



Written Opinions, Guidelines and Interpretation Notes

Interpretation Note: 2022-03

Voter Databases and Election Expenses

Comments made during the consultation period of November 4 to December 19, 2022

| Comments received from the Conservative Party of Canada | Elections Canada response to the Conservative Party of Canada |
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| <p>Pages 5–7 – “Current Environment: Collection and Use of Voter Data”</p> <p>This draft includes assumptions about Party usage of election data. This is irrelevant to the OGI. This sort of data isn’t typically included in any OGI. Can it be struck from this draft? What is the purpose of this section?</p> | <p>The section is included in the OGI to give all readers—including members of the public, who may be less familiar with political databases—background for understanding the regulated aspects of data collection, storage and use and their complexity. The financial data shows that, even though data obtained before the election is not an election expense, political entities incur significant election expenses against their limit to obtain current data during an election. Although the practices described may not reflect activities of all parties, they are drawn from academic and public sector research available at the time of writing and provide a framework for understanding the interpretation note. However, small changes have been made to remove details that are not relevant to the discussion.</p> |
| <p>Page 10 – “Data obtained by conducting surveys and research”</p> <p>“During an election period, expenses to manipulate and use data are also election expenses. Registered parties and candidates must therefore report the following data-related expenses, at a minimum, as election expenses:</p> <ul style="list-style-type: none"> • expenses to add data to a database and clean the data during the election period • expenses for system support during the election period” <p>What mechanism must a local campaign use to quantify the expenses to add data to a database? At the Party level, we have the ability to apply all (or a portion) of staff salaries to election expenses, who might assist with these sorts of activities. What mechanism must be used at the local level?</p> | <p>The mechanism to quantify the election expense will differ by campaign at the local level. For example, if a campaign uses volunteer labour for all of its database work, there is no expense to report. If a campaign uses paid staff for some of its database work, but the staff are assigned to many other tasks as well, the campaign does not need to break down the total compensation into separate amounts for database work and other work in its financial return. Instead, the total compensation would be reported in the general category of salaries and wages paid to campaign workers.</p> |

Page 12 – “Implications for other political participants – Registered associations”

From whom must the Association receive prior written instruction? The candidate? Is it a violation if a fundraising activity or previously scheduled activity of the Association occurs during the election period? Or are they just not able to share the data with the campaign?

When a registered association plans to incur election expenses on a candidate’s or registered party’s behalf, prior written authorization must come from the candidate’s official agent in the former case or the party’s chief agent or an authorized registered agent in the latter case. An electoral district association is otherwise prohibited from incurring election expenses.

A fundraising activity or other activity organized by a registered association can be held during an election period only if the related election expenses (e.g. event advertising, invitations) are authorized and reported by the candidate’s official agent. Non-promotional expenses for a fundraising activity (e.g. food, balloons) are not election expenses and could be reported by the association. Even if the activity was previously scheduled, the election expense rules still apply. The only exception is for election advertising that cannot be cancelled when a by-election or non-fixed-date general election starts—it is deemed to not be an election expense.

In terms of data sharing, if the association has collected data during an election period event without conducting surveys or research (e.g. a ticket buyer’s name and contribution amount), this collection of data is not an election expense. The resulting data can be shared with the candidate.

However, if the association conducts a survey or research during an election period event and adds the data to a database that it shares with the candidate, the expense to conduct the survey or research is an election expense to be authorized and reported by the official agent. The association could withhold the data from the candidate to avoid incurring an election expense, but other election expenses from the event would still need to be accounted for.

