



Written Opinions, Guidelines and Interpretation Notes

Interpretation Note: 2018-06

Online Contributions Made to Candidates Through the Registered Party

Comments made during formal consultation period of July 18 to August 31, 2018

Comments received from the Green Party of Canada	Elections Canada response to the Green Party of Canada
To confirm that it is <i>one</i> bank account for all candidates, not a separate bank account for each candidate.	Yes, one bank account can be opened to collect contributions to all of the registered party's candidates. The note has been modified to clarify this point.
From your wording, it appears we can already set this up for EDAs. Would the campaign account need to be separated from the EDA account? (Again, assuming it's one account, not 338.)	As a best practice for recordkeeping, the registered party should collect contributions for its candidates and for its electoral district associations in two separate accounts. However, this is not a requirement.
How are bank/transaction fees reported by the Party and candidates? What are the options for handling these fees (treat as a non-monetary transfer? invoice the campaign to recover the fee? other?)	<p>The party is acting solely as an intermediary and operating from a bank account separate from its general account. As a result, it should not report any financial transactions related to collecting and disbursing contributions to its candidates. Let's say a contributor gives \$50, the processing fee is \$2 and the net deposit to the separate account is \$48. The party will send the candidate \$48 from that account, along with supporting documentation. The candidate will report a \$50 contribution and a \$2 other electoral campaign expense for the processing fee. No transfer is reported by either the party or the candidate.</p> <p>If the payment processing company charges fees other than per transaction, the party must reasonably allocate the expense among the candidates covered by its online service. If the candidate sends money to the party so that it can recover these fees, the candidate reports the fees as an other electoral campaign expense.</p>

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>The OGI correctly recognizes that the medium through which political organizations receive contributions has shifted from cheques and money orders to electronic credit card transactions, mirroring trends in Canadian society. The OGI also notes most registered parties have online payment processing tools on their websites and extending these to candidates would significantly reduce the burden of candidates to set up their own payment processing gateways and jump through the hurdles of establishing such a gateway, including ensuring compliance with the Payment Card Industry Data Security Standard.</p> <p>The Guideline as drafted is logical and on point, other than the need for a registered party to provide Elections Canada with the statement of the bank account used to collect and disburse the contributions. As we have remarked in past formal comments, this would be a function of the party's auditor to review, as determined by Parliament and codified in the <i>Canada Elections Act</i>.</p>	<p>The requirement to provide the bank statement has been deleted.</p>
<p>Some candidates choose to work more independently from their electoral district associations, and a personal ask by a candidate to contribute to their campaign may be more powerful if the campaign accepts the contribution directly as opposed to routing it through the electoral district association. One of the limitations of a candidate accepting contributions before the issuance of the writ and their registration as a candidate with the returning officer is that income tax receipts cannot be issued for the contribution; hence the need to use the electoral district association as their contribution vehicle.</p> <p>Existing guidance from Elections Canada is clear as to when a candidate would be deemed to have accepted a contribution. Where no guidance has been provided (either previously or in the OGI) is the length of time an intermediary, such as a delivery agent, can hold a contribution destined for a political entity. If it is determined an intermediary can only hold the contribution for a very short time, when considering the typical 36-day length of the electoral period, a candidate registering 10 or more days following the commencement of the electoral period, and perhaps a 5-day buffer for a political entity to transfer the contribution destined for the candidate, it would leave a very short window of approximately 21 days for a registered party to offer this service, which makes it not worthwhile.</p>	<p>There is no limit in the <i>Canada Elections Act</i> ("CEA") to the length of time that an intermediary can hold a contribution. In the case of online contributions, however, that time period is immaterial to the question of when a tax receipt can be issued.</p> <p>The political financing handbooks specify that the date a contribution is made is to be used as the date received for reporting and receipting purposes. Since October 2017, the handbooks have stated that a contribution made electronically (including by credit card) is made on the date the contributor initiates the transaction. If the transaction is post-dated, the contribution is made on the date specified by the contributor. This is when the contributor relinquishes the funds.</p> <p>Even if the authorized agent does not accept the contribution until a later date, the contribution is still made on the earlier date for receipting purposes.</p>

