



Written Opinions, Guidelines and Interpretation Notes

Guideline: 2019-06

Political Financing Handbook for Registered Parties and Chief Agents

Comments made during consultation period of April 4 to May 21, 2019

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>This letter provides a summary of the concerns identified by the Liberal Party of Canada (the “LPC”), in respect of Elections Canada’s 2019 draft of the <i>Political Financing Handbook for Registered Parties and Chief Agents</i> (EC 20231) (the “Draft Guidance”).</p> <p>We appreciate the opportunity to comment on the Draft Guidance through the OGI process, and thank you and your staff for the time, effort and diligence that goes into developing these very useful handbook materials. By and large, we agree with the Draft Guidance. However, we do have some concerns with the practical implications of the interpretation contained in Chapter 7 of the Draft Guidance, “Partisan Advertising Expenses for the Pre-election Period,” which we wanted to bring to your attention. We note that very similar guidance is included in Chapter 7 of Elections Canada’s 2019 draft of the <i>Political Financing Handbook for Electoral District Associations and Financial Agents</i> (EC 20089), and our concerns apply equally to that chapter.</p> <p>We believe the interpretation contained in the section entitled “Partisan advertising conducted by a registered association to promote or oppose a party” (p. 69) creates several challenges, both for national campaigns and for certain local EDAs.</p> <p>Specifically:</p> <ol style="list-style-type: none"> 1. EDAs whose local media markets are broader than the boundaries of their electoral district are significantly disadvantaged by the Draft Guidance. 2. The Draft Guidance effectively restricts the ability of local EDAs to purchase partisan advertising to promote or oppose a registered party in ethnic or other specialty media outlets, which, by nature of their readership, are commonly distributed across electoral district boundaries. 	<p>With the enactment of Bill C-76, the <i>Canada Elections Act</i> prohibits electoral district associations from conducting partisan advertising that promotes or opposes a political party outside its electoral district. Under subsection 2(7), an ad is considered to promote or oppose a party if it names or identifies the party, including by its logo, or provides a link to a web page that does any of the aforementioned. An ad promotes or opposes the election of a potential candidate if it names the candidate, shows their image, identifies them, including by their political affiliation or any logo they have, or provides a link to a web page that does any of the aforementioned.</p> <p>Elections Canada’s interpretation is that where partisan advertising has elements that promote both the potential candidate and the party (such as the candidate’s name and party logo), the ad is generally considered to promote the candidate rather than the party. It can be done without the party’s involvement. Partisan advertising of an association needs to involve the registered party only when an ad runs outside the electoral district (with an exception for negligible spillover) and does not explicitly and reasonably promote the election of a specific potential candidate at the local level.</p> <p>This means, for example, that an association can place an ad in a national or specialty newspaper asking people to support Sally Candidate of the XYZ Party, without involving the party. However, if the association runs the same ad on Facebook nationally when it could have done so locally, it would be reasonably seen to have the purpose of promoting the party</p>

3. The Draft Guidance causes to be treated as collusive all regional advertising by local candidates, even where such advertising is bona fide and in no way designed to circumvent national limits.

Legislative Background

On December 13, 2018, Bill C-76: An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments (“Bill C-76”) received royal assent. Bill C-76 makes a number of changes to the Canada Elections Act (the “Act”), including the introduction of a limit on the partisan advertising expenses of registered parties for the pre-election period (in 2019, commencing on June 30, 2019, hereinafter the “pre-election period”). The limit for 2019 is \$2,046,800.

Bill C-76 contains further provisions to ensure this limit is respected. The Act provides that registered parties must not do anything to circumvent the partisan advertising expenses limit, including by colluding with affiliated political entities or third parties. The Act further stipulates that in order to avoid having local advertisements count against the registered party’s limit, an EDA must not incur partisan advertising expenses to promote or oppose a registered party, unless the advertising message is transmitted solely, or substantially solely, within the EDA’s electoral boundaries.

These provisions will come into force on June 13, 2019, and take effect June 30, 2019.

