



## Written Opinions, Guidelines and Interpretation Notes

### Interpretation note: 2016-01

#### Fundraising

#### Comments made during formal consultation period June 22–July 7, 2016

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>The draft Interpretation Note is well thought out and written. It is clear that Elections Canada (“EC”) has attempted to align its definitions and interpretations for contributions with those of the Canada Revenue Agency (“CRA”). Alignment of rules facilitates the administration of contributions for registered political entities and thus minimizes errors. Where EC has taken a different interpretation from that of CRA, we understand the reasons for doing so.</p> <p>There is a component of the draft Interpretation Note that includes commercial transactions; specifically, the sale of branded merchandise. Our views with respect to commercial transactions discussed in the opinion request on Charging for Trade Show or Exhibit Facilities in June 2016 apply as they relate to the sale of branded merchandise. More precisely the <i>Canada Elections Act</i> (“Act”) makes no reference to revenues derived from commercial transactions and, had Parliament intended to restrict or control such transactions, the Act would have done so. This concept is acknowledged in the Analysis and Discussion section on page 5.</p> <p>There are numerous vendors in Canada that facilitate or manage merchandising programs on behalf of clients. These vendors generally have multiple clients for which they source merchandise</p>	<p>It should be noted that Elections Canada does recognize the ability of political entities to enter into commercial transactions. Although the <i>Canada Elections Act</i> makes no specific reference to revenues derived from commercial transactions, the revenues of parties are tightly controlled in the Act. Our handbooks reflect our position.</p> <p>A commercial transaction differs widely from the sale of a branded item in the intent of the purchase. An individual does not purchase assets from a party (such as a building or a computer) with the intent of supporting that party. It is purely a commercial transaction, as opposed to the support intended through the purchase of branded goods. This position will be further examined in a forthcoming interpretation note on commercial transactions.</p> <p>Furthermore, it is our position that there could be great variations in the calculation of fair market value for branded goods if the value is not simply the amount paid to the commercial provider. Even when suppliers manage merchandising programs on behalf of clients, the suggested retail price could vary considerably from one supplier to another and therefore be completely arbitrary.</p> <p>As for the other costs involved in a branded merchandising</p>

for sale, arrange for the client's logo to be applied, and either ship the goods to the client for selling or manage the receipt of orders and sales/shipping to the client's customers. Products are often depicted in their promotional catalogues and can show the suggested selling price (generally categorized as being the fair market value), client wholesale purchasing cost, and minimum purchase commitment.

The sale of branded goods for a political entity generally does not amount to large volumes of goods/revenues, and generates minimal net returns (if any) when incorporating staff time and resources in managing the program and the risk of holding inventory (which may not be sold). The sale of branded goods is generally undertaken by a party as there are requests for branded merchandise.

The proposal put forward by EC is that the sale of branded merchandise would generate a contribution to the political entity if an item is sold for more than its direct cost as supported on a third party invoice. However the direct cost represents only a portion of the costs of the item.

In recent Interpretation Notes and Handbook releases, EC has been moving to a fully burdened costing model. An example of this is incorporating the fixed assets of a political party's national office in its reportable election spending. Another example has the value of party staff time expended prior to an election on video clips available on YouTube during an election as a reportable election expense. Why would the direct third party invoice costs for merchandise be the only cost to be included in determining whether or not a contribution has been made with respect to the sale of branded merchandise? There are many other costs involved in a branded merchandising program, including website development for e-commerce capability, product images shown on the website, staff time dealing with suppliers, storage costs,

program, these could also be true for any contribution, as administrative overhead costs are not specific to the sale of branded goods.

Elections Canada notes your concerns about the administrative burden associated with our position. However, this burden is alleviated by the fact that, according to subsection 366(1) of the *Canada Elections Act*, a receipt is only required for each contribution of more than \$20. The sale of most branded goods would generate contributions of \$20 or less. In addition, it is our view that each branded good sold can be processed as a separate transaction, even when the purchase may include multiple items (e.g. If the same customer purchases six branded coffee cups, this would be processed as six separate contributions), for the purpose of subsection 366(1).

Of course, if a person gives three \$20 bills (or cheques) simultaneously without receiving anything in return, this is considered a single \$60 contribution. Any attempt to report it as three separate contributions would, by definition, be an attempt to circumvent sections 371 and 366. This is not the case when a person buys multiple branded goods.

space used by staff in the management of the program, transaction fees, etc.