<p>Understanding there needs to be some outlying limit in which a registered party can hold funds as an intermediary for a candidate, we're putting forward a maximum period of three months. For a general election held on the prescribed October date, three months would permit candidates to use the summer to campaign and solicit contributions for holding by the registered party until sometime in September when the registered party could forward them to the candidate's official agent, who in turn would issue a receipt to the donor for income tax purposes. In a situation where there is a minority government, the three-month period would need to be extended, perhaps for the entire period between elections.</p>	
<p>As a final point, the new Portal being developed by Elections Canada should have the ability to allow the official agent to electronically upload contribution data provided by the registered party to facilitate the official agent's role in recording contributions and issuing receipts.</p>	<p>Elections Canada notes your comment. This functionality is currently part of the agency's plan for the portal.</p>
<p>Comments received from the Marxist-Leninist Party of Canada</p>	<p>Elections Canada response to the Marxist-Leninist Party of Canada</p>
<p>Interpretation Note: 2018-06 – Draft (July 2018), entitled <i>Online Contributions Made to Candidates Through the Registered Party</i> presents how registered political parties can process online contributions for their candidates in a manner compliant with the <i>Canada Elections Act</i> (CEA). The CEA does not specifically allow for this activity. Therefore, the Interpretation Note considers related provisions about contributions and provides a “how to.”</p> <p>In brief, the Interpretation Note states that the on-line contributions processed by the Party for its candidate(s) must be deposited into separate bank accounts, and then the contributions (minus the processing fees) are transmitted to the official agent of the candidate, who retains all legal liability for accepting and receipting the contributions, ensuring contribution limits are not exceeded, submitting documents showing how the contributions were processed, and so on. Payment processing charges paid by the Party are treated as a transfer-in-kind to the candidate. The contributions are not eligible for tax receipts, if they are received on-line by the Party before official confirmation of the candidate or more than one month after election day. The candidate's official agent could issue tax receipts for post-dated contributions.</p>	<p>Elections Canada notes your comment. To clarify, this OGI does not open new activities to registered parties. Its intent is to emphasize the steps that parties must take to remain in compliance with the CEA in the areas of handling contributions and issuing tax receipts. It is a transparent way to provide guidance to all parties on how to follow the law.</p> <p>The issue of fundraising and election expenses is a separate topic. Although it is not discussed in this note, as in all situations, registered parties must remain aware of how their activities to promote themselves and their candidates align with the different spending limits as well as restrictions on the use of voters lists.</p>

By way of analogy, Elections Canada compares the role of the Party in this instance with that of an individual who collects anonymous contributions for a party at an event, or during door-to-door campaigning, and transmits them to the Party with details for the official agent to accept them. The individual is not receiving the contributions, but merely transmitting them.

How the Issue is Posed

Having studied the matter, the Marxist-Leninist Party of Canada (MLPC) thinks that several important considerations are ignored in the Interpretation Note, perhaps because of the way the issue has been posed.

Elections Canada presents “the issue” at hand as follows: “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 wish sounds very innocuous. It is merely to take advantage of the Party’s on-line payment infrastructure. Since it is not difficult for a candidate to establish an on-line payment processing system, it is difficult to accept this wish at face value. In addition, the Interpretation Note itself references the “Political Financing Handbook for Candidates and Official Agents (EC 20155) – February 2018”, which explains how an Electoral District Association (EDA) can process on-line contributions for their candidate.

What Problem is Actually Being Addressed?

We think the issue relates to a political party putting its fund-raising machinery at the disposal of its candidates, *not merely its payment processing infrastructure*. This is not a minor difference. Clearly, contributions cannot be processed unless they have been solicited. What happens to the expenditures for solicitation? If contributions are solicited by direct mail, the cost of producing the mail-outs counts towards the election expense limits. Where is the expense involved in soliciting on-line expenditures accounted for?

