



## Written Opinions, Guidelines and Interpretation Notes

### Guideline: 2018-07

### Political Financing Handbook for Nomination Contestants and Financial Agents

### Comments made during formal consultation period of October 22 to November 5, 2018

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>The OGI is well put together and is the most comprehensive handbook published to date.</p> <p>We provide a number of points for consideration:</p> <p>On page 13 it states a dissolved corporation is ineligible to be a financial agent, yet a corporation is not eligible in any case. We believe this reference should be removed.</p>	<p>The reference has been deleted as suggested.</p>
<p>On page 27 regarding the date a contribution is made using an electronic gateway, we note the date of acceptance of the contribution is the date the contributor initiates the transaction (or the post-dated date if post-dated), which reflects the new guidance from OGI 2018-06, <i>Online Contributions Made to Candidates Through the Registered Party</i>.</p>	<p>For greater certainty, please note that the date a contribution is made (i.e. the date used for reporting and receipting purposes) may differ from the date a contribution is accepted by the authorized agent. Elections Canada's longstanding position is that, as a general rule, a contribution is accepted when the funds are available for use by the agent of the intended recipient, irrespective of how the contribution was made. The guidance on electronic transactions was first introduced in OGI 2017-01.</p>
<p>Pages 42–45 reflect partially the guidance in OGI 2018-08, <i>Regulated Fundraising Events</i>, which is currently in pre-consultation only. As previously discussed and agreed, the Party will provide its comments relating to pages 42–45 in our response to OGI 2018-08 following the commencement of the formal consultation period of OGI 2018-08 on November 9, 2018.</p> <p>On page 47 in the section Purchaser's contribution, last paragraph, the <i>Canada Elections Act</i> treatment of auctioned properties is stated but unlike other Handbooks the CRA position (which is different) is not stated. Recognizing that contributions to nomination contestants are not eligible for</p>	<p>The following text has been added in the section on auctions, as suggested, as well as in the section on draws:</p> <p>"Under Canada Revenue Agency rules, this type of contribution is not eligible for a tax receipt because the value of the advantage cannot be determined. While a nomination contestant's campaign cannot issue tax receipts in any case, this is useful to note for agents who later work on a candidate's campaign."</p>

<p>income tax receipts anyways, perhaps wording along the lines of “While contributions to nomination contestants are not eligible for an income tax receipt, the treatment of auction contributions under Canada Revenue Agency rules is different as they are not eligible for a tax receipt because the value of the advantage cannot be determined.” could be added. This might highlight the difference in treatment for a financial agent that transitions to become an official agent.</p>	
<p>On page 57 in the section Websites and web content, and more specifically pre-existing content, the guidance provided is not worded entirely the same as that in OGI 2018-04 <i>Pre-existing Web Content of Registered Parties in an Election</i>. This OGI states “If a pre-existing website or web content stays online during the contest period for the purpose of the campaign.....”, with presumably the operative word being purpose. However, given the lack of reference to OGI 2018-04 and no examples provided, perhaps the word “purpose” could be underlined, or alternatively, reference could be made to OGI 2018-04.</p>	<p>The Websites and web content section has been expanded to clarify how the purpose test for pre-existing web content, as outlined for registered parties in OGI 2018-04, applies to a nomination contestant’s campaign. A reference to the OGI has also been added.</p> <p>There is one notable difference for contestants versus registered parties: expenses for all content on a contestant’s campaign website will count toward the expenses limit, regardless of when the content was posted. This is because the contestant’s website exists for the purpose of their campaign—it does not serve an ongoing purpose in the same way that a registered party’s website does.</p>
<p>Recognizing that currently no handbook has a section discussing offences under the <i>Canada Elections Act</i> nor the related fine provisions, and that such material is not easily followed in the <i>Act</i> itself, perhaps consideration can be made to include a factual table to provide a financial agent with the potential hazards of not adequately discharging their obligations by unintended actions.</p>	<p>Elections Canada will consult with the Commissioner of Canada Elections on how this information may be provided in future guidance.</p>
<p><b>Comments received from the Marxist-Leninist Party of Canada</b></p>	<p><b>Elections Canada response to the Marxist-Leninist Party of Canada</b></p>
<p>The Marxist-Leninist Party of Canada has reviewed the revised handbook for nomination contestants and interpretation note OGI 2018-08, <i>Regulated Fundraising Events</i>. We have no comments on the drafts; they present clear guidelines on the nomination of candidate contestants and their financial business, along with fundraising events for parties with elected members, consistent with recent changes to the <i>Canada Elections Act</i>.</p>	<p>Elections Canada notes your comment.</p>

Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections
<p><b>Note, p. 7</b></p> <p>Since in the French version of the document, the term “particulier” is defined at the beginning of the document and has a very specific meaning, delineating who is legally authorized to contribute, this should be taken into account in the rest of the French document (see p. 18, third to fifth bullet points under “A ne pas faire”; p. 22, under “Qui peut apporter une contribution?”; p. 29, in the fifth bullet point under “Contributions inadmissibles.” The term “individu” could be used instead of “particulier” which, by definition, excludes non-Canadians and non-permanent residents of Canada.</p> <p>For the same reason, the term “physical person” could be used instead of “individual” in the corresponding parts of the English version of the document, i.e., in the third to fifth bullet points under “Don’t”, at p. 18; under “Who can contribute?”, at p. 22; and in the fifth bullet point under “Ineligible contributions”, at p. 28.</p>	<p>The term “individual” has been replaced with “person” in the Ineligible contributions section, where the use of “individual” was inaccurate (i.e. “contributions from <i>a person</i> who is not a Canadian citizen or a permanent resident.”). The equivalent change has been made in the French. In other sections, while it is redundant to say “an individual who is a Canadian citizen or permanent resident,” this redundancy is sometimes useful to reinforce who is eligible to contribute.</p>
<p><b>“Who is eligible to volunteer?”, p. 23</b></p> <p>For more clarity in the French version of the document, the words “un donateur” should be inserted between “être” and “admissible” in the third sentence of the second paragraph, which would read as follows: “Cette personne doit être <i>un donateur</i> admissible aux termes des règles concernant les contributions.” The corresponding sentence in the English document can be modified by adding the following italicized words: “the person would have to be <i>an eligible donor</i> under the contribution rules.”</p>	<p>The text has been modified as suggested.</p>

<p><b>Use of the term “improper disposal of surplus”, pp. 24 and 25</b></p> <p>In the English version of the document, in the third and second paragraphs respectively under “Paying volunteers for part of their work” and “Nominal gifts and thank-you parties” the expression “improper disposal of surplus” presupposes that a surplus exists, which may not necessarily be the case in all situations. Reimbursement of improperly used campaign funds may be demanded to pay unpaid claims, even if no surplus exists at the end. The expression “inappropriate use of campaign funds” used in the last paragraph of p. 59 and in the second paragraph of p. 68 under the subtitle “Compensation paid to the contestant” would be suitable here as well.</p> <p>Similarly, in the corresponding parts of the French version of the document (third and second paragraphs, respectively under “Rémunérer une partie du travail des bénévoles” and “Cadeaux symboliques et fêtes de remerciement”), the term “disposition inadéquate de l’excédent” could be replaced with “utilisation inappropriée des fonds de la campagne” used in the last paragraph at p. 61 and in the second paragraph under “Rémunération du candidat à l’investiture” at p. 70 of the French version.</p>	<p>As suggested, the phrase “it is an improper disposal of surplus” has been replaced with “it may be considered an inappropriate use of campaign funds that would need to be returned” in those sections.</p>
<p><b>Returned portion of advances, p. 38</b></p> <p>In the description, it is stated that if the campaign advanced funds for petty cash, travel or other expenses, the unused returned portions must be considered to be other inflows. To maintain balanced accounting, it should also be indicated that these same amounts must be reported as other campaign expenses in addition to the expenses that were actually paid out of petty cash.</p>	<p>Elections Canada agrees with the reporting method described in your comment. There are, however, multiple acceptable ways to account for petty cash advances, and this level of accounting detail is not typically included in the handbooks.</p>
<p><b>What is a regulated fundraising event? Excluded events, Note, p. 42</b></p> <p>Bullet points 1 and 3 of the definition of “regulated fundraising event” are not entirely consistent with the definition set out in the Act.</p> <p>Bullet point 1 refers only to an event organized to financially benefit a registered party <i>with a seat</i> in the House of Commons or one of its affiliated entities. To be complete, it should include, as in the flowchart on p. 43, events organized after the dissolution of Parliament for the benefit of a registered party represented in the House of Commons on the day of dissolution or for the benefit of one of that party’s affiliated entities.</p> <p>Regarding the bullet point 3, in the French version of the definition, it refers to an event “pour laquelle au moins <i>un invité a payé un montant</i> ou apporté une contribution de plus de 200 \$ dans le but d’y participer ou qu’un <i>invité y</i></p>	<p>The first bullet has been modified as suggested. In the remainder of the regulated events section, the English and French have both been modified to avoid the word “guest.” The French version also now correctly refers to a leadership debate rather than a leaders debate.</p> <p>An event for which a person pays \$200 with no portion being a contribution is listed under excluded events. This detail is not mentioned in the main criteria for a regulated event because, in the majority of cases, a ticketed fundraiser will generate at least a minimal contribution.</p>

