



## Written Opinions, Guidelines and Interpretation Notes

### Written opinion: 2016-06

#### Charging for trade show or exhibit facilities and setup at a party convention

#### Comments made during formal consultation period June 13–28, 2016

Comments received from the Canadian Action Party	Elections Canada response to the Canadian Action Party
<p>In response to the EC Opinion concerning the Conservative Party of Canada and their request for a written opinion on the charging of exhibitors at a convention, I have to say that by the “book” you are most certainly correct.</p> <p>But my concern is that holding such a trade show at a convention is simply a way of attracting more people than it is actually about the convention itself, and if it is that important to any party to increase the number of people (delegates) and give them more entertainment via a trade show, it could be starting down a slippery slope of denigrating conventions into massive no-cost-to-the-party trade shows with the convention as a side show.</p> <p>I think the next step would be to try and pass the costs of the side show (that is to say the convention itself) off as a deductible expense from the trade show.</p>	<p>Elections Canada notes your concern in this regard. However, our position is that a party may not use a trade show to offset convention expenses.</p>

<b>Comments received from the Democratic Advancement Party of Canada</b>	<b>Elections Canada response to the Democratic Advancement Party of Canada</b>
<p>The only potential issue that the Democratic Advancement Party of Canada has with the Elections Canada opinion is the potential for monetary contributions from corporations and unions through “the commercial value of the tangible benefit received by individuals (from the vendor, entity or group) physically exhibiting at the booth (as calculated for the Party Convention).”</p> <p>In our opinion, this commercial value of the tangible benefit should be rejected to avoid a loophole for contributions, legal or otherwise, from corporations and unions.</p>	<p>Elections Canada’s position on this issue is consistent with its position for any individual attending the convention, which is that the payment of fees by or on behalf of an individual to attend a party convention or a leadership contest is a contribution to the party.</p> <p>The contribution amount is the difference between the amount paid to attend and the commercial value of any tangible benefits received. Tangible benefits include meals, lodging and any other tangible goods or services directly received by the convention attendee.</p>
<b>Comments received from the Green Party of Canada</b>	<b>Elections Canada response to the Green Party of Canada</b>
<p>Elections Canada’s opinion, based on the information provided, is that payments accepted to cover the costs of the trade show or exhibit facilities and setup are not contributions. This opinion is based on Elections Canada’s understanding of this specific case, which is that all of the following conditions have been met:</p> <ul style="list-style-type: none"> <li>• the cost associated with the trade show is an incremental amount that the party incurred and would not have incurred for the regular convention without the trade show component</li> <li>• the party is charging no more than the actual expenses incurred as a direct incidence of the trade show</li> <li>• no amount is being charged to the exhibitors for the value of attending the convention, other than the tangible benefit received (such as food)</li> </ul> <p>The Green Party of Canada asks for confirmation that, although there is a maximum charge, there is no minimum charge required to exhibitors.</p>	<p>There is no minimum amount that the party must charge to exhibitors.</p>

