



## Written Opinions, Guidelines and Interpretation Notes

### Interpretation Note: 2022-01

#### Assets of Deregistered Electoral District Associations

Comments made during the consultation period of February 23 to April 8, 2022

Comments received from the Conservative Party of Canada	Elections Canada response to the Conservative Party of Canada
<p>We have the following concerns about OGI 2022-01:</p> <ul style="list-style-type: none"> <li>• It allows funds to enter the Political Financing system, including for tax benefit, only to later leave the system without regulation.</li> <li>• It does not sufficiently lay out a process for an Association to re-register after deregistration. Questions remain as to when and to whom funds must be transferred if bank accounts must be closed, frozen and/or transferred to the new Association.</li> <li>• As we are fast approaching redistribution of Ridings, we are concerned about the unintended consequences that this OGI will have upon the significant number of new Associations that will be registered in the next two years.</li> </ul>	<p>Elections Canada notes the party's overall concerns with the OGI. Since the party expands on these concerns in its further comments, we will address the topics as they arise.</p>
<p>We appreciate that the Act is restrictive on this topic and appreciate the interpretation in OGI 2022-01. However, we strongly recommend that the guidance for Deregistered EDAs be split into the two possible outcomes: 1. The Association is not replaced, and 2. The Association is only temporarily deregistered and is intending on a one-to-one replacement Association, for the same Party in the same Riding.</p> <p>For Type 1, most of this OGI applies, except it does not go far enough to cover what must happen with the EDA's assets that entered the system legally.</p> <p>For Type 2, this OGI runs counter to recent advice from Elections Canada for EDAs working towards re-registration. Please expand, or perhaps even prepare a secondary OGI, that explains the step-by-step</p>	<p>The party asks for the OGI to distinguish between an association that will not be replaced and one that is "temporarily deregistered." However, the <i>Canada Elections Act</i> (CEA) does not contain the concept of temporary deregistration; rather, one association is permanently deregistered, and a new association may or may not be registered in its place. For electoral redistribution, the majority of associations choose to continue in a new or readjusted electoral district; they are not deregistered but simply move to the new electoral district when the representation order takes effect.</p> <p>As requested, the recommended steps for the transfer of assets from one association to another are now outlined on page 5 of the OGI. The association that is being deregistered takes the same steps, whether or not a new association will be registered.</p>

<p>requirements for the transfer of assets from a deregistered EDA to its replacement.</p>	<p>We recognize that some of the guidance found in this OGI may run counter to previous advice given to parties or associations on a case-by-case basis. Part of the impetus for the OGI was to develop a consistent approach going forward that aligned with the CEA in all cases.</p>
<p>In preparing this response, we asked the following two questions of EC. We request that they be addressed in the advice to new Associations replacing deregistered ones:</p> <p><b>(1) Can a new EDA use the bank account of the deregistered EDA?</b></p> <p><b>(2) Can a new EDA register prior to the effective date of deregistration of the previous EDA?</b></p>	<p>In response to the party's questions:</p> <ol style="list-style-type: none"> <li>1. Yes, a new registered association can use the bank account of the deregistered association. This is now mentioned on page 5 of the OGI.</li> <li>2. No, a new association cannot be registered in an electoral district before the previous association is deregistered. The CEA is clear that a party can have only one registered association in a given electoral district at any time. This is now reiterated on page 5 of the OGI.</li> </ol> <p>This information will be added to the political financing handbook for electoral district associations, after this OGI is finalized, to clarify the process for associations that wish to register. As well, we will review the notices of non-compliance and deregistration sent to associations (and copied to registered parties) to ensure that time frames for compliance and steps for transferring assets are clearly communicated. Our commitment to clear communication in this area is now mentioned in the OGI on page 6.</p> <p>Later in the redistribution process, Elections Canada will provide information to every registered association and registered party on the process for associations to continue under the new representation order or to deregister and transfer their assets.</p>
<p><b>Page 5, last paragraph in “Can a deregistered association leave assets for its successor?”</b></p> <p>We recommend the addition of a new category, perhaps “non-compliant”, that acts as a precursor to deregistration. If an EDA is so tagged, there could be limits applied (perhaps restrictions on accepting contributions or on expenses?) and they could be given a limited time to come into compliance.</p> <p>The current requirement that an Association MUST be deregistered after the notice has been issued means that it does not serve the ultimate purpose of bringing them into compliance.</p>	<p>The CEA does not allow Elections Canada to restrict the financial activities of non-compliant associations while they are still registered. Restrictions come into play only on the effective date of deregistration.</p> <p>Once a notice of deregistration is sent, the deregistration is irreversible by law. But Elections Canada takes this step only after sending notices of non-compliance and copying the registered party, so that it is aware of the risk of deregistration and can take steps to prevent it. If an association's non-compliance persists despite the party's efforts, the association must be deregistered.</p>

