Guideline: 2014-04

Political Financing Handbook for Nomination Contestants and Financial Agents (EC 20182)

Comments made during formal consultation period January 22–February 6, 2015

No comments were submitted by the Animal Alliance Environment Voters Party of Canada	
No comments were submitted by the Bloc Québécois	
No comments were submitted by the Canadian Action Party	
No comments were submitted by the Christian Heritage Party of Canada	
No comments were submitted by the Communist Party of Canada	
Comments received from the Conservative Party of Canada	**Elections Canada response to the Conservative Party of Canada comments**
Refer to comments for candidates and official agents (2014-03).	Refer to OGI 2014-03, "Political Financing Handbook for Candidates and Official Agents (EC 20155)" for responses.

Comments received from the Green Party of Canada	Elections Canada response to the Green Party of Canada comments
The Green Party of Canada is not offering any changes to either of the Political Financing Handbooks, and commends the work of Elections Canada in its continuing work of running fair elections in Canada.	
Comments received from the Liberal Party of Canada	**Elections Canada response to the Liberal Party of Canada comments**
See comments of OGI 2014-03.	Refer to OGI 2014-03, "Political Financing Handbook for Candidates and Official Agents (EC 20155)" for responses.
No comments were submitted by the Libertarian Party of Canada	
No comments were submitted by the Marijuana Party	
No comments were submitted by the Marxist-Leninist Party of Canada	
No comments were submitted by the New Democratic Party	
Comments received from the Party for Accountability, Competency and Transparency	**Elections Canada response to the Party for Accountability, Competency and Transparency comments**
PACT agrees with the new additions to the handbook for nomination contestants in terms of voter contact calling services, but would like to see more conditions added to the list, such as those described in the voter contact calling services section of the candidates handbook, as described in the draft identified as OGI 2014_003. We believe that providing information	Voter contact calls made in relation to an election would not be expenses incurred as an incidence of an individual's nomination campaign. These include calls made to encourage electors to vote or refrain from voting; to provide information about the election, including voting hours and the location of polling

about voting, gathering information on the electors' views on the contestants and issues, and encouraging electors to vote or refrain from voting can all be used as methods to support the campaign of a nomination contestant. As such, they should be considered as part of the expenses for these campaigns and should be subject to the appropriate limits. Until such measures are provided in the handbooks, PACT will provide additional rules and guidelines for the nomination contest procedures to reflect this view, in order to provide a higher level of accountability and fairness to our internal processes.	stations; and to gather information about how electors voted in past elections or will vote in the election, or their views on a registered party, its leader, a candidate or any issues with which such a party or person is associated. In fact, a nomination campaign should not incur expenses for calls made for electoral purposes. Such calls would be made to promote a candidate or party, and nomination campaigns are prohibited from transferring property or services to affiliated political entities. However, Elections Canada has added "calls made to gather information from electors about their view on a nomination contestant, or on any issue the contestant is associated with" to the list of voter calls applicable to nomination contestants.
No comments were submitted by the Pirate Party of Canada	
No comments were submitted by the Progressive Canadian Party	
No comments were submitted by the Rhinoceros Party	
No comments were submitted by the United Party of Canada	
Comments received from the Commissioner of Canada Elections	**Elections Canada response to the Commissioner of Canada Elections comments**
I would first like to commend Elections Canada on the high-quality product that was distributed as a draft Handbook. I understand that the preparation of this tool – which will surely prove to be extremely useful to nomination contestants and their financial agents – has been a long endeavour. It	

essentially consolidates many communication tools that had been prepared by Elections Canada over the years into one comprehensive document that provides valuable information on how the Act's rules on political financing apply to nomination campaigns. The thoughtful manner in which the information is presented and the examples that are provided are conducive to effectively communicating the Act's requirements. This will prove to be extremely valuable for nomination contestants and their agents, and will assist them in meeting these requirements. Comments are provided below under various subheadings, representing issues that I have noted with the draft Handbook. For ease of reference, I provide the sections and page numbers of the relevant text for each issue. The length of my written comments is reflective of the fact that the draft Handbook is a comprehensive document that covers many issues.	
1. *Contributions made using corporate, association or group cheque* ***"Do's and Don'ts" (page xii)***; and ***"2.1 Contributions – Monetary contribution" (page 12)*** My Office has seen cases where agents of regulated entities believed that corporate cheques were acceptable as long as the name of an eligible contributor was provided. Although it may appear self-evident, in my view, it would be advisable to expressly state that cheques from corporations, associations or groups are not to be accepted, even if representations are made that the contribution is made on behalf of an individual associated with the entity. The making of a contribution by an individual using an instrument that links them personally to the contribution greatly facilitates the effective enforcement of the rules on contributions. Additional comments related to this are made below in Part 7, "Individual contributions."	**1.** The do's and don'ts section is intended to be a high-level summary of important reminders of key legal requirements. For the sake of brevity, and since this is a best practice rather than a legislative requirement, this comment has not been incorporated. For a more detailed response on the issue of traceable instruments, please refer below to the response to the Commissioner's seventh comment, titled "Individual contributions".

