



## Written Opinions, Guidelines and Interpretation Notes

The Chief Electoral Officer issues guidelines and interpretation notes on the application of the *Canada Elections Act* (CEA) to registered parties, registered associations, nomination contestants, candidates and leadership contestants, in accordance with section 16.1 of the CEA. 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 CEA. However, they are for information only and do not displace the provisions of the CEA.

### Interpretation Note: 2022-01 (Draft – February 2022)

## *Assets of Deregistered Electoral District Associations*

### Issue

Registered electoral district associations support their registered parties at the local level through activities such as recruiting candidates, fundraising and representing local issues. There are many reasons why a registered association can become deregistered, either voluntarily, involuntarily or by operation of the law. The *Canada Elections Act* (CEA) sets out rules for how assets can be moved around when an association is facing deregistration or is already deregistered. In the past, Elections Canada has not always applied these rules consistently.

This interpretation note seeks to establish a clear and consistent approach to how assets of a deregistered association may be dealt with in various circumstances, especially in the period after deregistration takes effect.

### Interpretation

- (1) A registered association that has been notified of its impending voluntary or involuntary deregistration can, before the effective date of the deregistration, transfer assets to:
  - its registered party
  - another registered association of the party
  - in certain circumstances, a candidate endorsed by the party, or
  - a nomination contestant or leadership contestant of the party (if the transfer is non-monetary and offered equally to all contestants)
- (2) The effective date of the deregistration must be at least 15 days after Elections Canada sends a notice to the association and party. In general, the agency will set an effective date that is beyond the minimum so that associations have more time to make transfers before they are deregistered.
- (3) From the effective date of the deregistration, the association can no longer make a transfer, including to its registered party or any association (whether registered or unregistered) of the party.

- (4) An association that is deregistered because of a readjustment of electoral boundaries or a party merger can continue to send transfers to its registered party or another registered association of the party for six months after its deregistration.
- (5) There is no obligation on a registered association that is facing deregistration to transfer its assets, and only the financial agent can send transfers on the association's behalf.
- (6) A deregistered association that transferred assets within the allowable time frame is still required to submit its outstanding financial transactions returns by the six-month deadline. As transferred assets could include assets that the association received irregularly, the deregistered association's failure to disclose its financial transactions may raise questions about the legality of the assets or their transfer.
- (7) Once identified in the returns of affiliated political entities, the transferred assets may be subject to a further review that leads, for example, to the return of illegal contributions. During a review or investigation, the Commissioner of Canada Elections may examine the matter to determine whether the (deregistered) electoral district association had legally received the assets that it later transferred.

## Legal Framework

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

- An electoral district association is an association of members of a political party in an electoral district. A registered association is an electoral district association that is listed as registered in Elections Canada's registry. (s. 2(1))
- No electoral district association of a registered party may do the following, unless the association is registered: accept contributions; send transfers to the registered party, its registered associations or a candidate endorsed by the party; send non-monetary transfers to nomination contestants or leadership contestants of the party; or accept surplus funds of candidates, nomination contestants or leadership contestants of the party. (ss. 365(1), 447)
- A registered party may have at most one registered association in an electoral district. (s. 449)
- Within six months after becoming registered, an association must provide the Chief Electoral Officer with a statement of its assets and liabilities as of the day before the effective date of the registration. (s. 451)
- Only individuals who are Canadian citizens or permanent residents can make political contributions to a registered party, registered association, candidate, nomination contestant or leadership contestant. (s. 363(1))
- Ineligible contributions must be returned to the contributor or remitted to the Receiver General for Canada, as the case may be, within 30 days after the recipient of the contribution becomes aware of the ineligibility. (s. 363(2))
- The following transfers between an electoral district association and the registered party, other associations and candidates of the same political affiliation are permitted and are not contributions:
  - An electoral district association, whether registered or not, can accept a transfer of funds, property or services from the registered party.
  - A registered association can accept a transfer of funds, property or services from another registered association or a candidate endorsed by the registered party.
  - A registered association can transfer funds, property or services to the registered party or to another registered association of the party.

