



## Written Opinions, Guidelines and Interpretation Notes

### Guideline: 2015-02

### Political Financing Handbook for Electoral District Associations and Financial Agents (EC 20089)

### Comments made during formal consultation period July 10–July 27, 2015

No comments were submitted by the Animal Alliance Environment Votes 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	
No comments were submitted by the Conservative Party of Canada	
No comments were submitted by the Green Party of Canada	

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p><b>Page xi of the EDA Handbook:</b> The term “Transmit” is used in relation to election advertising and it is not clear what this term means. It should be defined or clarified.</p>	<p>The table of important reminders (do’s and don’ts) for registered associations is meant to provide a summary of key obligations and serve as a quick reference tool.</p> <p>Further in the handbook, under “Advertising activities” in section 3.4 (Expenses of registered associations), the concept of transmitting election advertising is addressed in more detail and many examples are provided.</p> <p>The handbook text is drawn from OGI 2015-04, “Election advertising on the Internet” (published in July 2015). The section of the OGI entitled “What is ‘transmission to the public’ (English definition) or ‘diffusion’ (French definition)?” addresses the meaning of the term and provides definitions in the context of election advertising.</p>
<p><b>Page 8:</b> The Handbook states that “a person who is a member of a partnership that has been appointed as an auditor for the registered party” is eligible to be a financial agent, but also states that “an auditor appointed as required by the <i>Canada Elections Act</i>” is NOT eligible to be a financial agent. This seems contradictory so it needs to be clarified perhaps with an example.</p>	<p>The appointment of such a financial agent is allowed pursuant to subsection 457(3) of the <i>Canada Elections Act</i>. This is an exception to the general rule.</p> <p>A person who is a member of a partnership that has been appointed as an auditor for any other type of political entity is not eligible to be the financial agent of a registered association. The text of this section has been clarified in the handbook.</p>
<p><b>Page 9:</b> “All monetary transactions SHOULD go through the bank account.” Are there alternatives?</p>	<p>The <i>Canada Elections Act</i> is silent with respect to bank account requirements for electoral district associations. As a best practice, Elections Canada recommends that all monetary transactions go through the association’s bank account.</p>

<b>No comments were submitted by the Libertarian Party of Canada</b>	
<b>No comments were submitted by the Marijuana Party</b>	
<b>No comments were submitted by the Marxist-Leninist Party of Canada</b>	
<b>No comments were submitted by the New Democratic Party</b>	
<b>No comments were submitted by the Party for Accountability, Competency and Transparency</b>	
<b>No comments were submitted by the Pirate Party of Canada</b>	
<b>No comments were submitted by the Progressive Party of Canada</b>	
<b>No comments were submitted by the Rhinoceros Party</b>	
<b>No comments were submitted by the Bridge Party of Canada</b>	
<b>No comments were submitted by the United Party of Canada</b>	
<b>Comments received from the Commissioner of Canada Elections</b>	<b>Elections Canada response to the Commissioner of Canada Elections</b>
<p><b>Introductory tables (page xi)</b></p> <p>In the list under “Do”, the following is stated: “Ensure unpaid claims are paid within 36 months after the payment is due. After that, an authorization from</p>	<p>This item has been removed from the list.</p>

<p>Elections Canada or a judge will be required for the late payments.” The last sentence is inaccurate. As is the case with registered parties, there is no requirement to obtain authorization from the Chief Electoral Officer or a judge for an Electoral District Association (EDA) to make late payments, although such a requirement exists for candidates’, nomination contestants’ and leadership contestants’ unpaid claims.</p>	
<p><b>Registry of Electoral District Associations (pages 2 &amp; 4)</b></p> <p><b>a)</b> The draft Handbook currently states that “[a]n association remains registered in the registry as long as it continues to meet the requirements for maintaining that status.” However, not meeting relevant requirements under the <i>Canada Elections Act</i> (the “Act”) does not automatically result in deregistration. Administrative action and decisions by the Chief Electoral Officer and his delegates are required before deregistration actually occurs. Furthermore, provisions such as section 468 of the Act provide discretion to the Chief Electoral Officer to exempt, in whole or in part, an association from complying with certain requirements. The above statement should be amended to reflect this.</p> <p><b>b)</b> In addition, the second note on page 4 of the Handbook says: “Elections Canada cannot deregister an association during an election period.” Although this statement is accurate in relation to voluntary deregistration and deregistration at the request of the party, it is not accurate for non-voluntary deregistration under section 468 of the Act.</p>	<p><b>a)</b> The statement has been modified to read as follows:</p> <p>“An association remains registered in the registry as long as it continues to meet the requirements for maintaining that status. Should an association fail to meet requirements, Elections Canada may initiate the procedure for non-voluntary deregistration.”</p> <p><b>b)</b> The handbook has been modified to read as follows:</p> <p>“Elections Canada cannot process an application for voluntary deregistration during an election period.”</p>
<p><b>Chapter 2 Roles and Responsibilities – Introduction (page 7)</b></p> <p>In the interest of completeness, the introductory paragraph of chapter 2 of the Handbook could mention that the EDA may appoint other officers, in addition to its chief executive officer, as provided for in paragraph 448(1)(d) of the Act. Although the appointment of the chief executive officer is</p>	<p>The second sentence of the introductory paragraph has been modified to read as follows:</p> <p>“In addition, a registered association may appoint electoral district agents to perform certain financial tasks, or other officers of the association.”</p>

