



Federal Elections: Get involved, defend your issues, know the rules

July 26 @ 1 to 2 p.m. ET



CanWaCH
Canadian Partnership for
Women and Children's Health



CanSFE
Partenariat canadien pour la
santé des femmes et des enfants



3rd Party Registration and Reporting in the 2019 Federal Election

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Source of data: Elections Canada 3rd Party Financial Returns

<https://www.elections.ca/content.aspx?section=fin&document=index&dir=oth/thi/advert/tp43&lang=e>

The screenshot shows the Elections Canada website interface. At the top, there is a search bar and navigation links for Home, About Us, Contact Us, and Français. Below this is a horizontal menu with categories: Voters, Elections, Resource Centre, Media, Employment, Political Financing (highlighted), and Political Participants. The main content area is titled 'Third Party Financial Returns for the 43rd General Election'. It includes a breadcrumb trail: Home / Political Financing / View Other Reports / Third Party Financial Returns for the 43rd General Election. A sidebar on the left contains links for 'Search for contributions', 'View financial returns', 'View Other Reports', 'Candidates', 'Leadership Contestants', 'Nomination Contestants', 'Political Parties', and 'Download Open Data'. The main text explains the requirements for third parties to register and submit interim returns. A table at the bottom lists various third parties and their respective return due dates.

Third Party's Name	Interim return - due within 5 days of becoming required to register	Interim return - Due September 15	Interim return - Due 21 days before election day	Interim return - Due 7 days before election day	Electoral Campaign Return
UNIFOR	PDF	PDF	PDF	PDF	PDF
Leadnow Society	PDF	PDF	PDF	PDF	PDF
Canada Growth Council Inc	PDF	PDF	PDF	PDF	PDF
Fair Vote Canada	PDF	PDF	PDF	PDF	PDF
UCCO-SACC-CSN	PDF	PDF	PDF	PDF	PDF
Fairness Works	PDF	PDF	PDF	PDF	PDF
True North Strong & Free Advertising Corp.	PDF	PDF	PDF	PDF	PDF
Canada: Powered by Women Inc.	PDF	PDF	PDF	PDF	PDF
Keep Canada Beautiful	PDF	PDF	PDF	PDF	PDF
Grain Farmers of Ontario		PDF	PDF	PDF	PDF
Canadians United for Change		PDF	PDF	PDF	PDF
Friends of Canadian Broadcasting	PDF	PDF	PDF	PDF	PDF
Canadian Union of Public Employees		PDF	PDF	PDF	PDF
North99		PDF	PDF	PDF	PDF
350 Canada		PDF	PDF	PDF	PDF
USW		PDF	PDF	PDF	PDF

