

**SUPREME COURT OF CANADA**

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| **Citation:** B.C. Freedom of Information and Privacy Association *v.* British Columbia (Attorney General), 2017 SCC 6, [2017] 1 S.C.R. 93 | **Appeal heard:** October 11, 2016  **Judgment rendered:** January 26, 2017  **Docket:** 36495 |

Between:

**B.C. Freedom of Information and Privacy Association**

Appellant

and

**Attorney General of British Columbia**

**Respondent**

- and -

**Attorney General of Canada,**

**Attorney General of Ontario,**

**Attorney General of Quebec,**

**British Columbia Civil Liberties Association and**

**Canadian Civil Liberties Association**

Interveners

**Coram:** McLachlin C.J. and Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

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| **Reasons for Judgment:**  (paras. 1 to 60) | McLachlin C.J. (Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ. concurring) |

B.C. Freedom of Information and Privacy Association *v.* British Columbia (Attorney General), 2017 SCC 6, [2017] 1 S.C.R. 93

B.C. Freedom of Information and Privacy Association Appellant

*v.*

Attorney General of British Columbia Respondent

and

**Attorney General of Canada,**

**Attorney General of Ontario,**

**Attorney General of Quebec,**

**British Columbia Civil Liberties Association and**

Canadian Civil Liberties Association Interveners

**Indexed as:** B.C. Freedom of Information and Privacy Association ***v.* British Columbia (**Attorney General)

2017 SCC 6

File No.: 36495.

2016: October 11; 2017: January 26.

Present: McLachlin C.J. and Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

on appeal from the court of appeal for british columbia

*Constitutional law — Charter of Rights — Freedom of expression — Elections — Individuals or organizations who wish to “sponsor election advertising” required by Election Act to register with Chief Electoral Officer — Meaning of “sponsor” of “election advertising” — Whether individuals engaged in political self‑expression come within definition of “sponsor” and need to register — Whether registration requirement is a reasonable and demonstrably justified limit on expression of sponsors who spend less than $500 on election advertising — Canadian Charter of Rights and Freedoms, ss. 1, 2(b) — Election Act, R.S.B.C. 1996, c. 106, ss. 228 “election advertising”, 229, 239.*

In 2009 and 2013, the B.C. Freedom of Information and Privacy Association sponsored election advertising within the meaning of British Columbia’s *Election Act*. It was therefore subject to the impugned registration requirement in s. 239 of the Act. The Association sought a declaration that the registration requirement, to the extent that it applies to sponsors of election advertising who spend less than $500 in a given campaign period, infringes s. 2(*b*) of the *Charter* and is not saved by s. 1. Specifically, it argued that requiring that individuals or organizations who wish to “sponsor election advertising” to register is not a reasonable and demonstrably justified limit on expression by persons who convey political messages through small‑scale election activities like displaying homemade signs in their windows, putting bumper stickers on their cars, or wearing T‑shirts with political messages on them. The trial judge dismissed the application. He accepted the Attorney General of British Columbia’s concession that s. 239 of the Act was an infringement of the right of free expression, but concluded that the infringement was justified under s. 1 of the *Charter*. A majority of the Court of Appeal reached the same conclusion.

*Held*: The appeal should be dismissed.

Properly interpreted, s. 239 does not catch the categories of expression upon which the Association relies. The words of ss. 228, 229 and 239 of the Act, read in their grammatical and ordinary sense and harmoniously with the statutory scheme, the object of the Act, and the intention of the legislature, indicate that a “sponsor” required to register is an individual or organization who receives an advertising service from another individual or organization, whether in exchange for payment or without charge. Individuals who neither pay others for advertising services nor receive advertising services from others without charge are not “sponsors” within the meaning of s. 229(1). They may transmit their own points of view, whether by posting a handmade sign in a window, or putting a bumper sticker on a car, or wearing a T‑shirt with a message on it, without registering.

Although the registration requirement imposed on sponsors limits their right of expression guaranteed by s. 2(*b*) of the *Charter*, the limit on the expression of sponsors who spend less than $500 is justified under s. 1. The purpose of the registration requirement — increasing transparency, openness, and public accountability in the electoral process and thus promoting an informed electorate — is pressing and substantial, and the registration requirement is rationally connected to this objective. The limit is also minimally impairing. By confining the registration requirement to sponsors and exempting individual political self‑expression by persons who are not sponsors, s. 239 tailors the impingement on expression to what is required by the object of the Act. Moreover, the forms of advertising likely to be “sponsored” within the meaning of the Act are also likely to be subject to the Act’s attribution requirements, which are not challenged. The registration requirement’s deleterious effects are limited since only political expression in the form of sponsorship of election advertising stands to be delayed or inhibited. There will be few cases in which an individual or group is subject to the registration requirement but not the attribution requirement, and so the number of sponsors for whom s. 239 is the sole reason they cannot protect their anonymity will be few. The registration process is simple and unlikely to deter much, if any, expression in which a sponsor would otherwise engage. These limited deleterious effects are outweighed by the benefits of the scheme — permitting the public to know who is engaged in organized advocacy in their elections, ensuring that those who sponsor election advertising must provide the public with an assurance that they are in compliance with election law, and providing the Chief Electoral Officer with information that can assist in the enforcement of the Act and in informing sponsors of its requirements.

