



## 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: 2018-09 (October 2019)

## *Unpaid Claims and Reporting Requirements*

### Issue

Registered parties and associations have long been required to report certain unpaid claims in their financial returns, but changes to the *Canada Elections Act* (“CEA”) in 2015 have led to inconsistencies in reporting. Some parties and associations declare all their accounts payable at the fiscal year-end, while others declare only accounts that are past due. This interpretation note clarifies the meaning of unpaid claims under the CEA and how the reporting requirements apply.

### Interpretation

- (1) A claim is a debt owed by a political entity for expenses incurred or loans obtained.
- (2) For the purpose of providing a **statement of unpaid claims** in a registered party’s or association’s annual financial return, a claim for an expense is classified as “unpaid” from the day it is past due until it is paid in full.
- (3) For other reporting purposes of a registered party or association, including providing a **statement of by-election expenses** in an annual financial return or a **statement of general election expenses**, a claim for an expense is classified as “unpaid” from the day it is incurred until it is paid in full.
- (4) When no due date is specified on an invoice or written contract, a claim for an expense is deemed to be due on receipt of the related property or services.
- (5) A loan is classified as “unpaid” from the day it is obtained until it is paid in full.
- (6) In accordance with the CEA, registered parties and associations must report the following details about unpaid claims in their annual returns:
  - all claims for an expense that are past due as of December 31
  - all loans that have not been paid in full as of December 31
  - additional information on claims, including loans, that remain unpaid 18 or 36 months after their due date
  - previously reported unpaid claims, including loans, that have been paid in full since the last fiscal period

## Legal Framework

The most directly relevant provisions of the CEA in the context of this interpretation note are as follows.

For registered parties:

- A person who has a claim to be paid for a debt of a registered party must send the invoice or other document evidencing the claim to the registered party or one of its registered agents. (s. 427)
- A financial transactions return of a registered party must set out a statement of assets and liabilities in accordance with generally accepted accounting principles, including a statement of:
  - claims that are the subject of proceedings to recover an unpaid amount, and
  - unpaid claims, including those resulting from loans. (s. 432(2)(e))
- The statement of unpaid claims must include each unpaid claim in the statement for the previous fiscal period that has been paid in full since that statement was provided, and each claim that remains unpaid 18 or 36 months after the day on which it was due. (s. 432(6))
- A claim, excluding a loan, must be paid within three years after the day on which the payment is due. There is an offence for failing to pay the claim within this time period. (ss. 428, 497.1(1)(g))

For registered associations:

- A person who has a claim to be paid for a debt of a registered association must send the invoice or other document evidencing the claim to the registered association or one of its electoral district agents. (s. 475.1)
- A financial transactions return of a registered association must set out a statement of assets and liabilities in accordance with generally accepted accounting principles, including a statement of:
  - claims that are the subject of proceedings to recover an unpaid amount, and
  - unpaid claims, including those resulting from loans. (s. 475.4(2)(d))
- The statement of unpaid claims must include each unpaid claim in the statement for the previous fiscal period that has been paid in full since that statement was provided, and each claim that remains unpaid 18 or 36 months after the day on which it was due. (s. 475.4(6))
- A claim, excluding a loan, must be paid within three years after the day on which the payment is due. There is an offence for failing to pay the claim within this time period. (ss. 475.2, 497.2(1)(j))

## Analysis and Discussion

### History of legislation

Until 2015, registered parties and associations only needed to report claims that were disputed or might be the subject of an application to the Chief Electoral Officer or a judge. This included claims that remained unpaid past the statutory deadline, which was six months after the claim's due date. When Parliament passed Bill C-23 in 2014, the statutory deadline was extended to three years after the claim's due date. The bill repealed the provisions that deemed unpaid claims to be contributions after a certain period, and replaced them with an offence for failing to pay claims by the deadline.

Bill C-23 also introduced more stringent reporting requirements for unpaid claims. As a result, registered parties and associations now have to report:

- unpaid claims as of December 31
- additional information on claims that remain unpaid 18 or 36 months after their due date, including whether they are the subject of a legal proceeding or a dispute, whether there is a repayment schedule in place, and whether an unpaid amount has been written off by the creditor
- unpaid claims from the previous fiscal year's statement that have since been paid in full

The goal of increased reporting is transparency—for example, a long overdue claim could signal an attempt to circumvent the contribution rules, or it might raise concerns of potential undue influence by a claimant to which the political entity is indebted.

### Considerations

The CEA does not provide a definition of “unpaid” in the context of claims. Before 2015, registered parties and associations were only required to report loans, claims past the six-month payment deadline, disputed claims and claims for which an invoice was sent more than three months after the expense was incurred.

After the provisions changed in 2015, Elections Canada, registered parties and associations still sometimes interpreted an unpaid claim as a claim that was past due. This appeared to meet the objectives of the CEA, since transparency was provided for claims that might be linked to avoidance of the contribution rules or undue influence. At other times, Elections Canada, registered parties and associations operated under a reading of the CEA where an unpaid claim was any claim that had not been paid, even if not yet past due.

In examining the legislation, it is possible on the one hand to conclude that Parliament intended for there to be a difference between a claim and an unpaid claim. For example, paragraph 432(2)(e) requires that a financial transactions return set out a statement of the party's assets and liabilities, including a statement of:

- (i) **claims** that are the subject of proceedings under section 429, and
- (ii) **unpaid claims**, including those resulting from loans made to the registered party under section 373.

