

December 16, 2022

Tim Johnson  
Provincial Secretary  
Manitoba NDP  
803-294 Portage Avenue  
Winnipeg, MB R3C 0B9  
BY EMAIL

PC Party of Manitoba c/o  
George Orle  
3 - 430 River Ave.  
Winnipeg MB R3L 0C6  
BY EMAIL

Dear Mr. Johnson and Mr. Orle

During the run up to the June 7 by-election in Thompson, Mr. Johnson sent me a complaint alleging that the government breached the advertising restrictions set out in s. 92 of *The Election Financing Act*, by engaging in a \$250,000 advertising campaign promoting the budget during the byelection period. Mr. Johnson attached an article from the CBC website that discussed the advertising campaign. It contained a picture of a billboard, presumably part of the campaign, that said simply:

Budget 2022  
is clearing the surgical  
and diagnostic backlog

The relevant parts of section 92 are:

#### **RESTRICTIONS ON GOVERNMENT ADVERTISING**

##### **(1) — Restrictions for general elections and by-elections**

During the following periods, a government department or Crown agency must not advertise or publish any information about its programs or activities:

...

(c) for a by-election, in the election period.

## **(2) — Exceptions**

Subsection (1) does not apply to an advertisement or a publication

...

(d) that deals with a matter before the Assembly, such as the throne speech, the budget, the introduction or passage of a bill or an order or resolution of the Assembly.

## **(3) — Additional restrictions for by-elections**

During the election period of a by-election, the exceptions set out in clauses (2)(b) to (d) do not apply to an advertisement or publication that disproportionately targets the residents of the electoral division in which the by-election is being held.

The exception in 92(2) was added in 2021 and, on its face, appears to allow precisely the type of advertising at issue here. But Mr. Johnson took a different view. He said:

It is the basic principle of Section 92 that a Government should not be able to use taxpayer money in the midst of an election or by-election to promote its partisan agenda in a way that is meant to influence Manitoba voters.

While section 92(2) (d) permits exceptions for advertising that deals with matters before the Assembly, it is clear that a quarter million-dollar advertising campaign designed to persuade Manitobans about the importance of the Government's budget should not qualify for this exception. The intent of this provision was to not allow a partisan government to use taxpayer resources to improperly influence the views of Manitobans during an election period.

I agree with Mr. Johnson about the basic principle underlying section 92. In my view, however, the wording of the exception in 92(2)(d) is straightforward and permits any advertising about a budget, whether partisan or not. Interpreting the section as I do, implies that the government intended that it should be able to advertise about a budget in the election period of a by-election without any interference or review by the Commissioner. Mr. Johnson's interpretation of 92(2)(d) would give the Commissioner the discretion in each case to determine whether a particular ad was or was not partisan. In my opinion, if the government had intended to create such a broad discretionary review, it would not have done so in such an off-hand manner. It would, at the very least, have used express language, and might have set out guidelines or parameters within which that discretion was to be exercised.

I have also noted that at the time the bill was before the legislature, a member of the opposition said in the house:

Under Bill 32, government is free to do unlimited advertising of a budget or throne speech right up until election day.

Despite that concern being raised, the government passed the legislation without amendment.

In my view, therefore, the proper interpretation of section 92(2) is that the government intended that it be free to advertise about a budget currently before the legislature during a by-election, without any review for partisanship under *The Election Financing Act*. That being so, I see no need to pursue this matter further.

Yours truly,

Bill Bowles



Commissioner of Elections for Manitoba