

# Political Communications in the Digital Age – Submission

August 2020

## Introduction

The Digital Advertising Alliance of Canada (DAAC) wishes to thank the Chief Electoral Officer and Elections Canada for requesting our feedback with regards to the three discussion papers published in May 2020. The papers are comprehensive and well-written, providing straight facts and a balanced viewpoint, setting the stage for a rich submission process and future stakeholder discussions.

Many of our responses to the various questions asked in the papers provide an ongoing theme: a reinforcement of self-regulation for political advertising. Self-regulation is good for consumers, good for organizations and good for policy makers, as it can be adept and fluid to the needs of all parties.<sup>1</sup>

Some of our answers will appear quite short compared to others, and this is due to the fact that the DAAC may not hold a strong opinion on that particular matter, but for the sake of providing all-inclusive feedback, there are answers offered. Other organizations, including the associations that belong to the DAAC coalition, may have more to contribute on certain topics. Our answers will focus primarily on online advertising related issues and self-regulation.

## About the DAAC's Political Ads Program

The Digital Advertising Alliance of Canada (DAAC) is a consortium of the leading national advertising and marketing trade associations in Canada, whose members share a commitment to delivering robust and credible self-regulatory programs for responsible online behavioural advertising (YourAdChoices.ca) and political advertising (PoliticalAds.ca).

The DAAC's Political Ads Program addresses the requirement that an ad's tagline be "visible or otherwise accessible" and that it contain greater information, such as the name, phone number, and Internet or civic address for a registered third party. Elections Canada has confirmed to the DAAC that the notice provided by the Political Ads Program meets the requirement in the Act for identification information that must be included "in or on the message".

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<sup>1</sup> International Chamber of Commerce's *The Benefits of Advertising Self-Regulation in Ensuring Responsible and Compliant Advertising* – <https://iccwbo.org/content/uploads/sites/3/2020/06/2020-icc-srtoolkit-benefits-of-sr.pdf>

In the United States, from advocacy efforts of our sister organization the Digital Advertising Alliance (DAA), the Maryland State Board of Elections voted<sup>2</sup> to allow covered political entities to use a Political Ad-type icon in small ads that links to disclosures mandated by Maryland, including the authority line and other required information. Other US regulatory bodies have also expressed interest in the Political Ad program since its announcement in 2018.

The Canadian version of the Political Ads Program introduces a custom-made notice platform to standardize the experience users receive from the icon layered over the ads. This notice platform does not collect personal information from viewers; it does not place a cookie or track the user across the web.

In 2020, the DAAC introduced survey capabilities within the notice displayed to the user to ask basic questions (e.g. “Do you plan on voting in the upcoming election?”). Responses are collected anonymously and shared in aggregate with advertisers using our program. As the survey is directly layered atop of the advertisement, and it is branded to that advertiser, it is apparent to the viewer who is asking them the question. This should meet the requirement in the CEA that information must accompany the publication of election surveys such as opinion polls, including information about who sponsored the survey.

The DAAC invites representatives from Elections Canada to explore our Political Ads platform at greater length so that we may make improvements or adjustments to meet regulator expectations. You can find out more at [PoliticalAds.ca](https://politicalads.ca).

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<sup>2</sup> *“The proposed regulations change the authority line requirements for campaign material where it would not be legible to read to current technological standards, such as the use of an icon or an overlay rather than a click-through. The proposed regulations would prohibit data collection from the viewer of an authority line.”* COMAR 33.13.07 (Authority Line Requirements; Electronic Media) – [https://elections.maryland.gov/pdf/minutes/2018\\_08.pdf](https://elections.maryland.gov/pdf/minutes/2018_08.pdf)

## Discussion Paper 1: The Regulation of Political Communications under the *Canada Elections Act*

The DAAC agrees that the *Canada Elections Act* (CEA)'s structure is sound but that certain fundamental aspects need to be modernized.

The DAAC's Political Ads Program can help with minimizing impersonations of political entities or election officials by double-verifying that an organization is registered with Elections Canada, prior to them being permitted the use of our icon on their ads. This simple checkpoint we create allows publishers to be assured that the advertisers they are working with who are using our icon are legitimate, and potentially saves them time when it comes to advertising approvals, as the tagline is standardized.

The challenge related to political communication provisions described in the paper, and struggling to know where to place organic posts, is understandable. In "regular" marketing, organic popularity and engagement is free. It is the reward of finding a sticky message. If the message is provocative or resonates with the public, it will naturally gain traction regardless of the source.

The CEA should only be concerned with payment-based advertising, in which money can be tracked.