	<p>It may be possible for registered parties to set up agreements with their associations on the terms of their operation. This is a matter for parties to decide internally, however, as it is outside the scope of the CEA.</p>
<p><b>Conservative Party of Canada’s Finance</b>  <b>Page 6, first paragraph</b></p> <p>This guidance makes sense from a legality point of view, as it was strange that a new EDA could just take over the assets of a deregistered EDA when a transfer would be considered illegal, so it makes sense that they [Elections Canada] are addressing this issue.</p> <p>The concern from our finance perspective is in regard to us accepting a transfer from a to-be-deregistered EDA before the deadline and how we then handle it afterwards.</p> <p>From this opinion, we can accept the transfer. In the past, when the new EDA is registered, we would transfer the same amount to the newly registered EDA, and we’re done. <b>But then what if the deregistered EDA doesn’t file their returns?</b> It says <i>the Commissioner may take any enforcement measure it deems appropriate, including a monetary penalty. Who would have to pay that? The Party?</i> From the funds that were transferred to us that we’ve likely already transferred to the new EDA? It also says that if they still can’t get the deregistered EDA to comply, it “may raise questions about the legality of the assets or their transfer.” Since we accepted this transfer, would the Party be responsible for rectifying that by remitting the amount to the Receiver General? By the time the Commissioner makes that determination, we will have long since transferred the funds to the newly registered EDA, which to Elections Canada is considered a separate and legal transfer, so the onus will be on the Party, but the money is long gone.</p> <p>This is practically forcing the Party to get involved. Before, the EDA would inherit the assets, and then, if there was a problem, they would have to deal with it. <b>But the way this is proposed, since a soon-to-be-deregistered EDA can’t transfer funds to the new EDA because it can’t be formed until the old one is deregistered and then it can’t accept a transfer from the old EDA, they pretty much HAVE to transfer the assets to the Party</b> (the alternatives to this are unlikely to happen).</p>	<p>If a deregistered association fails to file its returns after transferring assets to a registered party, the Commissioner of Canada Elections may review or investigate the matter and decide on appropriate measures. Decisions are based on the public interest. The Commissioner may ask the party to participate in an investigation and in remedying the non-compliance. This is important because, without information from a deregistered association’s return, the assets are essentially anonymous contributions. A result could be that the party may be asked to remit the funds voluntarily. If an administrative monetary penalty were issued for a failure to file, it would be issued to the financial agent (who would be personally responsible for its payment) or to the association, not to the party.</p>

<p><b>It also seems very strange that if the transfer doesn't take place before deregistration, the assets just disappear. While they may have a point about legitimate assets being in the political system, this seems like a very important gap that they are not addressing in the proposal.</b></p>	<p>The party noted in its introductory comment, and Elections Canada agrees, that it is preferable for assets that entered the political system with the support of public funding to stay within the system. However, the CEA does not have any provisions that force this to happen.</p>
<p><b>Conservative Party EDA – Staff Liaisons</b></p> <p>It is encouraging to see EC acknowledge, “<i>The statutory notice period before deregistration takes effect is relatively short for volunteer-driven associations.</i>” We need to ensure we have sufficient time to transfer assets. <b>Instead of the effective date of the deregistration being “at least 15 days after Elections Canada sends a notice”, we would push for 90 days minimum. The aforementioned “non-compliant” tag, which allows the association the ability to comply and thus remove the threat of deregistration, is preferable.</b></p>	<p>Elections Canada has not set a minimum length beyond 15 days for the notice period before deregistration takes effect in order to protect the Chief Electoral Officer’s discretion—for example, in dealing with an association that acts in bad faith. There may also be administrative reasons for having slightly longer or shorter periods. However, we have noted the party’s suggestion that 90 days would be an appropriate length.</p>
<p>Is there an opportunity for us to also protect EDA funds should we as a Party choose to force an EDA to deregister? A path to freeze assets of an EDA that has “gone rogue” would be a valuable tool to protect funds or assets that have legally entered the Political Financing system.</p> <p>As an example: Should we ever be in the position that the “<i>registered Party may apply to have the Association de-registered,</i>” the <b>only</b> transactions that are permitted are to transfer assets to the registered Party, ideally within a very short time frame—say, the fifteen days—and with a steep “administrative monetary penalty” for the FA that refuses.</p>	<p>As mentioned in an earlier response, it may be possible for registered parties to set up agreements with their associations on the terms of their operation. Nothing in the CEA restricts the transfer of assets once a party has applied to deregister an association.</p>
<p><b>Comments received from the Liberal Party of Canada</b></p>	<p><b>Elections Canada response to the Liberal Party of Canada</b></p>
<p><b>General Comments</b></p> <p>1. The Interpretation Note focuses exclusively on the assets of a deregistered association and, to be fair, the title of the Interpretation Note is <b>Assets of Deregistered Electoral District Associations</b>. While a deregistered association may have assets, there is also a possibility the deregistered association may have liabilities. These liabilities may arise due to a number of circumstances, including insufficient funds to pay outstanding amounts owed to vendors, loans not repaid and the subsequent determination of a contributor contributing in excess of the annual contribution limit. Given the commencement of the electoral redistribution process, we believe there is merit in broadening this Interpretation Note to include a more fulsome discussion on association deregistration as this does</p>	<p>After an association is deregistered (or six months after it is deregistered because of a party merger or boundary readjustment), an association may be left with assets and liabilities. Apart from its continued filing requirements, the association ceases to have financial rights or responsibilities under the CEA. Its ability to dispose of those assets and its requirement to discharge those liabilities is governed by the broader law that applies to the association and its particular legal structure. A sentence to this effect has been added on page 6 of the OGI.</p> <p>Note that if a deregistered association appears to have accepted an over-the-limit or other illegal contribution while registered, the matter will be referred to the Commissioner of Canada Elections for review.</p>