- A registered association can transfer funds, property or services to a candidate endorsed by the party. It can send transfers once the candidate has appointed an official agent and, for a transfer of funds, has opened a campaign bank account. It can send funds after election day only for the candidate to pay claims and loans.
- A registered association can transfer property or services to a nomination contestant or leadership contestant, as long as they are offered equally to all contestants in a particular contest. (ss. 364, 365(1))
- No person or entity, other than the financial agent of a registered association, may send or receive a permitted transfer on behalf of the registered association. (s. 475(4))
- The registered association or its registered party may apply to have the association deregistered. As well, the Chief Electoral Officer may deregister a registered association if the association or its financial agent fails to comply with a notice about filing mandatory documents or returns. (ss. 467, 468)
- If an association is being deregistered for the reasons above, the Chief Electoral Officer will send the association and the registered party a notice with an effective date of the deregistration that is at least 15 days after the day on which the notice is sent. (s. 470)
- A registered association in an electoral district whose boundaries are revised as a result of a representation order made under the *Electoral Boundaries Readjustment Act* will be deregistered if it does not give notice that it will continue as the association for a particular electoral district under the new representation order. The association is deregistered on the day on which the representation order comes into force. (s. 469)
- If an association has been deregistered because of a new representation order, it may continue to transfer property or funds to the registered party or registered associations of the party in the six months after the effective date of the deregistration. A transfer of services is not permitted. (s. 469)
- On the merger of registered parties, any registered association of a merging party is deregistered. It may continue to transfer property or funds to the merged party or a registered association of the merged party in the six months immediately after the merger. A transfer of services is not permitted. (s. 423(3))
- The financial agent of a deregistered association must, within six months after the day of its deregistration, provide the Chief Electoral Officer with a financial transactions return for the portion of its current fiscal period ending on the day of deregistration, an auditor's report if required, and any outstanding documents from an earlier fiscal period. (s. 473)

## Background

In 2004, electoral district associations became obligated to register with Elections Canada to perform certain financial transactions in support of a registered party or candidate. Notably, an unregistered electoral district association of a registered party could not send transfers to the party's affiliated entities.

At the time, associations became subject to the legislation while holding existing assets and liabilities. As part of the transition to the new regime, the CEA required that, within six months of being registered, the associations submit a statement of assets and liabilities as of the day before registration. This would be the starting ground for their annual reporting. It allowed associations to bring assets into the political system without declaring their source. Assets could be cash and equivalents, inventory, capital assets, accounts receivable and prepaid expenses, among others.

The CEA continues to require that newly registered associations provide a statement of their assets and liabilities as of the day before registration. However, since an unregistered association may not accept contributions or accept transfers from political entities other than the registered party, the sources of these assets are limited. A new association's starting assets could therefore include transfers from its registered party or cash from loans at a commercial rate of interest, for example. Once registered, the association is able to receive contributions and receive transfers from a greater variety of affiliated political entities.

In the past, Elections Canada sometimes allowed a new association that was replacing a deregistered association in an electoral district to start with the remaining untransferred assets of its predecessor. There are multiple reasons for this approach, which are detailed below. However, it was taken inconsistently. As well, there were other limited instances in which transfers were allowed even though they took place after the statutory deadline. This interpretation note reviews the legal provisions on transfers to and from electoral district associations and the objectives of the CEA to arrive at a clear and consistent approach.

## **Analysis and Discussion**

### **How do associations become deregistered, and how can they dispose of their assets?**

There are many reasons why a registered association of a registered party becomes deregistered, either voluntarily, involuntarily or by operation of the law. The type of deregistration affects the time frame for disposing of assets.

On the voluntary side, the registered association or its registered party may apply to have the association deregistered. The party may make this request without the association's agreement, though it cannot control precisely when the deregistration takes place. On the involuntary side, the Chief Electoral Officer may deregister an association for failing to submit mandatory documents or returns. This takes place only after cautions are issued. Elections Canada notifies the association's chief executive officer and financial agent of the failure to meet the obligation and sends a copy of the notice to the leader and chief agent of the registered party. Elections Canada asks the association to correct the omission within 30 days of receiving the notice or satisfy the agency that the omission was not the result of negligence or a lack of good faith.

Once Elections Canada effectuates a deregistration, it sends a notice to the association and its registered party with an effective date of deregistration that is at least 15 days after the notice is sent. The notice includes an explanation of the deregistration process and its results. Before the effective date of deregistration, the association can transfer assets to its registered party; another registered association of the party; or, in certain circumstances, a candidate endorsed by the party. In the latter case, transfers can be monetary and non-monetary transfers to a candidate in a future election who has an official agent and a campaign bank account, or monetary transfers to a candidate in a past election who has unpaid claims or loans (the transferred amounts must not exceed what is unpaid).

Deregistration may also result from two operations: the readjustment of electoral boundaries, which occurs every 10 years, or a party merger. In the first case, a registered association in an electoral district whose boundaries are revised under a new representation order is deregistered when the order comes into effect, unless the association has given notice that it will continue. In the second case, when registered parties merge, any registered association of a merging party is deregistered. In both these cases, the associations can continue to send transfers of property or funds to the registered party or merged party, or to another registered association of the party or merged party, for up to six months after deregistration.

## **Can a deregistered association leave assets for its successor?**

It is possible that an association will not have transferred its assets before it is deregistered (or before the six-month deadline, in the case of a boundary readjustment or party merger). Elections Canada has sometimes allowed a new association in the electoral district to assume these remaining assets. There are multiple reasons for this approach:

- The CEA allows an association to start with assets, meaning that certain unregulated assets are allowed to enter the political system.
- The transaction could have been accomplished legally if the association facing deregistration had transferred its assets to its registered party or a registered association of the party, which could then have transferred the assets to the new association. In practice, the same bank account is often used by the new association, making the transfers out and in seem administratively unnecessary.
- The statutory notice period before deregistration takes effect is relatively short for volunteer-driven associations that, quite often, are deregistered because they lack members in key roles.
- Allowing a new association to start with remaining assets of the previous association is consistent with a goal of the CEA: ensuring that funds, especially publicly subsidized funds such as tax-credited contributions, stay within the political system.