For greater understanding of marketing disclosure best-practices with regards to influencers, the DAAC recommends Elections Canada read Ad Standards' influencer marketing disclosure guidelines.<sup>3</sup>

### The Definition(s) of Advertising

**Should a distinction between advertising and other communications be maintained? Or should all communications, or all paid communications, be subject to regulation (reporting, taglines and limits)?**

The term "advertising" used in the CEA could be changed to "paid communication" to address media that is not traditionally thought of as an advertisement. The requirement for taglines should be on all paid communications. Reporting and spending limits may need greater consideration, as they may be less straightforward in the digital context.

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<sup>3</sup> Ad Standards' influencer marketing disclosure guidelines (updated January 2019) - <http://adstandards.ca/wp-content/uploads/2019/02/Influencer-Marketing-Steering-Committee-Disclosure-Guidelines-Jan-2019.pdf>

**Should regulation be limited to the election period and pre-election period?**

No, leave the regulation period as is. Self-regulatory programs like the ones offered by the DAAC could assist with non-regulated periods.

**Should regulation be instituted only when an entity has hit a certain threshold of spending? If yes, what should that threshold be?**

Execution would be simpler if thresholds were not introduced, however to avoid onerous responsibilities on smaller players, it is understandable to consider this as an option. The DAAC recommends broader stakeholder input on this point.

## Issue Advertising

As all political-focused advertisers must register with Elections Canada prior to advertising either directly or indirectly on behalf of a political party or candidate, registered third parties are already self-reporting the fact that they are “issue-based” advertisers.

But what do you do about issue-based advertisers that are small or have limited resources? Easing the burden of registration could be a focus for Elections Canada. Make it very easy to register; minimal paperwork and a quick registration turnaround (obtain a preliminary approval + longer-term assessment approval). Easing, or automating, the reporting requirements should be considered. Is there a registration intermediary role that could be filled?

**Should the CEA cease to regulate issues-based communications and restrict its regulation to communications that specifically mention a party or candidate?**

Yes, the DAAC strongly feels that the CEA should cease to regulate issue-based communications. The term “issue-based” is too broad and open to alternative interpretations. With no definitive list of what is an “issue-based” communication, advertisers, publishers, and even regulators, are left to determine what may be captured by that term – and all may have different viewpoints.

Exclude issue ads by adopting the definition of “advertising” from Bill C-76 section 349.01<sup>4</sup>.

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<sup>4</sup> *Canada Elections Act*, Section 349.01(1) – <https://laws.justice.gc.ca/eng/acts/E-2.01/page-45.html#docCont>

If “issue-based” ads continue to be covered after an amendment to the CEA, there must be a list published by the Commissioner of Canada Elections as to what constitutes an “issue-based” communication, and that a detailed list of subject matters is publicly posted at the start of each pre-election and/or election advertising period, and such list should only be applicable during this period of time. Penalties for non-compliance should not be included, as it is often not a straightforward yes/no answer when it comes to determining whether an ad is issue-based.

If the Commissioner of Canada Elections is not prepared to make such a list, then the DAAC reiterates that the CEA must be adjusted to avoid this ambiguity entirely.

**Should elements indicating whether issue advertising promotes or opposes a party or candidate be included in the CEA? What would such elements be?**

Our recommendation is to remove issue-based ads from the legislation. If issue-based advertising is maintained within a revision of the CEA, then the tagline requirements should be applicable. If the question is proposing an additional line such as “We support X candidate” in the tagline, then the DAAC opposes this view.

Instead, this information could be housed on a profile page administered by Elections Canada for the registered third party.

## Identifying the Communicator

**Which communications should be subject to a tagline or other identification requirement? During what period (election or outside election period)?**

All paid communications by entities registered with Elections Canada should have a tagline, at all times. The DAAC’s Political Ads Program can help organizations with this requirement.

**Should the tagline or identification requirement include certain specified information, such as the name of the agent, the address or the phone number? Or should it vary to take into account the size and technology of the message?**

Digital advertising comes in many shapes and formats. For mobile advertising, in particular, it can be quite challenging to fit the required tagline information into a small ad format on a limited screen size. Solving for this is one of the main benefits of the DAAC's Political Ads Program. Our custom-built platform allows mobile advertisers to meet the requirements in the CEA by presenting a tappable/clickable notice which displays the required transparency information in a new window.

Encouraging political advertisers to utilize solutions like our self-regulatory program will ease the burden for the CEA to be perfectly composed.