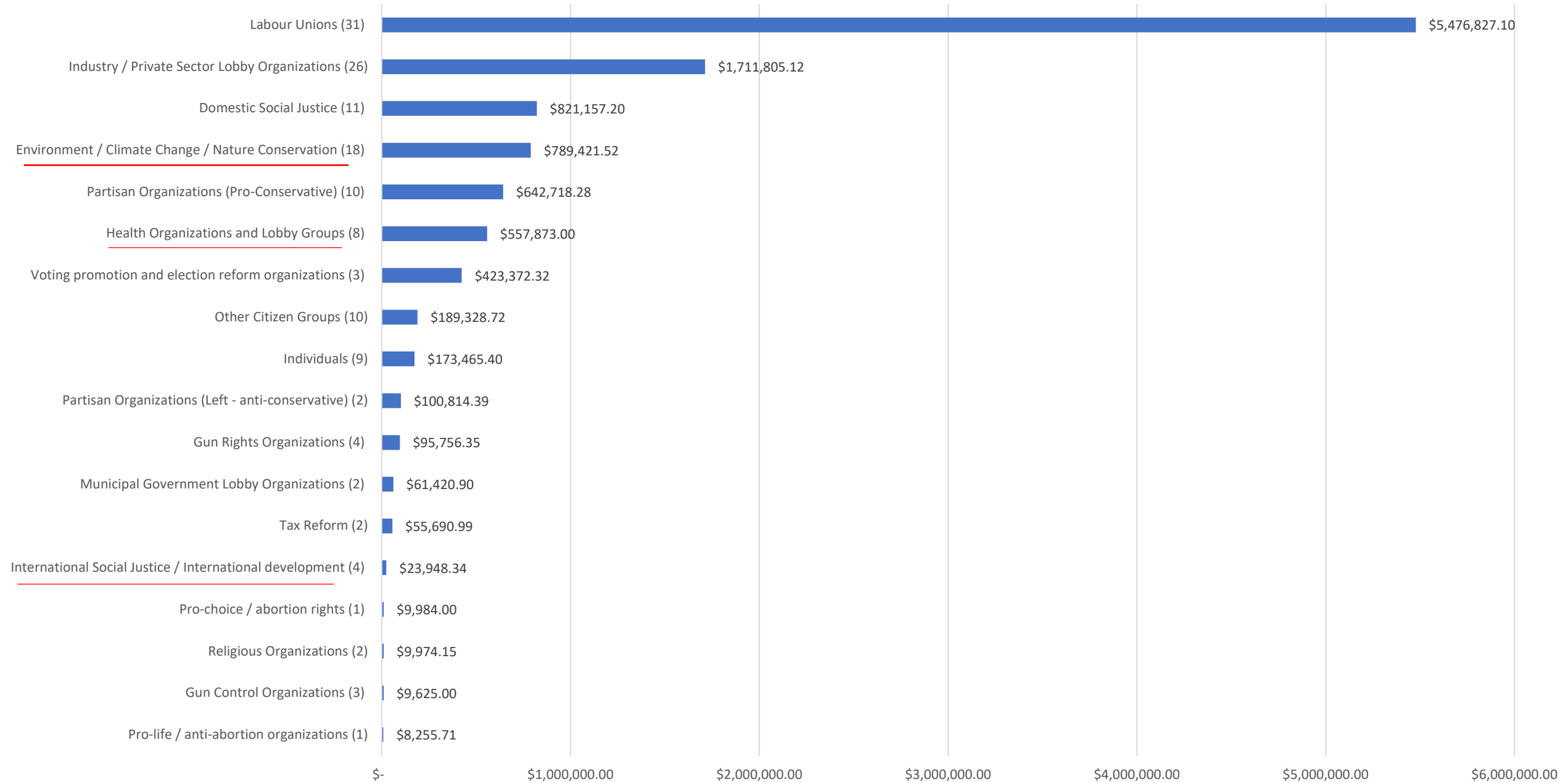
3rd Party Registration and Reporting (2019)

Summary

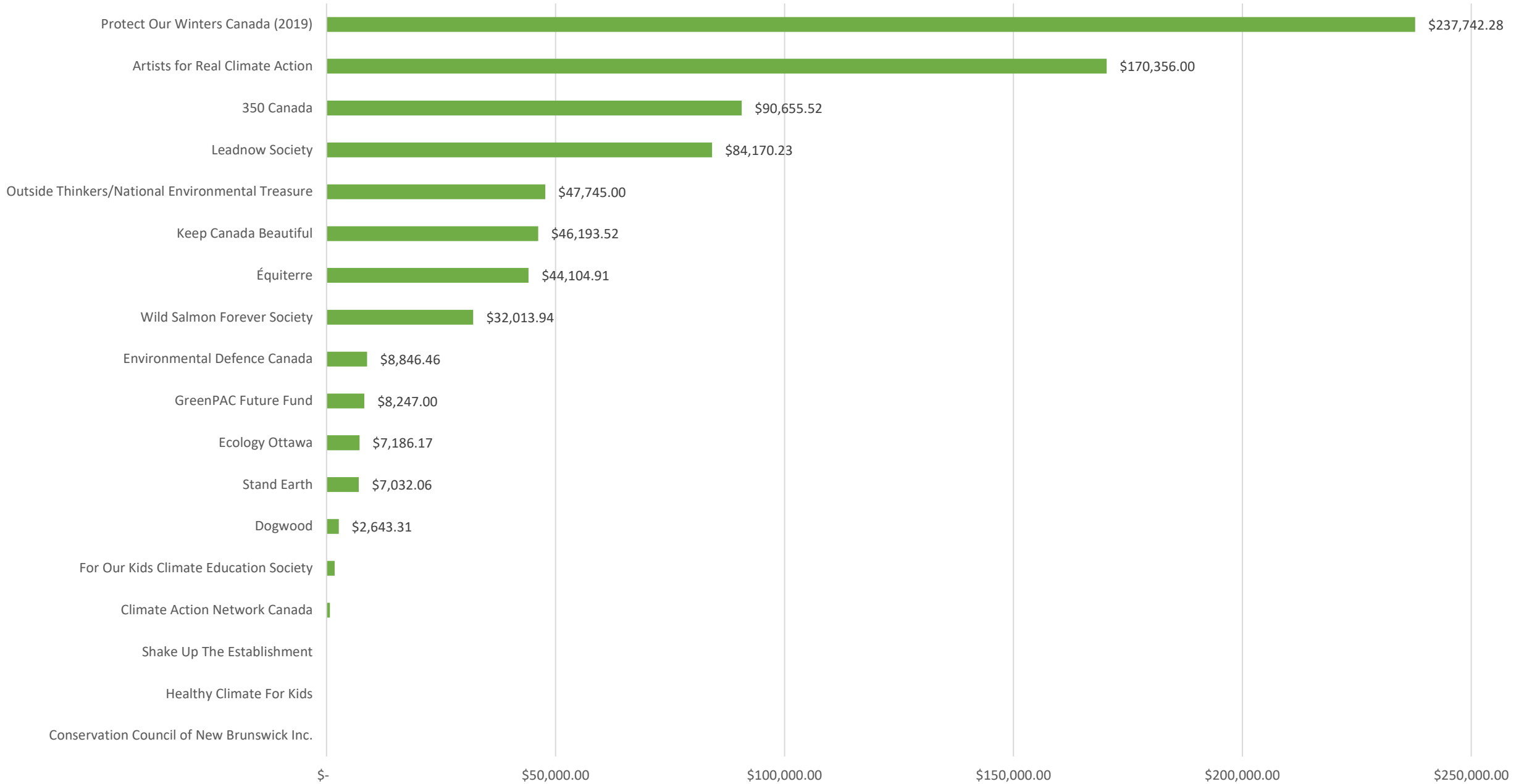
- 147 3rd Party Organizations registered
 - 129 Not-for-profits
 - 9 registered charities
 - 9 individual citizens
- Total reported spending: \$11.1 million