The relevant provisions are as follows:

Prohibition – circumventing maximum amount

429.2(2) *No registered party shall circumvent, or attempt to circumvent, that maximum amount in any manner, including by acting in collusion with a potential candidate for the purpose of his or her engaging in partisan advertising so that the combined total of the following exceeds the maximum amount:*

(a) the potential candidate’s partisan advertising expenses that relate to the partisan advertising engaged in in collusion with the party; and

(b) the party’s partisan advertising expenses.

rather than the potential candidate, even though it names the candidate. The advertising would need to be authorized by the party and count toward its partisan advertising limit.

This clarification and two examples have been added to the electoral district association handbook.

Furthermore, under the new provisions, it is still possible for multiple associations to run a regional ad that promotes the party (i.e. an ad that does not name potential candidates) without involving the registered party. This can be done if all associations in the region’s electoral districts authorize the ad and pay their share of the production and distribution cost, since associations are allowed to advertise locally for the party, as long as there is no collusion with the party and the distribution of the regional ad is limited to the electoral districts of participating associations.

Finally, we can confirm that where supporters from the region bring existing lawn signs featuring the name of their local candidate to an event, and the expense for producing and initially distributing the signs was that of the electoral district association or potential candidate, this is not a partisan advertising expense of the party.

Prohibition – incurring partisan advertising expenses, etc.

449.1(1) No electoral district association of a registered party shall

(a) incur partisan advertising expenses in relation to partisan advertising messages that promote or oppose a registered party or an eligible party and that are transmitted during a pre-election period; or

(b) transmit or cause to be transmitted, during a pre-election period, partisan advertising messages that promote or oppose a registered party or an eligible party.

Exception

(2) Despite paragraph (1)(a), an electoral district association of a registered party may incur partisan advertising expenses to the extent that the goods or services that the partisan advertising expense is incurred for are

(a) provided to that party, if permitted under paragraph 364(2)(b); or

(b) sold to that party.

Exception

(3) Despite subsection (1), an electoral district association of a registered party may

(a) incur partisan advertising expenses for the transmission of partisan advertising messages referred to in paragraph (1)(a) to the extent that those messages are intended to be transmitted solely, or substantially solely, within the association's electoral district; and

(b) transmit or cause to be transmitted partisan advertising messages referred to in paragraph (1)(b) to the extent that those messages are transmitted solely, or substantially solely, within the association's electoral district.

Message to be authorized

449.2 A registered association that causes partisan advertising to be conducted shall mention in or on the partisan advertising message that its transmission was authorized by one of the association's electoral district agents.

Prohibition – incurring election expenses

450(1) No electoral district association of a registered party shall incur election expenses.

Election expenses – electoral district associations

(1.1) For the purposes of subsection (1),

(a) election expense has the meaning given to that expression by subsection 376(1), except that the reference to “a registered party or a candidate” is to be read as a reference to “an electoral district association”; and

(b) subsections 376(2) to (4) apply, other than paragraph 376(3)(c), except that the reference to “a registered party or a candidate” in subsection 376(4) is to be read as a reference to “an electoral district association”.

Exception

(1.2) Despite subsection (1), an electoral district association of a registered party may incur an election expense to the extent that the property or service that the cost was incurred for or the non-monetary contribution was received for – or the goods or services that were accepted – are

(a) provided to that party, a registered association of that party or a candidate endorsed by that party, if permitted under paragraph 364(2)(b); or

(b) sold to that party or a candidate endorsed by that party.

Challenges with the Draft Guidance

Chapter 7 of the Draft Guidance sets out Elections Canada’s interpretation of how the new provisions designed to ensure respect for the registered party’s limit on partisan advertising expenses apply to registered associations.

The Draft Guidance explains that EDAs can incur expenses and conduct partisan advertising *to promote or oppose a registered party* without impacting the affiliated party’s limit *only if the advertising is conducted only or mostly in the association’s own electoral district*. The Draft Guidance goes on to explain that if an EDA wishes to conduct such advertising outside its own electoral district, the advertising would need to be conducted *on behalf of the registered party*. In such a case, the advertising would need to be agreed to in advance by the party, be authorized by the chief agent for the party, and the advertising expense would be counted against the party’s pre-election limit on partisan advertising.