<p>mandatory, the appointment of any other officer is optional. This change would provide greater context for the subsequent text at section 4.2 of the draft Handbook, which currently discusses the need to advise Elections Canada about changes in the identity of other officers, without the possibility of such officers having been appointed being mentioned previously in the Handbook.</p>	
<p><b>Contributions (pages 15 &amp; 16)</b></p> <p>The draft Handbook proposes to use the word “individual” in section 3.1 to refer to a Canadian citizen or a permanent resident of Canada. For greater clarity, the definition of the word “individual” for the purposes of this section of the draft Handbook that is currently found in the second note on page 16 should be moved to the introductory paragraphs of section 3.1, since the definition applies to text that currently appears before the note. The definition should also be extended to apply to sections 3.2 and 3.4 of the draft Handbook, since the word “individual” as it appears in these sections is meant to refer to a Canadian citizen or a permanent resident of Canada.</p>	<p>The note has been moved.</p>
<p><b>Contributor identification (page 16)</b></p> <p>The second note under this sub-heading states that, when recording a contributor’s personal information, “the full first and last name (initials are not acceptable) and the home address have to be recorded”. As noted previously in comments provided in relation to other draft Handbooks, the Act requires only that “the name and address” of the contributor be recorded. Although including the full first name and last name of a contributor is certainly a best practice that should be encouraged, it is not a legal requirement. In certain circumstances, information provided about the contributor’s name that includes the initials of his or her given names as well as a full last name may be sufficient to clearly identify the contributor, as required by the Act.</p>	<p>In order to properly identify a contributor, the full first and last names are required. This is important for ensuring that contribution limits are adhered to and for maintaining fairness in the electoral process.</p>

<p><b>Ineligible contributions (page 17)</b></p> <p>The description of what constitutes an “indirect contribution” in the parentheses in the fourth bullet of this section of the draft Handbook does not reflect the wording of the relevant provision of the Act at subsection 370(1). While the description in the draft Handbook implies that an indirect contribution results from making a contribution “on behalf of another person or entity”, the prohibited conduct in the Act is to make a contribution “that comes from money, property or the services of” another person or entity.</p>	<p>As this is a minor update that will affect a number of handbooks, the comment has been noted and the handbooks will be updated accordingly during the yearly handbook review and update process.</p>
<p><b>Returning ineligible contributions (page 17)</b></p> <p>The first sentence in this section of the draft Handbook currently reads as follows: “The financial agent must not knowingly accept an ineligible contribution.” While there is a prohibition in the Act in subsection 368(3) against knowingly accepting a contribution that exceeds a limit, there is no prohibition against accepting a contribution from a person or entity other than a Canadian citizen or a permanent resident of Canada. In the case of a contribution from a person or entity other than a Canadian citizen or a permanent resident, the requirement pursuant to subsection 363(2) is to return the ineligible contribution within 30 days of becoming aware of the fact that the contributor was ineligible. The first sentence should therefore read, “The financial agent or an electoral district agent must not knowingly accept <u>a contribution that exceeds the limit.</u>”</p>	<p>While Elections Canada agrees that there is no prohibition on accepting contributions from a person or entity other than a Canadian citizen or permanent resident, there is a requirement to return such contributions unused to the contributor or, if that is not possible, to the Chief Electoral Officer. It is therefore a recommended practice to not accept contributions from ineligible contributors.</p> <p>The current wording could be improved. Since this update will affect a number of handbooks, the comment has been noted and the handbooks will be updated accordingly during the yearly handbook review and update process.</p>
<p><b>Anonymous contributions (page 17)</b></p> <p>As noted previously in comments provided on other draft Handbooks, section 372 of the Act requires that a contribution that causes the limit to be exceeded be returned to the contributor, or to the Receiver General, as the case may be. As such, in the first example provided in this section of the draft Handbook, the amount of the contribution that must be returned is \$600.</p>	<p>Elections Canada’s interpretation of section 372 of the <i>Canada Elections Act</i> is that the requirement to return the contribution applies to the ineligible portion of the contribution rather than the entire contribution.</p>