**Should electoral communications such as phone calls, text messages and advertisements be subject to record-keeping requirements? If yes, should the record keeping be with an agency such as Elections Canada, with the communications companies, or with political entities?**

The DAAC holds no strong opinion on this matter. The records could be kept by the Commissioner of Canada Elections, Elections Canada or the CRTC. Records should be for paid communications only.

If these records are created, the ensuing database could be the all-encompassing master registry that is alluded to later in the discussion paper.

It should be pointed out, however, that if added record-keeping requirements are placed in the CEA, there should be a realistic strategy regarding compliance monitoring that is communicated to these parties.

**Should the records be publicly available for inspection?**

Keeping the records publicly available is supported by the DAAC as it falls under the theme of transparency. For journalistic purposes it may also be useful.

## Third-Party Communications

The crux of this section points to the fact that some political parties are going to help fund third party organizations. The question is whether the public should know about these affiliations plainly and easily or not. Does it matter to them? Journalism helps uncover these ties, but perhaps it should be reported on in contribution reports by the parties themselves, **and** by the receiving third-party organization – and not listed under “general funds”.

**Are the new categories of “advertising,” “activities” and “surveys” appropriate? Are they sufficient, or should third-party regulation more clearly apply to all activities that promote or oppose a party or candidate? Which third-party activities, if any, should be exempt from regulation?**

The regulation could apply to all paid communications that promote or oppose a political party or candidate, and consist of contributions over ~\$100.

**Should third parties be required to fund regulated activities out of contributions subject to limits (as opposed to using general funds)? Should only individuals be allowed to contribute, as is the case for other regulated entities?**

But both matters appear reasonable in the way they are positioned in the questions above and within the discussion paper. Broader stakeholder opinions should be solicited.

**Should the threshold of \$500 in expenses which triggers third party regulation be changed?**

\$500 seems like a low and reasonable threshold, however there are third party advertisers that may find good reach by paying for “boosts” on social media platforms, keeping below this amount. This is a gap.

**Should communications with staff or members be exempted from regulation? How should “members” be defined?**

Yes. “Members” could be individuals or organizations that have contributed funding or opted-in to communications. Often these communications are by email newsletter.

The Commissioner of Canada Elections could have access to these email lists, but there should be a strong compliance strategy in place before demanding this type of information access.

**Should provincial governments be subject to regulation as third parties?**

It would be more appropriate to call out provincial governments separately from third parties in the regulation.

**Should limits on the federal government’s advertising or communications during an election regulation be placed in law?**

No. Federal advertising and communications would likely be relevant for the purpose of informing the public about the currently elected government’s actions, and should not be limited during an election period.

## False Statements and Prohibited Communications

Page 19 of the discussion paper describes the Chief Electoral Officer and the Commissioner of Canada Elections receiving repeated calls to address false statements seen in the media and in various communications by electoral participants. It describes the struggle with policing the media and policing the messages seen, and what role these officers should play.

**Should the opinion poll and advertising blackouts on polling day be maintained?**

Yes, and be strict about it. As was made evident in the discussion paper, the public expectation is that political advertising should be finished the day before the election, and that voting day should be treated as an advertising and polling blackout day.

**Should any changes be made to the existing prohibitions in the CEA regarding certain false communications?**

A code, a method to handle complaints, and issued opinions/reports of findings should be considered. This oversight could reside within the Commissioner of Canada Elections or be independent in nature.

**Should the CEA contain additional content requirements? If yes, how and when should these be enforced?**

Enforcement shouldn’t be a priority for this considering false communications are often not paid communications, and the CEA should only be concerned with paid communications.

## Discussion Paper 2: The Impact of Social Media Platforms on Elections

### Transparency

#### **What changes, if any, should be made to the CEA's existing ad registry requirements?**

Requiring “online platforms<sup>5</sup>” to create individual, non-standardized, registries<sup>6</sup> is an onerous and expensive process for them. The penalties associated with not providing a registry should be removed entirely (e.g. Bill C-76 s. 333(1)).

Instead, consider this proposal:

A master profile for each political party could be featured on the Elections Canada website. This master profile could feature the political party/registered third party's name, main contacts (authorizing agents), links to social media channels (Twitter, Facebook, etc.), self-reported issues they run for or against (e.g. environmental issues, tax reform), key marketing target groups (e.g. males aged 18-54), samples of top ads they have run or plan to run, and more. This information would be submitted by the political party/registered third party directly to Elections Canada.

The profiles would be maintained by these parties, with the Commissioner of Canada Elections reviewing the inputted data on a regular basis.

This is a fresh way of considering how to display registry-type information; housing it in a centrally administered way where the onus is not on the individual publishers or platforms to control it (which leads to duplication of data and a lack of cohesiveness), but instead it's controlled by the political parties and registered third parties themselves.

