Written Opinion: 2021-09

Contributions Made Pursuant to Certain Agreements or Representations

Comments made during the consultation period of January 19 to February 17, 2022

Comments received from the Conservative Party of Canada	**Elections Canada response to the Conservative Party of Canada**
We do not have any follow-up questions or comments regarding the written contents of OGI 2021-09, *Contributions Made Pursuant to Certain Agreements or Representations*.	Elections Canada notes your submission.
Comments received from the Marijuana Party	**Elections Canada response to the Marijuana Party**
Regarding the draft Written Opinion, that is Elections Canada **writing an obituary for a dead "democracy."** To make my comments, I quote as below: "The proposed practice on which the Marijuana Party seeks a written opinion is described in five steps in its application, though there is an additional preliminary step that is important to this analysis: **communicating the plan to potential contributors**. An example of how the proposal could work in practice is as follows. Robert, as an individual, reads about the proposed plan on the party's website and decides to become an electoral district agent of a registered association. **The association appoints him as an agent and reports this to Elections Canada.** He contributes $100 to the association. As an agent, Robert accepts the contribution on the association's behalf and issues himself a contribution receipt for $100. He determines that a $100 expense that he personally incurred is for the benefit of the association (i.e. the association incurred it). The association, through Robert as its agent, then pays him $100 for the expense he has identified as being incurred for the association. He claims a $100 political contribution on his tax return. As a result, although Robert has not incurred any cost (he contributed $100 and received a $100 payment), he has received a contribution receipt potentially worth $75. **There are circumstances in which each of**	We have considered the party's comments and wish to address the following elements, which we understand to be the main point: • the party's view of an agent as a "political entity" • the relevance of planning or communication of the practice in determining its legality • the lack of a ruling on taxation law • the right of Canadians to participate in and contribute to activities of registered political entities The party believes its plan can be undertaken legally because the individuals involved in the transactions are "political entities." However, there is a misconception of how the term is used. Elections Canada uses the term "political entities" in the opinion to represent "registered parties, candidates, leadership contestants and electoral

the five steps listed in the plan may be performed legally. But collectively, and especially when coupled with communication of the plan, they breach the prohibitions in the CEA at subsections 368(4) or 369(1), or both." "Section 369 was added to the CEA to protect the political financing provisions, specifically by ensuring that transactions involving political entities were not used as a means to generate contributions that could be used to claim tax credits. Section 369 itself prohibits structuring a transaction to take the form of a contribution when, in fact, it is merely **a means to funnel funds to a non-political entity** while generating a tax credit receipt." In my view, those statements indicate that Elections Canada is operating with extreme prejudice towards "Robert," in ways which deliberately ignore that "Robert" has become an agent of a registered association. Rather, the assertion is implied that "Robert" is still "a non-political entity." Elections Canada has drafted this Written Opinion with willful blindness to my arguments regarding how and why accepting an appointment to become an agent makes that person able to engage in registered political activities on behalf of their association. In that example, "Robert" is acting as a "political entity" precisely because he became an agent. Although **"each of the five steps listed in the plan may be performed legally,"** Elections Canada concludes that it is the conscious understanding and communication of "Robert's" planned transactions that invalidates his contribution. Basically, this is a demand that political entities must operate without thorough organization. Rather, this Opinion asserts a nebulous sliding scale of willful blindness or deliberate ignorance that enables various agents and officers of registered associations and parties to engage in each of those five steps separately, but that disqualifies the contributions of those officers or agents if they consciously recognize and communicate their intentions to engage in a series of transactions, each of which was legally valid but which nevertheless become invalid because they were planned and organized in advance. Elections Canada is ultimately basing its moral Opinion on the immaculate hypocrisy that political activities are altruistic, similar to charitable activities, despite the jurisprudence actually saying the opposite. Rather than a genuinely legal argument, this draft has a moral foundation, which is rationalized in the appearance of that draft.	district associations," as listed in subsection 369(1). The subsection prohibits a representation being made that all or part of the contribution will be transferred to someone other than the listed entities. Although the registered agents and officers of a party or association may represent that party or association, they are not themselves one of the listed "political entities." The party questions the relevance to the opinion of planning and communication of the practice. The relevance of these concepts derives from the wording of section 369. Section 369 prohibits certain representations. Therefore, the "communication" of certain matters is relevant to the offence. Furthermore, subsection 369(2) prevents collusion for the purpose of circumventing this prohibition. As such, the fact that there was planning for the purposes of making an illegal representation is relevant to the scope of this offence. The party asks why the opinion does not address taxation laws. We have not provided an opinion as to whether the transactions in the plan result in a tax credit because this issue falls within the mandate of the Canada Revenue Agency. Our Electronic Financial Return software allows an agent to create a tax receipt, which is based on requirements in the law for such receipts, but the Canada Revenue Agency, operating under the *Income Tax Act*, ultimately decides on whether a particular tax credit may be claimed. The party suggests that Elections Canada is limiting democratic participation. Elections Canada's mandate is to ensure that Canadians can exercise their democratic rights as set out in the *Canada Elections Act*. Nothing in the opinion prevents Canadians from actively participating in registered

