



Let The Games Begin - What Every Business Needs to Know About Election Law This Year

by Jack B. Siegel

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A recent poll suggests that only 15 per cent of Canadians pay any attention to domestic politics between elections, leaving 85 per cent who allow the volume to be turned up only once the race officially begins. So, if you're one of the 85 per cent, this is your year.

Ontario will hold its second ever fixed-date provincial election on Thursday, October 6, 2011 and, depending on which pundit you're listening to (assuming, of course, that you are one of the 15 per cent who bothers), the chances are pretty high that there will be a federal election some time this year as well.

While we often think of elections as events that interest or affect us simply as voters, there are many aspects of election law that can affect businesses in their activities as voting day approaches. And although the rules for different levels of government are often similar, there are differences to be aware of, as well.

As an election lawyer, I sometimes think I've seen it all, from campaigns fending off complaints that the Dixieland jazz bands that they put on the back of a truck are making too much noise, to candidates filing nomination papers with two minutes to spare. But I've long since learned that there is something about elections that can inspire human creativity to new levels – and not always for the best. Here are some topics many business people know nothing about; at least not until someone complains. On the theory that an ounce of prevention is worth a pound of cure, here are a few pointers to keep you on the straight and narrow.

Employee Rights

As employers, businesses have obligations under election laws that are often overlooked, despite the fact that breaches of these requirements can lead to charges and substantial fines.

Both the federal and provincial Elections Acts require employers to provide leaves-of-absence to employees for election purposes, but in entirely different contexts. The Ontario law, for example, provides for unpaid leaves of absence, without loss of vacation entitlement, for employees who serve as election officials. The Canada Elections Act, in contrast, provides no similar protections for election workers, but instead provides a similar right to employees of *federally regulated* employers so that these employees can seek nomination or be candidates during an election campaign. Oddly, although the law does not require an employer to pay such a candidate, it does permit the employer to continue to pay them without making such payments count as campaign contributions.

Under both federal and provincial law, employers must give employees three consecutive hours (at the employer's "convenience") to vote on Election Day. In light of the length of voting hours (9 a.m. – 9 p.m. provincially and 9:30 a.m. – 9:30 p.m. for a federal election in the Eastern Time Zone), this is not an issue for employers of typical 9 to 5 employees. If the employer, however, has long or less common shifts (e.g. 11a.m. - 7 p.m.), then adjustments must be made for employees who ask for them without any reduction in the pay such employees would ordinarily receive for that day.

Building Access

During election campaigns, operators of both residential and commercial properties can often find themselves caught in between residents and tenants who just want to be left alone, and candidates and their volunteers who insist on their right to knock on every door or to campaign in public space.

Ontario provincial law grants a right of entry for candidates and their representatives to rental apartment buildings, condominiums and Co-ops, regardless of the level of the election. Federal legislation casts the net more widely, including any of these, plus any other multi-residence building (e.g. a university residence) and gated communities, and adds a right to campaign in common areas of any sort of multi-residence building between 9 a.m. and 9 p.m. Federal law also requires the operators of commercial and other buildings to permit campaigning in areas that are open to the public. While this latter right seems a bit extreme, the practical reality is that it is also self-limiting, as was learned by the candidate in the last federal election who alienated more voters than he won over, while accosting them in line for their morning coffee at a well-known donut establishment.

Know Your Limitations

Parties and candidates alike need money to run their campaigns. While they may ask for contributions at any time, the need is greatest at election time. Business owners need to know that while it is illegal for federal parties and candidates to receive contributions from corporations, they may still be asked to contribute as individuals. The current federal contribution limit is \$1,100 per party at each of the local and national levels. In other words, a single public-minded individual can contribute, for example, \$550 to each of two local Liberal candidates and another \$1,100 to the Liberal party nationally, and then do the same with respect to the Conservative Party and the New Democratic Party, parting with \$6,600 across the three parties.

Provincially, annual contribution limits are much higher. Contributors can be individuals, corporations or unions, as long as they live or carry on business in Ontario, and contribution limits double up in an election year. A theoretical donor in Ontario can give to each central party up to \$9,300 any time this year; up to \$1,240 to any single local riding association, provided that the total given to local riding associations of a single party does not exceed \$6,200. Then, during the election campaign, this generous soul can give a party another \$9,300 and give its candidates up to \$1,240 each, up to a collective maximum of \$6,200. That's as much as \$31,000 in 2011. And if the donor wants to hedge her bets, she can do that for each party, keeping in mind that all contributions over \$100 are publicly reported within 10 days of receipt.

Third Party Advertising

Finally, your business may have an interest in issues that are being spoken about during an election campaign and you might want to go so far as to spend some money on advocacy, either to encourage voters to make their decision based on a particular issue, or to support a candidate or party that is on the same side of that issue as you are. It used to be that you could not only do this anonymously, but that you were free to spend any amount you wanted for any such purpose. Not any more.

Both levels of government certainly recognize that such expressions of view are a matter of free speech, and should not, and cannot, be prohibited. But that does not mean they can't be *regulated*. Unless the amount spent is small (\$500 federally or provincially) anyone who spends money for such "third party advertising" must register with election officials and have their identity publicly disclosed

on the Internet. The natures of such third parties vary widely. Past registrants include “The Coalition for Education Fairness Ltd.”, the United Steelworkers, and my personal favourite, “ZAP-A-ROCK”. And while third parties remain free to spend provincially without limit, the sources of the money are controlled in much the same manner as are political contributions. Federally, however, there are also spending limits in place to prevent a third party from economically overwhelming a candidate or political party. These limits amount to \$3,765 in any single riding up to a nationwide total of \$188,250 for any registered third party. ■