



## 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: 2018-06 – Draft (July 2018)

## *Online Contributions Made to Candidates Through the Registered Party*

### Issue

Most registered parties have set up payment processing systems on their websites that allow them to receive contributions by credit card. Some parties may wish to use these systems to process contributions on behalf of their candidates. This interpretation note clarifies under what conditions the *Canada Elections Act* (“CEA”) allows a registered party to collect online contributions on behalf of its candidates and disburse the funds to the candidates’ campaigns.

### Interpretation

If the following conditions are met, a registered party can collect (but not accept) online contributions on behalf of its candidates:

- (1) The contributions are not deposited into the registered party’s general bank account. They are held in a separate account opened for that sole purpose until they are disbursed to the intended recipients.
- (2) The amount disbursed to the candidate’s campaign is the contribution amount less the actual fees charged to the registered party by the payment processing company.
- (3) The registered party provides the official agents with all the necessary information to accept and report the contributions: the contributor’s full name and address, contribution amount, and date the contribution was made.
- (4) The registered party also provides the official agents with the relevant account statements from the payment processing company so that the official agent can submit them as supporting documents with the electoral campaign return.
- (5) The registered party is ready to provide Elections Canada with the statement of the bank account used to collect and disburse the contributions, to ensure that it is used for that sole purpose.
- (6) The candidate’s official agent is responsible for accepting the contributions and issuing receipts.
- (7) Contributions made in this way count toward the limit for candidates of a registered party.

## Legal Framework

The most directly relevant provisions of the CEA in the context of this interpretation note 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))
- No person or entity, other than an authorized agent, can accept contributions to a political entity or borrow money on its behalf. For registered parties, this is the chief agent or another registered agent; for candidates, it is the official agent. (ss. 426(3), 477.47(1))
- Any person who is authorized to accept contributions on behalf of a political entity must issue a receipt—of which the person must keep a copy—for each contribution of more than \$20 that they accept. (s. 366(1))
- Contributions are subject to contribution limits. (s. 367(1))
- No person or entity shall solicit or accept a contribution on behalf of a registered party, a registered association or a candidate if the person or entity makes a representation to the contributor or potential contributor that part or all of the contribution would be transferred to a person or entity other than the registered party or a candidate, a leadership contestant or an electoral district association. (s. 369(1))

## Analysis and Discussion

### Background

Political entities used to collect the majority of their contributions by way of cheques and money orders, but Canadians increasingly expect to conduct their transactions online. Almost all registered parties have payment processing systems on their websites that allow them to accept credit card contributions. For practical reasons, a registered party may wish to offer its online contribution system to candidates around election time.

There are many rules in the CEA about accepting, receipting and reporting contributions to promote transparency and guard against illegal money entering the system. In most cases, contributions go directly from an individual contributor to the authorized agent of the intended recipient, who accepts it and issues a receipt. But contributions can also reach an authorized agent indirectly, including through the mail or another intermediary.

### Joint instruments and individuals as intermediaries

Elections Canada has recognized that, in some situations, multiple individuals may provide a joint instrument to make a contribution or one individual may serve as an intermediary to deliver contributions for multiple contributors. Nothing in the CEA prohibits these practices, as long as the contributions are knowingly made by eligible contributors using their own funds, accepted and receipted to the original contributors by an authorized agent, and verifiable through supporting documents.

For example, cheques from a partnership can be accepted if the authorized agent receives the following information in writing: names and home addresses of each contributor, the voluntary nature of each contribution, who it is intended for and the amount of each contribution. The instructions must be signed and dated by each contributor.

A cheque from a joint bank account may also be accepted. The contribution is generally reported in the name of the person who signed the cheque. However, if the cheque is accompanied by written instructions signed by both account holders, indicating how the contribution should be allocated between them, the contributions are reported in accordance with that agreement.

As well, a person may collect contributions at a fundraising event for a political entity and provide them to an authorized agent. For reporting purposes, the person who collects the contributions must provide the authorized agent with a description of the event, the event date, the approximate number of attendees, and the total amount collected in anonymous contributions. The person also has to remit to the authorized agent any cheques or money orders collected for contributions over \$20, which cannot be made in cash or anonymously.

It is important to make the distinction between collecting contributions and accepting them. A monetary contribution is generally considered accepted when the political entity takes financial control of it, for example by depositing it into the political entity's bank account.<sup>1</sup> Only authorized agents can accept contributions under the CEA, which makes them responsible for not knowingly accepting excessive contributions, for returning or remitting ineligible contributions within prescribed timelines, and for not knowingly filing false or misleading contribution returns.