Philosophically speaking, that all traces back to the bullshit that politics is altruistic, which is what the Charities Directorate at Revenue Canada started doing when the political contribution tax credit was enacted in 1974. That is what I proved was legally wrong, as well as proving that Revenue Canada was arrogantly dishonest regarding it, in my previous court case on these matters. The Opinion stated: **"The practice is designed to funnel money through the party or association for the benefit of the individual contributor by paying them a 'premium' in the form of a tax credit."** I have previously cited more than a dozen illustrations of the evidence of the parliamentary purpose for the political contribution tax credit, which was to **encourage more participation**. A tax credit is deliberately designed to be an incentive for people to participate. To assert that it is somehow wrong for taxpayers to take advantage of tax credits is not legally correct, in light of an abundance of jurisprudence that has indicated the opposite legal insights. However, Elections Canada, within this Opinion, has dodged making comments upon the taxation laws, despite that Elections Canada's software, provided to generate official receipts for contributions, has integrated both the election and taxation laws into that software. Elections Canada's draft Opinion is yet another way to make sure that the vast majority of Canadians continue to be too ignorant and intimidated to participate, such that the claim statistics for political contribution tax credits shall continue to show that less than 1% of taxpayers will claim their own credits. From a sublime point of view, Elections Canada's Opinion is amusing in its consequences of demanding willful blindness and deliberate ignorance of the participants in order for their transactions to be legally valid. Officers and agents are deemed to be making legally valid contributions if and only if they do not have a sufficient and publicly stated plan regarding their organization within their political entities. As long as an officer or agent does not publicly notice that their contribution funds were put into the pool of funds that they will spend, then there is no collusion that violates elections laws. Of course, that is easier to do the bigger the political parties and registered associations become, because then their pool of funds is bigger. However,	parties and associations as contributors, workers and volunteers. They can be compensated for their work or for related expenses. Political entities can, and do, promote the tax credit to encourage contributions from individuals. The restriction found in the law and noted in this written opinion is that no one may solicit or accept contributions while representing that the funds will go back directly or indirectly to the contributor or to another person. This is a prohibition put in place by Parliament to protect the integrity of the political financing system.

