discriminate against any of the parties or candidates.

Furthermore, the political program comparison must be prepared as part of the organization's regular activities and the topics addressed must relate to the organization's mission.

A political program comparison may also consist of hyperlinks to the platforms of candidates or political parties. Once again, no partisan commentary or analysis may accompany the information.

→ **Directive D-31** provides the full list of relevant conditions. The directive is available on the Élections Québec website.

3.3 Media

[*Election Act*, sections 404(1), 404(3) and 423]

The *Election Act* includes exceptions that apply to the publication and broadcast of partisan content by the media. Certain conditions apply to these exceptions.

Costs associated with publishing articles, editorials, news reports, interviews, columns or letters to the editor in a newspaper or other periodical do not constitute election expenses, provided the following conditions are met:

- The newspaper or periodical publishes the content without payment, reward, or promise of payment or reward.
- The newspaper or periodical has not been established for the purposes of or in view of the election.
- The circulation and frequency of publication remain the same as outside the election period.

The cost of broadcasting a public affairs, news or commentary program on a radio or television station is not considered an election expense provided the following condition is met:

- The program is broadcast without payment, reward, or promise of payment or reward.

Digital equivalents of newspapers, periodicals, radio stations and television stations are considered media outlets for these purposes. For example, the production of podcasts or the online broadcast of video commentaries could be covered by these exceptions.

During an election period, a media outlet may offer party leaders and candidates free space or broadcast time (commonly called “air time”). This service must be offered either to all candidates in a given electoral division or to the leaders of all parties represented in the Assemblée nationale and all parties that received at least 3% of the votes cast in the last general elections.

→ **Directive D-32** lists the conditions for applying these exceptions along with all the rules applicable to the media during an election period, including with respect to election advertising. The directive is available on the Élections Québec website.

3.4 Private intervenors

Provided the corresponding intervention does not directly promote or oppose the election of a candidate, a private intervenor may incur advertising expenses during an election period with the aim of:

- expressing an opinion on a matter of public interest or seeking support for such an opinion;
- advocating abstention or the spoiling of ballots.

Before incurring any such expenses, an elector or group of electors must receive authorization as a private intervenor from the Chief Electoral Officer.

→ Clarification on groups of electors

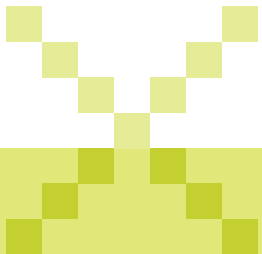
For a group to act as a private intervenor, the majority of the group's members must be qualified electors. A business, an association, a union or any other legal person cannot be part of the group. Members must designate one person from the group to represent them.

Qualified electors can therefore obtain private intervenor status, which entitles them to **spend up to \$300** on advertising during the election period.

The advertising must be paid for out of the person's own funds (or the funds of the members of the authorized group).

A private intervenor (or the person representing a group acting as a private intervenor) may not be or become a member of a political party during the election period.

→ More information is available in the ***Guide for private intervenors (DGE-709)***, available on the Élections Québec website.



4 Penal provisions

When the rules set out in the *Elections Act* are not followed, the person who contravenes any of its provision commits an offence. As the person responsible for administering the *Act*, the Chief Electoral Officer may institute penal proceedings. If found guilty, the offender will be liable to a fine. Some of the relevant offences relate to third-party interventions.

Election expenses incurred or authorized by someone other than an official agent

Any person who is not the official agent of a candidate or party (or the official agent's deputy) and **who incurs or authorizes an election expense** commits an offence under section 564.2 of the *Election Act*.

Any person who is not the official agent of a candidate or party (or the official agent's deputy) and **who uses goods or services** that constitute an election expense commits an offence under the same section.

A person who commits either of these offences is liable to:

a fine of \$5,000 to \$20,000 for a first offence and \$10,000 to \$30,000 for any subsequent conviction during a period of ten years, in the case of a natural person;

a fine of \$10,000 to \$50,000 for a first offence and \$50,000 to \$200,000 for any subsequent conviction during a period of ten years, in the case of a legal person.

→ **Some examples of partisan interventions prohibited during an election period**

- An individual **may not pay for the printing of a poster** designed to promote a candidate in the individual's workplace or in any other public place.
- A business **may not buy a newspaper advertisement** that attacks the position of a party or candidate on a particular issue.
- A non-profit organization **may not post an online brochure (e.g., in PDF format)** that rates the policies of candidates running in the local municipality on a scale of 1 to 10.
- A union **may not pay for a Facebook advertisement** that promotes or opposes a measure advocated by a party or candidate.
- An association **may not create a website** to support a candidate or party, since costs will be incurred in creating and maintaining such a website.

Other offences under the Act

The *Election Act* sets out other offences relating to election expenses. Any person who violates or attempts to violate any of the following sections commits an offence:

- Section 423 - Prohibition on providing free air time or space unless certain criteria are met;
- Section 429 - Prohibition on election-related advertising during the seven days following the date of the election order;
- Section 429.1 - Prohibition on election-related advertising on polling day;
- Section 457.2 - Prohibition on unauthorized advertising expenses incurred by a private intervenor.

Minimum fines of \$500 to \$5,000 apply to violations of these sections.

Complaints regarding the application of the Act

Under the *Act*, the Chief Electoral Officer may, of his or her own initiative or in response to a complaint, undertake inquiries into compliance with the provisions of the *Act*, including those relating to the control of election expenses.

You can report a suspected violation of Québec electoral legislation by filing a complaint on the Élections Québec website or by contacting us at one of the following numbers or addresses.

Élections Québec

Website: **www.electionsquebec.qc.ca**

Email: **info@electionsquebec.qc.ca**

Telephone (toll-free): 1-888-353-2846

In the Québec City area: 418-528-0422