The Attorney General of British Columbia was not obligated to lead social science evidence in order to discharge its burden of justification under s. 1 of the *Charter*. Although not leading social science evidence may seriously diminish the government’s ability to justify the infringement of a *Charter* right, social science evidence may not be necessary where, as here, the scope of the infringement is minimal.

**Cases Cited**

**Referred to:** *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827; *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569; *R. v. Zundel*, [1992] 2 S.C.R. 731; *R. v. Keegstra*, [1990] 3 S.C.R. 697; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Pacific Press v. British Columbia (Attorney General)*, 2000 BCSC 248, 73 B.C.L.R. (3d) 264; *R. v. Oakes*, [1986] 1 S.C.R. 103; *R. v. Bryan*, 2007 SCC 12, [2007] 1 S.C.R. 527; *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877.

**Statutes and Regulations Cited**

*Canada Elections Act*, S.C. 2000, c. 9, s. 353(1).

*Canadian Charter of Rights and Freedoms*, ss. 1, 2(*b*).

*Election Act*, R.S.B.C. 1996, c. 106, ss. 228 “contribution”, “election advertising”, “value of election advertising”, 229 [am. 2002, c. 60, s. 6], 231, 235(1) [rep. *idem*, s. 7], 235.1, 239, 240, 244, 245, 283(m.1).

*Election Act*, S.B.C. 1995, c. 51.

*Election Advertising Regulation*, B.C. Reg. 329/2008, s. 2.

*Election Statutes Amendment Act, 2002*, S.B.C. 2002, c. 60.

**Authors Cited**

British Columbia. Chief Electoral Officer. “Report of the Chief Electoral Officer on Recommendations for Legislative Change”. Victoria: Elections BC, April 2010 (online: http://www.elections.bc.ca/docs/rpt/2010‑CEO‑Report‑Recommendations.pdf; archived version: <http://www.scc-csc.ca/cso-dce/2017SCC-CSC6_eng.pdf>).

British Columbia. Legislative Assembly. *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 21, No. 16, 4th Sess., 35th Parl., June 27, 1995, pp. 16240‑41.

*Collins Canadian Dictionary*. Toronto: HarperCollins, 2010, “sponsor”.

Driedger, Elmer A. *Construction of Statutes*, 2nd ed. Toronto: Butterworths, 1983.

APPEAL from a judgment of the British Columbia Court of Appeal (Newbury, Saunders and Lowry JJ.A.), 2015 BCCA 172, 371 B.C.A.C. 65, 636 W.A.C. 65, 76 B.C.L.R. (5th) 26, 334 C.R.R. (2d) 37, [2015] 12 W.W.R. 295, [2015] B.C.J. No. 774 (QL), 2015 CarswellBC 1035 (WL Can.), affirming a decision of Cohen J., 2014 BCSC 660, 308 C.R.R. (2d) 12, [2014] B.C.J. No. 688 (QL), 2014 CarswellBC 1034 (WL Can.). Appeal dismissed.

Alison M. Latimer and Sean Hern, for the appellant.

Karen A. Horsman, *Q.C.*, and Sarah Bevan, for the respondent.

Michael H. Morris, for the intervener the Attorney General of Canada.

Daniel Guttman and Emily Bala, for the intervener the Attorney General of Ontario.

Dominique A. Jobin and Jean‑Vincent Lacroix, for the intervener the Attorney General of Quebec.

Sheila Tucker and Joanne Lysyk, for the intervener the British Columbia Civil Liberties Association.

Gillian T. Hnatiw and Zohar R. Levy, for the intervener the Canadian Civil Liberties Association.

The judgment of the Court was delivered by

1. The Chief Justice — British Columbia’s *Election Act*, R.S.B.C. 1996, c. 106, requires individuals or organizations who wish to “sponsor election advertising” to register with the province’s Chief Electoral Officer. This registration requirement applies to all sponsors of election advertising, regardless of how much they spend during the writ period.
2. It is common ground that British Columbia’s registration requirement limits the right of expression guaranteed by s. 2(*b*) of the *Canadian Charter of Rights and Freedoms*. The question on appeal is whether it is a reasonable and demonstrably justified limit on persons who convey political messages through small-scale election activities like displaying homemade signs in their windows, putting bumper stickers on their cars, or wearing T-shirts with political messages on them.
3. In my view, the Act does not catch small-scale election advertising of this nature. I would therefore dismiss the appeal.
4. Legislation
5. The challenge in this case is to the registration requirement that s. 239 of the British Columbia *Election Act* imposes on the sponsors of election advertising. This Court has upheld a registration requirement for third parties who spend at least $500 on election advertising: *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827,at paras. 142-46, perBastarache J., and at para. 48, per McLachlin C.J. and Major J.
6. Section 239, by contrast, requires anyone who is a “sponsor” of “election advertising” to register:

**Election advertising sponsors must be registered**

**239**  (1) Subject to subsection (2), an individual or organization who is not registered under this Division must not sponsor election advertising.