#### **Should the registries be expanded to include content that is not an ad, such as organic posts?**

No. If it is a large social networking platform, it is easy to click on the profile of the advertiser to see their organic posts.

The CEA should focus only on paid communications.

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<sup>5</sup> *Canada Elections Act*, Section 319 – <https://laws.justice.gc.ca/eng/acts/E-2.01/page-38.html#docCont>

<sup>6</sup> *Canada Elections Act*, Section 325.1 – <https://laws.justice.gc.ca/eng/acts/E-2.01/page-39.html#docCont>

**Should registries be required to provide other kinds of metadata beyond who posted the ad, such as its cost and/or targeting criteria?**

No. While some social networks do this already, Canadian publishers that fall under the definition of an online platform<sup>7</sup> due to their visitor level should not be burdened with further development work to adhere to the Bill C-76 amended CEA.

If there will be regulator scrutiny and reports of findings in the area of advertising non-compliance, then there could be reason to enhance the registries as they are now. But until that time, publishers and social networks should be commended on the work they have already done in this area.

**Who should be responsible for maintaining them? Why?**

Our proposal is that Elections Canada becomes the recipient of ad-related data through enhanced reporting requirements, and that Elections Canada hosts a master registry available for visitors to see a profile of a political party or registered third party.

Most online platforms, as defined by Bill C-76, have already built their political ad registries. Many can be found on the DAAC's Political Ads website<sup>8</sup>.

There are costs associated with maintaining political ad registries, regardless of the organization hosting it. If these registries will be required by online platforms in the long-term, costs to maintain them should be recouped by either reimbursements or tax relief options.

**What regulation, if any, should there be around the targeting of political ads?**

The DAAC welcomes political advertisers (political parties and registered third parties) to investigate and join one of our self-regulatory programs: AdChoices for online behavioural advertising, and the Political Ads Program for political advertising transparency.

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<sup>7</sup> *Canada Elections Act*, Section 319 – **online platform** includes an Internet site or Internet application whose owner or operator, in the course of their commercial activities, sells, directly or indirectly, advertising space on the site or application to persons or groups.

<sup>8</sup> The DAAC's Political Ads website features a list of political ad registries of many "online platforms" - <https://politicalads.ca/en/registries>

Our self-regulatory programs can act as a bridge between the CEA and PIPEDA. Our goal is to help organizations get into compliance with our Principles, which are modelled after Canadian privacy and election laws.

To echo what was stated in the discussion paper, as well as in the DAAC's own election post-mortem report to Elections Canada from 2019<sup>9</sup>, political advertisers (political parties and registered third parties) should be subject to the Personal Information Protection and Electronic Documents Act (PIPEDA) in the future.

**Should the use of algorithms in data-driven advertising be regulated? If so, how?**

No. As this subject matter is not election-related, it is best discussed under the auspices of the department of Innovation, Science and Economic Development Canada and/or the Office of the Privacy Commissioner of Canada.

## Access to Reliable Information Related to the Electoral Process

**Should there be regulation to require all digital and social media platforms to delete inaccurate or misleading content on where, when and ways to vote? If so, what sort of regulation?**

No. It is unclear as to how pervasive of a problem misinformation about where, when and ways to vote is. This may be an issue so minor that it does not need addressing. Working with social media platforms on media partnerships may be a better solution than further legislation.

**How should Elections Canada work with other stakeholders (platforms, regulated actors, civil society groups, researchers) who may be involved in this field?**

Engaging in discussion papers like these will help Elections Canada understand which organizations are most interested in collaboration and engagement.

The DAAC is open and available to work with Elections Canada at any time. Our intention is to help Elections Canada, and the Commissioner of Canada Elections, by imploring for greater transparency in the political advertising space, and to garner support for our self-regulatory program.

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<sup>9</sup> Available as an additional document sent with this submission.

Elections Canada and the Commissioner of Canada Elections could look at how the Office of the Privacy Commissioner (OPC) has split his office into two groups: the business advisory group and the compliance group.

The business advisory group is responsible for stakeholder engagement, obtaining feedback and working with various industries on collaborative compliance efforts. And the compliance group is responsible for investigations. They operate separately.

The Commissioner of Canada Elections and his office is already the compliance arm, separate from Elections Canada, but Elections Canada could take on the “business advisory group” type tasks.

Whichever way Elections Canada decides to engage with stakeholders in the future, they should maintain a culture of openness in hearing all sides of an issue. Maintaining a neutral tone is challenging, but critical, and Elections Canada has done a good job thus far of doing so.

