

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: 2019-01 (January 2019)

Volunteer Labour

Issue

Under the *Canada Elections Act* (“CEA”), volunteer labour is any service provided to a political entity free of charge outside a person’s working hours. It excludes a service provided by a self-employed person who normally charges for that service, which is instead a non-monetary contribution.

Several questions arise from this provision: When is a person self-employed? How do the rules apply to people who work on-call or variable hours? Can volunteers receive compensation or gifts? This interpretation note seeks to answer these questions, while clarifying when the provision of services is volunteer labour and when it is a non-monetary contribution.¹

Interpretation

- (1) In the context of volunteer labour, whether a person is self-employed or an employee is determined by their relationship to the entity or entities from which they receive their salary, wages or dividends. Generally, if a person receives a salary or wages, has payroll deductions and receives a T4, they are an employee.
- (2) People who work on-call or variable hours can volunteer for a political entity, provided they are not self-employed in the field and their employer has not instructed them to work for the political entity while receiving standby pay or other compensation.
- (3) If a political entity is providing compensation to a volunteer for any part of their work, the compensated part of the work is not volunteer labour. The following rules apply:
 - An agreement must be in place before the work is performed, regardless of the amount paid. It is strongly recommended that agreements be made in writing.

¹ Nomination and leadership contestants are not expressly mentioned in this interpretation note because its effect on their campaign expenses depends on the contest start date. For contests starting on or after December 21, 2018, this note applies in the same way for contestants as it does for candidates. For contests that started before that date, please refer to OGI 2014-01 in determining how this note applies.

- Expenses incurred under these agreements become claims for which the political entity is liable. If the campaign does not have funds to fulfill the terms of payment, the expense resulting from the agreement becomes an unpaid claim or a non-monetary contribution.
 - For parties and candidates, the expenses incurred are also election expenses if the work was done or the output of the work was used during the election period.
- (4) If a volunteer receives monetary compensation without a prior agreement being in place or receives gifts above the nominal gift threshold described below, the payments or gifts will, in the case of a candidate, be an improper disposal of surplus.
- (5) Nominal gifts up to a total value of \$200 and thank-you parties may be provided to volunteers and are not compensation for the purpose of the CEA. The associated costs are “other” electoral campaign expenses of the candidate or expenses of the party that are not subject to the election expenses limit.

Legal Framework

The relevant provisions of the CEA in this context are as follows:

- Volunteer labour means any service provided free of charge by a person outside their working hours, but does not include such a service provided by a person who is self-employed if the service is one that is normally charged for by that person. (s. 2(1))
- A non-monetary contribution is the commercial value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their commercial value. (s. 2(1))
- Commercial value, in relation to property or a service, means the lowest amount charged at the time that it was provided for the same kind and quantity of property or service or for the same usage of property or money, by
 - (a) the person who provided it, if the person is in the business of providing that property or service; or
 - (b) another person who provides that property or service on a commercial basis in the area where it was provided, if the person who provided the property or service is not in that business. (s. 2(1))
- Only individuals who are Canadian citizens or permanent residents can make political contributions. (s. 363(1))
- Contributions are subject to contribution limits. (s. 367(1))
- Candidates must pay their unpaid claims within 36 months after election day and report on the status of their unpaid claims at regular intervals. (ss. 477.54(1), 477.59)
- Registered parties must pay their unpaid claims within 36 months after payment is due and report on the status of their unpaid claims in each annual financial return. (ss. 428, 432)
- A candidate’s surplus of electoral funds is the amount by which the campaign’s revenues exceed its electoral campaign expenses and outgoing transfers. Campaigns must dispose of their surplus only to specified political entities. (ss. 477.8, 477.82)
- Candidates’ campaigns must either transfer their capital assets to specified political entities or sell them at fair market value as part of the surplus disposal. A capital asset is any property with a commercial value of more than \$200 that is normally used outside an election period other than for the purposes of an election. (ss. 2, 477.8(2))

Analysis and Discussion

Volunteer labour: an exemption from the rules on non-monetary contributions

Volunteer labour, as defined in the CEA, is any service provided free of charge by a person outside their working hours. It excludes a service provided by a self-employed person who normally charges for that service. For example, a self-employed painter could not volunteer to paint the office of a political entity. The painter would need to either be paid for the service or make a non-monetary contribution to the political entity, subject to the controls on contributions in the CEA.

A person who performs volunteer labour, other than a self-employed person who normally charges for that service, is not making a contribution to a political entity. This exemption from the contributions regime permits and encourages the direct personal involvement of individuals in the political process.

While contributions can only be made by Canadian citizens or permanent residents, volunteer labour can be provided by any person regardless of their legal status in Canada. It cannot be provided by corporations, trade unions, associations or groups.

When is a person “self-employed”?