3rd Party Spending on Election Advertising in 2019 Federal Election, as of March 30, 2020

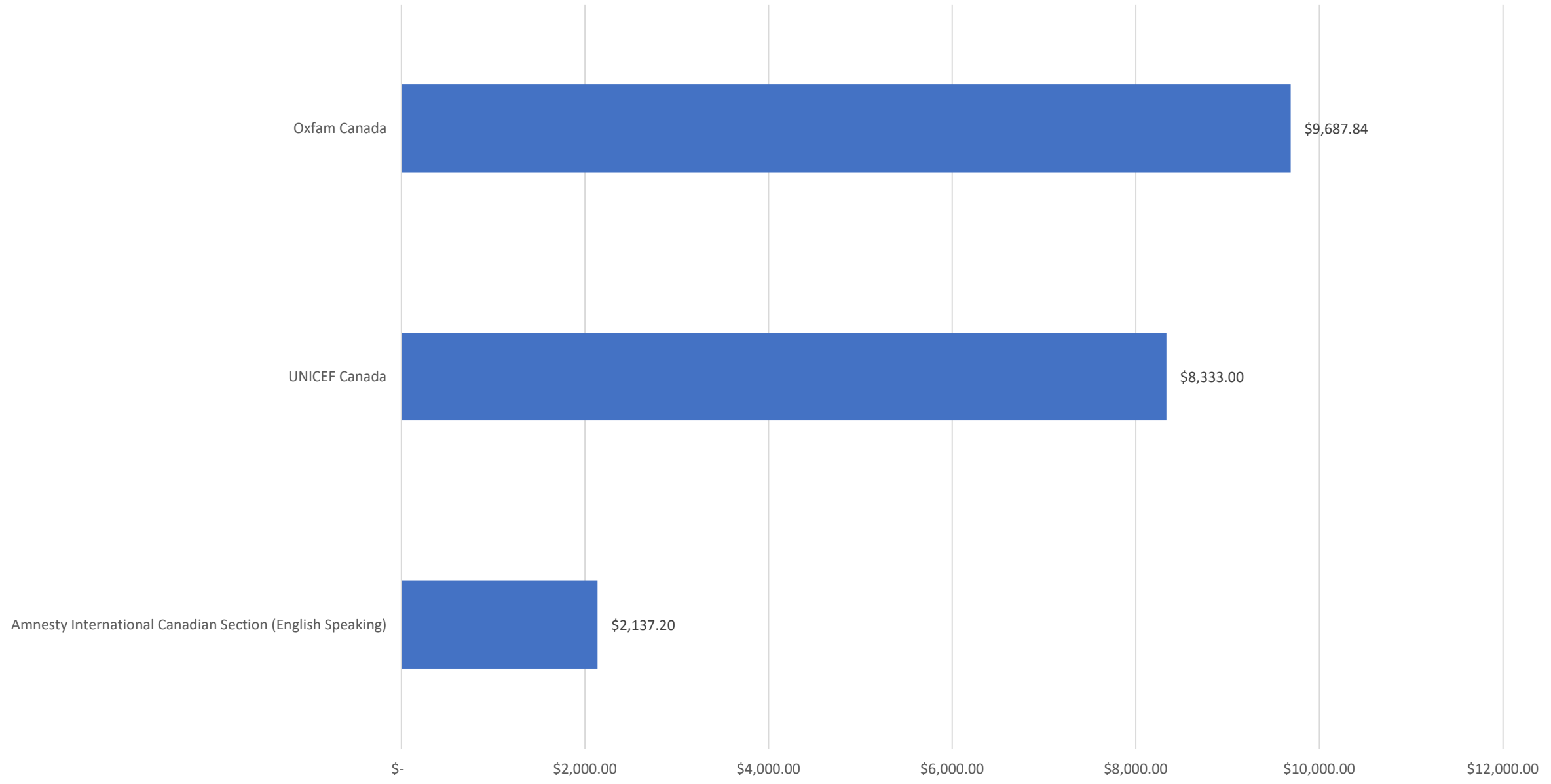
147 Registered 3rd Parties = \$11,161,438.88 Reported Spending



