



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: 2021-01 (Draft – January 2021)

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

Issue

Party leaders¹ and candidates² connect with Canadians in venues from public squares to conference rooms at election time. When an event is organized by an outside person or group (a third party), participants need to consider how the rules in the *Canada Elections Act* (CEA) apply.

This note aims to help registered parties and candidates determine whether and how an event that they are invited to is regulated in a pre-election or election period.³ It also provides relevant information to third parties that plan to organize such events. The first part relates to whether an event is regulated at all. The second part relates to whether a regulated event is a partisan activity or a contribution and why that matters.

While the note focuses on registered parties and candidates, an equivalent interpretation applies to eligible parties, potential or prospective candidates, nomination contestants and electoral district associations that are active in a pre-election or election period.

Interpretation

- (1) If a party leader or candidate is invited to participate in a third party's event during a pre-election or election period, they must determine whether and how the event is regulated by the CEA. The mere fact that an event has a positive impact on public perceptions of the political entity does not mean that it is regulated.
- (2) An event 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.

¹ In this note, a reference to a party leader can also be read as a reference to another public figure associated with and acting on behalf of the party, such as a deputy leader or Cabinet minister.

² For political financing purposes, a candidate includes someone who has accepted a contribution, loan or transfer to their campaign, or incurred electoral campaign expenses, whether inside or outside an election.

³ While events outside these periods are less likely to be regulated, they could still result in contributions to or paid expenses of the participating political entity, depending on the circumstances. See the contributions chapter of Elections Canada's political financing handbooks.

- (3) An event is generally not regulated if:
- 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)
 - the event is a debate or part of a series of near-identical events with competing candidates or leaders
 - the candidate or leader was invited for a clear purpose other than to promote them in the context of the election
- (4) A combination of the factors below may also suggest that an event is not regulated:
- the party leader or candidate plays a marginal role in the event
 - the candidate was invited before they announced their intention to run for election
 - 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)
 - 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
 - the event and invitation list were planned before the election was called (outside the context of a fixed-date general election)
- (5) A regulated event will be either a third party partisan activity or a contribution. Generally:
- it is a partisan activity if the third party organizes the event independently and on its own initiative. Registered parties, candidates and persons associated with them must not collude with a third party to influence its partisan activities or to circumvent an election expenses limit.
 - it is a contribution if it is held on the registered party's or candidate's initiative, or if there is coordination with the political entity that suggests the third party is not acting independently.
- (6) Basic communication between a third party and participating political entity about an event is not problematic. By basic communication, what is meant is that the third party can seek agreement about logistics (date, time and the leader's or candidate's topic), provided that these communications are not strategic discussions to maximize the benefit to the political entity's wider campaign. The third party can also inform the political entity about the venue, audiovisual equipment, other speakers and the audience. This does not affect the third party's independence and does not amount to coordination or prohibited collusion.
- (7) Contributions to registered parties and candidates can only legally be made by individuals who are Canadian citizens or permanent residents. If the third party is not an eligible contributor or is an individual who would exceed their contribution limit, they must be contracted as a supplier in advance and invoice the political entity for the amount that would otherwise be a contribution.

Legal Framework

The most directly relevant provisions of the CEA in the context of this interpretation note are as follows:

- The election period is the period beginning with the issue of the writ and ending on polling day. (s. 2(1))
- The pre-election period is the period beginning on June 30 in the year of a fixed-date general election and ending on the day before the general election is called. (s. 2(1))
- For political financing purposes, a candidate is deemed to have been a candidate from the time they accept a monetary or non-monetary transfer, accept a contribution, obtain a loan or incur an electoral campaign expense. (s. 477)
- An electoral campaign expense of a candidate is an expense reasonably incurred as an incidence of the election. (s. 375(1))
- Individuals who are Canadian citizens or permanent residents can make political contributions. (s. 363(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:
 - the person who provided it, if the person is in the business of providing that property or service; or
 - 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))
- A third party is generally a person or group that wants to participate in or influence elections other than as a political party, registered association in a pre-election period, electoral district association in an election period, nomination contestant or candidate. (s. 349)
- A partisan activity is an activity carried out by a third party, including organizing a rally, that promotes or opposes a political party, nomination contestant, potential candidate, candidate or party leader, otherwise than by taking a position on an issue with which any such party or person is associated. (s. 349)
- During an election period or pre-election period, collusion to influence a third party's regulated activities, including by sharing information, is prohibited between a third party on the one hand and a registered party, candidate, potential candidate or person associated with the campaign on the other. Collusion for the purpose of circumventing the election expenses limit of a registered party or candidate is also prohibited. (ss. 349.3, 351.01, 431(2), 477.52(2))

Background

This interpretation note was developed to help registered parties and candidates plan for and report expenses related to their election campaigns when they attend third party events. In late 2018, the CEA was amended to more broadly regulate third parties and their interactions with political entities during a pre-election or election period. This prompted some registered parties to request further guidance on how the new rules would apply. In most cases, the appropriate regulation for the situation is clear, but in more complex situations, parties and candidates will need to consider various factors to determine how a particular activity is regulated.