It is important to know if a person is self-employed in order to correctly apply the rules for volunteer labour. However, the CEA does not define the term “self-employed.” It is defined in the Merriam-Webster dictionary as “earning income directly from one’s own business, trade, or profession rather than as a specified salary or wages from an employer.”²

Whether someone is self-employed or an employee can therefore be determined by their relationship to the entity or entities from which they receive their salary, wages or dividends. The determination is simple in most cases—for example, sole proprietors and members of partnerships are self-employed because there is no separate legal entity between them and the paying entity.

The determination is more complex in the case of a person who has incorporated their business. The following questions should be considered in determining whether a person is self-employed or an employee:

1. Does the person receive a salary or wages from the corporation?
2. Are payroll deductions taken at the source for employment insurance, public pension plans, etc.?
3. Does the person receive a T4 statement for income tax purposes?

If the answer to the above questions is yes, the person is an employee and is eligible to volunteer in the same capacity as their line of business, outside their working hours.

² <https://www.merriam-webster.com/dictionary/self-employed>

Are people who work on-call or variable hours eligible to volunteer?

It is clear that employees cannot volunteer for a political entity during their working hours; this would result in a contribution from the employer (which is ineligible if the employer is a corporation, trade union, association or group). But what is the implication of the term “working hours” for people who work on-call or variable hours?

Since an irregular work schedule should not be a barrier to volunteering, people who work on-call or variable hours are able to provide volunteer labour if the following conditions are met:

- they are not self-employed in the same line of business as the services they are providing
- their employer has not instructed them to work for the political entity while receiving standby pay or other compensation

Similarly, employees are able to volunteer for a political entity while on leave from their regular work. This applies whether they are on paid or unpaid leave, as long as the paid leave was obtained in the normal course of employment.

Can volunteers receive compensation for part of their work?

Volunteer labour is defined in the CEA as a service provided free of charge. A political entity can provide compensation for services—whether referred to as wages, per diem payments or honorariums—but those services do not qualify as volunteer labour.

Elections Canada’s written opinions, guidelines and interpretation notes have not previously addressed the question of paying volunteers for their services. The handbooks do, however, provide guidance on paying campaign workers who are not volunteers. Campaigns are advised to include with the return a written contract or other documentation about any compensation paid.

It is possible for a political entity to pay a volunteer for part of their work. That part of the work is not volunteer labour but an expense. The political entity should take the following into account when paying volunteers:

- An agreement must be in place before the work is performed. In the case of candidates, if a volunteer receives compensation without a prior agreement being in place, the payment is an improper disposal of surplus.
- It is strongly recommended that agreements be made in writing. If there are questions about whether an election expense was reasonably incurred or whether there was an improper disposal of surplus, a written contract could serve as evidence to support the campaign’s report of the nature and amount of the expense.
- Expenses incurred under these agreements become claims for which the political entity is liable. If the campaign does not have funds to fulfill the terms of payment, the expense resulting from the agreement becomes an unpaid claim or a non-monetary contribution, subject to the controls on contributions in the CEA.
- It is acceptable for agreements to specify incentive- or performance-based terms of remuneration rather than a fixed rate. Such terms might include numbers of electors contacted or frequency and level of involvement.
- For parties and candidates, the expenses incurred are also election expenses if the work was done or the output of the work was used during the election period.

In addition to the guidelines above, the following restrictions should be kept in mind:

- Compensation paid to volunteers must be for actual work performed and cannot be unreasonably high for the amount of work. Otherwise, the expense is not “reasonably” incurred. In the case of candidates, such a payment would be an improper disposal of surplus.
- Only people who are eligible to volunteer their services can be paid less than the commercial value of their work. Otherwise, the transaction results in a non-monetary contribution. For example, a corporate supplier cannot volunteer part of its services or offer a discount outside of pre-established discounts in its normal course of business.
- Political entities cannot pledge to pay their volunteers on condition that the campaign has sufficient funds after the election. This would constitute a gift and, subject to the exception below, would therefore be an improper disposal of surplus in the case of candidates.

Can volunteers receive nominal gifts for their work?

Generally, any amount paid to a volunteer without a prior agreement is a gift and therefore not permitted under the CEA. In a political context, however, it is natural to want to thank volunteers by providing nominal gifts or throwing a thank-you party.

To avoid situations where a party or candidate might use the provision of gifts to workers after the campaign as a way to circumvent the expenses limit or improperly dispose of its surplus, Elections Canada is proposing the following guidelines:

- Nominal gifts up to a total value of \$200 may be given to each volunteer. This is in addition to the value of any food, refreshments or entertainment provided at a thank-you party.
- Expenses for nominal gifts and thank-you parties are “other” electoral campaign expenses of the candidate or expenses of the party that are not subject to the election expenses limit.
- No gifts over a total value of \$200 may be given to volunteers. In the case of candidates, this would be an improper disposal of surplus.