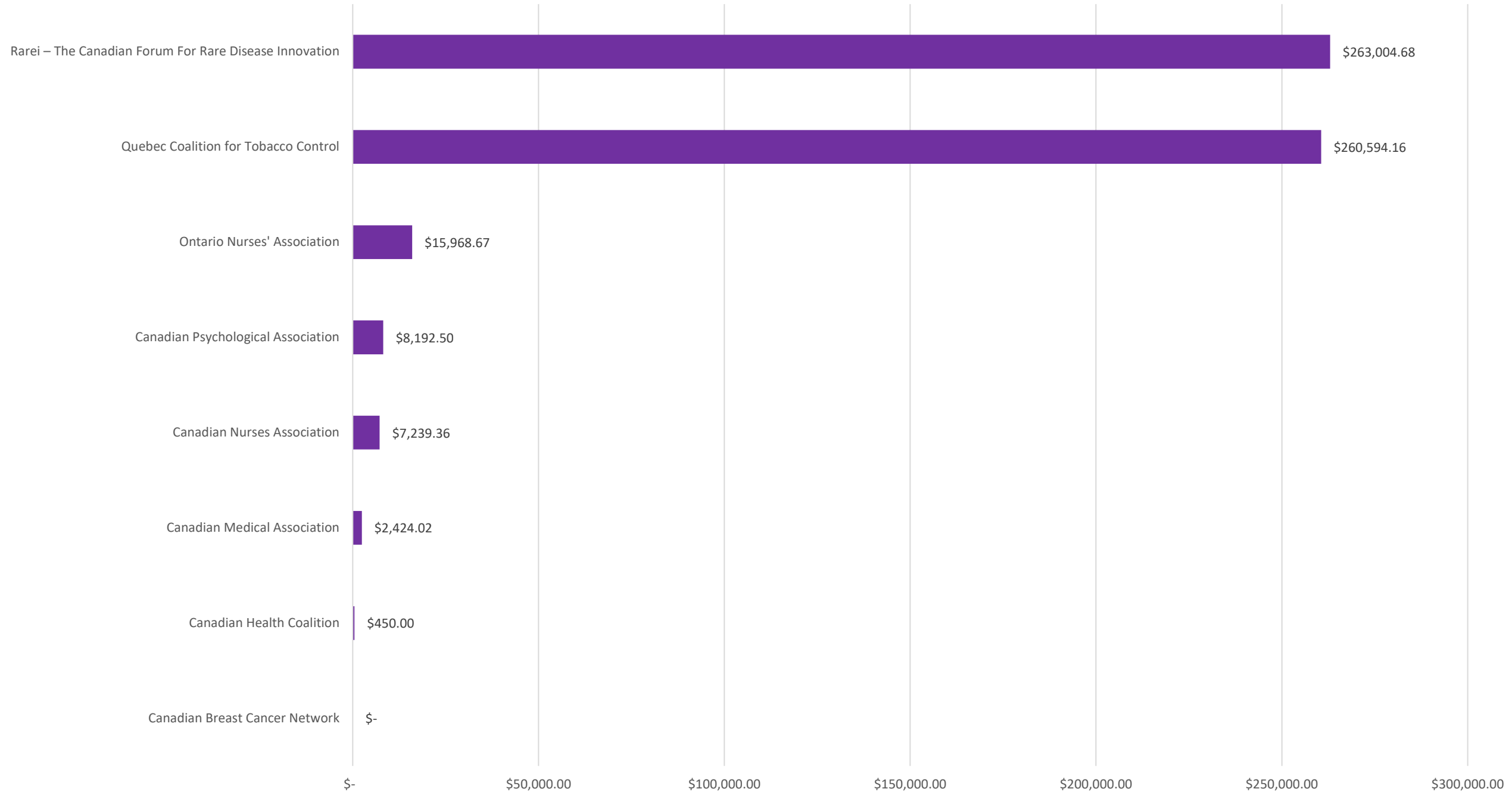
3rd Party Political Advertising by Environmental Organizations (18) = \$789,742.28