(2) A candidate, registered political party or registered constituency association is not required to be registered as a sponsor if the individual or organization is required to file an election financing report by which the election advertising is disclosed as an election expense.

(3) An individual or organization who is registered or required to be registered as a sponsor must be independent of registered political parties, registered constituency organizations, candidates, agents of candidates and financial agents, and must not sponsor election advertising on behalf of or together with any of these.

1. Section 240 describes the registration process:

**Registration with chief electoral officer**

**240**  (1) An individual or organization who wishes to become a registered sponsor must file an application in accordance with this section with the chief electoral officer.

(2) An application must include the following:

(a) the full name of the applicant and, in the case of an applicant organization that has a different usual name, this usual name;

(b) the full address of the applicant;

(c) in the case of an applicant organization, the names of the principal officers of the organization or, if there are no principal officers, of the principal members of the organization;

(d) an address at which notices and communications under this Act and other communications will be accepted as served on or otherwise delivered to the individual or organization;

(e) a telephone number at which the applicant can be contacted;

(f) any other information required by regulation to be included.

(3) An application must

(a) be signed, as applicable, by the individual applicant or, in the case of an applicant organization, by 2 principal officers of the organization or, if there are no principal officers, by 2 principal members of the organization, and

(b) be accompanied by a signed statement of an individual who signed the application under paragraph (a) that the applicant

(i) is not prohibited from being registered by section 247, and

(ii) does not intend to sponsor election advertising for any purpose related to circumventing the provisions of this Act limiting the value of election expenses that may be incurred by a candidate or registered political party.

(4) The chief electoral officer may require applications to be in a specified form.

(5) As soon as practicable after receiving an application, if satisfied that the requirements of this section are met by an applicant, the chief electoral officer must register the applicant as a registered sponsor in the register maintained by the chief electoral officer for this purpose.

(6) If there is any change in the information referred to in subsection (2) for a registered sponsor, the sponsor must file with the chief electoral officer written notice of the change within 30 days after it occurs.

(7) A notice or other communication that is required or authorized under this Act to be given to a sponsor is deemed to have been given if it is delivered to the applicable address filed under this section with the chief electoral officer.

1. Section 228 defines “election advertising”:

**Election advertising**

**228** For the purposes of this Act:

. . .

**“election advertising”** means the transmission to the public by any means, during the campaign period, of an advertising message that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated, but does not include

(a) the publication without charge of news, an editorial, an interview, a column, a letter, a debate, a speech or a commentary in a bona fide periodical publication or a radio or television program,

(b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election,

(c) the transmission of a document directly by a person or a group to their members, employees or shareholders, or

(d) the transmission by an individual, on a non-commercial basis on the internet, or by telephone or text messaging, of his or her personal political views;

1. Section 229(1) defines the concept of sponsorship:

**Sponsorship of election advertising**

**229**  (1) For the purposes of this Part, the sponsor of election advertising is whichever of the following is applicable:

(a) the individual or organization who pays for the election advertising to be conducted;

(b) if the services of conducting the advertising are provided without charge as a contribution, the individual or organization to whom the services are provided as a contribution;

(c) if the individual or organization that is the sponsor within the meaning of paragraph (a) or (b) is acting on behalf of another individual or organization, the other individual or organization.

