



## Written Opinions, Guidelines and Interpretation Notes

The Chief Electoral Officer, on application by the chief agent of a registered party, issues a written opinion on the application of any provision of the *Canada Elections Act* to an activity or practice that the registered party or a registered association, nomination contestant, candidate or leadership contestant of the registered party proposes to engage in. Before the issuance of a written opinion, registered federal political parties and the Commissioner of Canada Elections are consulted and invited to provide comments on a draft version.

If all the material facts have been submitted by an applicant for an opinion and they are accurate, the opinion issued by the Chief Electoral Officer is binding on the Chief Electoral Officer and the Commissioner with respect to the activity or practice of the registered party, registered association, nomination contestant, candidate or leadership contestant in question. It remains binding for as long as the material facts on which it was based remain substantially unchanged and the activity or practice is carried out substantially as proposed.

### Written Opinion: 2016-06 (July 2016)

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

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### Application presented

#### Original application

The following application from the chief agent of a registered party was received in accordance with section 16.2 of the *Canada Elections Act* ("CEA"):

"The Conservative Party of Canada kindly requests a written opinion, in terms of Section 16.2 of the Act, on the issue of charging for and accepting payment from individuals or entities (which could include vendors, individuals, corporations, associations and groups) to cover the **costs directly associated** with providing Trade Show / Exhibit Facilities and Setup at a Party Convention.

Is a federally registered political party permitted to charge for and accept payment from individuals or entities where such payment represents recovery by the registered party for the directly associated costs, as that term is defined below? Put another way, if a registered political party were to receive such a payment, which was limited to the directly associated costs, as that term is defined below, would it be correct to conclude that there is no contribution from the individual or entity (as defined by section I [*editor's note: section 2*] of the Act)?

The Conservative Party of Canada acknowledges past guidance provided by Elections Canada relating to charging for and accepting payment for advertising at Party Conventions, but seeks clarity specifically on the application of the Act on charging for and accepting payment to cover the **costs directly associated** with

providing Trade Show / Exhibit Facilities and Setup to individuals or entities at a Party Convention.

**Costs directly associated** with providing Trade Show / Exhibit Facilities and Setup are:

1. Direct costs of booths and full setup thereof,
2. Direct costs of providing power to booths,
3. 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)."

## Supplementary information

In order to provide a written opinion, Elections Canada requested more details and context from the party. In response, the following additional information<sup>1</sup> was provided.

### Nature of the activity

The trade show component of the convention provides a platform for members, vendors, and partners to exchange ideas and make connections. This will be an opportunity for businesses to promote their products and services, organizations to promote and inform delegates of their mandates, and for all participants to share their ideas with grassroots conservatives, volunteers, delegates, think-tank and business leaders, and the Conservative membership.

### Timing of the activity

The trade show will run simultaneously with other scheduled events during the Conservative Party of Canada National Convention (May 26 to 28, 2016).

Exhibit hours:

- Thursday, May 26, 2016 – 1:00 p.m. to 8:30 p.m.
- Friday, May 27, 2016 – 7:00 a.m. to 8:00 p.m.
- Saturday, May 28, 2016 – 7:00 a.m. to 5:30 p.m.

### Cost to the party for use of the trade show space

- Rental of ballroom foyer (trade show floor) **\$7,556.85**
- Booths **\$1,610.25**
  - \$75 x 19 booths = \$1,425 + 7% PST and 5% GST
  - 19 – 10' x 10' booth spaces to include the following:
    - 1 – 8'-high drapery back wall
    - 2 – 3'-high drapery sidewalls
    - 2 – fabric chairs
    - 1 – 6' x 2' skirted table

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<sup>1</sup> The information has been slightly rearranged for greater ease of reading.

- Drapery Booth Package (rental items include delivery, installation and dismantle labour and pickup)
- Booth power **\$1,775.55**
  - Each booth will be provided with 1 x 1500-watt electrical outlet at \$89 + 5% GST each
- Convention observer passes **\$5,780**
  - Each exhibitor is provided with one or two observer convention passes (as requested by vendor) for staff manning the booth. Thirty-four passes have been requested in total. They would have access to food and refreshments.
  - The tangible benefit calculated for the convention is \$170 per pass.