3rd Party Political Advertising by International Cooperation Organizations (3) = \$20,158.04



3rd Party Political Advertising by Health Organizations (8) = \$557,873.29



Analysis

- Election campaigns are a prime opportunity for public engagement with public policy issues
- Few organizations register with Elections Canada to spend \$ to boost positions in public policy debates
- 2 possible conclusions:
 - Organizations are spending on political advertising but not registering or reporting (dangerous)
 - Organizations are self-silencing during election campaigns (worrisome)
- Observations
 - “regulated” does not mean “prohibited”
 - Fears that political advertising is a risky activity
 - Focus on avoiding registration & reporting rather than compliance with regulations

Advocacy Regulations and the Election: Some thought on Political Activities, Elections Canada Rules and Lobbying Regulations

Presentation to Cooperation Canada, July 26, 2021

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- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising in Canada

www.CanadianCharityLaw.ca

www.Blumbergs.ca

www.CharityData.ca

www.SmartGiving.ca

- Free Canadian Charity Law Newsletter. Sign up at:
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- www.twitter.com/canadiancharity

Introduction

- Legal information not legal advice
- Views expressed are my own

Political Activities - Three Different Sets of Rules

- **Income Tax Act** limitations on registered charities
 - applies only to registered charities
- **Elections Act** and Third Party Advertising
 - applies to both NPOs and registered charities
- **Lobbying Act** (Federal)
 - applies to both NPOs and registered charities

Political Activities - Old Rules for Registered charities

- Under the Income Tax Act, a registered charity used to be restricted to the amount of resources it could use for non-partisan political activities and was and still is prohibited from involvement with partisan political activities. (now called activities which support or oppose a political party or candidate)
- Could only spend a maximum of 10% of resources (except for smaller charities between 10-20%) and could average over 3 years (some groups could spend 60% in one year if no previous political activities)
- Could always set up affiliated non-profit that could do unlimited political including partisan activities
- Could not do partisan political activities and political activities had to be connected to the charity's legal objects or purposes. (no change)

Political Activities - New Rules

- On December 13, 2018, the Trudeau government made several changes to the *Income Tax Act* (Canada) related to charities, especially with regards to political activities. The changes allow Canadian registered charities to conduct
 - unlimited public policy dialogue and development activities (PPDDA)
 - which are connected to the stated charitable purposes of the charity
 - as long as they are not directly or indirectly partisan.
- Although PPDDA is not defined in the Income Tax Act it will likely be viewed as what was historically referred to as allowable non-partisan political activities plus some charitable activities like private meetings with MPs.

Stated Charitable Purposes

- A stated charitable purpose is a purpose that meets all of following the three criteria:
 - the purpose appears in the charity’s governing documents
 - the purpose falls within one of the four categories of charity
 - the purpose provides a benefit to the public (see CRA Guidance [CPS-024, Guidelines for registering a charity: Meeting the public benefit test](#)) which includes a requirement that any private benefit conferred is necessary, reasonable, and proportionate (see also [Guidance CG-013, Fundraising by registered charities](#))

Political Activities

- CRA Guidance CG-027 **Public policy dialogue and development activities by charities**

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/public-policy-dialogue-development-activities.html>

- CRA releases Q&A on public policy dialogue and development activities by charities

<https://www.canadiancharitylaw.ca/blog/cra-releases-qa-on-public-policy-dialogue-and-development-activities-by-cha>

Political Activities

- With controversial charities that do lots of controversial PPDDA and receive lots of complaints from the public, CRA even if it were to audit the charity will not be reviewing whether a registered charity has spent more than 10% on political activities as that will be irrelevant but instead if there is an audit they will likely focus on
 - Is any activity of the charity directly or indirectly partisan?
 - Are all PPDDA related to the stated charitable purposes of the charity?
 - Is registered charity complying with other compliance requirements?