1. The Act also imposes an attribution requirement, which requires all election advertising to identify the name and telephone number or mailing address of its sponsor: s. 231(1). This attribution requirement applies regardless of whether the sponsor is subject to the registration requirement in s. 239, but does not apply to “classes of election advertising that may reasonably be considered clothing, a novelty item or an item intended for personal use” that are exempted by regulation: s. 283(m.1); see also s. 231(2). British Columbia’s Chief Electoral Officer has accordingly exempted from the attribution requirement “clothing”, “novelty items, including wearable novelty items such as buttons, badges, wrist bands and necklaces”, and “small items of nominal value that are intended for personal use”: *Election Advertising Regulation*, B.C. Reg. 329/2008, s. 2.
2. Facts and Judicial History
3. The appellant, the B.C. Freedom of Information and Privacy Association, is a non-profit society based in Vancouver. It engages in public advocacy in respect of freedom of information and privacy rights.
4. In 2009 and 2013, the appellant sponsored election advertising within the meaning of the Act. It was therefore subject to the impugned registration requirement in s. 239.
5. The appellant sought a declaration that the registration requirement, to the extent that it applies to sponsors of election advertising who spend less than $500 in a given campaign period, infringes s. 2(*b*) of the *Charter*, is not saved by s. 1, and is therefore of no force and effect. The appellant conceded that anyone who spends more than $500 on election advertising can be compelled to register: *Harper*. It argued, however, that persons whose expenditures fall below that threshold should not be compelled to register.
6. The trial judge, Cohen J., dismissed the appellant’s application: 2014 BCSC 660, 308 C.R.R. (2d) 12. He accepted the Attorney General of British Columbia’s concession that s. 239 of the Act was an infringement of the right of free expression under s. 2(*b*) of the *Charter*, but concluded that the infringement was justified under s. 1. A majority of the Court of Appeal (perNewbury J.A., Lowry J.A. concurring) reached the same conclusion: 2015 BCCA 172, 371 B.C.A.C. 65.
7. Saunders J.A. dissented. She would have held that, as applied to small-scale election advertisers — “[t]hose with bumper stickers on vehicles expressing views on environmental or economic matters, those who place signs in home windows or signs on their property expressing support for or disputing a proposal or initiative, and those with picket signs or other messages advancing a point of view on a public issue” (C.A. reasons, at para. 68) — the infringement of the s. 2(*b*) right did not meet the test of “compelling justification” required to justify a limitation on political speech: para. 67. She held that the impugned provision would have a chilling effect on “small and independent voices” (para. 59), particularly those who would struggle to comply with the administrative burden of the registration requirement and those who, “for reasons of personal security, will not register their addresses in a public record”: para. 69. For these individuals, in her view, the registration requirement would function as a “complete barrier” to political expression: *ibid.* Saunders J.A. distinguished *Harper* on this basis; in the absence of an exception for “inexpensive signage” (para. 71) — like the $500 expenditure threshold for registration in the *Canada Elections Act*, S.C. 2000, c. 9, s. 353(1) — “the advantage to the public interest inherent in the registration requirement for signage of the nature I have discussed is not so great as to overcome the consequent serious infringement of freedom of expression”: *ibid.*
8. Analysis
9. The registration requirement in s. 239 of the British Columbia *Election Act* provides that “an individual or organization who is not registered . . . must not sponsor election advertising”. By requiring “sponsors” to register before engaging in “election advertising”, it limits their s. 2(*b*) right of free expression.
10. Political expression “lies at the core of the [*Charter*’s] guarantee of free expression”: *Harper*, para. 1, per McLachlin C.J. and Major J.; see also *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569, at para. 29; *R. v. Zundel*, [1992] 2 S.C.R. 731, at pp. 752-53, per McLachlin J.; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 763-64, per Dickson C.J.; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, at pp. 1355-56, per Wilson J. Limitations on such speech, to be justified under s. 1 of the *Charter*, “must be supported by a clear and convincing demonstration that they are necessary, do not go too far, and enhance more than harm the democratic process”: *Harper*, at para. 21, per McLachlin C.J. and Major J.; see also *Libman*, at para. 28, quoting *Edmonton Journal*, at p. 1336, per Cory J.
11. The first step is to determine the scope and nature of the limitation on free expression that the law imposes. Having determined the scope and nature of the limitation, the second step is to determine whether it has been shown to be reasonable and demonstrably justified, under s. 1 of the *Charter*.
12. In this case, the parties part company at the first step. They disagree on the scope of the expressive activity caught by s. 239, which provides that “an individual or organization who is not registered . . . must not sponsor election advertising”. We must therefore establish what it means to be a “sponsor” of “election advertising”.
    1. What Is the Scope and Nature of the Infringement of Section 2(b)?
13. The courts below did not turn their attention to the first step of the constitutional analysis — that is, determining the scope and nature of the limitation on free expression that the registration requirement in s. 239 imposes. Both the trial judge and the Court of Appeal accepted as correct the Chief Electoral Officer’s interpretation of the provision, as set out in a 2010 report to the legislature:

Election advertising rules do not distinguish between those sponsors conducting full media campaigns and individuals who post handwritten signs in their apartment windows. The *Election Act* does not establish a threshold for registration, resulting in all advertising sponsors being required to register and display disclosure information — including individuals with a simple handmade sign in their window.

(“Report of the Chief Electoral Officer on Recommendations for Legislative Change” (April 2010) (online), at p. 16; see trial reasons, at para. 88; C.A. reasons, at para. 22.)

This report, which the appellant introduced as evidence at first instance, supports the view that s. 239’s registration requirement applies to essentially all “election advertising”, as that term is defined in s. 228. An individual who posts a handmade sign in her window is, on this interpretation, a “sponsor” of that advertising within the meaning of s. 239.