**Should digital and social media platforms have legal obligations to report publicly on any accounts or content they have removed? If so, exactly what information should they be required to report publicly?**

No. These are public and private companies that have internal policies to oversee the content that is posted on their platforms.

The only exception would be political advertisers that have engaged in paid communications, but have since deleted their advertising profile or ceased advertising. Copies of those advertisements/paid posts could be maintained in the online platform’s registry in accordance with the retention periods set out in the CEA (if maintaining registries is still required after CEA reform).

Again, our strong recommendation is that all penalties associated with online platforms not providing a public registry be entirely removed from the legislation.

**Should further measures be taken by social media platforms to reduce the spread of potentially harmful inaccurate and/or misleading information in private spaces?**

As seen in the media recently, many social media platforms are taking stronger stances on the spread of harmful or misleading information. Ultimately, it is up to each of these platforms to establish their own best practices and thresholds of tolerance in this delicate area.

**What are the risks for elections administrators such as Elections Canada in using digital and social media platforms to reach electors? What mitigating measures could be adopted to manage these risks?**

Like other marketers, Elections Canada must first be comfortable with the open and interactive experiences that social media platforms provide.

Hiring experienced social media experts that either work in-house within Elections Canada, or work with a reputable media/PR agency, is key.

It is Elections Canada's responsibility to engage with and respond to the Canadian electorate. Responding rapidly and to each post's replies may not be a realistic undertaking, therefore, consider instead the broad reach that social media platforms can provide, and stick to awareness messaging of where, when and ways to vote.

## Trust in the Elector Process

**What additional role, if any, should Elections Canada play to build trust in elections and democracy? What role should other actors play in this area?**

Elections Canada has the opportunity to be more than an elections facilitator.

There are ways Elections Canada can engage with stakeholders that are neutral in nature, such as providing high-level best practices to online platforms and political parties/registered third parties.

Guidance is needed. Political advertiser should have up-to-date privacy notices at the very least, and engage in marketing best practices. They should absolutely be using the DAAC's AdChoices program or Political Ads Program to inform users about their data collection practices for advertising and be more transparent overall.

Online platforms, specifically social media platforms, receive extreme pressure from multiple jurisdictions. These platforms are improving with society's needs, with scrutiny, and in time many of the issues highlighted in this discussion paper will be addressed without the need of further legislation or regulatory requirements.

We must again recognize the great lengths to which all "online platforms," as defined in the CEA, have made efforts to comply; they have created registries

and have been transparent. Unless there is regulatory oversight, actions, and active collaboration, these efforts are pointless.

The DAAC urges Elections Canada to consider the value in working with self-regulatory bodies such as the DAAC in creating sectoral codes and accountability programs, to broaden regulatory reach without the burden of extra overhead costs or lack of experience in the digital sector.

## Discussion Paper 3: The Protection of Electors' Personal Information in the Federal Electoral Context

This discussion paper does an excellent job of describing the data-driven advertising ecosystem as it operates today, and how PIPEDA does or does not apply.

What became apparent upon studying the discussion paper is the fact that ad tech vendors are required to adhere to PIPEDA, but the political advertisers they are working with are not. It is a gap that most Canadians likely do not realize exists.

One could argue that the list of electors is one of the most powerful and accurate databases in Canada, which is accessible to political parties with what appears to be very little oversight into its use.

The statements of the electors who voted has more protections, but could still be used in unexpected or unethical ways.

Page 7 of this discussion paper describes adding noise to the list of electors, which is a responsible and effective action to take.

Page 9 of the report describes the actions Elections BC took to provide a template to political parties for their privacy policies. This was noticed by the DAAC and mentioned in our election post-mortem report to Elections Canada (available as an add-on to this submission). While privacy policies are in place on the main federal party websites, they still need work. They need to call out how they collect and use data for advertising purposes, offer an opt-out option for the vendors they work with, and perhaps describe how they use the list of electors.

### Registered Third Parties

**Should registered third parties be subject to privacy requirements as regulated entities under the CEA?**

Registered third parties, and all registered political parties, could be subject to Canadian privacy laws, specifically PIPEDA for uniformity with private-sector requirements, however, our recommendation is that they also be encouraged to join self-regulatory initiatives such as the DAAC's AdChoices and Political Ads programs.

The CEA should not need to include privacy requirements within the Act as a patchwork response to PIPEDA's silence on this issue.

The CEA could make reference to PIPEDA, particularly if PIPEDA is updated to cover political parties and registered third-parties. But again, an effective solution is to encourage, or mandate, political parties and registered third parties also to belong to self-regulatory programs in the marketing sector.