<p>On point two:</p> <ul style="list-style-type: none"> <li>the party is charging no more than the actual expenses incurred as a direct incidence of the trade show</li> </ul> <p>Is a Party allowed to charge less than the actual expenses incurred as a direct incidence of the trade show?</p>	<p>There is no minimum amount that the party must charge to exhibitors.</p>
<p>Is a Party allowed to charge varying amounts for different exhibitors (as long as the amounts charged are all below the actual expenses incurred as a direct incidence of the trade show)?</p> <p>Example:</p> <p>If the actual expense incurred as a direct incidence of the trade show is \$400, may a Party charge "exhibitor A" \$200 and "exhibitor B" \$0.00 to set up their booths at the trade show?</p>	<p>The party can charge any amount per vendor, as long as no one vendor is being charged more than the incremental expense incurred as a direct incidence of the space they are occupying at the trade show.</p>
<p><b>Comments received from the Liberal Party of Canada</b></p>	<p><b>Elections Canada response to the Liberal Party of Canada</b></p>
<p>The opinion request from the Conservative Party of Canada is a component of a much larger issue of registered political entities being able to enter into commercial transactions. The nature of the opinion being sought is seeking confirmation that charges to third parties for the use of space on a cost recovery basis would not offend the <i>Canada Elections Act</i> ("Act"). Recognizing that this opinion request and the current draft guideline for Fundraising Activities (which includes the sale of branded goods) may set the principles and foundation of the guideline for commercial transactions anticipated in 2016–2017, the focus of our comments will mostly be on principles as opposed to the granular nature of the request.</p> <p>The Act controls contributions to registered political entities, and the regime of controls around contributions is well documented. The Act makes no reference to revenues derived from commercial transactions. Our view is that had Parliament intended to restrict or control such transactions the Act would have done so.</p>	<p>Elections Canada notes your comments and recognizes that this question is part of a broader issue. As indicated in the shaded box on page 1 of the opinion, unlike a guideline or an interpretation note, a written opinion does not provide a complete review of an issue; it only responds to a specific question asked and is limited to the factual situation submitted by the party.</p> <p>It should be noted that Elections Canada does recognize the ability of political entities to enter into commercial transactions. This position is reflected in our various handbooks and will be further examined in a forthcoming interpretation note on commercial transactions.</p>

Commercial transactions entered into by registered political entities can take many forms. For example, a registered political party may own a commercial office building and lease space not used by the party to a tenant. Such an arrangement would generally involve charging a tenant the fair market value of rent that a commercial landlord leasing comparable space in the market would charge. We agree that rent paid in excess of the fair market value would be considered a contribution to the party, and would likely be an ineligible contribution depending on the categorization of the tenant and the amount being paid. A registered political entity's auditor in the course of an annual audit is required to review non-contribution sources of revenue, assess whether or not each is a commercial transaction at fair market value, and render an opinion thereon. It would not be reasonable to force a registered political entity to lease unused office space at the party's out-of-pocket costs, which has no consideration for the cost of capital and the inherent risks commercial landlords face leasing office space.

We recognize from the perspective of Elections Canada that prohibiting commercial transactions makes it easier to regulate the contribution regime of registered political entities. That being said, given the current legislative framework, it is the responsibility of the registered political entity's auditor to determine whether or not revenue meets the requirements of the Act. Auditors, and in particular the auditors of the larger parties that are the ones more likely to have commercial transactions, are well positioned to determine whether a commercial transaction is undertaken at fair market value.

With respect to trade show and exhibit facilities at a party convention, the meeting and convention industry in North America has a well-established basis for booth pricing based on the size of the convention, target audience and other demographics. Companies such as GES (<http://www.gesexpo.ca/about/show-services>) can be engaged to provide sales kit support, providing convention organizers with a tool kit, including pricing, that allows for the marketing of trade show space. Consequently, a fair market value for the sale of trade show space at a convention can be established, and hence, based on this being a commercial trans-action, we would

<p>put forward that it is not regulated under the Act.</p> <p>As a minimum view, given the availability of fair market value for pricing trade show or exhibit facilities, the opinion sought by the Conservative Party of Canada is on an amount well below the fair market value and we believe would not offend the Act. More importantly, given the lack of a prohibition in the Act regarding commercial transactions, the sale of trade show or exhibit facilities could be charged at up to the industry fair market value.</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>Opinion (page 4)</b></p> <p>In the French version of the draft opinion, the first sentence in the box reads as follows: “Élections Canada est d’avis que les paiements acceptés pour couvrir <u>les coûts de l’équipement de salon professionnel ou d’exposition et son installation</u> ne constituent pas des contributions.” The corresponding sentence in the English version reads as follows: “Elections Canada’s opinion, based on the information provided, is that payments accepted to cover <u>costs of the trade show or exhibit facilities and setup</u> are not contributions.” It appears as if the costs covered by the French and English versions are not necessarily the same. For example, while the electricity costs seem to be covered in the English version, that is not necessarily the case in the French version. In addition, it is not clear that the two versions would cover all the costs that are targeted, such as the costs for any tangible benefit referred to in the third bullet in the box.</p> <p>The comment concerning the broadening of the scope of costs that should be covered is also valid with respect to the first and second sentences of the draft opinion under the subtitle “Fees to recover expenses,” in the “Analysis and Discussion” section.</p>	<p>Elections Canada understands the underlined phrase in both languages to include electricity costs.</p> <p>The text in the opinion has been updated to read:</p> <p>“Based on the information provided, Elections Canada’s opinion is that payments accepted to cover costs of the trade show or exhibit facilities, their setup, and any tangible benefit that exhibitors receive, are not contributions.”</p>