2. *Nomination contest report* ***"1.1 About the nomination contest – Nomination contest report" (page 2)***; and ***"4.2 Documents to be filed – Nomination contest report" (page 41)*** It may be advisable to add language about the importance of registered parties and associations submitting the nomination contest report to Elections Canada within one month of the end of the contest, as required by the Act. This report is the trigger that allows Elections Canada to get in touch with nomination contestants and their financial agents, and thereby provide them with the information that they will need to meet their reporting obligations under the Act. Too often, we have seen instances of parties and associations not having sent the nomination contest report, which ultimately may cause their contestants to be in breach of their reporting obligations because they did not receive the usual information that Elections Canada sends as a matter of course to contestants and financial agents when it has been advised that a contest has occurred. ***"3.1 Nomination campaign expenses – Definition" (page 25)*** In the "Note" that mentions that the contest period is determined by the start date and end date that the registered party or association has included in the nomination contest report, it would be useful to state that in light of the importance of this period for the purposes of the application of the rules, there is an expectation that parties and associations will submit dates that reflect the actual length of the contest. For instance, if the party's or association's constitution provides for a minimum period for a contest, it would be expected that the period indicated in the nomination contest report is consistent with this minimum.	**2.** The importance of submitting the nomination contest report to Elections Canada within one month of the end of the contest will be highlighted in the handbooks for registered parties and registered associations.
3. *Role of the financial agent* ***"1.3 What has to be done at the beginning of the nomination contest –***	**3.** This section of the handbook has been expanded to discuss the importance of establishing internal controls and processes

Definition" (page 4); and ***"The financial agent's responsibilities and obligations" (page 5)*** The draft Handbook states that "[t]he financial agent is responsible for administering the nomination contestant's financial transactions and reporting those transactions to Elections Canada as required by the *Canada Elections Act*." While this accurately reflects the description of the financial agent's responsibilities pursuant to section 476.64 of the Act, in my view, it would be helpful to spell out as clearly as possible what the full ramifications of this provision entail for financial agents. This will make it easier for financial agents to fully grasp the nature of their role and the extent of their responsibilities. We have seen a number of cases where financial agents did not play the important role that is required of them pursuant to the legislation. It would be helpful if the Handbook provided examples of what would be best practices for the financial agent to adopt, in light of this general responsibility over all financial transactions. The draft Handbook already explains that the financial agent is responsible, along with the contestant, for budget control. In my view, a best practice that is reasonably expected of financial agents as a consequence of their responsibilities under section 476.64 is to put in place controls to allow him or her to monitor the spending done by the contestant and the financial agent so that they do not, **together**, exceed the spending limit. Another best practice for financial agents to adopt in light of their responsibility over the financial transactions of a campaign is to ensure that everyone involved with the campaign is aware of who has the authority to incur expenses. Finally, the financial agent should insist that he or she be kept informed of the financial transactions of the campaign, and should intervene to address any non-compliance in a timely fashion.	to ensure that the expenses limit is not exceeded.
4. *Membership fees*	**4.** The text of this section has been revised to include all of the conditions that must be met for a membership fee to not be

"2.0 Nomination campaign inflows" (page 10) The discussion in the draft Handbook on the "membership fee" exclusion found at subsection 364(7) of the Act does not mention the requirement that an amount is only excluded from what constitutes a contribution if the payment is made by the individual who wishes to become a member of the registered party himself or herself. In my view, it would be prudent to refer to all of the conditions that must be met in order for the exclusion to apply. This will avoid having individuals make excessive contributions by paying the memberships of other individuals, under the misguided belief that this amount is excluded from what constitutes a contribution.	considered a contribution.
5. *No commercial value* ***"2.1 Contributions – What is commercial value?" (page 13)***; ***"2.2 Loans – Loan interest" (page 15, "Note" at the end of the section)***; ***"3.1 Nomination campaign expenses – Definition" (page 26, first "Note")***; and ***"3.5 Administering nomination campaign expenses – Non-monetary contributions or transfers are also recorded as expenses" (page 36, first "Note")*** The draft handbook notes that the Act deems certain non-monetary contributions to have a nil commercial value for the purposes of the Act. To avoid any potential confusion, and as provided for in subsection 2(2) of the Act, it would be useful to emphasize that the "no-commercial-value" rule only applies where the good or service was provided by an **eligible** contributor. As currently drafted, it implies that any individual making such a contribution would be captured by the exception. Individuals who are not Canadian citizens or permanent residents could erroneously assume that the non-monetary contribution they are making has a nil value for the purposes of the Act.	**5.** Text has been added at the start of section 2.1 to indicate that, when the term "individual" is used in this section of the handbook, it refers to an individual who is a Canadian citizen or a permanent resident.