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| <p>Page 12 – “Members of Parliament participating in an election or contest”</p> <p>“In terms of data, a candidate who is an MP might use information on electors from their parliamentary database to promote their re-election. The campaign has to report the commercial value of the data as a personal contribution from the MP, subject to their contribution limit, unless it is paid by the campaign. It is also an election expense or an ‘other’ electoral campaign expense, depending on when the data was shared with the campaign.”</p> <p>An MP must determine the fair market value of data they use for their election campaign? And they are able to apply this as a personal non-monetary contribution? I suspect the value of data will vary wildly between campaigns. How will this be audited?</p> | <p>Yes, if an MP uses their parliamentary database for electoral purposes, they will need to determine the commercial value of the data in order to report its use. This aligns with the longstanding treatment of other parliamentary resources that are sometimes used during elections (e.g. MP billboards, householders) and the valuation of non-monetary contributions in general. The parliamentary data could be reported by the MP as a personal non-monetary contribution, subject to the contribution limit for candidates to their own campaign (currently \$5,000 per election). The commercial value that the MP reports must be supported by a quote from a data supplier for a dataset with a similar number of entries and data fields and with a similar level of quality and currency. Quotes are reviewed by Elections Canada auditors, who may request more information from a campaign if the commercial value falls outside the usual range reported by other campaigns in similar circumstances.</p> |
| <p>Comments received from the Liberal Party of Canada</p> | <p>Elections Canada response to the Liberal Party of Canada</p> |
| <p>General Comments None</p> <p>Specific Comments We provide the following specific points for consideration:</p> <ol style="list-style-type: none"> 1. On page 2, point (7), words along the line of “or otherwise provided by Elections Canada as permitted by the <i>Canada Elections Act</i>” should be added to the end of the sentence to reflect the concept of footer #17 at the bottom of page 10. | <p>The following sentence has been added to point (7): “Elections Canada is not considered an external source when it provides data as required by the CEA.”</p> |
| <ol style="list-style-type: none"> 2. In the chart on page 9, Table 2, in the second section “Political entity owns the database software outright (customized or off-the-shelf solution) – Candidate using the registered party’s software,” it is stated the election expense is the party’s incremental cost to provide additional access to a candidate during the election period. We have difficulty understanding why this particular situation is incremental cost (only) when all of the other examples provided in the bottom part of Table 2 are commercial value. Our view is the election expense should be the commercial value. | <p>Elections Canada agrees that, when candidates use their party’s proprietary software, commercial value is the correct representation of the candidate’s software expense. In using “incremental cost” in the draft note, our intention was to ask candidates to report the commercial value of incremental access for their campaign. For clarity, Table 2 has been modified to present the following as the candidate’s election expense: “Commercial value of the party renting additional access per candidate during the election period (building on the commercial value of the party renting software for itself).” In the Practical Application section, an example has been expanded to show a party getting a quote for candidates’ access to the software.</p> |

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| <p>3. On page 10, in the section below Table 3, for the two bullet items, the describing paragraph above should be modified to make clear that the election expense to be recorded would be a candidate's pro-rata share of a (party) centrally negotiated data addition or system support available to all of the party's candidate campaigns if such services were centrally purchased by the party.</p> | <p>The following paragraph has been added under the bullet items: "In some cases, a registered party might incur data expenses centrally on behalf of its candidates. If a candidate's official agent agrees to buy the property or services from the party, a prorated amount for their electoral district is the candidate's election expense rather than the party's election expense."</p> |
| <p>4. On page 11, in the first paragraph, the last sentence states, "For example, an advocacy group cannot provide a contact list to a party or candidate for less than the commercial value." It should also include a caution regarding the possibility of collusion if the list were provided by the advocacy group to a party or candidate.</p> | <p>While there are restrictions on how information and resources flow between a third party and political entities, an advocacy group that provides a contact list to a party or candidate would not breach the collusion provisions, unless it shared the list to help the party or candidate circumvent their election expenses limit. However, the OGI does caution in the same section that there are risks for third parties and political entities coordinating with each other.</p> |
| <p>5. On page 12 of the OGI, the last paragraph of the section "Leadership contestants and nomination contestants" states, "As well, leadership and nomination contestants cannot send non-monetary transfers. A candidate, registered party or registered association that wants to receive voter data collected by a contestant must purchase the data or receive it as a personal non-monetary contribution [<i>subject to the individual's annual contribution limit</i> – added for clarification] from the contestant." If this statement is made due to interpretation or restrictive statutory provisions, given leadership and nomination contestants are very intertwined with the party, we would encourage Elections Canada to suggest modifications to electoral legislation that would remove the restriction of a leadership or nomination contestant campaign from sharing data with a political party under whose rules the leadership or nomination contestant campaign was established.</p> <p>The database data of a leadership or nomination contestant cannot be compared to the voter data used by a candidate in a general or by-election. This is because individuals eligible to vote to support a leadership or nomination contestant must first be a member/supporter of the party. Leadership or nomination contestants have the ability to submit membership/supporter names to the party for registration. As such, the party already obtains the data set of leadership or nomination contestant voter data. Additionally, contributions to leadership contestants are virtually all made through the directed contribution provisions of</p> | <p>Elections Canada agrees that data from membership and contribution processing can be shared between contestants and the party without regulation because the data belongs equally to both entities. This has been clarified in the OGI. The restriction on transfers would apply to data that a contestant's campaign obtained by conducting surveys or research to enhance its own database.</p> <p>The policy reason behind the CEA's prohibition of non-monetary transfers from leadership and nomination contestants to any of its affiliated political entities, adopted in 2003 under Bill C-24, is not immediately clear. Elections Canada will review the regime and consider making a recommendation to Parliament for legislative changes in this area.</p> |

