



Written Opinions, Guidelines and Interpretation Notes

The Chief Electoral Officer issues guidelines and interpretation notes on the application of the *Canada Elections Act* to registered parties, registered associations, nomination contestants, candidates and leadership contestants, in accordance with section 16.1 of the Act. Before the issuance of any guideline or interpretation note, registered federal political parties and the Commissioner of Canada Elections are consulted and invited to provide comments on a draft version. Guidelines and interpretation notes provide guidance and promote consistency in the interpretation and application of the Act. However, they are for information only and do not displace the provisions of the Act.

Interpretation Note: 2017-06 – Draft (March 2017)

Contributions and Commercial Transactions

Issue

In the course of their activities, regulated political entities may enter into transactions that earn them money but are not contributions or transfers. These transactions are often commercial in nature: there is a willing buyer, a willing seller, and an agreed upon price for property or services. However, in some circumstances, transactions that have the hallmarks of a commercial transaction will still result in a contribution for the purposes of the *Canada Elections Act* (“CEA”). This interpretation note seeks to clarify when the rules on contributions apply in the context of transactions involving political entities.

Interpretation

- (1) As a general rule, Elections Canada considers the inflow of money to a political entity from another individual or group to be a contribution unless the political entity can show that it is not. Whether a transaction involving the inflow of money to a political entity results in a contribution will depend on the facts of the transaction.
- (2) If a transaction takes place outside a political context, so that it is purely commercial and the political entity is equivalent to any participant in the market, then no contribution is made unless the purchaser pays the political entity more than the fair market value of the transaction.
- (3) If a transaction takes place in a political context (for example, a party convention, a registered association meeting or a candidate’s fundraiser), then the transaction will generally result in a contribution. The contribution amount is the difference between the money given and the cost of any tangible benefit received.

Legal Framework

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

- Only individuals who are Canadian citizens or permanent residents can make political contributions. (s. 363(1))
- A monetary contribution is an amount of money provided that is not repayable. (s. 2(1))
- A non-monetary contribution is the commercial value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their commercial value. (s. 2(1))
- Commercial value, in relation to property or a service, means the lowest amount charged at the time that it was provided for the same kind and quantity of property or service or for the same usage of property or money, by
 - (a) the person who provided it, if the person is in the business of providing that property or service; or
 - (b) another person who provides that property or service on a commercial basis in the area where it was provided, if the person who provided the property or service is not in that business. (s. 2(1))
- 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. (s. 364(8))
- Contributions are subject to contribution limits. (s. 367(1))
- If a ticketed fundraising activity is held for the primary purpose of soliciting a monetary contribution through ticket sales, the amount of the contribution is the difference between the ticket price and the fair market value of the benefit the ticket entitles the bearer to receive. (s. 377)

Analysis and Discussion

Monetary contributions

Regulated political entities (registered parties, registered associations, candidates, leadership contestants and nomination contestants) may receive funds from various sources. Most funds are received as contributions from individuals, transfers from related political entities and, in some cases, reimbursements from public funds. But all entities may receive funds outside these categories.

It is important for a regulated political entity to distinguish between what is and what is not a contribution. This is because contributions are subject to limits in the CEA and must be properly reported. Notably, contributions from people or groups other than individuals who are Canadian citizens or permanent residents are prohibited.

Although most contributions are easy to recognize, further enquiry is sometimes needed to determine if a particular transaction is a contribution.

The CEA's definition of "monetary contribution" as a non-repayable amount of money is a good starting point, but it is not complete. Some non-repayable money that is provided to a political entity is still not a contribution, such as proceeds from the sale of assets at fair market value after a candidate's electoral campaign.

To fully understand the meaning of a monetary contribution, it is necessary to look at other sections of the CEA and the purposes behind regulating contributions.

Transactions where the political entity is the buyer

The definitions of “non-monetary contribution” and “commercial value” in the CEA can be a basis for understanding monetary contributions. Taken together, they indicate that the amount of a non-monetary contribution is the commercial value of the property or service provided to the political entity, less the price charged for the property or service.

As such, if a candidate buys election signs with a commercial value of \$1,000 for \$1,000, the seller is not making a contribution. This is a simple purchase of goods. If, however, the candidate receives the signs for free or for half price, then the seller has made a contribution (of \$1,000 or \$500, as the case may be).

A general rule, then, is that a transaction between a political entity and a seller is not a contribution if the political entity pays the commercial value for the property or service. The question is whether the same holds true when the political entity is the seller.

Transactions where the political entity is the seller

Pure commercial transactions

In some cases where money flows to the political entity in exchange for its property or services, the transaction is not a contribution.

For example:

- A registered association might earn interest on its bank account balance, like other individuals and organizations. This interest, assuming the association receives the market rate, is not a contribution from the bank.
- A candidate may sell unneeded assets, such as used computers after an election period. Any funds the candidate receives selling such assets at fair market value are not contributions.
- A party may sublease its original premises when it moves to a new location. If the sublease is at fair market value, then the income it earns on the sublease is not a contribution.

However, some transactions that have the hallmarks of commercial transactions in which the political entity receives funds do result in a contribution. Several examples of such transactions are expressly defined in the CEA, while others are found in Elections Canada’s written opinions, guidelines and interpretation notes.

Ticketed fundraisers

In the case of a ticketed fundraiser, under section 377 of the CEA, the individual’s contribution is the ticket price less the fair market value of the tangible benefit received in exchange for the ticket (food, drink, green fees for a golf tournament, etc.).