6. *Returning ineligible contributions* ***"2.3 Administering contributions and loans – Returning ineligible contributions" (page 13)*** *[editor's note: page 17]* The text in the draft Handbook that describes the requirement to return the amount of an ineligible contribution pursuant to section 372 of the Act suggests that the whole amount of a contribution that is made that causes the contribution limit to be exceeded must be returned – unused – to the contributor, or if that is not possible, must be paid to the Receiver General. I agree that this is the correct interpretation of section 372. An interpretation that allowed the financial agent to accept the contribution but only return the amount by which the contribution limit was exceeded would not be consistent with subsection 368(3). That provision prohibits a financial agent from knowingly accepting a contribution that exceeds the limit. Further, allowing excessive contributions to be accepted effectively puts the contributor in an offence position for having contributed an amount that exceeds the limit (even if the exceeding portion of the contribution is returned to him or her at a later date). Accordingly, in my view, the last sentence in the example provided should read, "He sends a cheque of **$600** to the contributor." This $600 is the total amount of the second contribution that caused the contributor to exceed the limit by $100.	**6.** The purpose of this section of the handbook is to explain what is to be done in the event that an ineligible contribution is accepted. Elections Canada's interpretation of section 372 (return of contributions) is that the requirement to return the contribution applies to the ineligible portion of the contribution rather than the entire contribution. The guidance provided in the handbook does not indicate that the financial agent can accept an ineligible contribution. The first paragraph of the section of the handbook titled "Returning ineligible contributions" states that the financial agent must not knowingly accept an ineligible contribution. The remainder of this text addresses what to do in the event that an ineligible contribution is accepted.
7. *Individual contributions* ***"2.3 Administering contributions and loans – What to keep in mind when administering contributions" (pages 19–20)*** Some of the circumstances discussed as acceptable practices for making and recording contributions would seem to deviate from the Act's provisions	**7.** Although the CEA does not require that contributions over $20 be made using a traceable instrument, Elections Canada agrees that as a best practice financial agents would be well advised to only accept contributions made by way of a traceable instrument that links the contributor to the contribution. Text has been added to this effect.

that require that contributions over $20 be made using a traceable instrument that links, on the very face of the instrument, the contributor to the contribution being made. These include the discussions on "joint bank accounts", on contributions from "partnerships" and on contributions from "unincorporated sole proprietors". In the case of the discussion on a "joint bank account" being used to make a contribution, in my view, the approach proposed is generally consistent with the Act's requirements, to the extent that it attributes the making of the contribution to the individual who actually signed the cheque. It is conceivable that some individuals may only have a joint account with their spouse, and do not have an individual personal account. The approach in the draft Handbook ensures that these individuals are able to make a contribution, while preserving the need for a traceable instrument that links the contributor to the contribution, since the signature on the cheque will provide this link. Where two individuals who share a joint account wish to each make a contribution, they should sign their own distinct cheque drawn from the account. That said, from an enforcement point of view, the other proposals in the draft Handbook (those dealing in particular with partnerships and unincorporated sole proprietors) are problematic in that they allow contributions to be made through instruments that do not on their face link the contributor(s) to the contribution. This should be avoided. I would recommend that, in this area, a clear emphasis be put on clarity, traceability and transparency.	
8. *Surplus disposal rules* ***"5.3 Disposing of surplus – Definition" (page 51)***; ***"3.1 Nomination campaign expenses – Definition" (page 25, end of fourth paragraph)***; ***"3.1 Nomination campaign expenses – Renting a campaign office" (page 28)***; ***"3.1 Nomination campaign expenses – Use of parliamentary***	**8.** Based on the concerns raised regarding compliance with and enforcement of the surplus disposal provisions, and on other concerns raised by several parties, the text in this section has been modified. It now indicates that the use of campaign funds to pay expenses incurred outside the contest period is not