Elections Canada provides examples to illustrate its interpretation, including the following at p. 69:

Examples

3. A registered association of the party plans to produce flyers promoting the party leader and distribute them in ridings across the region during the pre-election period. Because the advertising will be distributed widely outside the association’s riding, it is a partisan advertising expense of the party. The association must obtain prior written authorization from a registered agent of the party, and this authorization must be mentioned on the flyers. The association must then transfer or sell the advertising to the party. The financial agent sends an invoice to the party, along with copies of the original supplier invoices, and the party reports the production and distribution costs as partisan advertising expenses subject to the limit.

The example above raises important questions respecting certain types of partisan advertising to promote or oppose a registered party that candidates may engage in during the pre-election period.

The Draft Guidance states that such advertising is permissible so long as the advertising takes place “only or mostly in the association’s own electoral district.” We note that this language differs from the legislative language.

Urban Ridings

There are situations where candidates may be unable to restrict the distribution of an advertising message (i.e. by print, radiobroadcast or digital online) to a particular riding. In particular, where a candidate is located in a region where the media market is spread across multiple ridings, it may be difficult or impossible for the candidate to purchase advertising limited to their riding. That would be true in very large media markets – such as the Greater Toronto-Hamilton Area, or Montreal – but also in much more modest media markets. Take, for example, a case where the candidate for Ottawa Centre wishes to transmit partisan advertising in support of a party during the pre-election period in the *Ottawa Citizen*. The newspaper (or radio, broadcast or digital online ad, as it were) will inevitably be delivered (or broadcast) to households in neighbouring ridings, including Ottawa South, Ottawa—Vanier, Ottawa West—Nepean, Orléans, and so on. There is difficulty in determining whether the ad would be viewed “mostly in” Ottawa Centre. Under the Draft Guidance, this particular ad would more than likely need to be authorized by the registered party, bear the party’s authorization tag, and count toward the party’s spending limit.

In fact, the situation would exist even in two-riding communities, i.e. Burnaby, Red Deer, Thunder Bay, Sudbury, and Windsor. Taken literally, the Draft

Guidance would require that, even in a two-riding community, the candidate in the larger of the two ridings could place an advertisement in local media without national approval, but the candidate in the small riding (by population) could not. The same problem exists in three or four riding communities, such as Winnipeg, Kitchener-Waterloo, London, Prince Edward Island, Halifax, Saskatoon, and St. John's.

Minority Language and Other Specialty Media

The same concerns apply to pre-election partisan advertising in print ethnic and other specialty media outlets (such as Xtra, the LGBTQ outlet) the circulation of which typically bears no relation to electoral district boundaries. The effect of the Draft Guidance is to essentially eliminate any local multi-candidate or national brand advertising in ethnic or specialty media, except with national approval, prioritization and expense allocation. This will significantly reduce the ability of candidates with large communities of voters who do not speak an official language of Canada to engage those voters through their ethnic media, and to engage with constituencies through other specialty media outlets.

Rallies, Parades and Festivals

It is very possible that during the pre-election period, large-scale rallies will be held to promote a party leader. Leaders and candidates may also participate in parades and festivals arranged by other groups. Typically, when such events are held, supporters from the region are invited to attend and are encouraged to bring lawn signs featuring the name of their local candidate. We wish to confirm that this practice is permissible during the pre-election period, and that, so long as the lawn sign bears a local candidate's authorization tag, this will not be considered a national advertising expense.

Candidates

We think it is important to emphasize that local candidates are independent entities of the national party office. It is not always possible, or appropriate, for a national party to "control" a local candidate's regional communications. Nor does Bill C-76 include a requirement that the national party do so. Indeed, local candidates and national parties do not have a common chief agent, and it therefore is impractical (and in some cases may be impossible) to expect that all advertising expenses will be co-ordinated between the two.