Elections Canada has based this guidance on its understanding of Parliament's intention to balance various important rights and goals. On the one hand are the constitutional rights of expression, association and democratic participation. These rights are exercised when political entities interact with electors and groups, all of whom are third parties under the CEA. On the other hand are the goals of transparency in contributions, expenses and third party involvement, and of a level playing field during elections. The guidance reflects the balancing of these rights and goals in particular situations.

Analysis and Discussion

Part 1: Which third party events involving a party leader or candidate are regulated?

Party leaders, MPs and candidates are commonly invited to third party events during pre-election and election periods. This participation may have the effect of making them better known or better liked. Although the invitation to the event is sometimes motivated by the goal of promoting a political entity, many such invitations do not have that purpose, even if some promotional benefit does result.

A political person often has a prominent role in the community outside of politics. This role as a member of a group, an entrepreneur, an academic, and so on, may have an incidentally positive impact on their chance of election. But the CEA does not regulate every corner of a political person's life. The mere fact that an event has a positive impact on public perceptions of the political entity does not make the event regulated.

Rather, as a general rule, the CEA regulates transactions and activities that happen "as an incidence" of an election. This concept is explicit in the definition of electoral campaign expenses to be reported by candidates. For example, a candidate might incur a travel expense during the election period. Is the expense regulated as part of the campaign? The question to ask is whether the travel expense was incurred because of the election or whether it would have been incurred regardless.

By extension, when party leaders and candidates are given the opportunity to participate in third party events during a pre-election or election period, the activity is regulated if the third party's invitation is motivated by the election. As a third party's motive is not always stated, events that can reasonably be seen to have the purpose of promoting a political entity's election must be captured, while events with only a side effect of promotion are not. A determination needs to be made based on all relevant factors.

Elections Canada has issued two interpretation notes that touch on when an event may be subject to regulation. In OGI 2019-10, *Candidate and Leader Debates*, it was noted that debates organized by outside groups have the purpose of informing the electorate rather than promoting a specific candidate or party. The note concluded that providing a public forum for candidate or leader debates with two or more participants is not a contribution, as long as it is a true debate. This interpretation can be extended to a series of events, held under near-identical conditions, featuring competing party leaders or local candidates one at a time. An example would be a chamber of commerce inviting local candidates to present their platforms at separate weekly meetings.

In OGI 2020-04, *The Use of Member of Parliament Resources Outside of an Election Period*, Elections Canada considered when activities of an MP would be regulated as a contribution to their own campaign. The note concluded that most MP activities between elections are not regulated under the CEA, even if they are conducted in a partisan way, as long as they reasonably serve a parliamentary purpose. This includes MPs attending third party events in their role as parliamentarians. When they are genuinely exercising their parliamentary functions, these individuals can attend third party events without regulation under the CEA.

While OGI 2020-04 dealt specifically with MPs in their role as constituency representatives, it is important to note that the concept of parliamentary purpose extends to parliamentarians in other roles: the prime minister and Cabinet ministers on government business (as long as government rules on non-partisanship are respected), opposition party members in their role of critiquing the government,⁴ and any MP in their role as a legislator or committee member.

The clarity of purpose as to why a third party has invited a political entity to its event will fall on a spectrum. At one end is an event where a group invites a candidate to speak to its members about the reasons that they should vote for the candidate. Such an event is regulated by the CEA, and the way it is regulated is discussed in Part 2. At the other end is an event where a candidate who is an expert in a specialized field is invited as one of numerous speakers to address an academic conference. Participation may benefit the person in their candidacy, but it was not evidently the purpose behind the invitation.

Based on the above discussion, an event is generally not regulated if:

- the invitee is an 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)⁵
- the event is a debate or part of a series of near-identical events with competing candidates or leaders
- the candidate or leader was invited for a clear purpose other than to promote them in the context of the election

In between the extremes of the spectrum are more complex situations. Elections Canada has dealt with such situations in the past on a case-by-case basis. For example, when a candidate who was on the board of directors of a major charity spoke at a prescheduled gala for that charity during an election period, Elections Canada stated that their participation was not regulated because it was not tied to their candidacy.

