



## Written Opinions, Guidelines and Interpretation Notes

### Interpretation Note: 2018-09

#### Unpaid Claims and Reporting Requirements

#### Comments made during formal consultation period of December 3 to 17, 2018

Comments received from the Conservative Party of Canada	Elections Canada response to the Conservative Party of Canada
<p>The reporting of all outstanding unpaid claims as of our year-end would be very time consuming and onerous, since it would involve pulling and documenting in the return every invoice that was in accounts payable at December 31, not just the balance by vendor, as well as unpaid employee expense claims and vendor accruals (items for which the invoice has yet to be received). This would number in the hundreds of items.</p> <p>It would seem that receiving this level of detail at year-end does not help Elections Canada meet its objective of attempting to determine if non-monetary contributions have been made to the party by vendors or individuals, which have not been properly reported as such. By providing them with the details of claims that remain unpaid 6 months later (i.e. as of the annual report filing date), this allows them to focus on and assess whether these items are truly vendor/employee payables, or should have been otherwise reported, without getting lost in unnecessary detail.</p> <p>The reporting that Elections Canada has proposed would require the public disclosure of essentially all of the Party's vendors, as well as employees with unpaid expense claims, which raises concerns about confidentiality and privacy (with respect to employees) without a compelling reason for doing so, where they are simply providing services to the Party in the normal course of business.</p>	<p>Elections Canada has factored the comments made by registered parties into its final interpretation. As a result, unpaid claims related to expenses for property or services will only need to be included in the statement of unpaid claims of a registered party or association if they are past due as of December 31. When an invoice or a written contract does not specify a due date, the claim is deemed to be due on receipt of the property or services.</p>

<b>Comments received from the Green Party of Canada</b>	<b>Elections Canada response to the Green Party of Canada</b>
<p>Would a detailed Accounts Payable listing be sufficient to be attached to the return for those people using software that does not upload directly to the EFR software?</p>	<p>Unpaid claims must be reported in the prescribed form. However, as Elections Canada has revised its interpretation of unpaid claims to be only those past due (see the response to the Conservative Party of Canada above), there should be significantly fewer claims to report.</p>
<p>Will the EFR software be able to support popular platforms like Quickbooks, Simply Accounting, etc., for report uploads?</p>	<p>The EFR software is not able to support those platforms.</p>
<p>Will a simple declaration page be sufficient to denote the payment of the previous year's unpaid claims, or will there be a need to detail individual payments for each claim on the EFR report in the future Annual Reports?</p>	<p>Individual payments still need to be detailed. However, as Elections Canada has revised its interpretation of unpaid claims to be only those past due, there should be fewer payments to report.</p>
<p>Should individualized payment details be required, what would the payment instrument convention be for direct deposit transactions? As opposed to a payment made by cheque, whereby normal tracing/vouching would use the cheque number as a record, what would be the equivalent that would be acceptable by Elections Canada for an electronic transaction?</p>	<p>Registered parties and associations are not required to include a cheque number or electronic reference number as evidence that claims have been paid.</p>
<p>My comment on the above is that while the "Goal of increased reporting is transparency," there are ways which Elections Canada can augment the ability of registered parties and associations to comply with these requirements and safeguard the public trust, without imposing undue hardship on the reporting entities.</p>	<p>Elections Canada trusts that its final interpretation minimizes any potentially undue hardship in the reporting of unpaid claims.</p>

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>To follow is the submission of the Liberal Party of Canada in respect of the requirement to report “unpaid claims” in a financial return pursuant to section 432(2)(e)(ii) of the <i>Canada Elections Act</i>.</p> <p><b>LEGISLATION</b></p> <p>Section 432(2)(e) of the <i>Canada Elections Act</i> requires that a party’s financial return include:</p> <p>“a statement of the registered party’s assets and liabilities and any surplus or deficit in accordance with generally accepted accounting principles, including a statement of</p> <ul style="list-style-type: none"> <li>(i) claims that are the subject of proceedings under section 429, and</li> <li>(ii) unpaid claims, including those resulting from loans made to the registered party under section 373;”</li> </ul> <p>Section 432(6) of the <i>Canada Elections Act</i>, with respect to the statement of unpaid claims, further states:</p> <p>“The statement of unpaid claims referred to in subparagraph 432(2)(e) shall include information indicating</p> <ul style="list-style-type: none"> <li>(a) <b>each</b> unpaid claim in the statement for the previous fiscal period that has been paid in full since that statement was provided; and</li> <li>(b) <b>each</b> claim that remains unpaid 18 months after the day on which it was due and each claim that remains unpaid 36 months after the day on which it was due.”</li> </ul> <p><b>CLAIM VERSUS UNPAID CLAIM</b></p> <p>Sections 432(2)(e) and 432(6) distinguish between “unpaid claims” and “claims,” without definition. It is a well-established principle of statutory interpretation that such a distinction must have been intentional by Parliament. We submit that what Parliament intended was to differentiate between those amounts which are claimed to be owing by a party and those amounts which are claimed to be unpaid. In other words, a “claim” is simply an amount owing, while an “unpaid claim” is an amount owing that is not yet past due.</p> <p>Given the lack of definitional specificity in the text of the legislation, it would also be helpful for a purposive analysis to be applied. The purpose of this section appears to be to provide transparency as to (1) who might exercise influence over a party by virtue of unsettled debts or loans, and (2) whether a registered party is meeting its financial obligations as they come due. This interpretation is</p>	<p>Elections Canada has factored the comments made by registered parties into its final interpretation. As a result, unpaid claims related to expenses for property or services will only need to be included in the statement of unpaid claims of a registered party or association if they are past due as of December 31. When an invoice or a written contract does not specify a due date, the claim is deemed to be due on receipt of the property or services.</p> <p>In response to your comment about reporting unpaid claims in the aggregate at year-end, we note that the absence of the word “each” cannot direct the interpretation. Claims must be reported individually so that they can be tracked from one fiscal year to the next, either by Elections Canada, a political entity or the public. While all registered parties must have an auditor review their annual return, registered associations under the \$10,000 threshold are not subject to such a requirement. It is therefore important for Elections Canada’s auditors to be able to accomplish the task. We note that the number of unpaid claims to report should be greatly reduced under the final interpretation.</p> <p>Similarly, while an upload capacity for unpaid claims has not yet been developed, the now-reduced number of claims to report should minimize any potentially undue hardship.</p>