Local candidates could have regional priorities that legitimately differ from national priorities; or may take actions (indeed, given timing, may already have taken actions) to run regional advertising separate from the national office. The

national office should not be compelled to exercise control over its local candidates. In any event, in many instances it may not be able to. In some cases, the fact of regional advertising may only be discovered after expenses have been incurred.

In Conclusion

In a practical sense, the Draft Guidance essentially eliminates local advertising of the national party brands in urban ridings during the pre-election period. It will also essentially eliminate any local multi-candidate or brand advertising in ethnic and other specialty media during the pre-election period, except with national approval, prioritization and expense allocation. Finally, it imposes a requirement that a national party office exercise control and approval over regional advertising, despite the fact that local candidates are independent entities, with their own funds and agents.

In each of these three cases, the Draft Guidance goes somewhat further than the prohibition contained in section 429.2(2) of the statute. On its face, Bill C-76 only appears to limit local advertising by candidates to the extent that the advertising is a result of *collusion* between a local candidate and its national party office for the purpose of circumventing the pre-election limit. As we have indicated in prior correspondence, collusion is not mere co-ordination, but requires an underlying illicit purpose or intent.

In short, as we read the legislation, it was not intended to create a strict liability offence that arises whenever the sum of regional and national advertising exceeds the national cap. Rather, it appears to us to be intended to restrict “in-and-out” type advertising where there is co-ordination and/or intent to use local resources to exceed the national cap. In particular, advertising purchased by local candidates without an intent to collude (i.e. without collusion with the national party office) should not attract regulatory scrutiny.

Where a party and an EDA are acting in concert (i.e. through co-ordinated discussions and targeting; through fund transfers, or the like) with intention to run regional advertising to exceed a national cap, this amount should be placed against the national expense cap. However, where a local candidate or group of candidates themselves seek *bona fide* regional advertising with their own resources (i.e. a party branded advertisement with local policy priorities), this should not impact on the national advertising cap.

We accordingly respectfully request that Elections Canada provide revised Draft Guidance that clarifies the issues above.

<p>We thank Elections Canada for the opportunity to comment on the draft OGI, and appreciate the time, effort and diligence that goes into developing these very useful handbook materials. We are hopeful that our comments and questions will lead to a final product that answers practical questions other readers may have.</p>	
<p>In addition to comments previously provided for recent handbook updates, please find our incremental comments below for the <i>Political Financing Handbook for Registered Parties and Chief Agents</i>.</p> <p>p. 29: In the first example, it might be useful to add a comment regarding the requirement that a receipt for <i>Canada Elections Act</i> purposes must be issued. This might be accomplished by modifying the second last sentence to read “If that amount is greater than \$200, a non-monetary contribution must be reported as well as a receipt issued for <i>Canada Elections Act</i> purposes.”</p>	<p>The handbooks aim to introduce readers to one concept at a time in order to make learning easier. The example indicated in your comment appears early in the handbook and focuses on commercial value. More comprehensive examples are provided in later chapters.</p>
<p>p. 30-31: In addition to the three examples provided, perhaps a fourth simpler example could be provided of a contributor making a combined monetary and non-monetary contribution totalling \$1,600 to a registered party.</p>	<p>This will be taken into account for the next release of the handbooks in 2020.</p>
<p>p. 31: Under the section “Who is eligible to volunteer,” the second paragraph could be somewhat modified to read “But a self-employed person cannot volunteer a service they would normally charge for. That is a non-monetary contribution and not volunteer labour and is subject to the contribution limits and eligible contributor contribution rules.”</p> <p>Also under this section, in the fourth paragraph, for clarity, perhaps it can be added that individuals who are members of such groups (corporations, trade unions, associations, and other groups) are eligible to volunteer.</p> <p>In the second example it might be helpful to add the commercial value of the service recorded as a non-monetary contribution is subject to the annual contribution limits.</p>	<p>In line with your first suggestion, the words “and stay within their contribution limit” have been added to the current sentence.</p> <p>As your second suggestion requires more context to be incorporated, it will be taken into consideration for the next release of the handbooks in 2020.</p> <p>The third suggestion is to add information that is already implied. For simplicity, the example has not been changed.</p>
<p>p. 33: It would be useful to add examples to the section “Activities conducted by others in coordination with the party may be contributions.” For example, the first bullet under the subsection “Coordination may result in a contribution if the registered party did one or more of the following:” states “requested or suggested that the third party undertake the activity” but in the following subsection, the fourth bullet states “the registered party and third party attend the same event or invite one another’s members to the event” could be viewed as being at odds with one another. Additionally, in the final “Note:” to this section it would be useful if guidance were provided on the difference between “coordination” and “collusion” and provide examples.</p>	<p>In line with your suggestion, four examples have been added to this section. Please note that the bulleted points are indicators only. Examining them in the context of a particular situation will allow parties and third parties to better determine if an activity, such as inviting another’s members to an event, would result in a contribution.</p>