<p>participe.” This wording is not very well fitted. First of all, it is not sufficient for a person to have simply paid (including a contribution) or contributed over \$200 for the event to become a regulated event. The payment of the amount or the contribution needs to have also been a prerequisite for a <i>person</i> to attend the event. Clearly, it is not a requirement that the person who pays or contributes be <i>invited</i> to the event. Instead of the word <i>invité</i> [guest], the word <i>personne</i> [person] could be used—indeed, that is the word used by Parliament.</p> <p>Furthermore, in the French version of the document, under “Activités exclues,” the first bullet point should refer to “débat des candidats à la direction” instead of “débat des chefs.” The corresponding term in the English version should be “Leadership contestants’ debate.”</p> <p>Finally, in both the French and English versions of the document, with respect to the payment of over \$200, it should be specified that at least a portion of that amount needs to be a contribution.</p> <p>To avoid confusion or misunderstanding, it would be better to use, as much as possible, the terminology actually used by Parliament.</p>	
<p><b>Diagram 3: Regulated fundraising events, p. 43</b></p> <p>The statement in the first diamond starting at the top does not seem to properly express what is intended to be said. The wording used should reflect the fact that the threshold of more than \$200 also applies to both the contribution and the amount paid and at least a portion of the amount paid must be a contribution. Also, according to the wording of the Act, the contribution or payment of the amount is not a condition of assistance for the event only for the donor or the payer themselves. It may also be a condition for someone else’s (other than the donor or payer) attending the event. The text in the diamond could be changed as follows: “Was a person required to make a contribution or pay a total amount of more than \$200 to participate in the event or so that another person could attend the event?”</p> <p>In the third diamond, in the French version of the document, the preposition “à” should be added to the beginning of the first question, which should read as follows: “À la date de l’activité, le parti avait-il au moins un député?”</p>	<p>An event for which a person pays \$200 with no portion being a contribution is covered in the flowchart under excluded events. In line with your suggestion, the words “or to have another person attend” have been added to the first diamond. The French has also been corrected as suggested.</p>

