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Stéphane Perrault
Chief Electoral Officer of Canada
Elections Canada
30 Victoria Street
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August 19, 2020

Dear Mr. Perrault,

Thank you for the opportunity to respond to the series of discussion papers on
“Political Communications in Federal Elections.”

The issues canvassed are of deep concern to the Green Party of Canada.

Unlike other parties, we have already taken a number of positions relevant to this
consultation process.

Privacy

We have called for the protection of personal information. In fact, in the last two
Parliaments, whenever amendments to the Elections Act were made, I introduced
amendments to ensure that federal political parties were subject to the Personal
Information Protection and Electronics Document Act (PIPEDA). To be technically
accurate, since I am not allowed to be a member of any committee, and since I had been
making substantive amendments at Third Reading, the larger parties engineered a
process to deny me my rights at Third Reading. I am “invited” to submit amendments
at clause by clause, but my amendments are “deemed” to have been moved. There was
not support from voting members of the committee, so my amendments in two
Parliaments failed.

Last year, Privacy Commissioner Daniel Therrien warned that Canada is far behind the European Union and other countries when it comes to our privacy laws. Our laws are inadequate governing how our political parties handle citizens' personal data.

The Green Party of Canada was the first to call for federal privacy laws to apply to all federal political parties. In the absence of sufficiently robust federal policies, British Columbia has developed its own Personal Information Protection Act.

We believe the BC law is a good model to be adopted at the federal level.

The Elections Canada Discussion Document asks excellent questions which I think should be answered through the process in committee. Certainly, personal information that can be used for purposes of voter suppression should not be allowed to be saved. In Garth Turner's book, *Sheeple: Caucus Confidential in Stephen Harper's Ottawa* (Key Porter Books: 2010), former Conservative MP Turner describes data collection by the party as FRANK (containing data on Friends, Relatives and Neighbours' Kids). The information collection could be used to target negative, "dog whistle" messaging.

Wherever the line is drawn, it must be informed by keeping the amount of data collected to a minimum. It might be wise to prevent political parties collecting and keeping information about electors who have clearly indicated they will never vote for the party collecting the information.

Political parties may and will need to collect data about voters who want to receive information not available when a volunteer canvasser has stopped at their door. Parties must be able to collect information about voters who request a lawn sign. It would be wise to have a consent box added to the canvassers' tracking sheet to ensure a voter is aware information is being collected.

Unlike in the United States where every voter chooses a political party when registering to vote, in Canada most people never join a party. It makes sense to allow supporters, who are not members, to have the option of saying "keep my address and contact information on file," with a choice of saving for one year or more. Parties need to keep track of supporters. But that decision belongs to the voter, not the party.

As Susan Delacourt described in her important work, *Shopping For Votes: How Politicians Choose Us And We Choose Them* (Douglas and McIntyre: 2013), politics in Canada has shifted over the years to employ tools of data collection, targeting, algorithms, and "wedge issues" to win elections without appealing to the majority of Canadians.

Due to the unfair First Past the Post voting system, most elections result in Parliaments that do not reflect the percentage of votes won by the federal parties. There is a significant distortion that typically results in what Professor Peter Russell dubbed a

“false majority”: winning the majority of seats with a minority of votes. The tools of data collection and “shopping for votes” described by Ms. Delacourt amount to manipulating an election riding by riding.

Key to this is the antidemocratic process known as voter suppression.

As noted in the discussion papers, the 2011 election was marred by very disturbing incidents of robo-calling to misdirect voters who did not plan to vote Conservative from their actual polling stations. In pointing out that it was the Conservative Party that benefitted, I am relying on the several court decisions on this matter, before the Federal Court in the Council of Canadians challenge on six federal electoral districts and the Ontario Superior case involving charges against Conservative staffer Michael Sona. Both courts found as fact that it was voters who did not intend to vote Conservative who were targeted and that the information used to make the calls came from the Conservative Party data base. No court or inquiry has yet determined who was responsible.

The first use of robocalls in a Canadian election was in my own riding of Saanich-Gulf Islands in 2008. In that instance as well, the beneficiary of a fake voice mail, “spoofed” to appear to be from the New Democrats, was the Conservative Party. In that case, there was no NDP candidate able to take the seat, but they still had a name on the ballot. The calls came in the day before the election urging NDP supporters to get out and vote for the local (non) candidate and Jack Layton and the NDP team. The rise in votes for the NDP, as compared to polling just before the calls, deprived the Liberal candidate of the seat in a close race.

That instance was referenced in the court case relating to the Mike Duffy and Nigel Wright affair. Mike Duffy claimed under oath that Gary Lunn, the Conservative MP who held the seat, had told him that a Conservative Party operative told him later that he should thank them. And when Lunn asked why, he was told he held his seat due to “Black ops” within the Conservative Party. That incident was never properly investigated, but it underscores the danger of any political party developing solid data about electoral preferences and loyalties to other parties. There are other forms of voter suppression, such as attack ads.