<p>not appear to be discussed in any detail in the <i>Political Financing Handbook for Electoral District Associations and Financial Agents</i>, other than some limited framework references in Section 1.</p>	
<p>2. Given the infrequency with which assets of deregistered electoral district associations need to be addressed, we believe it would be beneficial to include in the Interpretation Note examples of asset transfers and the treatment of such. For example, this might include, but not be limited to, the transfer of signs in a commercial storage locker, which storage locker is under a long-term lease; the transfer of property, goods or equipment such as computers; etc. Similar examples should also be provided for liabilities.</p>	<p>The transfer of non-monetary assets to the registered party or a registered association of the party is done by reporting outgoing and incoming transfers in the financial returns of the participating political entities. Non-monetary assets do not have to be moved physically if they will later be transferred to a new association in the same electoral district. An example of a monetary and non-monetary transfer of assets has been added on page 5 of the OGI. Further examples may be added in the handbook for electoral district associations.</p>
<p><b>Specific Comments</b></p> <p>We provide the following specific points for consideration:</p> <p>1. In the Analysis and Discussion section, and more specifically in the subsection “What happens to remaining assets?” the first paragraph on page 6 states “With no disposal requirement, once the deadline has passed for sending transfers, a deregistered association’s remaining assets are simply removed from the political system. They become unregulated.” We believe there may be merit in a broadening of the discussion of these funds becoming unregulated. For example, while no longer under the regulatory regime of the <i>Canada Elections Act</i>, the disposition of these funds may be subject to statutory provisions in the <i>Income Tax Act (Canada)</i>, depending on how and to whom the assets are disposed of.</p>	<p>As noted in our response to the party’s first comment, the OGI now mentions that the disposal of assets or the discharge of liabilities after deregistration is subject to broader laws than the CEA. We have not elaborated on the application of those laws as they fall outside Elections Canada’s mandate.</p>

Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections
<p>On page 4, in the last sentence of the second-last paragraph, it is suggested that an association cannot make monetary or non-monetary transfers to a candidate's campaign if the campaign has not yet opened a bank account. It would be useful to clarify that monetary transfers are the only type of transfers that require the prior opening of the bank account by the campaign. Subsections 477.46(3) and (3.1) of the <i>Canada Elections Act</i> (the Act) specify that all deposits and payments of campaign funds are required to pass through the campaign bank account. The transfer of property and services (for example, an association that transfers signs to a campaign for free) does not involve a financial transaction for the campaign. It is therefore not necessary that the campaign have a pre-existing bank account so that the official agent can accept such a transfer.</p>	<p>The sentence has been modified as follows:</p> <p>“In the latter case, <b>the following transfers are allowed:</b> monetary and non-monetary transfers to a candidate in a future election who has an official agent and a campaign bank account (<b>though a non-monetary transfer is allowed without a bank account</b>) and monetary transfers to a candidate in a past election who has unpaid claims or loans (the transferred amounts must not exceed what is unpaid).”</p>
<p>In the last sentence of the first paragraph under the “Background” title, it is stated that an unregistered electoral district association cannot send transfers to the registered party's affiliated entities. We would suggest adding language to clarify that an unregistered electoral district association cannot send transfers to the registered party's affiliated entities <i>or the registered party itself</i>. Pursuant to paragraphs 447(b) and (c) of the Act, an unregistered association cannot make a monetary or non-monetary transfer to the party or the party's affiliated entities.</p>	<p>The sentence has been modified as follows:</p> <p>“Notably, an unregistered electoral district association of a registered party could not send transfers to <b>the party or its</b> affiliated entities.”</p>
<p>Under the summary of the relevant legal provisions, in the third-last and second-last bullet points, it is stated that an association deregistered as a result of the merger of registered parties or the coming-into-effect of a new representation order revising the boundaries of the electoral district of the association can, in the six months after the deregistration, continue to transfer property or funds to the party or its registered associations. It is also specified, and rightly so, that these deregistered associations cannot transfer services. However, this latter clarification is not reproduced anywhere else in the body of the document. For greater clarity, we would suggest adding the same clarification at the end of the last paragraph of the section entitled “How do associations become deregistered, and how can they dispose of their assets?”.</p>	<p>The following sentence has been added at the end of the paragraph:</p> <p>“A transfer of services is not permitted.”</p>

The following parties did not submit comments to Elections Canada regarding OGI 2022-01:

- Animal Protection Party of Canada
- Bloc Québécois
- 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
- Libertarian Party of Canada
- Marijuana Party
- 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