<p>p. 35: In the section “Issuing contribution receipts” it would be useful to show in a single location in what instances a contribution is “not deemed nil”.</p> <p>Also in this section the second sentence of the second paragraph states “Tax receipts can be issued only for monetary contributions.” It would be helpful to remind chief agents that while certain contributions are not eligible for a receipt for income tax purposes, a receipt for <i>Canada Elections Act</i> purposes may need to be issued.</p>	<p>The handbooks currently use a modular design, such that information is not always repeated from one section to another. Elections Canada is interested in improving the usability of its handbooks and will consider a more holistic approach for future releases.</p>
<p>p. 42: In the Loans chapter, the note on page 42 states “Note: An individual cannot use the money, property or services of another person or entity to make a loan to a registered party if the other person or entity provided those resources to make the loan possible.” This is correct, and also applies to contributions. Given the importance of this concept, perhaps a more fulsome discussion should be included in the Handbook?</p>	<p>This will be taken into account for the next release of the handbooks in 2020.</p>
<p>pp. 50–54: In the section on regulated fundraising events a statement would be useful clarifying that an attendee who was not required to make a contribution (thus a guest) to attend a regulated fundraising event does not need to meet the statutory definition of an eligible contributor to attend.</p>	<p>The following text has been added: “Any person can attend an event, even if they are not a Canadian citizen or permanent resident, as long as they did not make a contribution in order to attend. For example, an eligible contributor can pay to bring a foreign guest.”</p>
<p>pp. 55–56: In the section of ‘Sale of branded goods’ there are two references to “When is a benefit central? above.” Given “above” is a long ways away on page 48, in each instance it would be helpful to reference the actual page number.</p>	<p>The handbooks cannot include page references because they are developed for both print and online platforms.</p>
<p>p. 69: The statutory provisions around partisan advertising are new, and given the concept of partisan advertising conducted by a registered association could be difficult to understand, it would be helpful to summarize the rules with respect to associations in a simple chart.</p>	<p>Given the many factors that weigh into how, when and for whom electoral district associations can legally conduct partisan advertising, the party handbook now refers readers to Chapter 7 of the <i>Political Financing Handbook for Electoral District Associations and Financial Agents</i> for more information.</p>
<p>p. 72: In the first “Note:” in the section “Limits on election expenses” it should be added that exceeding the election expenses limit is an offence.</p>	<p>In the past, political entities have advised Elections Canada that referring to offences in the handbooks sets a threatening tone for their volunteers. As a result, the handbooks indicate what actions are prohibited but generally do not refer to the related offence.</p>
<p>p. 80: In the section “Rental of a temporary party office,” it would be helpful to include examples of installation costs.</p>	<p>This will be taken into account for the next release of the handbooks in 2020.</p>