when it comes to smaller parties or associations, then it becomes more and more obvious that their pool of funds is smaller. Indeed, the limit case is shown in the single most extreme example of “Robert,” who does every step himself. And thus, because he is conscious of that plan, Elections Canada asserts that it is his intention to do so which invalidates his contribution. Of course, almost everything within the elections laws was set up to enable advantages for the bigger political parties, their associations and candidates, while disadvantaging smaller political parties, their associations and candidates. As always, it is inside that context that Elections Canada's Opinion is based on willful blindness, which will enable those elections laws to be administered with extreme prejudice. There is necessarily an implicit sliding scale with regards to the awareness that officers or agents have regarding them spending money that they donated, from which their political contribution tax credit follows. As long as they do not notice, and do not publicly discuss doing that, then it will be deemed legal. However, if they do notice and publicly discuss that, then it will be deemed illegal. I do not expect that Elections Canada will answer the questions regarding why “Robert” is not a political entity, operating within the political entity of his registered association, or why his awareness and communications regarding his rights and freedoms result in disqualifying his rights and freedoms. As the Opinion repeated regarding the prohibition in s. 369, the wording references that **“all or part of a contribution will be transferred to a person or entity other than a registered party, registered association.”** The Opinion is based on discounting and disregarding that “Robert” has been registered to become a “political entity.” Therefore, no part of the contribution has been transferred to any “entity other than the registered association.” But, meanwhile, Elections Canada's Opinion expresses extreme disrespect towards “Robert.” He is aware of his rights and freedoms, and acts upon them. That is what disqualifies him from enjoying his rights and freedoms. Yet, at the same time, both Elections Canada and Revenue Canada appear happy to continue to maintain attitudes of deliberate ignorance towards other agents or officers, especially of bigger parties, as long as those agents or officers do not publicly organize to take advantage of their rights and freedoms to claim tax credits through registered political activities.	

Regarding: **“Subsection 368(4) is breached when a registered party enters into an agreement to pay for goods or services where a term of that agreement is that a contribution will be made. As a result, the proposed practice will breach this provision if the transactions involve the registered party.”** I am not as interested in subsection 368(4) because, if it was possible to publicly promote participation premiums, then I would want to do that through authorizing registered associations rather than through the party as whole. Indeed, I could amend my original question to delete the reference to the party as whole, while only focusing upon the potential for registered associations. Indeed, I resubmit my s. 16 enquiry to only concern associations (simply by deleting the paragraph regarding parties) because those registered associations are what I care most about, because they theoretically have the most potential to democratically distribute power. If, but only if, Elections Canada were able and willing to consider their opinion regarding s. 369, under which “Robert” was an extreme example regarding the issues of **“who is a political entity, within which political entities?,” then**, and only then, might it be worthwhile to pursue this matter further. However, since I presume that Elections Canada will continue to deliberately ignore my comments, there would then be no practical point to continue to debate subsection 368(4), nor to resubmit an inquiry which would only concern registered associations and, therefore, only concern section 369. In my view, the correct interpretation of subsection 368(4) regarding **“when a registered party enters into an agreement to pay for goods or services where a term of that agreement is that a contribution will be made”** changes when those agreements are being made by persons who are all acting within the registered association or party because those persons making those agreements are “political entities” acting on behalf of their respective political entities, from inside those entities. Indeed, if, by some political miracle, Elections Canada provided some useful statements that could be used to inform Canadians like “Robert” regarding their rights and freedoms, then the final consequence might be for some future government to abolish the political contribution tax credit provisions rather than ever allow them to accomplish their true purpose of encouraging vastly more participation.	

I presume that Elections Canada will not reconsider its Opinion because of my comments. On the contrary, in response to that draft, **I have deleted my previous discussions of the Participation Premium Plan from various articles on the Marijuana Party Website** (except for articles which were moved into the Party History section.) Given Elections Canada's draft, I believe that it is now practically impossible to publicly promote the Participation Premium Plan. Democracy and its rule of law in Canada are effectively dead. To make additional comments, I quote: "To the extent that the proposed practice is crafted to avoid the consequences of subsection 369(1)–for example, **by describing the funnelling of money back to the contributor as the payment of a party or association expense**—it also breaches the prohibition in subsection 369(2) of the CEA, which prevents collusion to circumvent the prohibition under subsection 369(1)." The transaction is being described as presented in the "Robert" example because those are the facts regarding that example. "Robert" is a registered agent. **His payment to himself is *payment of an association expense.*** The Opinion adopts an attitude which cancels "Robert's" status as an agent, and presents "Robert's" transactions as only being **"described"** as given in the example, but still, then regarded as somehow not being as given as in that example. I repeat some SCC statements, that are similar to many others: **R. v. Oakes** [1986] 1 S.C.R. 103, at p. 136 d: **"… faith in social and political institutions which enhance the participation of individuals and groups in society."** Or, **R. v. Keegstra** [1990] 3 S.C.R. 697, at p. 728 a: **"… participation in social and political decision-making is to be fostered and encouraged."**	

