



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: 2019-07 (Draft – May 2019)

Accessibility Expenses and Disability-Related Personal Expenses

Issue

The *Elections Modernization Act*, in force as of June 13, 2019, makes significant changes to how the *Canada Elections Act* (“CEA”) treats expenses related to accessibility and disability. A new category of expenses has been introduced to improve the accessibility of election campaigns for electors with a disability. In addition, personal expenses related to a candidate’s disability or their care for a person with an incapacity (“disability-related personal expenses”) are now reimbursed at a higher percentage. Candidates, nomination contestants and leadership contestants can pay these personal expenses from their own funds or accept their payment by others without the amount being treated as a contribution.

This interpretation note illustrates what qualifies as an accessibility expense or a disability-related personal expense, how the expenses are calculated and how they are allocated when the two categories overlap.

Interpretation

- (1) The nature of an individual’s disability does not limit whether an expense qualifies as an accessibility expense or a disability-related personal expense.
- (2) While accessibility expenses may be primarily directed toward interactions with electors, costs incurred by a campaign to provide accommodation for an employee or to facilitate participation by a volunteer with a disability in the work of the campaign are also accessibility expenses.
- (3) Some permanent accessibility measures may be established outside the election period. The expenses for such measures will only qualify as accessibility expenses if they are used during and for the election.
- (4) In many instances, an accessibility expense will be one portion of a larger expense. It is the responsibility of the registered party or candidate claiming the expense to be able to identify and justify the portion that qualifies as an accessibility expense.
- (5) There may be an overlap between the accessibility needs of a particular candidate on the one hand, and electors or campaign workers and volunteers on the other. In these instances, the full expense may be allocated between accessibility expenses and disability-related personal expenses on a reasonable basis.

Legal Framework

The most directly relevant provisions of the CEA in the context of this interpretation note are set out below.

Definitions of accessibility expenses and disability-related personal expenses

- An accessibility expense is a cost incurred, non-monetary contribution received or non-monetary transfer received for the purposes of making accessible, to persons with a disability, materials used or activities held during an election period. The amount of the accessibility expense is the difference between the amount of the cost incurred or value of the contribution or transfer received and the amount of a cost or value of a contribution for materials or activities not accessible to persons with a disability. (s. 377.2(1))
- A personal expense includes an expense relating to the provision of care for a person with a physical or mental incapacity for whom a nomination contestant, leadership contestant or candidate normally provides such care. In the case of a nomination contestant, leadership contestant or candidate who has a disability, it includes additional expenses related to that disability incurred because of the election. (ss. 374.4(1)(b)-(c), 378(1)(c)-(d), 379.4(1)(b)-(c))

Payment of accessibility expenses and disability-related personal expenses

- An accessibility expense can be incurred by candidates or registered parties. In accordance with the general rule for expenses, candidates' and parties' accessibility expenses must be paid by an authorized person from the candidate's campaign bank account or the party's bank account using regulated funds. (ss. 375(a.3), 377.2, 426, 477.46(3.1), 477.47(4))
- Accessibility expenses are not identified as distinct types of nomination campaign expenses or leadership campaign expenses. For these entities, no distinction is made as to costs incurred for accessibility and other costs incurred. The expenses are incurred, paid and reported in the same manner as other campaign expenses. (ss. 374.1, 379.1(1))
- Disability-related personal expenses may be paid by a nomination contestant, candidate or leadership contestant out of their own funds or may be paid by another person or group. Such a payment is not treated as a contribution for the purposes of the CEA. (ss. 364, 476.65(3.1), 477.47(3.1), 478.72(3.1))

Spending limits related to accessibility expenses and disability-related personal expenses

- There is no limit to the amount that candidates or registered parties may spend on accessibility expenses. An accessibility expense is not an election expense, so it is exempt from the election expenses limits. (ss. 376(3.1), 430(1), 477.49(1))
- While the Chief Electoral Officer may set maximum amounts of expenses for different categories of a candidate's personal expenses, no limit has been set for disability-related personal expenses. (s. 378.1)
- The CEA does not set a maximum amount or authorize the Chief Electoral Officer to set a maximum amount for personal expenses of nomination or leadership contestants.