## Accountability

**Besides publishing their privacy policies, what other requirements could parties be subject to in order to make them accountable for how they collect, use and disclose personal information?**

The DAAC's response to this question is twofold:

First, all political parties and registered third parties should be engaging in the DAAC's Political Ads Program as a viable solution to providing greater transparency to Canadians while also helping them to comply with the CEA.

Second, ad tech vendors, publishers and other advertising suppliers should be part of the DAAC's existing AdChoices self-regulatory program for online behavioural advertising. Our AdChoices program has a strong, independent, accountability arm and opt-out tools are available for the public.

There is nothing preventing a political advertiser (a political party or registered third party) from participating in the DAAC's AdChoices program alone or in combination with the Political Ads Program. The DAAC's programs can aid the political advertiser on their path towards regulatory compliance for both the CEA and PIPEDA.

The primary issue we come across is awareness about our self-regulatory programs, and finding the right representatives at these organizations to take initiative to join. Having Elections Canada encourage these political advertisers to take this extra step would be incredibly helpful.

**When political parties share information with a third-party partner, should they continue to be held accountable for the use of that information?**

Political parties should be transparent about what personal information is being collected for the purpose of online behavioural advertising at or before the time of collection so that it is clear that the information will be disclosed to a third-party partner. The DAAC's AdChoices program is a solution created to help with this transparency requirement.

Under PIPEDA's accountability principle, information provided to a third party for processing purposes remains the responsibility of the person who collected the information. If political parties become subject to PIPEDA, this principle would apply to the parties in respect of information that they provide to their third party partners if those partners are acting in the role of processors.

An organization is responsible for personal information under its control. PIPEDA is clear in this regard, which is the Act that the third-party partner would fall under.

But Elections Canada should be most concerned when it comes to the list of electors. The parties should be held accountable for that list's use.

## Consent

**Under what circumstances should an elector's consent be implicit or explicit? Should consent be required for the collection and use of publicly available information?**

PIPEDA uses the terms "implied" (not "implicit"), and "express" (not "explicit") when addressing consent.

In general, the circumstances of when an elector's consent must be implied or express will be dependant on whether the information being collected, used or disclosed is considered sensitive. Privacy laws that apply to political parties, such as the European Union's *General Data Protection Regulation*, consider political opinions to be sensitive information.

The OPC has [investigated and resolved](#) a multitude of privacy complaints regarding publicly available information, and is best suited to handle this topic.

**Would any uses or disclosures of personal information be unacceptable, even with consent? Should such areas be expressly delineated by law?**

The Office of the Privacy Commissioner of Canada has [issued guidance](#) on this topic, describing them as “no-go zones”. The concept of “risk of harm” is challenging for the DAAC to offer guidance on as it is subjective and case-by-case.

**Should there be any regulation about how information that Elections Canada provides to parties can be combined with other sources of information?**

Elections Canada and the Commissioner of Canada Elections should consult with stakeholders to better understand how information provided (such as the list of electors and the statements of electors who voted) is combined with other datasets, and could offer simple guidance to political advertisers for how to handle those lists in the digital ecosystem, and outline expectations to the vendors that political advertisers use.

This guidance could be issued in collaboration with the Office of the Privacy Commissioner of Canada.

**Should electors' consent be obtained for providing lists of electors and statements of electors who voted to political parties and candidates?**

It would be logical to assume that elector data/voting data would be sensitive personal information if it is identifiable to the individual.

Sensitive data would require express (opt-in) consent to use under PIPEDA.

Whether or not an enhanced consent regime is introduced, political parties should at the very least increase their transparency in this area to better inform the public about what data is collected and with whom it is being shared, in plain language and in a palatable way. The DAAC's AdChoices self-regulatory program is a good option to help them be proactive with this when it comes to their online behavioural advertising practices.

## Identifying Purposes, Limiting Collection and Limiting Use, Disclosure and Retention

**Should there be mandatory restrictions on what type of information parties collect, including sensitive information such as religion or sexual orientation?**

PIPEDA provides that an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances. This restriction has been interpreted to limit the collection, use and disclosure of information, even with consent, to appropriate purposes and would apply to political parties, if PIPEDA were extended to them.

It may be determined that collection of religion and sexual orientation information by political parties is not appropriate. Even if such information were determined to be appropriate, it would be considered sensitive personal information under PIPEDA and would require opt-in consent to collect, use or disclose.