1. Saunders J.A.’s concern with the impugned provision’s effect on “small and independent voices” is predicated on this assumption. So, too, is this appeal. The appellant submits that “the infringement in this case . . . is the law’s impact *on small spenders*” (emphasis in original). If s. 239 does not limit expression as broadly as the appellant contends — if individuals who display handmade signs in their windows, place bumper stickers on their cars, or wear T-shirts with political messages on them are not subject to the Act’s registration requirement — then the appeal fails.
2. I conclude that, properly interpreted, s. 239 does not catch the categories of expression upon which the appellant relies. This follows from the application of our long-accepted approach to statutory interpretation, namely that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, quoting both E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, and *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21. In this case, each of these considerations indicates that s. 239 is directed only at those who undertake organized advertising campaigns — that is, “sponsors” who either pay for advertising services or who receive those services without charge as a contribution. In no case does the registration requirement apply to those engaged in individual self-expression.
   * 1. The Words and Scheme of the Act
3. Section 239(1) of the Act provides that “an individual or organization who is not registered under this Division must not sponsor election advertising”. The registration requirement is thus directed at a specific activity — the sponsorship of election advertising.
4. “Election advertising” is broadly defined in s. 228 as “the transmission to the public by any means, during the campaign period, of an advertising message that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate”. This is broad enough to cover the individual expression of a political message by, for example, placing a handmade sign in a window or a bumper sticker on a car, or by wearing a T-shirt with a political message on it. Such activities may “promot[e] or oppos[e], directly or indirectly, a registered political party or the election of a candidate”, particularly since s. 228 includes in this category the transmission of “advertising message[s] that tak[e] a position on an issue with which a registered political party or candidate is associated”. Nor do handmade signs, bumper stickers, or T-shirts fall within any of the exclusions from the definition of “election advertising” set out in s. 228.
5. However, s. 239 of the Act limits the registration requirement by requiring registration only by individuals or organizations who “sponsor election advertising”. The ordinary meaning of “sponsor” does not suggest a person engaged in individual self-expression, but rather a person or group that is undertaking or “sponsoring” an organized campaign. A “sponsor” is “a person or group that promotes another person or group in an activity or the activity itself, either for profit or for charity”: *Collins Canadian Dictionary* (2010), at p. 911 (emphasis added). One cannot be a “sponsor” in perfect isolation.
6. The Act’s use of the word “sponsor” reflects its ordinary meaning. Section 229(1) defines “the sponsor of election advertising” as “the individual or organization who pays for the election advertising to be conducted” (s. 229(1)(a)) or, “if the services of conducting the advertising are provided without charge as a contribution, the individual or organization to whom the services are provided as a contribution”: s. 229(1)(b). A person who displays a handmade sign in her window or a bumper sticker on her car does not “pa[y] for . . . election advertising to be conducted” in any ordinary sense of those words. No money changes hands. Nor can she be described as an individual to whom advertising “services” have been provided “without charge as a contribution”.
7. Under the Act’s definition, an individual or organization cannot “sponsor” election advertising without either “pay[ing] for the election advertising to be conducted” (s. 229(1)(a)) or being “provided without charge” the “services of conducting the advertising”: s. 229(1)(b). The alternative definitions in s. 229(1)(a) and (b) describe the same activity — in each case, someone is the “sponsor” and someone else “conduct[s]” the advertising. The only difference is that, in the first case, the sponsor pays for the election advertising, while in the second case the sponsor receives the services without charge. Whether the individual or group pays for that service (s. 229(1)(a)) or receives it without charge (s. 229(1)(b)), there must be a service provided for the individual or group to fall within the Act’s definition of “sponsor”. Sponsorship necessarily involves at least two people — the person providing the service (whether for money or without charge) and the sponsor. A person who posts a handmade sign in her window, or puts a bumper sticker on her car, or wears a T-shirt with a political message on it, is neither paying for nor receiving the service of conducting advertising. She is not receiving a service from someone else, and thus is not a “sponsor” under the Act.
8. I note that s. 228 of the *Election Act* defines “contribution” as “a contribution of money provided to a sponsor of election advertising, whether given before or after the individual or organization acts as a sponsor”. This is in tension with s. 229(1)(b), which states that an individual or organization who receives the “services of conducting . . . advertising” from another individual or organization “without charge as a contribution” is the “sponsor” of that election advertising.[[1]](#footnote-1) It is clear, in any case, that more than one individual must be involved, whether the advertising services are paid for or received without charge.
9. The statutory scheme provides further support for the view that the Act’s registration requirement does not catch individual expression on election issues.
10. Section 228 defines “value of election advertising” as:

(a) the price paid for preparing and conducting the election advertising, or

(b) the market value of preparing and conducting the election advertising, if no price is paid or if the price paid is lower than the market value.