A research paper presented to the 2009 Annual Meeting of the Canadian Political Science Association addressed the issue of “Election Finance Law and Party Centralization in Canada.” Of significance to the matter at hand, the authors state that, “the national

wing of each party enjoys ... a natural advantage over its local entities in fundraising.” It explains:

“To solicit a large number of relatively small contributions from individuals in contemporary Canada requires the use of practices and technologies such as direct mail, telephone solicitation and Internet fundraising. These techniques succeed when the content of appeals is carefully crafted and personalized; the fixed costs of establishing the infrastructure and appeal are high, so they are feasible only as large-scale undertakings. Local associations run by volunteers trying to reach supporters in a geographically circumscribed area face significant barriers to using these kinds of techniques.”¹

And it certainly is the case that high costs are involved. In 2017, the Conservative Party of Canada reported contributions of \$18.8 million and fundraising expenses of \$7.1 million. The Liberal Party of Canada raised \$14 million and spent \$2.7 million on fundraising. At the August 2018 Conservative Party Policy Convention in Halifax, Conservative Fund Chair Irving Gerstein boasted that the use of the Party’s national elector database was “key” to its ability to raise funds.

A Party that fields candidates across the country has access to the entire National Electors List. Independent candidates, and Party candidates, for that matter, do not have access to the National List. We understand that it is completely legal to use the list of electors for fundraising purposes, but the unfairness of the situation needs to be taken into consideration.

In the last Elections Canada interpretation note on the subject of “Pre-existing Web Content of Registered Parties in an Election” (2018-04 – Draft (June 2018)), Elections Canada pointed out that the objective of the CEA is “primarily to ensure a level playing field in an election.” Considerations were elaborated from the standpoint of how pre-existing web content impacts fairness.

The MLPC thinks the same considerations are missing in examining the import of political parties being allowed to “process” contributions for candidates.

Considerations Related to “a Level Playing Field”

It seems to us that a level playing field is affected if certain political

¹ *Election Finance Law and Party Centralization in Canada*, Colleto, David; Jansen, Harold; Young, Lisa.

parties can use their multi-million dollar national fundraising infrastructure to advantage their candidates and the candidate does not have to account for these expenses beyond the “processing fee” and a share of the Party’s website if the candidate is promoted during the official election campaign period. It makes a mockery of the idea that all citizens solicit political and financial support for their candidacy on an equal footing.

It makes a mockery of a law that professes to have one set of rules for candidates to compete and another set of rules for party competition. The fact that this distinction has long been mocked does not make this new development any more acceptable. It adds to the way that independent candidates are disadvantaged and discriminated against on the grounds that the purpose of an election is to give rise to a Party government and therefore Parties and Party Candidates should be favoured by law. While it is frequently said that independent candidates are not “viable,” the features of the election law which favour the viability of party candidates over independent candidates, and the parties with representation in the House of Commons over those without, is not given equal airing.

A case in point is the impact of an election financing system that uses previous electoral performance to justify the according of privilege in the next election. Following the 2015 federal election, political parties that met the vote-threshold requirement received more than \$60 million in election expense reimbursements, while their candidates received \$42 million.

Transferring of Expenses

Self-servingly, beginning in January 2015, the political parties in the House of Commons all agreed to remove fundraising expenses from the definition of election expenses that count towards spending limits. The Liberal Party of Canada has chosen not to rescind this provision, introduced by the Conservative Party’s *Fair Elections Act*. When the *Fair Elections Act* was enacted, former Chief Electoral Officer Mayrand and others opposed a provision that would have exempted the cost of telephone calls to anybody who had contributed more than \$20 to a political party in the past from election expenses. The Conservatives were forced to remove the provision. Mr. Mayrand noted at the time that the provision would “compromise the level playing field” between the political parties. “It takes little imagination to

understand that other partisan communications can be dressed up as fundraisers,” he said, adding it would also be “difficult if not impossible” to enforce.