Political Activities

- Many charities have not updated their legal purposes or objects in a long time and all PPDDAs have to be related to your purposes
- CRA will also be looking at whether the group is complying with charity requirements in about 20 other areas - fundraising, receipting, T3010 filings and accuracy, objects, undue private benefits, business activities, dealing with non-qualified donees, etc.
- <https://www.canadiancharitylaw.ca/blog/blumbergs-releases-new-canadian-charity-legal-checklist-by-mark-blumberg/>

Third Party Election Advertising Registration Rules (Federal)

Federal Election

- Third party election advertising rules are at Federal level and some provinces
- Most charities don't realize that these can easily apply to them
- Only relevant during election and sometimes period prior to election
- Many have very low threshold for registration

Federal - What is a “Third Party”?

- Canada Elections Act (“CEA”)
- A third party is generally a person or group that wants to participate in or influence elections other than as a political party, electoral district association, nomination contestant or candidate
- Non-profits that are not registered charities and Canadian registered charities may fall under the definition of “third party”
- Non-profits that are not registered charities and registered charities will be affected differently by recent changes but the CEA makes no distinction between them

Timelines for Federal Election- Fixed Date – e.g. 2019

- **Pre-Election Period:** June 30 – day before Election is called
- **Election Period:** Day Election Called – Day Polls Close (near end of October).

Timelines for Federal Election – Not-fixed date – potentially 2021

- **Election Period:** Day Election Called – Day Polls Close
- The pre-election period only applies to fixed date elections. There isn't a pre-election period for non-fixed date general elections.
- Typically an election period must be a minimum of 36 days and a maximum of 50 days.

“Regulated Activities”

Type	Description
Election advertising	The transmission to the public by a third party, by any means during the election period , of an advertising message that promotes or opposes a registered party or candidate, including by taking a position on an issue with which the registered party or person is associated .
Partisan activities	Activities carried out by a third party that promote or oppose a political party, nomination contestant, potential candidate, candidate or party leader, other than by taking a position on an issue with which the political party or person is associated. Note: Activities to fundraise for the third party are excluded from partisan activities. As well, activities that meet the definition of election advertising are only election advertising, not also partisan activities.
Election surveys	Surveys about voting intentions or choices, or about an issue with which a registered party or candidate is associated, that a third party conducts or causes to be conducted during the election period . The survey results are used in deciding whether or not to organize and carry out regulated activities, or in the organization and carrying out of regulated activities.

NPO vs Charity or Registered Charity

- Generally NPO can carry out partisan activities and therefore all regulated activities may apply to it.
- A charity or registered charity cannot carry out partisan activities and therefore generally only “issue advertising” under “Election Advertising” would be applicable and potentially election surveys.

Election Advertising

- “The transmission to the public by any means during the election period of an advertising message that promotes or opposes a registered party or candidate, including by taking a position on an issue with which the party or candidate is associated.”
- Examples:
 - hire a media firm to design election advertising that will be distributed during the election period.
 - having staff produce election advertising messages and pay for them to be distributed on radio, TV, newspapers, magazines, website banners, billboards, etc.
 - paid, sponsored or boosted messages communicated over the Internet

What is NOT Election Advertising

- messages sent or posted for free on social media platforms such as Twitter and Facebook
- messages sent by email or through other messaging services (including texts sent through a cellular or mobile network)
- videos posted for free on social media platforms such as YouTube and Instagram
- content posted on the third party's website (the ongoing expenses for creating and maintaining a website are not placement costs)

Example of Election Advertising

- “The third party runs a national radio ad during the election period, promoting a policy issue with which one registered party is closely associated but not naming the party. This is election advertising. The advertisement has to include an authorization statement from the third party. The expense for the advertisement—including its scripting, recording and transmission—is an election advertising expense subject to the limit for the election period. (As issue advertising, this particular advertisement would not be a regulated expense if it ran only during the pre-election period.)”

Registration Requirements

- A person, corporation or group must register with Elections Canada as a third party immediately after incurring expenses:
 - totalling \$500 or more for regulated activities that take place during a pre-election period, or
 - totalling \$500 or more for regulated activities that take place during an election period
- The following are eligible to become registered third parties:
 - an individual who is a Canadian citizen or a permanent resident, or lives in Canada
 - A corporation that carries on business in Canada (including a municipal government), as long as it is not a foreign third party
 - a group, if the person responsible for the group is a Canadian citizen or permanent resident, or lives in Canada

Registration Requirements

- During a fixed election period, groups can register for pre-election starting June 30. For an election period, you can register the day the general election or by-election is called.
- A person, corporation or group can also register as a third party if they **intend** to incur expenses totalling \$500 or more for regulated activities in one of the periods.
- A third party that registers during the pre-election period and is also required to register during the election period is deemed to be registered for the election period.