1. Like its definition of “sponsor of election advertising”, the Act’s definition of “value of election advertising” indicates that election advertising must either be conducted at a sponsor’s expense or else be provided to the sponsor without charge. Further, “preparing and conducting the election advertising” must have a “price paid” that can be assessed in relation to — and, in some circumstances, can be “lower than” — its “market value”. The “value of election advertising”, thus defined, determines whether the sponsor must file a disclosure report in accordance with ss. 244 and 245. It is also measured against the advertising limits in s. 235.1. The Act contemplates that, to be subject to these requirements, a sponsor will have either paid a price for or received without charge the services of preparing and conducting election advertising, and that these services will have a market value against which the price paid for them may be measured. The definition of “sponsor” in s. 229(1) can and should be read harmoniously with this description. Sponsorship cannot be a solitary endeavour.
2. I therefore conclude that the words of ss. 228, 229 and 239 do not support the interpretation given to them by the appellant, British Columbia’s Chief Electoral Officer, or the courts below. The words of the Act, read in their grammatical and ordinary sense and harmoniously with the statutory scheme, limit the registration requirement to “sponsors” — i.e., individuals and organizations who receive advertising services from others in undertaking election advertising campaigns. The Act uses the concept of sponsorship to exempt an entire class of political expression — namely, election advertising that is not sponsored — from the registration requirement. Individuals who neither pay others to advertise nor receive advertising services without charge are not “sponsors”. They may transmit their own points of view, whether by posting a handmade sign in a window, or putting a bumper sticker on a car, or wearing a T-shirt with a message on it, without registering.
   * 1. The Object of the Act and the Intention of the Legislature
3. Interpreting s. 239 as imposing a registration requirement only on individuals and organizations who receive services from others in undertaking election advertising campaigns — and who thus “sponsor” election advertising within the meaning of the Act — is consistent with the purpose of the Act and the intention of the British Columbia legislature. Here, history provides helpful context.
4. The *Election Act*, S.B.C. 1995, c. 51, passed the legislature in 1995. At second reading, the province’s Attorney General described the legislation’s “cornerstones” as “fairness, openness, and accessibility of the electoral process” and declared that “[t]he process is not open if ordinary citizens cannot clearly see what forces influence those who sit in this House representing them”: British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 21, No. 16, 4th Sess., 35th Parl., June 27, 1995, at p. 16240 (emphasis added). With respect to the Act’s third party expenditure limits, he said:

It is obvious that a limit on candidates wouldn’t work very well and wouldn’t be fair if third parties were not limited in their advertising spending as well. Third parties could step in and conduct parallel advertising campaigns that would foster the kind of unfair dominance of the electoral process that we’re trying to correct. Limits on candidate spending in that scenario would be meaningless. [Emphasis added; p. 16241.]