### **Incremental costs**

The costs related to the exhibitor space, booth setup and power are all incremental in nature, i.e. the party would not have incurred these additional costs if the exhibitors were not present at the convention.

### **Amount the party proposes to charge each participant for the use of space**

The amount the party proposes to charge is \$575 for exhibitor registration, plus \$170 per convention observer pass (max. 2):

- Exhibitor booth with one staff – \$745
- Exhibitor booth with two staff – \$915

### **Exhibitors and vendors**

Interested parties were invited to exhibit their products or services to convention attendees. They were not chosen, simply invited. Information was posted on the convention website and vendors supplying services to the party or electoral district associations that could add value and share ideas with other convention attendees were invited to attend. The idea is to create some excitement and areas of interest during the convention. Vendors have the opportunity to increase their revenue from the “Conservative Party” by exposing their products or services to delegates from all electoral district associations.

Vendors will have the opportunity to sell their products and services to convention participants. Vendors come from a variety of sectors. Some will be selling t-shirts, signs, battery packs, books, stickers, posters, promotional items, hats, jackets, etc. Some will also be promoting their services to potential clients such as speech writing, campaign management, mail services, IT services, creative services, digital services, etc. Some will be there to promote their organization’s mandate and share ideas and network.

The only goods or services that will be provided to the vendors by the party are those included in the fee structure.

## Opinion

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. This opinion is based on Elections Canada's understanding of this specific case, which is that all of the following conditions have been met:

- 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
- the party is charging no more than the actual expenses incurred as a direct incidence of the trade show
- no amount is being charged to the exhibitors for the value of attending the convention, other than the tangible benefit received (such as food)

## Legal Framework

The relevant provisions of the CEA in this context are as follows:

- subsection 2(1): A monetary contribution is an amount of money provided that is not repayable.
- subsection 363(1): Only individuals who are Canadian citizens or permanent residents can make political contributions.
- subsection 364(8): The payment of fees by or on behalf of an individual to attend an annual or biennial convention or leadership convention of a particular registered party is a contribution to that party.

## Background

When a regulated entity receives money, it is necessary to determine if all or part of the funds constitute a contribution, as the CEA prohibits contributions from entities other than individuals. A corporation or union is generally not permitted to provide money to a registered party, unless it is part of an arm's-length commercial transaction for goods or services from the party at fair market value.

The difference between the price charged by the party for the goods or services and the fair market value of the benefit received by the purchaser is a monetary contribution. If a purchaser pays no more than the party's incremental expense, the payment is not a contribution.

However, it is important to distinguish the above from Elections Canada's position on sponsorship and advertising. A transaction in which a political entity receives money in exchange for advertising or promotional opportunities directed at its members or supporters (e.g. at a political convention) is not recognized as a

commercial transaction. Any money received as part of such an arrangement is to be treated as a contribution that is subject to the contribution limit and eligibility rules.

## **Analysis and Discussion**

### **Fees to recover expenses**

Based on the material facts set out in the party's application, it is Elections Canada's opinion that in the case of a political convention with a trade show component, the party may recover expenses by charging fees to exhibitors for the use of space.

The case presented in this application differs from sponsorship and advertising in that the purchaser of the exhibit space receives a tangible benefit. The fair market value of the goods and services is the amount of the incremental expense to the party as a direct incidence of the trade show.

In the present case, the party is adding a tradeshow component to the annual convention and wishes to recover the incremental costs.

It is Elections Canada's understanding that:

- the amounts to be charged are not offsetting any expenses that the party would have incurred for the convention without the trade show
- the amounts to be charged are purely to recover costs for incremental expenses as a direct incidence of the trade show

Therefore, in this case, the party may charge exhibitors for the use of space, up to the actual incremental expenses incurred as a direct incidence of the trade show. These amounts are not contributions.

### **Limitations on recoverable expenses**

It is important to note that a party cannot offset costs that would have been incurred for the convention *irrespective* of the trade show. For example, a party may recover costs for the trade show rental space only if that room would not otherwise have been accessible for the convention.

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.

Similarly, parties should take care to charge facility and setup costs based on actual incremental expenses incurred by the party, not on estimates. Any amount charged in excess of the actual incremental expenses would be a monetary contribution and would be subject to the controls on contributions in the CEA.