

Policy



Policy 1.2 Advisory Opinions

Effective Date: 2024-07-23

Amended:

Responsible Program: CPSI

Approved by: CEO

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Scope

This policy covers the administration of Elections BC's Advisory Opinion Policy (AOP) for preparing directives and guidelines authorized under the *Election Act* (the Act). Although the AOP only applies to advisory opinion requests, it does not limit the Chief Electoral Officer's (CEO) duty or ability to provide information to the public.

Policy

Requests for advisory opinions are received, addressed, responded to and published in accordance with this policy.

Background

Elections BC routinely responds to questions from the public and from political participants (participants). This includes political campaigns and their legal counsel, who may contact Elections BC for an interpretation of electoral law, policy or procedure.

This policy helps promote a level playing field amongst political campaigns, in alignment with Elections BC's core values of impartiality and transparency. The AOP establishes a consistent process for receiving and considering requests for interpretations of the Act, publishing requests and making advisory opinions based on these interpretations available to both participants and the public.

Advisory opinion definition

An advisory opinion is a public-facing directive or guideline issued by the CEO in response to a request for interpretation of the Act. Under section 12(2)(f) of the Act, the CEO is authorized to prepare directives and guidelines for participants.

The CEO may also initiate and issue advisory opinions at the CEO's discretion.

Requesting advisory opinions

The requestor of an advisory opinion must be a participant indicated in s.12(2)(f) of the Act, an individual authorized to act on behalf of a participant, or other individuals at the CEO's discretion. Elections BC must maintain a list of participants and other authorized individuals.

To qualify for an advisory opinion, the request must:

- be from a participant or authorized individual;
- be about an issue or question that current Elections BC guidance materials cannot clearly answer;
- be related to an activity or situation that a participant is, or expects to, engage in (to avoid requests based only on hypotheticals); and
- be submitted in an Elections BC-approved format.

If a request does not contain sufficient detail but otherwise qualifies for an advisory opinion, Elections BC may contact the requestor for additional information. Requests that do not qualify for advisory opinions may receive responses at the CEO's discretion outside of the AOP process.

Responding to advisory opinion requests

There is no legislated timeframe for Elections BC to respond to an advisory opinion request generated through the AOP process.

Requests that do not qualify for advisory opinions are to receive a response within three business days. These requests are treated as general inquiries, are tracked in CLIFF and are not part of the AOP process.

Upon receipt of a qualified request for an advisory opinion, Elections BC will immediately post a concise summary of the request in a section of the Elections BC website dedicated to advisory opinions. Requests will only identify the requestor by participant type and not at the individual level. Elections BC may solicit input from political parties or other participants regarding the request.

Elections BC is to notify the requestor and other participants designated by the CEO that a qualified advisory opinion request is under consideration within three business days. Once a request is posted to the Elections BC website, the requestor cannot withdraw their request.

Preparing advisory opinions

Drafting advisory opinions is the responsibility of Corporate Planning and Strategic Initiatives (CPSI), with input from subject matter experts, legal counsel and Elections BC's Executive Committee.

An advisory opinion must generally be consistent with:

- published Elections BC guidance materials;
- legal advice logged in the legal opinions register; and

- legal advice provided by Elections BC legal counsel in response to the request for advisory opinion.

Before it is issued, an advisory opinion must be signed off by the Chief Electoral Officer or Deputy Chief Electoral Officer.

Issuing advisory opinions

There is no legislative obligation to produce or issue an advisory opinion within a certain time.

The priority level and response time for an advisory opinion will be determined on a case-by-case basis. Factors influencing the time to respond and issue an advisory opinion include:

- the complexity of the opinion;
- whether external consultation is required;
- the urgency or relevance of the opinion;
- whether the request is under consideration during an event period; and
- other factors at the CEO's discretion.

In all cases, advisory opinions are to be issued as soon as an appropriate response is available.

When an advisory opinion is ready, it is published on the Elections BC website in a section dedicated to advisory opinions. The requestor is notified, and a copy of the finalized opinion is distributed to all recipients designated by the CEO.

Maintaining advisory opinions

CPSI is to establish and maintain a register of advisory opinions. CPSI will work with Communications to maintain a section of the Elections BC website dedicated to advisory opinions. CPSI is also responsible for determining accepted formats for receiving requests and issuing opinions.

Legal effect of advisory opinions

Advisory opinions are issued for information purposes and to achieve transparency and consistency objectives. Advisory opinions should not be considered legal advice.

The Chief Electoral Officer will not administer monetary penalties or recommend regulatory prosecutions for actions that comply with a published advisory opinion. It is the responsibility of regulated participants to ensure that they comply with advisory opinions, including by soliciting legal advice.

References

[Election Act](#), s.12(2)(f)

[Policy 25.6 Response to queries and correspondence](#)



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Chief Electoral Officer
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