1. These statements support the conclusion that the purpose of the registration requirement is to allow the public to know who is behind, or “sponsoring”, election advertising. It was intended to require individuals and organizations who “conduct parallel advertising campaigns” — and who can be described as “forces” that “influence” provincial elections — to register, so the public knows who they are. The legislative purpose, at the time of the Act’s enactment, was to allow “ordinary citizens” to “clearly see” who is behind the messages they receive during a campaign period, thus promoting informed voting.
2. The registration requirement was not aimed at curbing the expression of an individual who, in an act of self-expression, places a sign in his window or a bumper sticker on his car, or wears a T-shirt with a political message. The question of who is “behind” or immediately responsible for the content of the message does not — indeed, cannot — arise in such cases. Registration would serve no purpose.
3. The Act’s legislative history confirms that registration was not intended to be a prerequisite for individual self-expression. From its enactment in 1995 until its amendment in 2002 (*Election Statutes Amendment Act, 2002*, S.B.C. 2002, c. 60), s. 229(1) of the Act referred not only to sponsors of “election advertising”, as it does now, but also to sponsors of “election opinion survey[s]”. It defined the “sponsor of election advertising or an election opinion survey” as either “the individual or organization who pays for the election advertising or election opinion survey to be conducted” or who is “provided” the “services of conducting the advertising or survey . . . without charge as a contribution”. A “sponsor of election advertising” was simply an individual or organization who paid to “conduct” that advertising in the same manner that an individual or organization would pay to “conduct” an opinion survey. Just as, in any ordinary sense, paying for an opinion survey “to be conducted” or receiving “the services of conducting the . . . survey . . . without charge” entails more than asking questions of passersby, so too does paying for election advertising “to be conducted” entail more than handing out campaign literature to those same passersby. Both forms of sponsorship were originally defined together because both were directed at organized campaign activities involving the provision and receipt of services, whether polling services or advertising services. The Act, as enacted, did not seek to catch the person who merely asks survey questions, nor did it intend to include the person who merely hands out flyers — or otherwise engages in individual self-expression. Subsequent deletion of the references to opinion surveys did not change this intention.
4. This conclusion is buttressed by other since-excised provisions of the Act pertaining to opinion surveys. Section 235(1) formerly required that “an individual or organization who first publishes in British Columbia the results of an election opinion survey” during a campaign period must also publish, among other things, “the name of the sponsor of the survey” *and* “the name of the individual or organization who conducted the survey”, as well as various information about the survey’s methodology. These publication requirements were struck down as an unjustified infringement of s. 2(*b*) of the *Charter* in *Pacific Press v. British Columbia (Attorney General)*, 2000 BCSC 248, 73 B.C.L.R. (3d) 264, which led to their repeal by the *Election Statutes Amendment Act, 2002*. Still, the Act, as originally enacted, required the disclosure both of the survey’s sponsor and of the individual or group who conducted it. This indicates that to “sponsor” an election opinion survey would entail having another individual or organization “conduc[t]” it, and that “conduct[ing]” such a survey would involve some discernible methodology. The conclusion that these provisions were directed at organized campaign activities involving the provision and receipt of services is, in my view, inescapable.
5. In removing references to opinion surveys in 2002, the legislature did not expand the ambit of the definition of “sponsor” in s. 229(1); it remains an individual or organization who pays some other individual or organization to “conduct” election advertising, or who receives “the services of conducting the advertising . . . without charge” from some other individual or organization. The lone pamphleteer on whose political expression the appellant’s case relies is not included in this description. In my view, considering the text and context of the Act, the legislature never intended otherwise.
   * 1. Who Must Register?
6. For the reasons discussed, I conclude that a “sponsor” required to register is an individual or organization who receives a service from another individual or organization in undertaking an election advertising campaign, whether in exchange for payment or without charge as a contribution. Individuals engaged in political self-expression do not come within the definition of “sponsor” in s. 229(1), and need not register.
7. The foregoing interpretation limits not only the scope of the Act’s registration requirement, but also of its attribution requirement (s. 231), its disclosure requirement (s. 244) and its expenditure limits (s. 235.1). An individual working entirely on his own, without paying for or receiving any service in the creation or dissemination of election advertising, is not required to comply with any of these provisions of the Act. This is consistent with the legislative purpose of the Act’s third party advertising provisions, which, as I have discussed, is to provide the public with information about those engaged in organized advertising campaigns during an election period, not to put conditions on individual self-expression. When an individual himself distributes handmade flyers, there is no question of who is responsible for that advertising, and so the attribution and disclosure provisions — like the registration requirement — would serve no purpose.
8. Throughout this action, the Attorney General of British Columbia’s position was consistent with the interpretation of s. 239 that I have put forward. In its pleadings, it expressly denied the appellant’s allegation that s. 239 “forces people to register with a government agency before being able to freely engage in political expression”. In its factum, it asserted that “the posting of a hand-made sign in a car window, or the wearing of a hand-made T-shirt . . . are not in fact instances of sponsorship triggering the registration requirement”.
9. It is true that, at one point in oral argument, counsel for the Attorney General of British Columbia appeared to concur in the suggestion that an individual who produces homemade signage containing an advertising message during an election campaign, having paid for the materials with which that signage is produced, could be a “sponsor of election advertising” for the purposes of the Act and subject to the registration requirement in s. 239. The Attorney General’s position on the record, however, is clear: s. 239 does not capture the cases of political expression on which the appellant relies.
   * 1. Conclusion on the Scope and Nature of the Infringement of Section 2(*b*)
10. Sponsors of election advertising cannot engage in political expression in the form of sponsored election advertising unless they first register. A “sponsor” is an individual or organization who receives a service from another individual or organization in undertaking an election advertising campaign. As the Attorney General of British Columbia concedes, s. 239 of the British Columbia *Election Act* infringes the right of expression of individuals and organizations who are “sponsors” of election advertising. It does not infringe the right of expression of those who are not.
11. I acknowledge that, in a close case, whether a particular individual or organization is caught by the Act’s definition of “sponsor” may prove difficult to determine. No such case is before us, however. The foregoing is a sufficient basis on which to decide the issue on this appeal — namely, whether “sponsors” who spend less than $500 on election advertising during a given campaign period may constitutionally be required to register.