⁴ While the opposition's role is not codified in legislation, it is acknowledged administratively by Parliament. For example, opposition leaders have augmented office and travel budgets (see [Members' Allowances and Services](#)) to perform their extra responsibilities.

⁵ There may be limited exceptions for the prime minister and Cabinet ministers acting specifically in their caretaker role, which applies to ministerial but not parliamentary functions.

Such events must be assessed individually on their own facts. A combination of the factors below may suggest that a third party did not have the purpose to promote the registered party's or candidate's election and that the event is therefore not regulated:

- the party leader or candidate plays a marginal role in the event
- the candidate was invited before they announced their intention to run for election
- 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)
- 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
- the event and invitation list were planned before the election was called (outside the context of a fixed-date general election)

Taking all these factors into consideration minimizes the opportunity for an individual or organization to circumvent regulation while actively promoting the election of a candidate or a registered party. Once a political entity has determined that an event is regulated, it will need to consider how that event is regulated: as a third party partisan activity or as a contribution.

Part 2: When a third party event is regulated, how is it regulated?

Partisan activity vs. contribution to a political entity

A regulated event that a third party holds during a pre-election or election period and that a party leader or candidate attends will either be a third party partisan activity or result in a potential contribution to the political entity, depending on how the event was organized. This section explains the differences.

Individuals, groups, corporations and unions may independently carry out activities that promote or oppose the election of a registered party, candidate, potential candidate or nomination contestant. These activities are regulated as third party partisan activities—along with partisan advertising, election advertising and election surveys—during pre-election and election periods.

For example, independently from Party XYZ, Group ABC may conduct a door-to-door campaign asking electors to support Party XYZ because that party's policies align with the group's political goals. If Group ABC conducts this canvassing during the pre-election or election period, the event is regulated as a third party partisan activity.

By contrast, a third party might organize an event on the initiative of a political entity or in coordination with it. This is not a partisan activity but rather a non-monetary contribution. The political financing handbooks for registered parties and third parties published since 2019 have elaborated on this topic. A contribution most clearly results when a third party directly offers its services or property, or their use, to a political entity so that the entity can promote itself. A contribution also results when a third party acts in a coordinated way with a political entity, such that important decisions about the event cannot be considered truly independent choices of the third party.

In most cases, it will be clear to organizers and participants as to which type of regulation applies. The same event cannot be both a third party partisan activity and a contribution. As a general rule:

- an event is a partisan activity if the third party organizes the event independently and on its own initiative
- an event results in a contribution if it is held on the registered party's or candidate's initiative, or if there is coordination with the political entity that suggests the third party is not acting independently

For partisan activities, which must be organized independently, the third party and political entity must keep in mind that collusion is prohibited by the CEA. Collusion is generally an agreement, explicit or implicit, to achieve an objective prohibited by law. A political entity must not collude with a third party to circumvent the election expenses limit or to influence the third party's regulated activities, including by sharing information.

Here again, political financing handbooks published since 2019 have discussed this topic by stating that mere interaction without a common intent to influence a third party's activities is not collusion. The handbooks also provide examples of situations that are or are not prohibited collusion.

Elections Canada wishes to clarify in this note that basic communication between a third party and participating political entity about an event is not problematic. By basic communication, what is meant is that the third party can seek agreement about logistics (date, time and the leader's or candidate's topic), provided that these communications are not strategic discussions to maximize the benefit to the political entity's wider campaign. The third party can also inform the political entity about the venue, audiovisual equipment, other speakers and the audience. This does not affect the third party's independence and does not amount to coordination or prohibited collusion.

Financial considerations

When an event is regulated as a partisan activity or a potential contribution, its value must be calculated. For a partisan activity, the expense is calculated and reported exclusively by the third party as a partisan activity expense. It does not impact the registered party or candidate.

For a non-monetary contribution, the commercial value of the event as well as the eligibility of the contributor must be determined. Only a third party who is a Canadian citizen or permanent resident is eligible to contribute to a registered party or candidate, and only up to their individual limit. To avoid making an illegal contribution, most third parties must be contracted by the political entity as a supplier in advance, issue an invoice for the commercial value of the event and receive payment from the political entity. If the event takes place during the election period, the registered party or candidate must count the commercial value of the event against their election expenses limit.

The method of calculating the potential non-monetary contribution is explained in the political financing handbooks for all types of entities. A non-monetary contribution is the commercial value of property or services, or their use, given to a political entity. As an event involves a range of resources, from logistics to promotion to physical set-up, the calculation will need to take all these elements into consideration.