However, instead of updating the CEA to cover this, participating in the DAAC's AdChoices self-regulatory program could be recommended for political advertisers using behavioural advertising. Under our Principles, entities are prohibited from collecting or using sensitive personal information for online behavioural advertising purposes without consent.

**Should there be restrictions on how long parties can retain personal information? How might that vary depending on the type of information (i.e. political opinions, financial information and address information)?**

Yes. Elections Canada can decide what timeframe is appropriate based on their extensive history in managing elections. These restrictions could be presented in the form of a best practices guidance document, perhaps released in partnership with the OPC, that details retention rates and it could include other topics covered in this discussion paper. It does not need to be in a regulation.

Such Elections Canada guidance could overlay, and inform, the rule under PIPEDA, that information should only be retained only so long as is needed to satisfy the purposes for which it was collected, assuming PIPEDA were extended to apply to political parties.

**To what extent should parties be subject to clarifying the purposes for which personal information is collected, used and disclosed?**

The DAAC's Principles under our AdChoices self-regulatory program for online behavioural advertising state that clear, meaningful, and prominent notice should be given to consumers about data collection and use practices associated with online behavioural advertising.

The more transparent these organizations are with how they collect, use and disclose personal information, the more trustworthy they will appear. It would be so novel at first that it could be a differentiator for a party that wanted to be more progressive on this issue.

**Should the CEA be amended to require that party privacy policies indicate under what circumstances a party may share personal information with a third party, such as provincial political parties?**

Yes, and privacy policies should include a list of what types of personal information is collected, used and disclosed, and if possible, a list of external vendors (e.g. ad tech companies) and who the data will be disclosed to, as well as the ability to opt out of sharing information with a third party. For political parties specifically, there should be some guidance issued.

## Accuracy and Individual Access

**Should Canadians have the right to access their personal information from political parties?**

If PIPEDA were extended to apply to political parties, Canadians would have access to their personal information held by the parties.

**Are there circumstance when it would be legitimate for political parties to decline access?**

There are some exemptions<sup>10</sup> under PIPEDA which allows organizations to deny access to personal information in certain circumstances.

For political parties, declining access could be allowed if the requests are egregious or suspicious in nature, given the role they play in society. Access requests should be reported to the Commissioner of Canada Elections or Elections Canada to ensure they are responded to in a reasonable timeframe.

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<sup>10</sup> Responding to access to information requests under PIPEDA – [https://www.priv.gc.ca/en/privacy-topics/accessing-personal-information/obligations-for-organizations/02\\_05\\_d\\_54\\_ati\\_02/](https://www.priv.gc.ca/en/privacy-topics/accessing-personal-information/obligations-for-organizations/02_05_d_54_ati_02/)

## Safeguarding Personal Information

### **Should the CEA impose mandatory security requirements on parties/candidates who receive the lists of electors?**

Guidance could be issued that identifies what security controls may be implemented, including limiting access to the lists of electors to key authorized individuals, hashing or encrypting the data, and adding noise to the dataset.

Stakeholder feedback should be solicited not just from the political parties but from external vendors and data security experts as well.

### **Beyond legislating safeguards, what can be done to protect personal information held by political parties? How can parties manage their information holdings to safeguard information while also enabling campaign workers or volunteers to use that information to communicate with electors?**

Elections Canada could assemble a list of pre-approved data security vendors that political parties can work with. Criteria for how to be on the list could be narrow and specific, or loose and open to multiple vendors – it fully depends on how tight Elections Canada would like to make the protections.

Discussing this topic with a broad set of stakeholders, particularly ones that work in the security sector, would be advised.

### **Could there be any challenges when applying PIPEDA's breach notification requirements to political parties? Should there be variations for political parties and/or candidates?**

If the CEA is updated to address breach notifications, or PIPEDA applies to these parties, the expectations of the private sector should be applied to political parties and registered third party organizations equally.

Breach notifications and procedures are now a standard practice that private sector companies have learned to deal with. If a local dental office is required to notify of a breach then so should large parties, especially when the data may be sensitive in nature.

## Challenging Compliance

**What type of privacy compliance model is best suited for political parties? Which body should provide oversight? Should parties be audited? What is the appropriate role for electoral management bodies, data protection authorities or other regulators?**

The DAAC offers self-regulatory models that political parties and registered third parties can embrace, but it does require genuine initiative to take the steps to comply with a self-regulatory program when there is little incentive to do so.

That being stated, it is our mandate to help companies comply with PIPEDA, and now the CEA through our Political Ads Program, and so we expect that political parties will see the value in self-regulation.