    1. Is the Infringement Justified Under Section 1?
12. No one contends that the limit on expression imposed by requiring sponsors of election advertising, as described above, to register would not be justified under s. 1 of the *Charter*. The appellant’s argument that the limit is not justified under s. 1 is predicated on a much broader construction of ss. 229(1) and 239 — one that would limit the free political expression of individuals in the form of handmade signs, bumper stickers, and T-shirts.
13. Nor does the appellant submit that the registration requirement is unconstitutional with respect to *all* sponsors of election advertising. It is only those sponsors who spend less than $500 whom the appellant says cannot constitutionally be required to register. The only question, then, is whether the limit on the expression of sponsors who receive services in undertaking election advertising campaigns and who spend less than $500 is justified under s. 1.
14. A comparison with *Harper* suggests that this limit on expression is demonstrably justified as a reasonable limit in a free and democratic society. In *Harper*, this Court unanimously held that requiring those who spend more than $500 on election advertising to register was a justifiable limit on s. 2(*b*). The threshold for registration in this case — sponsorship of election advertising — is similarly reasonable and demonstrably justified.
15. The *Canada Elections Act* and the British Columbia *Election Act* each apply their respective registration requirements to some, but not all, third party advertisers. Under the federal legislation at issue in *Harper*, only third parties who “incu[r] election advertising expenses of a total amount of $500” must register: s. 353(1). Under the British Columbia legislation, only third parties who “sponsor election advertising” must register: s. 239(1). While Parliament has selected a quantitative threshold, the British Columbia legislature has opted for a qualitative one. Each threshold is low, but each permits small-scale individual election advertising without registration.
16. The appellant argues that the British Columbia provisions limit spontaneous or unplanned election advertising in a way that the federal legislation at issue in *Harper* does not. The courts below agreed. It is true that the two registration requirements are triggered at different times: the *Canada Elections Act* requires a third party to register “immediately after” the $500 threshold is reached (s. 353(1)), while the British Columbia *Election Act* prohibits a third party “who is not registered” from sponsoring election advertising (s. 239(1)). However, on the interpretation of s. 239 adopted here, the difference diminishes to insignificance. Section 239 limits spontaneous or unplanned *sponsorship* of election advertising. The federal and British Columbia registration requirements apply at different times because of the difference between the former’s quantitative threshold and the latter’s qualitative threshold. When all third party advertising expenses are included, as under the federal law, it may not be possible to anticipate precisely when the $500 threshold will be reached. But when only third party *sponsorship* is included, advance registration is appropriate; by its very nature, an organized election advertising campaign cannot be undertaken to its sponsor’s surprise.
17. The conclusion suggested by comparing this case to *Harper* is confirmed by the test for justification set out in *R. v. Oakes*, [1986] 1 S.C.R. 103.
18. The purpose of the registration requirement, the courts below held, is “to increase transparency, openness, and public accountability in the electoral process, and thus to promote an informed electorate”: trial reasons, at para. 116, quoted in C.A. reasons, at para. 41. I agree. This objective is pressing and substantial: *Harper*, at para. 142.
19. The registration requirement for sponsors of election advertising is rationally connected to this objective: *Harper*, at para. 143.
20. The limit is minimally impairing. By confining the registration requirement to sponsors and exempting individual political self-expression by persons who are not sponsors, s. 239 tailors the impingement on expression to what is required by the object of the Act. Moreover, the forms of advertising likely to be “sponsored” within the meaning of the British Columbia *Election Act* are also likely to be subject to the Act’s attribution requirements, which the Appellant does not challenge.
21. The registration requirement’s deleterious effects are limited. There may be small groups of British Columbians who wish to disseminate their views in a manner that would constitute sponsorship of election advertising below $500, but who are unwilling first to register their intention to do so with the government, even if they are prepared to comply with the Act’s attribution provisions. Their political expression would be chilled by the registration requirement. Others may be deterred by the requirement to register in advance. However, these impingements on the s. 2(*b*) right are limited, since only political expression in the form of *sponsorship* of election advertising stands to be delayed or inhibited. Sponsorship, as discussed, involves receiving advertising services. It is an organized activity that involves at least two, and usually more, people. It is by its nature not spontaneous. Moreover, there will be few cases in which an individual or group is subject to the registration requirement in s. 239 but not the attribution requirement under s. 231 and the *Election Advertising Regulation*, and so the number of sponsors for whom s. 239 is the sole reason they cannot protect their anonymity will be few. The registration process is simple and unlikely to deter much, if any, expression in which a sponsor would otherwise engage.
22. Against these limited deleterious effects must be weighed the benefits of the scheme. The registration requirement permits the British Columbia public to know who is engaged in organized advocacy in their elections, by creating and maintaining a register of sponsors. The provision ensures that those who sponsor election advertising must provide the public with an assurance, in the form of a signed statement, that they are in compliance with British Columbia’s election law. Finally, registration provides the Chief Electoral Officer with information that can assist in the enforcement of the Act and in informing sponsors of its requirements.
23. In my view, the benefits of requiring sponsors of election advertising to register outweigh the deleterious effects on sponsors’ s. 2(*b*) right.
24. The appellant argues that the Attorney General of British Columbia was obligated to lead more evidence than it did in order to discharge its burden of justification under s. 1 of the *Charter*. I cannot agree.
25. In *Harper*, as well as in *R. v. Bryan*, 2007 SCC 12, [2007] 1 S.C.R. 527, and *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, this Court considered the evidentiary standard that applies at the justification stage in the election law context. I do not read *Harper*, *Bryan*, and *Thomson Newspapers* as precluding cases in which such an infringement may be justified under s. 1 despite a lack of social science evidence. By not leading social science evidence at this stage, the Attorney General of British Columbia has seriously diminished its ability to justify the infringement of a *Charter* right, but it has not eliminated it; though logic and reason, without assistance, can only go so far, they can go far enough. Where the scope of the infringement is minimal, minimal deference to the legislature may suffice and social science evidence may not be necessary. That is this case.
26. Disposition
27. I therefore conclude that, though s. 239 of the British Columbia *Election Act* trenches on s. 2(*b*) of the *Charter*, the infringement is saved by s. 1.
28. I would dismiss the appeal. The parties have agreed that they will bear their own costs, and so I would order none.

*Appeal dismissed.*

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1. The tension between the two provisions is something the legislature may wish to address. [↑](#footnote-ref-1)