resources" (page 30, third sentence); ***"3.1 Nomination campaign expenses – Compensation" (page 30, third sentence)***; ***"3.2 Contestant's personal expenses – Definition" (page 31, last sentence)***; and ***"3.3 Other expenses – Definition" (page 34, second paragraph)*** There does not appear to be a statutory basis for allowing campaigns to use regulated funds for purposes other than to pay nomination campaign expenses as defined in the Act. My position on this point is described in greater detail in my written comments on OGI 2014-01.	permitted.
9. *Non-monetary contributions* ***"3.1 Nomination campaign expenses – Definition" (page 25)***; ***"3.1 Nomination campaign expenses – Definition" (page 26, last sentence of third paragraph; first paragraph after the first "Note"; and in the example provided)***; ***"3.1 Nomination campaign expenses – Advertising – use of social media and the Internet" (page 27, in the second example)***; ***"3.1 Nomination campaign expenses – Assets" (page 28, third paragraph)***; ***"3.1 Nomination campaign expenses – Expenses of volunteers" (page 29, third paragraph)***; ***"3.1 Nomination campaign expenses – Expenses of senators and elected Members" (page 29)***; ***"3.1 Nomination campaign expenses – Use of parliamentary resources" (page 30)***; ***"3.1 Nomination campaign expenses – Compensation" (page 30)***; ***"3.1 Nomination campaign expenses – Elected Members' websites" (page 30)***; ***"3.2 Contestant's personal expenses – Definition" (page 31, second paragraph)***; ***"3.5 Administering nomination campaign expenses – Non-monetary contributions or transfers are also recorded as expenses" (page 36)***; and ***"4.2 Documents to be filed – Nomination contestant's statement of personal expenses" (page 42, last paragraph)*** The draft Handbook correctly states that "nomination campaign expenses do not include non-monetary contributions or transfers used by the campaign." This is consistent with the definition of "nomination campaign	**9.** Based on this comment, as well as on your comments in response to the draft interpretation note titled "Definition of leadership campaign expenses and nomination campaign expenses", the text of the handbook has been modified to indicate that only non-monetary contributions accepted during the contest period are subject to the controls on contributions in the CEA. However, the position of Elections Canada is that property or services accepted as non-monetary contributions or transfers are also nomination campaign expenses subject to the limit. This is due to the inherent link between the acceptance of property or a service and its categorization as an expense. Otherwise, the concept of non-monetary contributions and transfers would be diminished within the regulatory framework governing nomination contestants. Note that non-monetary transfers accepted by a nomination campaign are subject to the controls on transfers in the CEA and can only be accepted during the contest period. The text has also been modified to indicate that non-monetary contributions accepted outside the contest period are not regulated as contributions or expenses.

expense" at subsection 2(1) of the Act. Various parts of the draft Handbook nevertheless state that non-monetary contributions must be reported as "other expenses", a category of expenses that is not provided for in the Act. There does not appear to be any statutory basis for this. The Act only provides for "nomination campaign expenses" as regulated expenses of a nomination contestant, and only "costs incurred" are included as such expenses. My position on this point is described in greater detail in my written comments on GI 2014-01.	
10. *Reporting the value of expenses* ***"3.1 Nomination campaign expenses – Advertising" (page 27)***; and ***"3.1 Nomination campaign expenses – Advertising – use of social media and the Internet" (page 27, first example provided)*** The draft Handbook provides the following example: "The financial agent purchases flyers during the contest period and mails them to residents in the electoral district. The **commercial value** of these flyers, including the design, printing and distribution, is a nomination campaign expense." (emphasis added) In my opinion, the definition of "nomination campaign expense" in the Act requires that what must be reported is the actual cost incurred by the campaign. Unlike for election expenses incurred by a candidate or registered party at an election, the Act does not require that nomination campaign expenses be reported, at a minimum, to reflect commercial value. The nomination campaign expense that must be reported is the cost actually incurred for the property or service, which may or may not reflect its commercial value.	**10.** Elections Canada's position is that non-monetary contributions and transfers accepted during the contest period are nomination campaign expenses (refer to the previous comment and response). Given this position, it is necessary to report the commercial value of such non-monetary contributions and transfers as nomination campaign expenses. In the case of purchased property or services, as noted in section 3.1 of the handbook, Elections Canada agrees that expenses are to be reported at the amount charged. Generally, this amount is the commercial value of the property or service received. Our position differs in cases where the amount charged for property or a service is less than its commercial value. In those cases, the difference has to be reported as a non-monetary contribution, making the total expense amount equal to the commercial value of the property or service.