How to Register

- A third party that is required to register with Elections Canada has to:
 - open a separate bank account with a Canadian financial institution or certain authorized foreign banks, as defined by the *Bank Act*
 - appoint a financial agent, who must sign a declaration accepting the appointment
 - appoint an auditor without delay, if it has incurred expenses totalling \$10,000 or more for regulated activities
 - submit the *General Form—Third Party* to Elections Canada

How to Register

- If the third party is a trade union, corporation or other entity with a governing body, the application must include a signed copy of a resolution authorizing it to incur expenses for regulated activities.
- For example, the resolution could read: “The board hereby authorizes <name of the third party> to incur expenses regulated by the *Canada Elections Act* during the <pre-election period, election period or both> for the election held on <election date>. This resolution was approved by the majority of the board members.”

Taglines

- A third party must identify itself in or on any election advertising and indicate that it has authorized the advertising.
- The tagline must include the third party's name, phone number and civic or Internet address. It must be clearly visible or otherwise accessible. Tagline must also indicate that the third party authorized the ad, suggested wording is: "Authorized by <name of third party>, <civic or internet address>, <phone number>."
- For advertising on the Internet, where the authorization statement cannot be included on the advertising message because of its size, this is acceptable if the statement is made immediately apparent to the viewer by following the link in the advertising message.

Other Points

- \$500 is not just cash but could also be donated supplies or services (non-monetary contributions) – valued at commercial value
- The way to determine commercial value varies based on whether or not the contributor is in the business of providing the property or service. If in the business, it is the lowest amount they would charge, if not in the business it is the lowest amount a commercial provider in the area would charge.
- Cannot use contributions if you don't know the type of contributor, name and address of contributor
- If you need to report then will report each contributor over \$200.

Other Points

- Contributions can be accepted from:
 - Canadian citizens or permanent resident
 - business and other organizations that operate in Canada
- There are no contribution limits
- Third parties may also use their own funds to pay for regulated activities

Prohibition on Using Foreign Funds

- “A third party must not use funds from a foreign entity to pay for regulated activities. It must not circumvent, or attempt to circumvent, the prohibition or collude with any other person or entity for that purpose.”

Other Requirements

- Expense limitations per electoral district and nationally
- A third party must not collude with a party or a candidate to:
 - (1) circumvent the party or candidate expenses limits
 - (2) influence the third party's regulated activities - including through sharing information.
- “Caution about collusion A third party must not collude with a registered party, a candidate, a potential candidate or a person associated with a candidate’s or potential candidate’s campaign (including the official agent) in order to influence the third party in its regulated activities. When organizing and carrying out partisan activities, third parties must be careful to act independently.”

Reporting Requirements

- Reporting requirements triggered once a person incurs \$500 or more for regulated activities during the pre-election or election period
- If over the \$500 threshold, must register as a third party with Elections Canada
- Person who incurs \$10,000 or more in expenses for regulated activities during pre-determined time periods are required to file one or more “interim campaign returns” with Elections Canada
- After election day, all third parties required to file “electoral campaign return”
- If third party spends more than \$10,000 on regulated activities, must also file an auditor’s report with Elections Canada after the election

Summary

- \$500 of expenditures is very low limit – for either pre-election period or election period.
- When non-fixed election less time is covered by legislation – only 35-50 days compared to almost 4 months when fixed election. Therefore some groups may be less concerned with limitations if not registered.
- Many non-profits and charities will need to register
- Be very careful about avoiding foreign money for political advertising and collusion

For More Information

- For more information, see the Political Financing Handbook for Third Parties by Elections Canada (To be used for non-fixed-date general elections and by-elections)
 - https://www.elections.ca/pol/thi/ec20227/ec20227_e.pdf

Lobbyist Registration - Federal

Lobbying the Canadian Federal Government

- Lobbying Act and Office of the Commissioner of Lobbying of Canada
- lobbying defined broadly, applies to charities
- Lobbying Act and ITA very different
- For charities, registration is required when lobbying “duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.”