We agree that the sale of branded merchandise above its typical fair market range should be categorized as a contribution for the amount in excess of the typical fair market range. Our suggestion is that if the sale of the branded merchandise is made within the typical fair market range, regardless of the political entity's direct third party invoice cost, there would be no deemed contribution. This would acknowledge that the sale of branded merchandise is typically inconsequential in terms of the overall revenues of a political party and that there are more costs in the sale of branded merchandise than simply the direct third party invoice cost.

**Specific comments**

Page 1 – Benefits provided to contributors (1) – The last sentence of this paragraph states, “The fair market value of the benefit is generally the amount the political entity paid a commercial provider for the property or service (i.e. the retail price).” We agree the benefit would be the fair market value of the good/service provided. We also agree that the fair market value would be the retail price. The element that is missing is the wholesale cost that the political entity paid for the good/service. This is particularly important when considering the sale of branded goods. A political entity may be entitled to a discount given for volume purchases or commitments; thus a wholesale price is established for the political entity. This concept will be commented on more fully in a further comment.

Page 7 – Practical Applications – Sale of branded goods – Contributions – The first sentence states, “When a branded good is sold for more than its fair market value (i.e. more than the amount the political entity paid a commercial provider for the item), the purchaser is making a political contribution.” We agree

<p>with the initial statement but do not agree with the phrase in brackets. The phrase in brackets should be modified to “i.e. the retail price for comparable quality and volume”.</p> <p>Page 7 – Practical Applications – Sale of branded goods – Example – The example needs to be modified, and additional examples added. Prior to the last sentence we should add two other elements along the lines of “(i) the fair market value of the coffee cup is determined to be \$15, and (ii) the fair market value of the coffee cup is determined to be \$10.” The last sentence would be modified to read, “The contribution being made by each individual who purchases a coffee cup is (i) \$0 (\$15 – \$15), and (ii) \$5 (\$15 – \$10).”</p>	
<p><b>Comments received from the Commissioner of Canada Elections</b></p>	<p><b>Elections Canada response to the Commissioner of Canada Elections</b></p>
<p><b>Auctions – Examples (page 9) [French version only]</b></p> <p>In the French version, in the last paragraph of the first example provided on the page, the reference to “une dépense électorale” should be to “une dépense de campagne”.</p>	<p>The reference has been modified to read “une dépense de campagne”.</p>
<p><b>Ticketed fundraising – Expenses (page 10) [French version only]</b></p> <p>In the second sentence found under the heading “Dépenses” in the French version, a few key words have been omitted, as indicated in the underlined portion: “Toutefois, comme les dépenses de production et de distribution <u>du matériel promotionnel</u> sont spécifiquement incluses, toute dépense du genre qui serait engagée avant ou pendant l’activité de financement constitue une dépense électorale.”</p>	<p>The suggested words have been added to the French text for greater clarity.</p>
<p><b>Draws (page 12) [French version only]</b></p> <p>The first sentence under the shadowed note in the French version</p>	<p>The text has been slightly modified in both languages for greater clarity.</p>

seems to suggest that expenses incurred for the promotion of a draw only constitute election expenses if the draw occurs during the election period. All expenses incurred for advertising that is transmitted during the election period constitute election expenses, however, irrespective of when the draw occurs.

English:

"For candidates and parties promoting a draw during an election period, the expenses incurred for its promotion are election expenses, irrespective of when the draw occurs."

French:

"Pour les candidats et les partis qui font la promotion d'un tirage en période électorale, les dépenses engagées pour la promotion constituent des dépenses électorales, quelle que soit la date à laquelle le tirage a lieu."

The following parties did not submit comments to Elections Canada on OGI 2016-01:

- Alliance of the North
- Animal Alliance Environment Voters Party of Canada
- Bloc Québécois
- Canada Party
- Canadian Action Party
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Democratic Advancement Party of Canada
- Forces et Démocratie
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- Marxist-Leninist Party of Canada
- New Democratic Party
- Party for Accountability, Competency and Transparency
- Pirate Party of Canada
- Progressive Canadian Party
- Rhinoceros Party
- Seniors Party of Canada
- The Bridge Party of Canada
- United Party of Canada