### **Registered parties and contributions to affiliated entities**

Political parties also sometimes act as intermediaries for contributions to their affiliated entities. There are currently two situations in which this occurs in an organized way: when they collect contributions on behalf of their electoral district associations and when they accept directed contributions to their leadership contestants. The different processes and legal bases are outlined below.

On several registered party websites, a contributor can choose to make an online contribution to a specific registered association rather than to the party itself. It is Elections Canada's understanding that, in such cases, the party collects the contributions in an account separate from its general bank account and then disburses the funds to the intended association. If the association has appointed the chief agent of the party as an electoral district agent, the party can be authorized to accept contributions into the association's bank account and issue receipts in the name of the association. The contributor names and addresses are then supplied to the association for reporting purposes.

Registered parties also serve as an intermediary for leadership contestants. Since leadership contests became subject to the CEA in 2014, it has specifically allowed registered parties to accept directed contributions and transfer them to leadership contestants. Parties are able to issue tax receipts for these directed contributions; by contrast, leadership contestants cannot issue tax receipts for contributions made directly to them.

Directed contributions are made and processed as follows:

- An individual makes a contribution to a registered party with a written request that all or part of it be transferred to a particular leadership contestant.
- The funds are deposited into the party's general bank account, and the party issues a tax receipt to the contributor for the full amount.
- The party transfers the funds to the contestant, along with a statement of the names and addresses of contributors, contribution amounts and transferred amounts. The party may retain a processing fee, which is considered a transfer from the leadership contestant.
- The full amount directed by the contributor counts toward the limit on contributions to leadership contestants.

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<sup>1</sup> The point at which a contribution is accepted may be different from the date a contribution is made or received, which is the date used for reporting purposes. See the contributions chapter of the political financing handbooks for more information.

## **Implications for registered parties and contributions to candidates**

The above sections demonstrate a common thread: when an individual makes a contribution to a political entity, an authorized agent of the intended recipient must be the one to accept the contribution and issue a receipt. The only exception is when registered parties accept directed contributions for leadership contestants, and the CEA sets out a specific regime allowing this situation.

In terms of candidates, the only authorized agent is the official agent. The CEA makes no provision for parties to accept directed contributions on their behalf. Several issues would arise if parties accepted contributions for their candidates:

- The CEA authorizes only the official agent to accept contributions to the candidate and issue receipts.
- Financial obligations in the CEA are predicated on the official agent being ultimately responsible for administering contributions. The official agent is subject to offences for failing to issue a receipt, failing to return an ineligible contribution and knowingly accepting an excessive contribution.
- If funds are sent from a party's general bank account to a candidate, the CEA categorizes the transaction as a transfer and not a contribution.

It is clear that a registered party cannot accept contributions to its candidates, or that if it did, those contributions would need to be reported as contributions to the party and transfers to the candidates. But this does not prevent the party from collecting contributions on their candidates' behalf under specific conditions that comply with the CEA's requirements.

## **Conclusion**

### **Guideline for collecting and disbursing online contributions to candidates**

If a registered party wishes to collect contributions for its candidates through its website, it must be acting only as an intermediary. It cannot accept the contributions into its general bank account or issue receipts, and it should never have financial decision-making control over the contribution. This means the party must collect the contributions in an account opened for that sole purpose and disburse to candidates the full amount of contributions, less the actual fees charged by the payment processing company for the transactions.

For the candidate's campaign to accept the contribution, the party has to provide the official agent with each contributor's full name and address, contribution amount, and date the contribution is made (the date the contributor initiated the transaction, unless it was post-dated). The party must also include the relevant account statements from the payment processing company so that the official agent can submit them as supporting documents with the electoral campaign return.

Finally, the party should be ready to provide Elections Canada with the statement of the bank account used to collect and disburse the contributions, to ensure that it is used for that sole purpose.

### **Implications for receipting and contribution limits**

A receipt has to be issued for all monetary contributions over \$20. Since the registered party is only acting as an intermediary when it collects contributions for its candidates, the receipt must be issued by the official agent of the candidate and not by an agent of the party.

Unlike contributions to registered parties, a contribution made to a candidate is only eligible for a tax receipt if it is made within a specified period. That period starts from the day on which the candidate's nomination has been confirmed by the returning officer and ends on the day that is one month after election day. Under Canada Revenue Agency rules, contributions received after election day must have been in transit on election day to be eligible for a tax receipt.

The contribution counts toward the limit for candidates of a registered party.

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