Lobbying the Canadian Federal Government

- The “communication” for purposes of the Lobbying Act, involves verbal or written or written contact with a public office holder.
- Not only the time spent communicating with public office holders but also the time spent preparing for communicating (researching, drafting, planning, compiling, travelling, negotiating a contract, discussing changes to the contract, discussing changes to the program, discussing expediting the process, and discussing how the program will be publicly launched) – would all probably be taken into account.
- The Lobbying Act is quite comprehensive and it is intended to increase transparency as to who government is communicating with.

Lobbying the Canadian Federal Government

The registrable subject matters from the Lobbying Act include:

- (i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,
- (ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,
- (iii) the making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act,
- (iv) the development or amendment of any policy or program of the Government of Canada, or
- (v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada.

Lobbying Federal Government (continued)

- What is “significant part of duties” - look at any month
- Commissioner says:
- when lobbying takes up 20% of an employee’s time or efforts; or
- if you add all the employees together more than 20% of one full time employee’s overall duties.

Exceptions to registration

- Some examples of corporate/organizational activities that are exempt from the requirement to register and should not be factored into a calculation of significant part of duties include:
 - communications restricted to a straightforward request for publicly available information;
 - preparation and presentation of briefings to parliamentary committees;
 - employees making submissions to federal public office holders on the employer's behalf with respect to the enforcement, interpretation or application by that official of any existing federal statute or regulation; and
 - routine dealings with government inspectors and other regulatory authorities.

“Communication” - Exceptions

- Paragraph 4(2)(c) of the Act specifies that oral or written communication with a public office holder may not require registration under the Act if such communication is restricted to a simple request for information.

Examples not requiring registration

- enquiries to obtain publicly available information;
- general enquiries about the terms and conditions of programs and application processes;
- participation in government-initiated activities such as consultations, hearings, roundtables, or like activities where transparency is comparable to that of a parliamentary committee, with participants, proceedings and decisions readily available publicly;

“Communication” - Exceptions

Examples not requiring registration (Continued)

- communication with respect to the enforcement, interpretation or application, by public office holders, of any current federal statute or regulation; or
- preparation and presentation of briefings to parliamentary committees.

More information on communicating with federal public office holders:

<https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/communicating-with-federal-public-office-holders/>

Federal Lobbying Database



Office of the Commissioner of Lobbying of Canada
Commissariat au lobbying du Canada





Office of the Commissioner of Lobbying of Canada
www.ocl-cal.gc.ca

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Multimedia Tutorials

Login

Communications Log - Search Results

To view a Communications Log entry, click on the communication date.

To change the order of the search results, select a criteria and click **Apply**.

Sort by: **Apply**

Results: 1-37 of 37

Date	Activity Description	Designated Public Office Holders
2010-06-22	In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number:551-151578	Stephen Harper Prime Minister Paul Wilson Director Julie Gaudreau Stakeholder Relations Jason Ransom Official Photographer Andrew MacDougall Deputy Press Secretary
2010-06-18	In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number:551-151580	David McGovern Assistant Deputy Minister
2010-06-18	In-house Organization: WORLD VISION CANADA Responsible Officer: DAVE TOYCEN Communication number:551-151578	Andrew MacDougall Deputy Press Secretary Julie Gaudreau Special Assistant

Standards and Risk Management

Ethical

- Charities greatest asset is often reputation - some political activities can be very valuable and others toxic
- Does charity have a policy which defines when it will be involved in advocacy and what process will be used to decide
- Are sufficient resources allocated?
- Are you being transparent about political activities?

Other Thoughts

- involvement of stakeholders in choosing agenda, direction and in implementation
- dangers of silos and need board review and control over GRC committee
- bench mark for PPDDA funding –e.g. 2%
- avoid fray of partisan activists and “propaganda”

How to Position Your Charity for Political Activities

1. Does your charity do PPDDAs?
2. Would it help your mission to be involved with PPDDAs?
3. What are charity's stated purposes and are PPDDAs in purposes?
4. Do you need to change your purposes to be broader or different?
5. Do stakeholders support you doing PPDDAs?
6. Do you need to enhance support by changing board composition, board education, enhancing understanding of advocacy process and skills

How to Position Your Charity for Political Activities (continued)

7. Does your charity have a policy which defines when it will be involved in advocacy and what process will be used to decide to be involved?
8. Are sufficient resources allocated for political?
9. Are PPDDAs reported on T3010?
10. Have you done Federal, provincial or municipal lobbyist registration?
11. Ensure that your T3010 filings are accurate?
12. Are you in control of your social media?
13. Is your charity complying with other compliance requirements?

Questions?

Thank you!

Please support us by providing your feedback:

<https://www.surveymonkey.com/r/P3KF28H>