Reimbursement of accessibility expenses and disability-related personal expenses

- Accessibility expenses are reimbursed at 90% to a maximum of \$5,000 for candidates who are elected or obtain 10% of the valid votes cast in their electoral district, and \$250,000 for registered parties that receive 2% of the vote nationally or 5% of the valid votes in the electoral districts where they endorsed candidates. (ss. 444(1), 477.73(3)(f))
- Disability-related personal expenses of a candidate are reimbursed at 90% for candidates who are elected or obtain at least 10% of the valid votes cast in their electoral district. (s. 477.73(3)(e))
- No reimbursement is available for personal expenses incurred by a nomination or leadership contestant.

Reporting obligations

- Candidates are required to provide a statement of accessibility expenses as part of their electoral campaign return. Registered parties must include a similar statement for a general election in their election expenses return and for a by-election in their annual financial return. (ss. 432(2)(j)(ii), 437(2)(b), 477.59(2)(b)(a.3))
- A statement of the personal expenses of a nomination contestant, candidate or leadership contestant is required as part of their campaign return. It must indicate which expenses were paid other than from the campaign bank account and the source of those funds. (ss. 476.75(2)(a.3), 477.59(2)(b)(a.4), 478.8(2)(a.3))

Definition of election expenses

- An election expense is any of the following:
 - any cost incurred, or non-monetary contribution received, by a registered party or a candidate, to the extent that the property or service that the cost was incurred for or that was received as a non-monetary contribution is used to directly promote or oppose a registered party, its leader or a candidate during an election period; and
 - any acceptance by a registered party or a candidate of a provision of goods or services, to the extent that the goods or services are used to directly promote or oppose a registered party, its leader or a candidate during an election period. (s. 376(1))

Analysis and Discussion

Definition of disability

Disability is a key concept for both types of expenses discussed in this interpretation note. There is no universally accepted definition of “disability,” and none is prescribed in the CEA: the concept is fluid and reflects an evolving social consensus. The 2017 Canadian Survey on Disability indicates that 22% of Canadians 15 years old or older identify as living with a disability.

Disability may be mild or severe, chronic or intermittent. Examples from the broad range of disabilities faced by the Canadian population include pain-related disabilities, learning disabilities, mental-health disabilities and physical disabilities. Many of these disabilities can result in significant barriers to participation in the political process.

Elections Canada has adopted an inclusive approach to serving electors with disabilities: no proof of disability and no explanation of the nature of a barrier to participation is required. Consistent with that approach, the expenses discussed in this interpretation note are not limited by the nature of a disability and no proof of disability will be required to claim eligible expenses.

In many instances, accessibility expenses will be anticipatory in nature and not designed to remedy a barrier for a particular individual. Where the rationale for a claim is difficult to discern, Elections Canada may require further explanation.

What are accessibility expenses?

Accessibility expenses are costs incurred (or non-monetary contributions or transfers received) by either a registered party or a candidate to improve the accessibility of their campaign activities for electors, campaign workers or volunteers with a disability. Wherever there is communication or interaction between a party, candidate or campaign and an elector during an election period, there is a potential accessibility expense.

The following are typical accessibility expenses that might be incurred by the campaign of a registered party or candidate.

Accessible websites

A fully accessible campaign website is one that can be properly read by a screen reader, allows for navigation using a keyboard, gives the same information in alternative formats, uses adequate colour contrast and provides other features designed to enhance the user experience for those with visual impairments, intellectual impairments or mobility impairments. See the World Wide Web Consortium's Web Content Accessibility Guidelines for internationally recognized standards.

Additional expenses to create an accessible website, to convert an inaccessible website, or to make some features accessible during the election period are accessibility expenses.

Sign language interpretation

The campaign might have a sign language interpreter at events where the candidate or party leader is speaking or at locations where information is being offered, so that events and information are accessible to people who are deaf or hard of hearing.

The expense for interpretation services that make material or an activity accessible during the election is an accessibility expense.

Communication products in adapted or alternative formats

Campaigns often distribute or publish communication products in print, audio, video and other formats. To make a communication accessible, the campaign may need to add an alternative format or adapt an existing format. For example, printed products can be reproduced in braille, large text and audio; audio can be transcribed into text; and video can be translated into ASL or LSQ, captioned or transcribed into text.