Notwithstanding the exemption of fundraising expenses, the current law stipulates that fundraising promotional materials do count towards election expense limits. The Interpretation Note should explain how the expenses related to the fundraising apparatus of national parties should be allocated to candidates, beyond merely capturing the cost of processing payments. To do otherwise introduces the possibilities for unlimited promotion of candidates by their political parties in the name of “fundraising” and further distorts the “level playing field.”

Elections Canada has recognized some aspects of the unfair treatment of independent candidates in the *Canada Elections Act* and has proposed their remediation. In its recommendation to Parliament following the 2015 election, it proposed that independent candidates should be entitled to have excess funds from their election campaigns retained on their behalf for the next election, rather losing the funds to the Receiver General.

Within the limits of an electoral law devised to advantage the so-called major political parties, we reiterate our position that Elections Canada should attempt to curtail, rather than expand, the exercise of privilege and power in the electoral process. We think that the green light given to political parties to “process” contributions to candidates facilitates the exercise of privilege and power.

On a Related Matter

Increasingly, as political parties with significant financial resources try to maneuver within the limits of the law, which is supposed to create an even playing field, “how-to’s” are being constructed. The court case regarding the Conservative Party’s in-and-out transactions is a case in point. How a political party can *legally* exceed spending limits through the sharing of expenses with candidates has now been established.

In this light, another issue related to the matter at hand came up at Conservative Party Policy Convention. Starting in 2019, candidates of the Conservative Party will be required to hand over 50 percent of their reimbursements to the Conservative Fund. By way of explaining this new policy, which was met with some opposition by delegates, Gerstein explained what he referred to as “the six-million-dollar reason.”

<p>Gerstein stated that the Party must deal with a loss of \$20 million, that is, the per-vote subsidy it received in the last electoral cycle. He said that for the Conservative Fund to stay ahead of the political financing game and come out of the 2019 election debt free and with cash in the bank, it “must increase the proportion [of revenues] that comes from government funding.” He went on to explain that the Party needs to achieve “qualifying non-profit organization” status so that it can obtain an estimated \$6 million GST/HST refund. To qualify, 40 percent of the entity’s funding must come from government sources. Qualifying entities are entitled to receive a refund of 50 percent of their GST/HST outputs.</p> <p>Apparently, the plan is to have candidate election expense reimbursements that are transferred to the Party treated not as a “transfer” from a candidate, but as a government reimbursement to the Party. This is an arguable proposition, but to ensure that Conservative candidates maximize their spending, and, consequently, their potential public reimbursements, fundraising for Conservative candidates takes on significance beyond the normal.</p> <p>In conclusion, some of the issues pertaining to ensuring a level playing field are beyond the purview of Elections Canada, given the privileges accorded to political parties and their candidates by the CEA. Within these legal limitations, the MLPC believes it is the duty of Elections Canada to ensure that, wherever possible, the election law is not interpreted in a manner that expands the space for the exercise of power and privilege in the electoral process.</p>	
<p>Comments received from the Commissioner of Canada Elections</p>	<p>Elections Canada response to the Commissioner of Canada Elections</p>
<p>In bullet (7), it would be advisable to expressly mention that the <i>whole amount</i> of the contribution—including the fees charged to the registered party by the payment processing company—counts toward the limit on total contributions that an eligible donor is allowed to make to all the local regulated political entities of a registered party (i.e., to its candidates, nomination contestants, and registered associations).</p>	<p>The bullet has been modified as suggested.</p>

The following parties did not submit comments to Elections Canada regarding OGI 2018-06:

- Alliance of the North
- Animal Protection Party of Canada
- Bloc Québécois
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- New Democratic Party
- Progressive Canadian Party
- Rhinoceros Party