The above guidelines do not prevent a campaign from liquidating low-value items, purchased for use during the campaign, to volunteers. Keep in mind that capital assets valued over \$200 must be transferred to a specified political entity or sold as part of the surplus disposal.

Practical Application

The remainder of this document explains how the interpretation applies to various occurrences of volunteer labour in a political context.

Sole proprietors and members of partnerships

Sole proprietors and members of partnerships are self-employed, as there is no separate legal entity between the person and their business. They cannot volunteer in the same capacity as their line of business, but they can volunteer in another capacity.

Examples

1. Sophie, a self-employed accountant, wishes to volunteer as an official agent for a candidate's campaign. She is able to do so without making a non-monetary contribution to the campaign, since the role of official agent is outside the normal activities of an accountant. If Sophie wished to volunteer as an auditor, she would be making a non-monetary contribution to the campaign.
2. Gilbert, a partner in a law firm, wishes to provide legal services to a registered party. Even if Gilbert performs the work outside his working hours, the service he provides is a non-monetary contribution. The amount of Gilbert's contribution is the lowest amount he would normally charge for the same service. Gilbert must be eligible to contribute under the CEA and must stay within the contribution limit.

People who have incorporated their business

A person who has incorporated their business may or may not be self-employed, depending on their relationship to the corporation. A self-employed person cannot volunteer the same services they would normally charge for.

Examples

1. Aline, the joint owner of an event-planning corporation, wishes to provide planning services to a registered association. Aline draws a regular salary from her company; her pay stub includes deductions for income tax, employment insurance and benefit plans; and the corporation issues a T4 to her in March. Aline is therefore an employee and can volunteer event-planning services outside her working hours. However, the registered association has to pay all other event fees, such as venue and decoration costs. Aline cannot provide these items through the corporation for free or at a discounted rate as this would be an ineligible non-monetary contribution. She could, however, buy the items with her own funds and provide them to the association as a non-monetary contribution from an individual.
2. Curtis has incorporated his photography business. He offers to do a photo shoot for a candidate's campaign. Curtis does not draw a salary from the corporation; he withdraws the profits in the form of dividends. Curtis is therefore self-employed. Even if Curtis performs the work outside his working hours, the service he provides is a non-monetary contribution subject to the contribution limit.

People who work on-call or variable hours

People who work on-call or variable hours can volunteer for a political entity, provided they are not self-employed in the field and their employer has not instructed them to work for the political entity while receiving standby pay or other compensation.

Examples

1. Beatrice works for a corporation and is paid to be on standby every weekend. Her employer has instructed her to help a registered party's campaign during these hours. This is not volunteer labour. The services provided would constitute an ineligible contribution from the corporation to the party. If Beatrice has provided services under these conditions, the chief agent must calculate the commercial value of the services and send a cheque to Elections Canada, payable to the Receiver General for Canada, within 30 days of becoming aware of the ineligible contribution.
2. Leo is employed as a call centre agent and decides to volunteer for a candidate's campaign in his free time. However, Leo's job requires him to work variable hours, often in the evenings. On a day when Leo is scheduled to work the night shift, he goes into the campaign office in the morning to make phone calls. As he is not being paid by his employer for services provided during these hours, Leo's work is volunteer labour and is not a contribution.

Compensating volunteers for part of their work

People who volunteer for a political entity can be paid for part of their work. That work is not volunteer labour but an expense of the political entity.

Examples

1. Sam works full-time as an administrative officer on the staff of a member of Parliament. When the member runs for re-election, Sam takes an unpaid leave of absence to volunteer for the campaign. The candidate offers Sam an honorarium for the hours he will work—a fixed amount of \$1,000 for the election period. The official agent puts this agreement in writing at the start of the campaign, and the honorarium is an election expense that has to be reported.
2. Suzanne is being paid to manage a candidate's social media accounts during the election period. Suzanne has signed an agreement that lists the tasks she will perform and her hourly wage. Often, when she has finished her paid work, Suzanne volunteers for the campaign. This is an acceptable combination of paid and volunteer work. The expenses incurred under the agreement are election expenses that have to be reported. The volunteer labour is not reported.

Giving nominal gifts to volunteers

In addition to a thank-you party, nominal gifts up to a total value of \$200 may be offered to each volunteer as a token of appreciation for their work.

Examples

1. After the election, the candidate's campaign holds a pizza party for its volunteers. They are each given a \$50 travel bag and a \$100 gift card in appreciation of their hard work. The cost of the gifts and thank-you party is an "other" electoral campaign expense not subject to the election expenses limit.
2. A group of students offer to go door-to-door to collect funds for a candidate in a by-election. At the end of the election, there is a surplus of funds. In recognition of the students' hard work, the campaign decides to write each one a cheque for \$300. This is not an acceptable gift but an improper disposal of surplus.