Advertising and voter suppression

It is clear that when political strategists claim that “attack ads work” what they are saying is that negative ads depress the vote that another party might receive. Ad hominum attack ads cannot be regulated due to free speech concerns. But access to the airwaves can and should be regulated.

Saturation television ad campaigns give a large advantage to the parties with the most money. The invasive nature of attack ads placed in prime time, during sporting events and so on, does maximum damage. The advent of US-style attack ads can be traced back to the Conservative Party assault on newly-elected Liberal leader Stephane Dion. The ads fell outside of any writ period beginning in January 2007. Many observers believe that the “not a leader” attack permanently attached itself to Mr. Dion.

As Green Party leader, my first experience of being the target of an ad hominum attack ad was in 2019, with a barrage of radio ads that were purchased and approved by the New Democrats claiming that a Green vote could not be trusted. “Elizabeth May has said she’ll work with the Conservatives,” an ominous voice intoned, “That’s right, Stephen Harper’s Conservatives.” This was of course not the case, but in a reflection of the nature of any minority Parliament, I had said we would be prepared to work with anyone. The ads saturated airwaves in and around Victoria. My margin of victory dropped in Saanich-Gulf Islands, but the real impact was where we had been in the lead, only to lose on election day in the Victoria riding, and to blunt growth in other nearby NDP-held seats. These ads were very effective, but not ethical nor honest.

We need to take steps to ensure that the airwaves are not used to depress the vote. We need to make sure they are not used in strategies of voter suppression.

The best way to do that is to ban television and radio ads by political parties or third-party groups altogether. This is the practice in the European Union, the United Kingdom, Ireland, Brazil, and many other countries.

Paid election advertising is allowed in those countries by other means, such as billboards and newspaper ads, as well as on social media.

Fair access to the air waves is ensured through free public interest broadcasts. Any candidate speaking directly to a camera is not going to conduct character attacks and smears. For that, they need paid actors and ominous voice-overs.

Truth in Advertising

In addition to advertising that depresses a vote, there is an increase in “fake news” in Canadian elections. We need a significant improvement to the Act in the interests of keeping Canadian elections free and fair.

The 2019 election was marred by the increased use of misleading claims, some of which can be categorized as outright falsehoods. In my own riding, I experienced a barrage of radio ads, newspaper ads, and mailed flyers making false claims against me and the Green Party.

We have truth in advertising requirements for all manner of consumer and health products. When a new toothpaste hits the market, the manufacturer is required by law to make only verifiable claims. Shouldn't political parties be held to the same standard? In the absence of such regulation, voters are misinformed. The more outrageous the lie, the more likely voters are to think it is true, as they assume there must be some requirement for "truth in advertising."

We recommend that the Elections Act be amended to ensure that citizens have recourse to complain of advertising they feel is untrue. The new law would give the Commissioner of Canada Elections the power to investigate and, on determining that a claim is false, order the political party to cease and desist uttering false claims, as well as publish a retraction, correction and apology. Obviously, Elections Canada cannot attempt to censor opinion. Nevertheless, where claims and allegations are easily disproven on the evidence, misstatements of fact should be regulated in order that Canadians have access to accurate information in the most essential process in any democracy – our elections.

Any electorate should have access to a complaint line to rapidly assess if a political party or third-party group is distributing false information designed to damage another party. The Elections Canada regulation should have a rapid verification function to inform the offending party that their false advertising must stop and an apology be published.

Given the fast pace and short timeline of a Canadian election, it is important that there also be financial penalties to create a powerful disincentive to such conduct. For example, the attack mailings that hit Vancouver Island started near the very end of the campaign, making it hard for the Green Party to respond before Election Day. Even the best system may not be able to get the facts set out before the damage is done. The fear of loss of the financial rebate post-election could be a powerful disincentive to the spreading of false information.

Social media

Elections Canada's discussion paper #2 on the challenges posed by social media was very thorough. Nevertheless, we think it missed the correct approach. Rather than approach the issue as your paper suggests and attempt to deal with these challenges only in the context of an election, we really need deeper reforms.

The key reform is that social media should no longer be allowed to cling to the fiction that the digital giants provide a neutral platform. In fact, they are publishers and should be treated as such. Their existence as "platforms" allows them to scoop advertising dollars from Canadian local media, undermining our democracy as we lose local

newspapers. The “platform” fiction allows these publishers to avoid their legal responsibility to avoid slander and libel laws.

We also need to review anti-trust and competition laws to reverse the increasing centralization of ownership in news media. These changes require action by Parliament in a number of areas. A recommendation from the Chief Electoral Officer to do so would be hugely influential.

Digital giants need to be taxed and regulated for what they are – a globalized, predatory sector that undermines democracy while mining our data for their own profit. Facebook is not our “friend.” We need to un-friend them.

Please feel free to contact me to pursue any details of our position on these key issues.

Many thanks,

A handwritten signature in black ink, reading "Elizabeth May". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Elizabeth May, O.C.
Member of Parliament
Saanich – Gulf Islands
Parliamentary Leader of the Green Party of Canada

Cc: The Hon. Dominic Leblanc
Minister of Intergovernmental Affairs
President of the Queen’s Privy Council for Canada