The expense to format or draft a document to meet accessibility needs (including to simplify text for electors with intellectual disabilities), or to add or adapt communication products to make them accessible during the election, is an accessibility expense.

However, when campaigns incur expenses to follow best practices for plain language writing for the general public, these are not accessibility expenses; they may be election expenses.

Temporary physical improvements (construction or renovation)

Some buildings do not have level access or may be temporarily inaccessible to persons with a mobility impairment. The campaign might construct a temporary ramp for their campaign office to provide wheelchair access or make other renovations that provide access to persons with a disability. The expense for construction or renovations to make material or an activity accessible during the election period is an accessibility expense.

Paid campaign workers and volunteers

Volunteering or working for a campaign is an important form of participation in the political process. While accessibility expenses may be primarily directed toward interactions with electors, costs incurred by a campaign to provide accommodation for an employee or to facilitate participation by a volunteer with a disability in the work of the campaign are also accessibility expenses.

What are not accessibility expenses?

The following are not accessibility expenses:

- an expense related to a registered party's or candidate's fundraising activity—the CEA specifically excludes expenses incurred in connection with a fundraising activity from accessibility expenses
- an expense for material used or an activity held outside the election period only
- an expense that the campaign would have incurred for property or a service regardless of whether or not it was accessible (for example, renting an office that has level access when it is the only office available)
- an expense used for a purpose other than making material or an activity accessible

Practical Application

How are accessibility expenses calculated?

Accessibility expenses are calculated as follows:

- the difference between the cost incurred for the property or service to make the materials or activities accessible, and the value of the property or service if the materials or activities had not been accessible
- the difference between the value of a non-monetary contribution or transfer received to make the materials or activities accessible, and the value of the property or service if the materials or activities had not been accessible

Only the authorized agent of a political entity, the candidate or a person authorized in writing by the agent can incur accessibility expenses. Only the authorized agent is allowed to pay accessibility expenses.

The following are different ways of calculating the amount of an accessibility expense, depending on how it is incurred and how the property or service is used.

Sole-purpose expenses

Determining the amount of an accessibility expense for a discrete property or service solely intended to enhance accessibility is the simplest to calculate: the entire cost of the property or service (or its commercial value, if it is transferred) is an accessibility expense. The rental cost for a temporary ramp or professional fees for sign language interpretation are examples of property or services with no purpose beyond enhancing accessibility.

Blended expenses

In many instances, an accessibility expense will be one portion of a larger expense. Expenses for developing and maintaining a website, for example, are expenses typically incurred by a campaign for purposes other than enhancing accessibility. But if a portion of that expense is incurred to ensure that the website is accessible, that portion of the expense is an accessibility expense. It is the responsibility of the registered party or candidate claiming the expense to be able to identify and justify the portion that qualifies as an accessibility expense.

Rental costs for a campaign office may represent similarly blended expenses. There may be an incrementally greater cost associated with renting an office with elevator access, for example, or with an automatic door opener. It may be a challenge to identify the portion of a rental cost that represents an accessibility expense. One method of doing so may be to compare rental costs for otherwise commensurable properties, where one is equipped with accessibility features and one is not.

Shared accessibility expenses

In some instances, expenses may be incurred jointly by candidates of different registered parties (e.g. an all-candidates' debate), by candidates of the same party (e.g. a BBQ for two candidates from neighbouring electoral districts) or between a party and candidates (e.g. a joint rally partially funded by the party, promoting all candidates in an urban area).

In these cases, Elections Canada will accept any reasonable allocation of accessibility expenses. One campaign may not pay the expenses of another campaign because transfers between campaigns are not allowed. Elections Canada may ask for an explanation of the basis for the allocation.