However, allowing the assets to stay in place and be assumed by a new association comes with a series of challenges. Foremost, there is nothing in the CEA that suggests that a new association can simply continue with the assets of a deregistered association (unless it has applied to continue following a boundary readjustment). On the contrary, in terms of sending assets, the CEA is clear that a deregistered association cannot send transfers to another political entity outside the allowable period. This includes transfers to a new association of the party in the electoral district, which is a separately registered political entity under the law, even if it has the same membership, bank account and officers as its predecessor. In terms of receiving assets, the CEA is also clear that an unregistered association of a registered party cannot accept contributions and cannot accept transfers other than from its registered party.

In addition, allowing assets to be assumed by a new association poses risks for the overall integrity and transparency of the political financing system. Associations are most often deregistered for failing to submit their financial returns (approximately 200 of 324 associations deregistered since 2015). Once deregistered, associations have an obligation to submit all outstanding returns within six months, but this deadline is also regularly missed. Meanwhile, a new association can register the day after an association has been deregistered. Allowing the new association to assume the assets of its predecessor leaves little incentive for the deregistered association to submit returns. Moreover, in the absence of financial returns, there is no way for Elections Canada to verify whether the assets had initially entered the system legally.

As a result, Elections Canada's position going forward is that a new association can never assume the untransferred assets of its predecessor. Such an action will be referred to the Commissioner of Canada Elections with possible consequences for the sender and receiver.

## **What happens to remaining assets?**

Given the above discussion, a question arises as to what happens to an association's remaining assets once it has been deregistered (or past the six-month deadline to send transfers, in the case of a boundary readjustment or party merger). When it comes to candidates, nomination contestants and leadership contestants, the CEA keeps regulated funds in the system by requiring campaigns to dispose of a surplus to an affiliated political entity after an election or contest. However, there is no similar obligation on an association at the end of its registered life, and only the financial agent can send transfers on the association's behalf.

With no disposal requirement, once the deadline has passed for sending transfers, a deregistered association's remaining untransferred assets are simply removed from the political system. They become unregulated.

There are, however, administrative measures that can help keep regulated funds in the system. In general, Elections Canada will set an effective date of deregistration that is beyond the minimum 15 days after notice is sent to the association and party. The agency may also notify party representatives before it formalizes its decision to deregister an association if it is possible that the party's intervention could reverse the need for deregistration. (Once the decision is made to deregister an association and a notice is sent, however, the deregistration cannot be reversed.) In the deregistration notice, Elections Canada will be clear about the time frame in which transfers can occur. These measures will provide registered associations with more opportunities to comply with requirements or to arrange and send transfers to other political entities before they are deregistered, in order to keep the assets in the political system.

### **What if an association makes allowable transfers but fails to submit its returns?**

It is possible that a deregistered association will transfer assets to an affiliated political entity within the allowable time frame but fail to submit its outstanding financial transactions returns. Those returns are due within six months after deregistration or within an extended deadline granted by Elections Canada or a judge. Elections Canada sends two reminders to the association in the period before the deadline.

After the deadline passes, Elections Canada will continue to seek transparency from the deregistered association by referring the association to the Commissioner of Canada Elections for a failure to file. The Commissioner's office may, in turn, seek to have the association comply with the reporting obligations and take any enforcement measures that the Commissioner deems appropriate. One possible enforcement measure, among others, could be the imposition of an administrative monetary penalty for failure to file the required financial return.

If non-compliance continues, the deregistered association's failure to disclose its financial transactions may raise questions about the legality of the assets or their transfer. This is because the association may have received the assets irregularly, such as through contributions over the limit or from an ineligible or anonymous contributor. Once identified in the returns of affiliated political entities, the transferred assets may be subject to a further review that leads, for example, to the return of illegal contributions. During a review or investigation, the Commissioner of Canada Elections may examine the matter to determine whether the (deregistered) electoral district association had legally received the assets that it later transferred.

## **Conclusion**

This interpretation note establishes a consistent approach to how assets of a deregistered association may be dealt with in various circumstances. The CEA provides specific rules for how associations may transfer their assets in the allowable time frames. Any remaining assets may not be transferred and are removed from the political system.

Although there are arguments for allowing a new association to assume its predecessor's remaining assets, explicit provisions in the CEA and the objective of transparency do not favour this approach. Elections Canada will use administrative measures to help meet the CEA's goal of keeping public funds in the system. Where compliance is lacking, the agency will promote transparency through referrals to the Commissioner of Canada Elections.