For the value of a venue, Elections Canada has taken the position in previous guidance⁶ that if an individual hosts an event in their private residence, they are not expected to include an equivalent value to the use of their home as a contribution. This applies to other private venues that are not available to rent as a meeting space, such as factories, airport hangars and condominium lobbies, as they have no ascertainable commercial value.

In two examples in the handbooks for registered parties (2019, 2020) and third parties (2019), Elections Canada had mentioned that the potential contribution from an event would be the third party's "incremental costs" to hold the activity. As the use of incremental costs in the CEA is limited to determining certain types of expenses, future editions of the handbooks will not use that wording in reference to contributions, which are always based on commercial value. However, the net effect of this adjustment on the amount of a potential contribution should be minimal.

⁶ OGI 2016-01, *Fundraising* (September 2016), p. 9.

When an event has two or three focal points, only one of which is the registered party or candidate, the potential contribution amount is a reasonable allocation of the full commercial value, based on the portion of the event that focuses on the political entity. The focus may be quantified in terms of time (for example, a candidate gives a 30-minute speech at a 3-hour event), in terms of visibility (for example, the campaign's kiosk is occupying one fifth of the venue) or a combination of these or other factors.

Even when an event does not result in a contribution or potential contribution, if a party leader or candidate campaigns while at the event, they must report the expenses they incurred to participate (for example, for campaign literature, incremental travel costs and staff salaries) in the appropriate financial return.

Practical Application

This section provides examples of the concepts discussed in the interpretation note.

Event is not regulated

1. During a pre-election period, a chamber of commerce invites an opposition party leader with a seat in Parliament to give the keynote address at an event, in which the leader is expected to outline the party's policy ideas for economic growth. An opposition leader has a parliamentary role of presenting alternative policies to those held by the current government. As the event can be reasonably tied to the party leader's parliamentary duties, it is not regulated. This same event would be regulated if it took place during the election period, as Parliament would be dissolved and most parliamentary duties suspended.
2. An organization hosts an annual conference on a policy issue and invites a candidate to speak as an expert. The event falls during the election period. However, it is always held at that time of year, the conference is not partisan in nature and the candidate is invited for their expertise in this field. The organization is not conducting any other activity in the election period that would be a third party regulated activity or that would result in a contribution. The event can reasonably be seen as having an academic rather than electoral purpose. This event is not regulated.
3. During an election period, a candidate who is the incumbent MP for the riding is invited along with several local public officials to speak briefly at an annual street festival. The candidate was invited as the most recent federal representative of the riding. The event can reasonably be seen as having the purpose to promote the community rather than the candidate, who is not a material focus of the event. This event is not regulated. However, the candidate brought campaign staff to the event to hand out flyers. The remuneration of staff and cost of flyers are election expenses.

Event is regulated as a partisan activity

4. A third party organizes a barbecue to promote a registered party during an election period. It informs a local candidate of the event date in case they wish to attend. The candidate decides to show up and gives a short, informal speech. The event is a third party partisan activity.
5. During an election period, a labour union holds a members' meeting on the next round of collective bargaining. The union invites a federal candidate whom it supports to address members for 15 minutes, but there is no coordination beyond the non-strategic basics of the event time and topic. This is a third party partisan activity. As only part of the event's focus was on the election, the partisan activity expense is a reasonable allocation of the full expense for the event—for example, based on the candidate's speaking time.

6. During an election period, a religious group invites a party leader to a meet-and-greet with congregants after its weekly celebration. This is a third party partisan activity. Assuming the expense for the reception is under \$500, the religious group will only need to register with Elections Canada if it conducts other regulated activities in the election period. Note that if the group had invited multiple party representatives on other weeks of the election period, the event would likely not be regulated.

Event is regulated as a contribution

7. During an election period, a party leader requests to make a policy statement in a company's factory with employees standing in the background. The company agrees. As the event is being held on the registered party's behalf, it results in a potential contribution rather than being a partisan activity. The company must invoice the registered party for the commercial value of property and services it provided for the event so that it does not make an illegal contribution. That amount is also an election expense of the registered party. As the commercial value of using part of the factory as a meeting space is not ascertainable, it is not included in the calculation.
8. During an election period, a third party organization decides to hold an event to endorse a candidate. The third party and the candidate work together to arrange the time, place, speaking points and guest list. Given this coordination, the event results in a potential contribution rather than being a partisan activity. The third party must invoice the candidate's campaign for the commercial value of the property and services it provided for the event so that it does not make an illegal contribution. That amount is also an election expense of the candidate.