Examples

1. The candidate's campaign creates a website for use during the election period and pays to run accessibility diagnostics on the site. When the diagnostics show that several web pages need to be recoded for accessibility, the campaign hires a web designer to make the improvements. The diagnostics tool and web designer fees are accessibility expenses.
2. The registered party creates a website for use outside and during election periods. It pays to run accessibility diagnostics on the site. When the diagnostics show that several web pages need to be recoded for accessibility, the party hires a web designer to make the improvements. The diagnostics tool and web designer fees are accessibility expenses that may be eligible for partial reimbursement after the next general election, depending on how the party reports the overall website expense in its general election return.
3. The candidate's campaign office is in a building that has three steps before the entrance. To make the office accessible to wheelchair users, the campaign hires a contractor to build a wooden ramp. The cost of materials and labour is \$300. This is an accessibility expense.
4. The registered party produces a video for \$5,000 that is used to promote the party leader during an election. The production cost includes captioning that makes the video accessible to persons who are deaf or hard of hearing. The video would have cost \$4,700 to produce without the captions. As a result, the chief agent reports an election expense of \$4,700 and an accessibility expense of \$300 (\$5,000 – \$4,700).

Disability-related personal expenses

Expenses incurred by candidates, nomination contestants and leadership contestants with a disability to support them while they campaign are not accessibility expenses but rather disability-related personal expenses.

Disability-related personal expenses must be reasonably incurred in relation to a campaign or contest, either during or outside the election period. These expenses include the following types listed in the CEA:

- expenses related to the provision of care for a person with a physical or mental incapacity for whom the person normally provides such care
- in the case of a candidate, nomination contestant or leadership contestant who has a disability, additional personal expenses that are related to the disability

Personal expenses must be new expenses or increases in normally incurred expenses. In other words, they are expenses that the candidate or contestant incurred only because there was an election or contest. They do not count against the election or contest expenses limit. In the case of candidates, personal expenses may be eligible for partial reimbursement.

Only the candidate, nomination contestant, leadership contestant or authorized person can incur a personal expense. Anyone can pay a personal expense. They can be paid:

- by the agent from the campaign bank account
- by the candidate or contestant using their own funds, including funds provided by another person or group for that purpose
- by any person or group directly, using their own funds, with the candidate's or contestant's consent

If the candidate, the contestant or others pay disability-related personal expenses and do not intend to be repaid, the payment is made without going through the campaign bank account. It is not a contribution but must still be reported in the appropriate return.

Examples

1. Ana, a nomination contestant, has a disability that requires the services of a caregiver when she travels. The caregiver accompanies Ana on trips in the riding. The expenses of this additional care are personal expenses of the contestant.
2. Boris, a candidate, has a disability that requires him to use accessible forms of transportation. He regularly travels from home to his campaign office and to campaign events using accessible taxis. The expenses for the taxis are personal expenses of the candidate. If his campaign qualifies for a reimbursement, Boris will get a higher reimbursement by correctly reporting the fares as personal expenses rather than travel and living expenses.

Note: A candidate or contestant may be enrolled in a subsidy program for disability needs that is run by a government or private source. If the candidate or contestant pays their personal expenses with the subsidized funds and is reimbursed by Elections Canada, this may affect their allowable subsidy. Individuals should consult their funding source for rules specific to their program.

Distinguishing between accessibility expenses and disability-related personal expenses

There may be an overlap between the accessibility needs of a particular candidate on the one hand, and electors or campaign workers and volunteers on the other. In these instances, the full expense may be allocated between accessibility expenses and disability-related personal expenses.

For example, if a temporary ramp is built for a candidate's campaign office and the candidate has a mobility impairment requiring her to use a wheelchair, the expense is a legitimate personal expense for the candidate. However, the temporary ramp also increases the accessibility of the campaign office for electors with disabilities and facilitates interaction between the campaign and electors. In this instance, the cost of the ramp could be allocated between both categories.

As another example, if a candidate were to use the services of a sign language interpreter in the context of an all-candidates' debate, the interpretation services would benefit the candidate, but would also benefit any electors who are deaf or hard of hearing attending the debate. Compensation costs for the interpreter could be allocated in this instance as necessary between expense categories.

The allocation of the expenses must be reasonable, and Elections Canada may request a rationale explaining how a determination was made.

Note that, as discussed above, the source of funds may limit the allocation of overlapping expenses. Accessibility expenses of a candidate's campaign may only be paid from the campaign bank account using regulated funds. Disability-related personal expenses may be paid from the campaign bank account, from the candidate's own funds, or by another person or group with the candidate's consent.