<p><b>Nomination contestant’s role in providing information about a regulated fundraising event, p. 44</b></p> <p>The first paragraph should be changed to take into account the fact that the requirements concerning the provision of information and publication apply respectively to organizers and to the party. Moreover, we should clarify that, in the event that these requirements are not met, it is the recipient of the contributions (who is not necessarily the party) who must return or remit them.</p> <p>In the sentence immediately above the Note, in the middle of the page, it is stated that the organizers of the event must provide the information to the party before the <i>deadline</i>, without providing more detail. Although the Act does not stipulate a precise deadline for providing the information to the party, it does stipulate that each organizer of an event not organized by the party must provide to the latter the information concerning the event in <i>time for</i> the party to publish it or for its chief agent to submit a report in accordance with the Act. As a result, it should be clearly indicated that organizers must demonstrate due diligence and provide the information in time for the party to publish it during the fixed period or for its chief agent to submit a report by the required deadline.</p>	<p>The first paragraph provides a general statement that the party has to follow disclosure rules for a regulated event. Organizers are not included in this sentence because they are not always obliged to provide information (i.e. if the registered party organized any part of the event). Details are provided in the remainder of the section.</p> <p>The sentence has been modified to read: “Information must be provided <i>far enough in advance of</i> the disclosure deadline <i>that</i> the party <i>has time to publish or report on it.</i>” Elections Canada anticipates that parties will set their own internal deadlines for receiving information from organizers and share it with them.</p>
<p><b>Below the box summarizing the obligations of organizers of events held during a general election, p. 45</b></p> <p>It would be preferable to import and insert right after the box summarizing organizers’ obligations, boxes summarizing the party’s obligations for an event held outside a general election and during a general election (including the note that goes with the first box but excluding the one that goes with the second box) found on p. 4 of the draft OGI 2018-08. It would be very useful to explain in this OGI not only the obligations of event organizers but also those of registered parties. Indeed, it is important that organizers (who may be candidates, leadership contestants or nomination contestants) also know the requirements that apply to registered parties so that they realize the importance of providing the registered parties with the information they need to fulfill their obligations.</p> <p>In addition, the sentence immediately following the box that is currently on page 45 does not seem to adequately reflect the wording of the Act neither for the people concerned nor for the type of information not to be provided or not to be included in a report. Minors will have to be added to the list of people concerned. Furthermore, it is not only the names of the persons concerned that must not be disclosed. The prohibition also covers address information (municipality of residence or its equivalent, province and postal code) for the people concerned.</p>	<p>The obligations of the registered parties do appear in the draft handbook, though they are presented from the perspective of the organizer so that it is tailored to the readers’ needs. For example, the party’s disclosure deadlines are already outlined in the section “Information to provide outside and during a general election” and would be duplicated if the tables from 2018-08 were imported.</p> <p>The exclusion of minors from the list of attendees is mentioned in the table. To reinforce their exception, the note under the table has been modified to read: “<i>In addition to minors</i>, attendees are not listed in the reports if they attended solely for the following purposes: ...”. We believe the wording is sufficiently clear that no contact information is to be provided for these attendees.</p>

<p><b>Returning contributions for non-compliance with disclosure rules, p. 45</b></p> <p>The indication to the effect that, in case of non-compliance, the political entity that received the contributions must return them to the donor <i>or</i> remit them to Elections Canada suggests that the political entity can freely decide how to dispose of the contributions. This is not the case. Also, the deadline for returning or remitting the contributions is not mentioned. Pursuant to the Act, it would be better to indicate that the contributions must be disposed of within <i>30 days</i> following the day on which the authorized agent of the political entity become aware of the non-compliance with the relevant requirements of the Act. On the other hand, with respect to the destination of the contributions involved, it would be worth noting that, should the contributions have not been used, they ought to be returned to the donor. However, if they had been used, or, although they had not been used, if it is impossible to return them to the donor, they ought to be remitted to Elections Canada.</p> <p>Moreover, as long as it appears that the scope of the expression “disclosure rules” is limited only to requirements applicable to the party, it is suggested that the title be modified by replacing that expression with the expression “relevant requirements,” which would cover requirements applicable to organizers as well as those applicable to the party. Under the Act, non-compliance with any of these requirements results in returning or remitting the contributions received.</p> <p>In addition, an organizer providing the party with prohibited information and a party including such information in a report should be added to the list of situations requiring contributions to be returned to the donor or to be remitted to Elections Canada.</p>	<p>To avoid repetition, this section refers the reader to Chapter 2, Contributions, for more information. In order to emphasize the importance of referring to that chapter, the referral has been amended to read: “See <b>Returning ineligible or non-compliant contributions</b> in Chapter 2, <b>Contributions</b>, for information on the process that needs to be followed when returning contributions.”</p> <p>As suggested, the disclosure of information on excepted attendees has been added to the list of situations that may require contributions to be returned or remitted.</p>
<p><b>Typical fundraising activities, p. 46</b></p> <p>In the second sentence of the second paragraph under “Contributions,” it is stated that, if a purchaser buys multiple items, each unit sold is treated as a separate contribution from a separate contributor. In reality, it is not the purchased branded good that is the contribution, but the <i>price paid</i> for the purchase of the good.</p>	<p>As the method of calculating the contribution is fully described in the first paragraph of the section, we believe it is acceptable to use a short form in the next paragraph. The term “price paid” cannot be substituted because the contribution is the price paid less the cost of the item.</p>
<p><b>Donor’s contribution, p. 47</b></p> <p>In the French version of the document, in the Note, between “entreprise” and “ce bien ou service”, the words “qui fournit” should be inserted. In the English version, the second line of the Note could be changed as follows: “...individual not in <i>the business of providing the good or service in question.</i>”</p>	<p>The English and French have been modified as suggested.</p>

