



## Written Opinions, Guidelines and Interpretation Notes

### Interpretation Note: 2021-01

#### Participating in Third Party Campaign-Style Events During Pre-election and Election Periods

Comments made during consultation period of January 12 to February 25, 2021

Comments received from the Animal Protection Party of Canada	Elections Canada response to the Animal Protection Party of Canada
<p>Regarding <i>Participating in Third Party Campaign-Style Events During Pre-election and Election Periods</i>, we have reviewed the document and have nothing of substance to add. The draft OGI seems to cover the issues that arose for the Animal Protection Party during the 2019 election.</p>	<p>Elections Canada notes your comment.</p>
Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p><b>General Comments</b></p> <p>We appreciate the challenge of preparing a guideline on complex subject matter, especially as the determination of an event as being regulated would ultimately be based on the facts and circumstances at the time, and these facts may change and be subject to a new interpretation during or following an event.</p> <p>We do feel, however, that greater certainty is required by political entities in advance of agreeing to participate in an event. A subsequent finding of non-compliance carries significant reputational risk.</p> <p>Throughout the draft interpretation, words such as “appears,” “reasonable/reasonably,” “may suggest,” “most cases,” “likely” and “generally” are used extensively. Unfortunately, the couching of statements/opinions with such adjectives gives a political entity little assurance that they won’t inadvertently find themselves in non-compliance.</p> <p>There are a number of statements made, such as “the organizer is not conducting any other activities that are regulated under the third party regime or that result in a contribution to the political entity” and “An event</p>	<p>As the party acknowledges in its comments, whether an event is regulated depends on all the facts of the situation. This is why the OGI provides criteria but does not use definitive wording. The only way to provide certainty for parties and candidates would be to consider all activities with a promotional effect as being regulated, since the opposite would create gaps in the regime. The criteria provided in the OGI are intended to maintain community engagement to the extent possible without infringing on the goals of the CEA. However, we acknowledge that bullet (3) of the interpretation box could have been more definitive: “generally not regulated” has therefore been changed to “not regulated” before the three types of events that will not be subject to regulation during a pre-election or election period.</p> <p>The party expresses a concern that information coming to light after an event may affect how the event is regulated. Elections Canada and the Commissioner of Canada Elections will take into account that registered parties and candidates do not always know that a third party or its members are politically active or will be politically active later in the pre-election or election period. At the same time, registered parties and candidates are expected to be</p>

<p>is regulated if the third party’s invitation can reasonably be seen to have the purpose of promoting the registered party’s or candidate’s election. A determination needs to be made based on all relevant factors.” We note that criteria may change based on additional information available following the event.</p> <p>A political entity cannot have any certainty as to their regulatory position if the facts that arise during or following the event could retroactively change the regulatory classification of that event. By way of example, a candidate could find themselves participating in an event in which the organizer, at the time of the event, was not intending on participating in any other regulated third party activities but subsequently changed their mind.</p> <p>The likely impact of the guidance provided in the draft OGI will be to limit political participation in community events. This participation is a critical part of direct political engagement with communities and should be encouraged rather than dissuaded.</p>	<p>aware, to some degree, of the motivation and political (or apolitical) views of the organizations or individuals whose invitations they accept. This has been clarified in the OGI.</p> <p>Finally, we note that, in cases where the registered party or candidate did not know that an event would be sufficiently partisan to be regulated, it is likely that the party or candidate was not involved in decisions about the event. This means that the event is a third party partisan activity, whose regulation does not affect the registered party or candidate from a political financing perspective, as long as there was no collusion to influence the activity.</p>
<p><b>Specific Comments</b></p> <p>We provide the following specific points for consideration:</p> <ol style="list-style-type: none"> <li>1. On page 1, line 1, the term “public squares” is used, yet the OGI does not provide guidance on how a political entity should treat the use of a public square or other public space from a campaign [expense] perspective.</li> </ol>	<p>The OGI provides guidance, in this respect, in relation to private venues with no ascertainable commercial value. As with private venues, if a public space is usually available to use free of charge for the type of event that is being held, or if its use as a meeting space has no ascertainable commercial value, there is no expense to report. This has been clarified in the OGI.</p>
<ol style="list-style-type: none"> <li>2. On page 1, example #1, the terms “pre-election” and “election” are used, which appear to later be defined on page 3 in the Legal Framework section. These terms are used throughout the OGI. Given that “pre-election” and “election” are predefined terms, should these be capitalized throughout the OGI to ensure that the defined meaning is used for these terms?</li> </ol>	<p>Grammar rules advise against the capitalization of common nouns. However, for clarity, the definition of a pre-election period as the period beginning on June 30 in the year of a fixed-date general election has been repeated in the Issue section.</p>
<ol style="list-style-type: none"> <li>3. On page 2, example #3, bullet #1 states “the invitee is a member of Parliament (MP) and their participation is reasonably tied to their parliamentary duties (in the pre-election period only as Parliament is dissolved during an election period).” It fails to recognize that a Cabinet minister can continue discharging their government functions during an election period.</li> </ol>	<p>A Cabinet minister’s caretaker role was acknowledged in a footnote on page 5. The text has been moved into the body of the OGI to increase its prominence, and a reference has been added to the Privy Council Office’s guidelines on the conduct of ministers under the caretaker convention.</p>