<p><b>Fundraising during an election period (page 19)</b></p> <p><b>a)</b> The draft Handbook states that, before incurring election expenses on behalf of the candidate, the EDA must obtain prior written authorization from the candidate’s official agent. The EDA itself, however, cannot incur any such expense. It does so through the actions of one of its authorized electoral district agents. For this reason, the draft Handbook should state that, prior to incurring promotional expenses on behalf of the candidate, the <u>electoral district agent of the EDA</u> must receive written authorization from the candidate’s official agent.</p> <p><b>b)</b> The draft Handbook should also specify that only the official agent of the candidate can pay the expenses of the candidate, even if they were incurred by an authorized electoral district agent.</p>	<p><b>a)</b> The text has been modified to read as follows:</p> <p>“Prior to incurring election expenses on behalf of the candidate, the financial agent of the registered association must receive written authorization from the candidate’s official agent.”</p> <p><b>b)</b> The rules for paying candidate expenses are set out in the candidate handbook.</p>
<p><b>What to keep in mind when administering contributions (page 22, last bullet)</b></p> <p>It would be useful to clarify that a contributor’s address is required only when the contribution that was made exceeds \$200.</p>	<p>As this update will affect a number of handbooks, the comment has been noted and the handbooks will be updated accordingly during the yearly handbook review and update process.</p>
<p><b>Loans – Loans from financial institutions (page 23)</b></p> <p>Given that, pursuant to the Act, only individuals (who are Canadian citizens or permanent residents of Canada) are allowed to make a contribution, it is important that the Handbook state clearly that financial institutions may make a loan, provided it is made at a fair market rate of interest, pursuant to subsection 373(3) of the Act. Indeed, if a financial institution makes a loan at an interest rate lower than the market rate, it makes an illegal non-monetary contribution to the EDA for an amount equivalent to the amount of the forgone interest.</p>	<p>As this update will affect a number of handbooks, the comment has been noted and the handbooks will be updated accordingly during the yearly handbook review and update process.</p>

<p><b>Transfers – Definition (page 25)</b></p> <p>The first paragraph of this section of the draft Handbook currently reads as follows:</p> <p style="padding-left: 40px;">“A transfer is a provision of funds, property or services between political entities of the same political affiliation. A transfer is not considered to be a contribution, and contribution rules therefore do not apply.”</p> <p>While the subsequent text mentions that only specific transfers between some entities are permitted under the Act, the first paragraph could create confusion. It is recommended that it be modified so that the second sentence of this first paragraph reads as follows: “<u>Where specifically permitted under the Act</u>, a transfer is not considered to be a contribution, and contribution rules therefore do not apply.”</p>	<p>As this update will affect a number of handbooks, the comment has been noted and the handbooks will be updated accordingly during the yearly handbook review and update process.</p>
<p><b>Outgoing transfers (page 25)</b></p> <p>It would be useful to clarify that, with respect to transfers to a candidate, an EDA may only transfer funds <u>other than trust funds</u>, as provided for in subsection 364(4) of the Act.</p>	<p>Given that situations in which this rule would apply are so exceptional, Elections Canada considers that it does not warrant inclusion in the handbook.</p>
<p><b>Election advertising (page 27)</b></p> <p>The description of what constitutes “election advertising” found on this page should reflect all the elements of the definition in section 319 of the Act, including advertising messages that take a position on an issue associated with a candidate or a registered party.</p>	<p>The definition at section 319 has been modified in the handbooks to be more specific to the entity addressed in the document. Elements of the definition are used as they apply to registered associations.</p>
<p><b>Websites of registered associations (page 28)</b></p> <p>Whether a pre-existing EDA website constitutes an election expense for the</p>	<p>Elections Canada agrees that this is ultimately a question of fact.</p>



<p>candidate it endorsed if it remains online during an election period is a question of fact to be determined in light of the circumstances of each particular case. That said, there will be a strong presumption that the candidate’s official agent accepted a non-monetary transfer from the EDA and, therefore, incurred an election expense.</p>	
<p><b>Voter contact calling services (page 29)</b></p> <p>On page 29, under what is now erroneously numbered as example 2 but is in fact the first example provided, the second sentence states that “the commercial value of the flyers – including the design, printing and distribution – is an expense and has to be reported by the registered association.” However, the Act requires that election expenses be reported at the actual cost for which the good or service was purchased, or at the minimum, to reflect the commercial value of the good or service acquired.</p>	<p>This example refers to flyers that are distributed outside of the election period. The expenses are not therefore election expenses. However, the wording of the example has been improved to read as follows:</p> <p>“Expenses incurred for the flyers, including the cost of production and distribution, are to be reported as expenses of the registered association.”</p>
<p><b>Filing deadline and extensions (page 38)</b></p> <p>The draft Handbook states that the request by an EDA for an extension of the filing deadline for their financial transactions return has to be received by Elections Canada within two weeks after the applicable deadline. Pursuant to subsection 475.91(2) of the Act, however, the request for an extension of the filing deadline can be <u>made within the period for providing the return</u> or within two weeks after the end of that period.</p>	<p>The handbook indicates that extension requests have to be received within two weeks after the applicable deadline. This timeline would not preclude the submission of an extension request prior to the applicable deadline.</p>