Some of the ticket price remains a contribution, despite the fact that the transaction has the hallmarks of a commercial transaction (that is, a person must buy a ticket at the full price to attend the event).

Conventions

Under subsection 364(8) of the CEA, participants who pay fees to attend a party convention or a leadership contest are making a contribution to the party. The *Political Financing Handbook for Registered Parties and Chief Agents* continues:

The contribution amount is the difference between the amount paid by the individual 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. The general expenses incurred by the party in holding the convention, such as room or audiovisual equipment rental, would not be deducted from the convention fee. (June 2016, 36)

In fact, Elections Canada's interpretation pre-dates the introduction of subsection 364(8) to the CEA. That subsection was added to provide greater certainty that the payment of convention fees is a contribution, even though it may have the hallmarks of a commercial transaction.

On the other hand, paying to rent trade show space at a convention will not result in a contribution under certain conditions. This is discussed in written opinion 2016-06, *Charging for Trade Show or Exhibit Facilities and Setup at a Party Convention*. Elections Canada concluded that no contribution is made if payments are accepted to cover no more than the actual incremental costs of the exhibit facilities, setup and other tangible benefits received by the purchaser. Furthermore, the payments may not offset any costs the party would have incurred for the convention without the trade show component.

Sponsorship and advertising

The political financing handbooks for various entities also address the situation where an organization seeks to "sponsor" a political entity's event or "advertise" with a political entity's supporters. The handbooks state that such transactions are subject to the contribution rules. This is despite the fact that such an arrangement may have the hallmarks of a commercial transaction.

Draws, auctions and the sale of branded goods

In the recently published *Fundraising* interpretation note (2016-01), there are several examples of transactions that are subject to the contribution rules even though they involve a political entity selling property or services. The reasons behind the interpretation are documented in that note and will be only briefly mentioned here.

For draws, the full purchase price of the ticket constitutes a contribution for the purposes of the CEA. A pro-rated portion of the prize value is not deducted from the ticket price because no value can be attached to the hope of winning.¹

¹ The Canada Revenue Agency (CRA) takes a different approach in the context of charitable tax receipts (see income tax folio [Split Receipting and Deemed Fair Market Value](#), November 2016). The CRA's view is that if a person is willing to pay \$X for a draw ticket, then that draw ticket is worth \$X to the person and no charitable or political donation has been made. In other words, the price paid is not a donation but a commercial transaction engaged in by the buyer.

For auctions, the *Fundraising* note considers two situations: the purchase of an item with an ascertainable market value, and the purchase of an item or service that is not available on a commercial basis. It states:

An individual who buys an auctioned property or service makes a contribution if the bid amount exceeds the fair market value of the property or service. The fair market value is generally the amount that would be paid for the property or service in a commercial market. ...

However, if the auctioned property or service is not available on a commercial basis, the entire amount of the winning bid is a contribution. (2016, 8)

As an example, Elections Canada has been asked in the past whether a fundraising auction for the party where people bid for a meeting with a political leader would result in a contribution. As stated in the *Fundraising* note, the answer is yes since the fair market value of such a benefit cannot be determined.² As well, such a payment is usually made to show partisan support and to buy influence or goodwill, which is the type of transaction that the CEA seeks to regulate through the contribution rules.

For the sale of branded goods, such as pens or t-shirts with the party logo, the *Fundraising* note states that any amount the purchaser pays in excess of the item's cost to the political entity is a contribution.

Parliament's intent: reducing undue influence and creating a level playing field

In making the above interpretations and giving meaning to the definition of "monetary contribution," Elections Canada considered what is generally accepted to be Parliament's intention in regulating contributions.

As a first objective, through transparent reporting as well as limits on who may make contributions and in what amount, Parliament seeks to reduce the undue influence that may arise through a person or entity purchasing influence or favours (in other words, buying goodwill). An additional purpose is to reduce the perception of such undue influence.

As a second objective, Parliament seeks to level the playing field between political entities by ensuring that not only those with a few wealthy donors are able to participate in the political process. To this end, the law limits the ability of individuals, corporations and unions to use their financial resources to assist political entities with whom they agree.

These intentions have a direct bearing on transactions that result in the inflow of money to a political entity. If a person or entity that is not permitted to make contributions (a corporation or non-Canadian, for example) were able to provide money to a political entity by sponsoring a party convention or buying an object at an "auction" for an enormous sum, the purposes of the contribution limits would be defeated. This is because such transactions, just as traditional contributions, can have the effect of buying goodwill or assisting a political entity.

As Parliament cannot have intended to allow contribution rules to be so easily bypassed, Elections Canada concludes that Parliament intended for such transactions to be captured by the broad definition of "monetary contribution."

² Again, the CRA's position differs (ibid). The CRA states that when a purchaser buys an auctioned item or service for which there is no clearly ascertainable value, the bid determines the value of the item. This is true regardless of who is holding the auction.

Conclusion

It is Elections Canada's interpretation that where money flows to a political entity from another individual or group, the inflow of money is a contribution unless the political entity can show that it is not.

If a transaction takes place outside the context of a political activity, so that it is purely commercial and the political entity is equivalent to any participant in the market, then no contribution is made unless the purchaser pays the political entity more than the fair market value of the transaction.

If a transaction takes place in a political context, such as at a convention or a fundraiser, then the transaction will generally result in a contribution. The contribution amount is the difference between the money given to the political entity and the cost of any tangible benefit received.

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