<p>4. On pages 1 and 2 of the Interpretation section, no example and commentary is provided of an MP hosting an annual BBQ or other annual event.</p>	<p>The scope of the OGI relates to candidates, such as MPs, participating in third party events. An MP's annual constituency event, whether hosted by the MP or the registered electoral district association, is not likely a third party event. During a pre-election or election period, only an incumbent MP who is not running again is a third party rather than a candidate. A registered association is never a third party. The political financing rules that apply to MPs using their parliamentary resources can be found in OGI 2020-04, <i>Use of Member of Parliament Resources Outside of an Election Period</i> and in the "Use of existing resources" section of the political financing handbook for candidates.</p>
<p>5. On page 2, example #4, bullet #1 states "the party leader or candidate plays a marginal role in the event," and bullet #3 states "the event is not partisan in nature, such as a charity event (keeping in mind that an issue-based event may still be partisan, depending on how the third party presents the issue)." These are not helpful as they provide little guidance and no additional clarity.</p>	<p>The interpretation box should be read in conjunction with the examples in the Practical Application section for clarity. It is not possible to specify what proportion of time or attention constitutes a marginal role for a leader or candidate, nor to provide a definitive list of materials (decorations, pamphlets, etc.) or agenda items that suggest that an event is partisan in nature. However, we have qualified a marginal role with the following text: "such as making brief remarks that are not central to the event." The OGI acknowledges that events will fall on a spectrum from clearly not regulated to clearly regulated. If the party or candidate believes that an invitation was extended to them to support their election campaign, they should consider the event to be regulated.</p>
<p>6. On page 2, example #6, we positively note the guidance, as well as other guidance in this OGI, has been updated in the draft <i>Political Financing Handbook for Registered Parties and Chief Agents</i> currently out for comment as OGI 2021-02.</p>	<p>Elections Canada notes your comment.</p>
<p>7. On page 8, example #1, the example provided pertaining to a chamber of commerce is an opposition party leader. The example should be broadened to include (i) opposition MPs, and (ii) government MPs.</p>	<p>The example has been broadened to indicate that any MP, whether in government or opposition, could participate in the described event without regulation during a pre-election period.</p>
<p><b>Comments received from the Commissioner of Canada Elections</b></p>	<p><b>Elections Canada response to the Commissioner of Canada Elections</b></p>
<p>We agree with the content of the proposed interpretation note.</p>	<p>Elections Canada notes your comment.</p>

The following parties did not submit comments to Elections Canada regarding OGI 2021-01:

- Bloc Québécois
- Canada's Fourth Front
- Canadian Nationalist Party
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Free Party Canada
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- Marxist-Leninist Party of Canada
- National Citizens Alliance of Canada
- New Democratic Party
- Parti pour l'Indépendance du Québec
- People's Party of Canada
- Parti Rhinocéros Party
- Stop Climate Change
- Veterans Coalition Party of Canada