There is strong value in self-regulation when it is layered atop of existing legislation – which is how our AdChoices program operates atop of PIPEDA. We can provide sector-specific standards to address broad legislative language.

Should parties be audited? Yes, especially if there is reason to do so, such as a complaint or significant breach. If auditing will not be done by the Commissioner of Canada Elections each election cycle, then there should be independent oversight that does so. The DAAC's AdChoices program has proactive accountability monitoring and a non-compliance procedure in place, conducted independently by Ad Standards. This has proven to be a strong element of our AdChoices self-regulatory program.

**What should be the nature of offences and penalties, if any?**

Setting clear expectations, and having a way to measure against those expectations, is a good way to encourage regulatory compliance without the need to levy fines. Whatever is decided should be clearly communicated upfront, before elections.

**Should there be recourses for individuals when their personal information is not treated in accordance with fair information principles?**

Canadian privacy class action lawsuits would fall under PIPEDA.

While there are a few exceptions, “most privacy class action lawsuits involve data breaches. Essentially, an entity trusted with the personal information of

large numbers of individuals is sued because they lost the data stored on an unsecured device, a rogue employee absconded with the data or repurposed it, a hacker circumvented their security measures, or they simply allowed information to be improperly disclosed due to lax practices or other failings. In each of these scenarios, the common factor is a data breach and improper disclosure of personal information.”<sup>11</sup>

**Would a code of practice that political parties have agreed to be more appropriate than legislative action? Who should lead the development of such a code?**

Yes. As we have asserted throughout this submission, the DAAC is in an ideal position to assist with a self-regulatory code for all political advertisers. Please reach out to us to discuss further.

## Final Thoughts

The Digital Advertising Alliance of Canada commends the Chief Electoral Officer and Elections Canada for presenting comprehensive background on the subject matters detailed in these three discussion papers. They were well-researched and thought-provoking.

Each question asked in the discussion papers opens the door to many other discussions, and it would be fruitful to continue exploring these topics. This will take time and effort – and varied opinions should be contributing towards these discussions – to know the best way forward. It is our hope that other submissions received by Elections Canada can provide multiple stakeholder viewpoints to consider.

Priorities will need to be identified.

The Digital Advertising Alliance of Canada is committed to supporting Elections Canada’s priorities in an effort to enhance political ad transparency to Canadians. Please consider our strengths and position in the digital advertising ecosystem as a positive ally, supporter and partner.

We look forward to assisting you in reaching your identified goals in innovative and valuable ways. Thank you for reading.

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<sup>11</sup> A quote from an article written by Teresa Scassa, Canada Research Chair in Information Law and Policy at the University of Ottawa, Faculty of Law – [https://www.teresascassa.ca/index.php?option=com\\_k2&view=item&id=318:a-troubling-new-twist-on-privacy-class-action-lawsuits-in-canada&Itemid=80](https://www.teresascassa.ca/index.php?option=com_k2&view=item&id=318:a-troubling-new-twist-on-privacy-class-action-lawsuits-in-canada&Itemid=80)

## About the DAAC

The Digital Advertising Alliance of Canada (DAAC) is a consortium of the leading national advertising and marketing trade associations in Canada, whose members share a commitment to delivering robust and credible self-regulatory programs for responsible online behavioural advertising ([YourAdChoices.ca](https://YourAdChoices.ca)) and political advertising ([PoliticalAds.ca](https://PoliticalAds.ca)).

It's main program, [YourAdChoices.ca](https://YourAdChoices.ca), provides a blue triangular in the corner of ads that can be clicked or tapped to see who delivered the ad and allows individuals to opt out of receiving online behavioural advertising. It also features a strong accountability arm that participating companies are required to respond to.

The Political Ads self-regulatory program, [PoliticalAds.ca](https://PoliticalAds.ca), was created to aid political advertisers in operationalizing their political ad transparency online. The purple icon used in the program is a symbol that can be easily recognizable to online users, allowing them to find out more information about who delivered the political ad to them.

The DAAC's expertise and focus is with regulatory compliance that provides information, but is not disruptive, to an advertiser's message.

The DAAC has a vested stake in ensuring there is transparency in online political advertising. The recent 2019 federal election coincided with our launch of a political advertising tool customized for this category to ensure a healthy adherence to the basic principle of consumer transparency.



The DAAC is composed of the following associations:

- [Association of Canadian Advertisers](#)
- [Association of Creative Communications Agencies](#)
- [Canadian Marketing Association](#)
- [Canadian Media Directors' Council](#)
- [Institute of Communication Agencies](#)
- [Interactive Advertising Bureau of Canada](#)
- [Quebec Media Directors' Council](#)