<p><b>What are nomination campaign expenses?, p. 51</b></p> <p>At the end of the first paragraph, for further clarification, the words “regardless of when the expense was incurred” could be inserted after a comma.</p>	<p>The text has been added as suggested.</p>
<p><b>What qualifies as a nomination campaign expense? p. 52</b></p> <p>In the third bullet point from the top of the page, “donated property and services” should be replaced by “property and services donated to the campaign.”</p> <p>In the fourth bullet point, after “services” and before the opening parenthesis, “received by the campaign” should be added.</p>	<p>The current wording is slightly simpler and the fact of the donation or service being provided to the campaign is reasonably implied.</p>
<p><b>Assets, p. 58</b></p> <p>In the first sentence of the third paragraph it is stated that assets might be received during the contest period in the form of a contribution and that, in that case, the asset is a non-monetary contribution. This sentence should be reworded. A contribution, whether or not it is monetary, may be received before or after the contest period. The time of receipt of the contribution is not relevant as to whether there is a contribution or not. However, the time of use of the good or service (during, before or after the contest) determines whether or not it is a nomination contest expense. As a result, a non-monetary contribution received outside of the contest period but involving a good or service used during the contest constitutes a nomination contest expense.</p> <p>Furthermore, the third sentence of the third paragraph refers to the purchase price, while the asset was not purchased but received as a non-monetary contribution. Therefore, it should refer to “the commercial value” of the asset, instead of its purchase price.</p> <p>In the French version of the document, at the end of the third paragraph, “dépense de course à l’investiture” should be “dépense de campagne d’investiture.”</p> <p>The second Note could be more complete and indicate that the assets received by the campaign cannot be, as such, transferred.</p>	<p>The paragraph has been corrected to read as follows: “Assets might be received in the form of a contribution from an individual. In that case, the commercial value of the asset is a non-monetary contribution. If the asset was used during the contest period, the nomination contest expense is the lower of the commercial value of renting a similar asset for the same period or the purchase price. The remaining amount, if any, is an other nomination campaign expense.”</p> <p>In the third paragraph, it is understood that the purchase price is theoretical since no purchase has taken place. This is ultimately the equivalent of commercial value.</p> <p>The French has been corrected as suggested.</p> <p>The following text was added in the note: “The assets themselves cannot be transferred.”</p>
<p><b>Rental of a campaign office, p. 59</b></p> <p>In the French version of the document, at the end of the first line of the second paragraph under “exemple,” “premiers” should be “derniers”. In fact, it is the last 17 days in March that are part of the contest period. This remark is also valid for example one on page 70 of the French document.</p>	<p>The French has been corrected as suggested.</p>

**Interest on loans before and after the contest period, p. 68**

It is clearly stated that the interest accrued on loans *before and after the contest period* is another nomination campaign expense. This position could cause one to conclude, on the contrary, that Elections Canada is of the opinion that interest accrued on loans during the contest period constitutes a nomination contest expense. However, on page 33, under “Loan interest” it is stated generally that interest incurred on loans whether paid or accrued is a *nomination campaign expense*, without any other qualification. Therefore, it is important to clarify the nature of interests accrued during the contest period.

The following text has been added in Chapter 3, under Loan interest: “Interest incurred during the contest period is a nomination contest expense, while interest incurred before or after the contest period is an other nomination campaign expense.”

The following parties did not submit comments to Elections Canada regarding OGI 2018-07:

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