And, **Keegstra** at p. 764 a - b: **"… participation in the political process is open to all persons. Such open participation must involve to a substantial degree the notion that all persons are equally deserving of respect and dignity."** **The Opinion is being extremely disrespectful to "Robert."** Of course, I reassert that for the same reasons that participation premiums are legally valid within subsection 369(1), so too with subsection 369(2) which is based on rejecting that the payment made "By Robert to Robert" was a payment made by a registered agent to himself, as expressed "**by describing the funnelling of money back to the contributor as the payment of a party or association expense.**" In the "Robert" example: **"He determines that a $100 expense that he personally incurred is for the benefit of the association (i.e. the association incurred it). The association, through Robert as its agent, then pays him $100 for the expense he has identified as being incurred for the association."** The Opinion succinctly summarizes its attitude regarding "Robert" under subsection 369(2) as previously presented under 369(1), namely that despite the facts being that "Robert" became a registered agent, and thereby made payments to himself on behalf of his registered association, the Opinion expresses the attitude that those facts do not count as the facts. From the moment that I read the title of the Opinion, I expected that it would be bad. The Opinion title should have been: **"Contributions made pursuant to certain rights and freedoms."** I quote the **369(1)** wording: **"No person or entity shall solicit or accept a contribution on behalf of a registered party, a registered association or a candidate if the person or entity makes a representation to the contributor or potential contributor that part or all of the contribution would be transferred to a person or entity other than the registered party or a candidate, a leadership contestant or an electoral district association."**	

The relevant excerpts are: **“No person or entity shall solicit or accept a contribution on behalf of a registered association if the person or entity makes a representation to the contributor or potential contributor that part or all of the contribution would be transferred to a person or entity other than the electoral district association.”** The facts in the “Robert” example are that throughout those transactions he was always an agent. After he received his contribution, he was an agent when he paid his expenses, and he was still an agent when he received payment for those expenses. Thus, the facts are that there was never any agreement to transfer funds outside of the electoral district association. Hence, there is no way to apply the wording of subsection 369(1), and so, of course, there is no application of subsection 369(2). None of the contribution is subsequently transferred to any entity other than the registered association, precisely because “Robert” became and remained an agent. There is no time when the funds are transferred to another entity. After “Robert” becomes an agent, then nothing in s. 369 remains relevant. Since there never is a transfer to any other entity than the registered association, there were never any representations of agreements to do so. The money was donated to the association and stayed there. The draft Opinion is wrong. It is not based on the correct legal interpretation of the wording of s. 369. Instead, it is based on a moral attitude driving deliberate ignorance toward the facts that “Robert” becomes a registered agent. From 1984 up until 1999, that moral attitude drove Revenue Canada to behave in arrogantly dishonest ways with regard to the correct interpretation of the political contribution tax credit. Since 2004, I have been attempting to get Elections Canada to answer questions regarding participation premiums. Elections Canada stonewalled me as much as possible. This Opinion is an expression of extreme disrespect for the rights and freedoms of “Robert,” who could be any Canadian taxpayer that wanted to participate in registered politics. The draft Opinion would present the Commissioner with a series of absurdities because that Opinion is wrong in many important ways.	

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 written opinion.	Elections Canada notes your comment.

The following parties did not submit comments to Elections Canada regarding OGI 2021-09:

- Animal Protection Party of Canada
- Bloc Québécois
- Canadian Nationalist Party
- Centrist Party of Canada
- Christian Heritage Party of Canada
- Communist Party of Canada
- Direct Democracy Party of Canada
- Free Party Canada
- Green Party of Canada
- Liberal Party of Canada
- Libertarian Party of Canada
- Marxist-Leninist Party of Canada
- Maverick Party
- National Citizens Alliance of Canada
- New Democratic Party
- Parti Patriote
- Parti pour l'Indépendance du Québec
- Parti Rhinocéros Party
- People's Party of Canada
- Veterans Coalition Party of Canada