<p><b>Background – Analysis and discussion (pages 4 and 5)</b></p> <p>In its application for a written opinion, the party indicates that vendors will be able to sell their products or services to convention participants and that others will be promoting their products or services to potential clients. There is nothing in the application indicating that vendors will be providing free products or services to participants, which is a common practice at certain trade shows, aimed at creating traffic at exhibitors’ booths. The application for a written opinion does indicate that in organizing the trade show, the party hopes to create excitement among the convention attendees.</p> <p>To the extent that handing out free products or providing free services to convention participants helps create the desired excitement, it could, in some cases, constitute an ineligible non-monetary contribution accepted by the party, if the exhibitor is a person or an entity other than a Canadian citizen or a permanent resident of Canada.</p> <p>Obviously, the draft written opinion does not raise this issue, insofar as it is only a response to the questions asked by the party in its application for a written opinion. It may be useful to note here that, unlike a guideline or an interpretation note, a written opinion does not provide an exhaustive review of an issue; instead it only responds to the question asked, and is generally limited to the factual situation submitted by the party.</p>	<p>As indicated in the shaded box on page 1 of the opinion, and as acknowledged in your comment, unlike a guideline or an interpretation note, a written opinion does not provide a complete review of an issue; it only responds to a specific question asked and is limited to the factual situation submitted by the party.</p>
<p><b>Limitations on recoverable expenses (page 5, 2nd paragraph)</b></p> <p>In the draft opinion, reference is made to the fact that if a party wishes to charge exhibitors for attending the convention, it may only recover the costs of any tangible benefit received by observer pass holders. The draft opinion further states that any excess amount charged would be a contribution from an ineligible contributor. It should be noted, however, that this would be the case only if the contribution was made by a person or entity other than a Canadian citizen or permanent resident of Canada. In such a case, the ineligible contribution must be reimbursed in accordance with the provisions of the Act.</p>	<p>The text in the opinion has been updated to read:</p> <p>“In addition, if a party wishes to recover costs for providing exhibitors with observer passes to the convention, it may only recover the cost of the tangible benefit (such as food and refreshments). Any amount charged in excess of the actual cost of the tangible benefit would be subject to the controls on contributions in the CEA.”</p>

As mentioned in the draft opinion, subsection 364(8) of the Act provides that the payment by or on behalf of an individual of fees to attend a convention of a particular registered party is a contribution to that party. Such being the case, it seems clear that the payment of fees for an observer pass constitutes the payment of a fee to attend a convention. Given the wording of subsection 364(8), it would be useful to delineate the criteria pursuant to which a party will be authorized to recover the cost of the tangible benefit provided by the observer pass, including by explaining what would constitute a "tangible benefit" in that context.

The amount charged for the observer pass can only cover the cost of the tangible benefit received (such as food and refreshments), and not the ambiance or pleasure of attending the convention.

The following parties did not submit comments to Elections Canada on OGI 2016-06:

- Alliance of the North
- Animal Alliance Environment Voters Party of Canada
- Bloc Québécois
- Canada Party
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Forces et Démocratie
- 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