The meaning of a claim is suggested by sections 427 and 475.1, which state that a person who has a “claim to be paid for a debt” must send an invoice or other document evidencing the claim to the registered party or association. A claim could therefore be understood as an amount owing; once an amount is paid, there is no longer a claim.

On this reading, it would be redundant for an “unpaid claim” to also be defined as an amount owing. Looking at the reporting requirements, where a registered party or association is required to report on “claims that remain unpaid 18 or 36 months after their due date,” the due date might be viewed as relevant to when a claim is categorized as unpaid. Therefore, an unpaid claim could be defined as an amount owing that is past due.

On the other hand, in accounting terms, unpaid claims are best understood as accounts payable. By that definition, an unpaid claim would be a claim that has not yet been paid in full at the fiscal year-end. Expenses incurred before year-end for which no invoice has been received would be reported using accrual accounting.

This second interpretation is supported by looking at political financing requirements for elections and contests. The wording of the unpaid claims provisions for candidates, nomination contestants and leadership contestants after an event is substantially the same as it is for registered parties and associations in their annual returns. As a result, a single interpretation could be expected to apply to all political entities.

For candidates and contestants, there is a clear relationship between campaign expenses—which must be reported in detail as paid, contributed or transferred, or unpaid—and the statement of unpaid claims. Registered parties are also required to report election expenses this way, whether paid or unpaid, and for by-elections this reporting occurs within their annual return. If unpaid claims were only those debts past due, the link between unpaid expenses and claims would break, complicating the reimbursement of expenses paid after the return is filed but before their due date.

What is more, candidates and contestants must open a bank account exclusively for their campaign and close it “once all unpaid claims and surplus [campaign] funds” have been dealt with (s. 476.65(4), 477.46(4), 478.72(4)). The account is meant to be closed when all financial obligations are met. However, if unpaid claims were only those past due, the accounts might be closed before campaigns had paid claims with a long payment deadline.

Another important consideration is that some claims, including some loans, have no specified due date. If unpaid claims are interpreted as being only those past due, invoices with no due date or due dates far into the future—precisely the types of expenses for which transparency is required—would not be detailed in annual returns of registered parties or associations. They would be captured only in the broad category of accounts payable and accrued liabilities. Furthermore, loans with no due date would be reported in the fiscal year in which they were obtained, but no details would be provided in subsequent fiscal years if the loans remained unpaid.

Finally, it may be useful to consider the meaning of “unpaid” in other parts of the CEA. In most cases it is clear that the ordinary meaning of the word is to be applied. For example, a cost incurred is an expense incurred by a registered party or candidate, “whether it is paid or unpaid” (s. 376(4)). There is no middle option. As well, a person may commence proceedings to recover an “unpaid amount” if the registered party or association disputes that it is payable (ss. 429, 475.3). There is no indication that the person must wait until the invoice is past due to begin recovery. In these cases, the meaning of unpaid stands for itself without definition.

### **Definition of an unpaid claim**

In deciding between the two interpretations above, Elections Canada considered the objective of the CEA to ensure transparency and the extent to which the same language is used for the unpaid claims provisions of different political entities. It was felt that transparency and especially coherence were better served by an interpretation of an unpaid claim as any claim that has not been paid in full. This also accorded with the ordinary meaning of the word. An interpretation to that effect was put forward in a [draft version of this note](#) in November 2018.

However, comments received from registered parties during the consultation period must also factor into Elections Canada’s final interpretation. In their comments on the draft note, some parties argued for a purposive interpretation of the legal provisions. They contended that reporting hundreds of claims not yet past their due date would not help Elections Canada identify transactions that might in fact be non-monetary contributions. At the same time, the process of identifying and reporting on all amounts owed, including accrued expenses, would add a significant burden. Some parties also raised concerns about confidentiality and privacy, as employees of the party or association with unpaid expense claims might have their names and amounts due to them disclosed in the year-end reports without furthering the objectives of the regime.

## Conclusion

In light of considerations outlined on both sides of the debate in the initial note, and the subsequent representations of registered parties, Elections Canada has revisited its draft interpretation. The goal of the CEA is to provide transparency, and Parliament's changes in 2014 reflected an intention to ensure that all unpaid claims, including loans, were clearly reported. However, it is also true that unnecessary reporting that creates a burden on participants without appreciably furthering the goal of transparency does not reflect Parliament's intention.

In the circumstances, it is appropriate to interpret the provisions in a way that ensures transparency without imposing unnecessary additional reporting requirements. To achieve these goals, Elections Canada interprets the provisions as follows.

When registered parties and associations prepare their annual financial returns, they must include a statement of unpaid claims, including loans. A claim for an expense is classified as unpaid from the day it is past due until it is paid in full. A loan is classified as unpaid from the day it is obtained until it is paid in full. In order to protect the goal of transparency, when no due date is specified on an invoice or written contract, a claim is deemed to be due on receipt of the related property or services. This interpretation ensures that no unpaid claims will be unreported indefinitely.

This interpretation applies only to the statement of unpaid claims in a registered party's or association's annual financial return. It does not apply to other reporting by a registered party or association, including providing a statement of by-election expenses in an annual financial return or a statement of general election expenses, or to reporting by candidates or contestants. In all of those cases, a claim is classified as unpaid from the day it is incurred until it is paid in full. This is so that a statement of expenses for an election or a contest gives a complete picture of the event. Otherwise, unpaid election or contest expenses that were not yet past due would fail to be captured and counted against spending limits.