Comments received from the Marxist-Leninist Party of Canada	Elections Canada response to the Marxist-Leninist Party of Canada
<p>The Marxist-Leninist Party of Canada has reviewed OGI 2019-06, <i>Political Financing Handbook for Registered Parties and Chief Agents</i>. In overview, we think the guidelines cover the required topics, particularly the new provisions related to Bill C-76.</p> <p>We have questions and/or comments on the following sections:</p> <p>Soliciting, Recording and Acceptance of Contributions</p> <p>In Section 2 on the topic of contributions, on page 37, anonymous contributions are covered. We think more clarity is required to distinguish between the solicitation of contributions and the acceptance of them. Under the topic “recording anonymous contributions” it states that “If anonymous contributions of \$20 or less are collected during an event related to the party, the chief agent or an authorized registered agent has to record: a description of the function at which the contributions were collected; the date of the function; the approximate number of people at the function; the total amount of anonymous contributions accepted.” Further, it states: “Anonymous contributions of \$20 or less may also be received outside the context of a particular function. In that case, the chief agent or a registered agent has to keep track of the total amount collected plus the number of contributors.”</p> <p>The above passages refer to “recording anonymous contributions,” and it is clear that when the chief agent or registered agent accepts contributions, the agent is responsible for knowing the detailed source of the contributions and assumes the legal responsibility for acceptance.</p> <p>The solicitation of contributions, however, is not restricted to chief agents and registered agents. The example given on page 37 seems to create the impression that only the chief agent can solicit contributions. It states:</p> <p>“Volunteers of the registered party organize a wine and cheese event one evening and invite local residents. Approximately 40 people show up. During the evening, the chief agent passes a basket around to collect cash contributions from the attendees. She informs the guests about the contribution rules: a maximum of \$20 can be accepted from any one individual as an anonymous contribution. At the end of the evening there is \$325 in the basket.</p> <p>After the event the chief agent has to record the following: a description and the date of the event, the approximate number of people who attended (40),</p>	<p>The example has been modified in line with your suggestion.</p>

<p>and the amount collected in anonymous contributions (\$325). The chief agent has to deposit the amount into the party's bank account.”</p> <p>We would suggest that the example provided be changed as follows (changed indicated in bold):</p> <p>“Volunteers of the registered party organize a wine and cheese event one evening and invite local residents. Approximately 40 people show up. During the evening, one of the organizers passes a basket around to collect cash contributions from the attendees. She informs the guests about the contribution rules: a maximum of \$20 can be accepted from any one individual as an anonymous contribution. At the end of the evening there is \$325 in the basket. The organizer remits the contributions to the chief agent along with all the pertinent details related to the event: a description and the date of the event, the approximate number of people who attended (40), and the amount collected in anonymous contributions (\$325).</p> <p>The chief agent uses form EC 20154 for reporting the contributions and deposits the amount into the party's bank account.”</p>	
<p>Clarification on “Typical fundraising activities”</p> <p>On page 55, in reference to the sale of branded goods, it is stated that “If a purchaser buys multiple items, each unit sold is treated as a separate contribution from a separate contributor.”</p> <p>The related example states: “To raise funds, the registered party sells T-shirts with the party logo for \$25. The T-shirts were purchases from a supplier for \$10 each, so the contribution generated by each T-shirt is \$15 (\$25-\$10). An individual who supports the party buys two T-shirts. The chief agent reports two anonymous contributions of \$15. No receipt is required.”</p> <p>It would follow from this example that an individual could purchase 2,000 T-shirts and make 2,000 anonymous contributions of \$15, equal to a total \$30,000.</p> <p>Is this correct? If so, it would appear to be a huge loophole for circumventing the annual contribution limit of \$1,600.</p> <p>Other than these 2 areas, we think the handbook is clear and provides useful guidelines.</p>	<p>Elections Canada had considered the issue raised in your comment when establishing our position on this topic. We believe the branded goods regime is an unlikely target of abuse for over-the-limit or ineligible anonymous contributions since the amounts involved per item (\$20 or less to not generate a receipt) are small. Of course, if Elections Canada has reason to believe that a political entity or purchaser is using the branded goods regime to circumvent the contribution rules (as may be the case in the example you provided), we will refer the matter to the Office of the Commissioner of Canada Elections.</p>

Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections
We are in agreement with the content of the proposed manual.	Elections Canada notes your comment.

The following parties did not submit comments to Elections Canada regarding OGI 2019-06:

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