11. *Expenses of senators and elected Members* ***"3.1 Nomination campaign expenses – Expenses of senators and elected Members" (page 29)*** The position put forth in the draft Handbook with respect to the support that a senator or elected member (whether federal or provincial) may give to a nomination contestant during a contest period appears to deviate from how the personal expenses of other supporters and volunteers are treated under the political financing rules. The draft Handbook proposes to treat any involvement by such a person as giving rise to nomination campaign expenses, which must first be authorized by the financial agent or the contestant. It appears clear that a campaign that calls upon a senator or elected member to come to assist them in the course of a contest may have incurred expenses that are regulated if, for example, travel expenses are involved. Another example is where a campaign organizes a tour of notable senators or members to give speeches at organized events, in order to promote the selection of the contestant. That said, and as a general proposition, the personal expenses of a campaign volunteer or supporter (and this does not necessarily exclude a senator or elected member) are not regulated under the Act, unless the campaign actually incurred expenses that promote the selection of the contestant. Whether or not the campaign has incurred nomination campaign expenses is therefore a question of fact that must be examined in light of all relevant circumstances.	**11.** Elections Canada agrees with the comment that whether or not nomination campaign expenses have been incurred is a question of fact. However, the assumption underlying the approach in the handbook is that when a senator, Member or candidate campaigns on behalf of a nomination contestant, they are doing so at the request of the campaign. Note that this section of the handbook has been further clarified based on comments received on interpretation note 2014-02, titled "The use of Member of Parliament resources outside of an election period".
12. *Reporting requirements* ***"4.2 Documents to be filed within four months after the selection date or election day" (page 41)***; and ***Chart at page 42*** *[editor's note: page 46]* ***"Nomination Contestant reports – extension requests"***	**12.** It is true that the CEA makes a distinction between the return and the declarations of the candidate and official agent regarding the return's completeness and accuracy. However, as noted, the form prescribed by Elections Canada includes the declarations as part of the return. To avoid confusion, the declarations have not been listed as separate documents to be

The draft Handbook states that there are three mandatory documents that must be provided within four months after the selection date or election day (depending on circumstances): the nomination contestant's campaign return; the auditor's report on this return; and the nomination contestant's statement of personal expenses. Subsections 476.75(1) and (7) of the Act, however, require that four documents be filed within four months after the selection date or election day. These mandatory documents are: a) the nomination contestant's campaign return; b) an auditor's report on that return (but only if required under the criteria provided for in the Act); c) the contestant's declaration about the completeness and accuracy of the return; and d) the financial agent's declaration about the completeness and accuracy of the return. While, as a matter of practice, Elections Canada has chosen to include the two declarations (mentioned at c) and d) above) on the first page of the prescribed form for the contestant's return, legally, they are three distinct instruments. A financial agent who has submitted the completed return without one of the required declarations has not, pursuant to the Act, met his or her obligations to file the return and other mandatory documents. Moreover, the nomination contestant's statement of personal expenses is not a mandatory document pursuant to these provisions of the Act. Rather, it is provided as supporting documentation with the return. These distinctions are important and should be communicated to contestants and financial agents. The failure to provide any of the four mandatory documents mentioned above would give rise to the offence of having failed to file the return and required documents.	filed with Elections Canada. In response to this comment, the bulleted list of documents to be filed under section 4.2, "Documents to be filed within four months after the selection date or election day", has been changed to: • *Nomination Contestant's Campaign Return*, including the declarations signed by the contestant and the financial agent (Required if the campaign accepted contributions totalling $1,000 or more, or incurred nomination campaign expenses totalling $1,000 or more. Note that transfers to affiliated political entities are not nomination campaign expenses.) • *Nomination Contestant's Statement of Personal Expenses* (Required if the campaign accepted contributions totalling $1,000 or more, or incurred nomination campaign expenses totalling $1,000 or more. Note that transfers to affiliated political entities are not nomination campaign expenses.) • *Auditor's Report* (Required if the campaign accepted contributions totalling $10,000 or more, or incurred nomination campaign expenses totalling $10,000 or more. Note that transfers to affiliated political entities are not nomination campaign expenses.) • All supporting documents (Required if the campaign accepted contributions totalling $1,000 or more, or incurred nomination campaign expenses totalling $1,000 or more. Note that transfers to affiliated political entities are not nomination campaign expenses.)