strengthened by the reference to loans, and by the requirement to report annually on the status of pay downs, as well as to group claims in 18 months and 36 months.

We note in particular the language of section 432(6)(b), which strongly supports our reading of the legislation:

each **claim** that remains **unpaid** 18 months **after the day on which it was due** ....

This could be restated for clarity to read:

each **amount** that remains **an unpaid claim** 18 months **after the day on which it was due** ...

In other words, a “claim” is not necessarily an “unpaid claim” but simply an amount owing. It only becomes an unpaid claim **after the day on which it is due**. This language in section 436 [sic – 432(6)] clearly signals Parliament’s intention here of distinguishing between a “claim” and an “unpaid claim.”

#### **SPECIFIC COMMENTS**

**First**, we note that on page 3 of the draft OGI, there is an acknowledgement that the *Canada Elections Act* does not include a definition of what is an unpaid claim. The draft OGI references sections 427 and 475.1 which, according to the draft OGI, 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.” However, the OGI omits the sections noted above. This leaves the impression that section 432(2)(e) requires the listing of all amounts owing as of a particular date, whether or not past “**the day on which it is due**” as required by section 436 [sic – 432(6)]. The legislation does not state this. The guidance should be clear that **a claim becomes an unpaid claim at the time that payment is past due**, and not at the moment it is invoiced to a registered party. Otherwise, the rule would require reporting of all vendors whose pay periods happen to occur over year-end, regardless of the currency of accounts. This would include, for example, this year, reporting of a vendor providing goods or services to a party in advance of a general election. It is appropriate that there be reasonable limits on disclosure of vendors in advance, such that a certain amount of operational competitiveness can be maintained until following the general election, when the payment of such unpaid claims would be reported separately.

**Second**, we note that in the draft OGI, under the heading “Legal Framework,” the third bullet states “The statement of unpaid claims must include **each** unpaid claim in the statement... .” We would ask the guidance to be clear that,

when reporting year-end unpaid claims, such **year-end unpaid claims may be aggregated together**, as one would typically find in a Generally Accepted Accounting Principles (GAAP) prepared financial statement in the liabilities section of a balance sheet. We note that the year-end reporting in section 432 simply requires that we report “unpaid claims”; the requirement to report “each” unpaid claim is only set out in section 436 [sic – 432(6)] and there applies only to a “previous fiscal period that has been paid in full” or to claims that are 18 months or more past due. It follows that all other unpaid claims reporting should be aggregated. While this aggregated approach may make it slightly more difficult for Elections Canada to subsequently verify the details of unpaid claims and their subsequent payment, we note that such verification is already undertaken by a party’s auditor.

**Third**, we would like the guidance to be clear that **mere accruals in a financial statement are not necessarily an unpaid claim**. Financial statements prepared under GAAP include accruals to ensure, for example, that revenues and expenditures are matched in the same reporting fiscal period. However, an accrual of an expense does not necessarily mean the supplier has at that point a claim to be paid for a debt. In addition, the supplier would not send an invoice or other document evidencing the claim because their claim would not then be currently legally enforceable. For example, a party may make an accrual for work pertaining to a long-term technology development project, but the contract between the party and the developer requires certain milestones to be reached before the party would have a legal obligation to make a payment. Consequently, in our view, accruals that are made for financial statement purposes for which an invoice has not been received would only be aggregated as an unpaid claim without the need to report when such accrual had been paid in a following fiscal period.

**Finally**, when the payment of unpaid claims needs to be reported, we suggest that the *Registered Party Financial Transactions Annual Return* must **have an upload capability to allow a party to upload such now paid unpaid claims in a manner similar to the uploading of contributions** as the volume will be significant, and keeping in mind that a party is not obligated to file reports electronically.

<b>Comments received from the Marxist-Leninist Party of Canada</b>	<b>Elections Canada response to the Marxist-Leninist Party of Canada</b>
<p>The Marxist-Leninist Party of Canada has reviewed the above cited interpretation note. The note provides clear guidelines and we have no questions for clarification or comments for improvements.</p>	<p>Please note that Elections Canada has revised its draft interpretation after consultation with registered parties. As a result, unpaid claims related to expenses for property or services will only need to be included in the statement of unpaid claims of a registered party or association if they are past due as of December 31. When an invoice or a written contract does not specify a due date, the claim is deemed to be due on receipt of the property or services.</p>
<b>Comments received from the Commissioner of Canada Elections</b>	<b>Elections Canada response to the Commissioner of Canada Elections</b>
<p>We are in agreement with the content of the proposed interpretation note.</p>	<p>As the Commissioner of Canada Elections is aware, Elections Canada has revised its draft interpretation after consultation with registered parties and with the Commissioner's concurrence.</p>

The following parties did not submit comments to Elections Canada regarding OGI 2018-09:

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