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| <p>the <i>Canada Elections Act</i>, and as such, a party would have all of the contribution data of a leadership contestant. Given how parties manage leadership and nomination contest data, we do not believe there are implications pertaining to non-monetary contributions from the contestant to the party.</p> | |
| <p>6. On page 12, in the section “Members of Parliament participating in an election or contest,” in the first paragraph, a statement is made regarding MPs using House of Commons data resources. If such an activity is not permitted by the <i>Members By-law</i>, then the example should be modified to not use as an example an activity that is not permitted.</p> | <p>While the House of Commons <i>Members By-law</i> may restrict the use of parliamentary data and other parliamentary resources, the House has sole authority for determining whether a particular use is permitted. The example in the OGI ensures that, in the event that parliamentary data is used, campaigns know to report the use and how to do so under the <i>Canada Elections Act</i>. However, a note has been added after the example to remind campaigns that the <i>Members By-law</i> may place limitations on this activity.</p> |
| <p>Comments received from the Marxist-Leninist Party of Canada</p> | <p>Elections Canada response to the Marxist-Leninist Party of Canada</p> |
| <p>The MLPC has studied Elections Canada’s (EC) Draft Interpretation Note on Voter Databases and Election Expenses, which revisits and changes the current interpretation of the <i>Canada Elections Act</i>.</p> <p>Since 2015, the law has been interpreted to exclude costs for the creation and population of voter databases as an election expense if they were incurred before the election period. Only the costs of adding information to the databases during the election period were deemed to be election expenses.</p> <p>In effect, this has meant that millions of dollars spent by political parties to track electors have not counted towards spending limits. This discredits the claim these limits contribute to making elections fair because they apply to all.</p> <p>The new interpretation will require parties and candidates to report “the use of voter database software during an election period” as an election expense in the same way that they must report the use of their national headquarter offices during the official campaign period as an expense. The examples presented in the draft interpretation describe how this should be done, particularly as outlined on page 13. In our opinion, they are clear.</p> <p>We use the occasion to raise some related concerns.</p> | <p>Elections Canada notes your contextual comments on the collection and use of voter data and on voter privacy.</p> |

Electors Should Not Pay for Databases and Data Analytics

The MLPC notes the irony involved in moving databases and data analytics into the category of election expenses. It creates a Catch 22.

On the one hand, excluding database expenses used to track electors from the amount of money parties can spend is patently unfair. On the other, by treating these costs as election expenses, political parties will now enjoy public reimbursement for these expenses at a rate of 50 per cent, so long as they meet the threshold. The inclusion of expenses related to databases amounts to imposing a kind of tax on the electorate to pay for campaigning practices that are broadly reviled and detested.

Abundant studies have shown that electors do not approve of political parties compiling dossiers on them so that they can be micro-targeted. There is also sufficient evidence that they want political parties to respect their right to privacy—starting with the right to informed consent before information about them is compiled. The vast majority, when surveyed, have indicated they want political parties to be subjected to the same privacy laws that other entities are compelled to obey. Nevertheless, the political parties with power to change the privacy laws have rejected acting responsibly on this matter time and again, going so far as to reject the recommendations of Privacy Commissioners and Chief Electoral Officers.

Entrenching the Concept of “Ever More Efficient Campaigns”

In its draft note, EC points out that “in the last decade, registered parties and candidates have increasingly relied on voter databases and analytics to run ever more efficient campaigns.” This observation is given as one of the reasons for revisiting the current interpretation on database expenses.

The use of the term “efficient campaigns” has become commonplace over the past decade. It is as if the aim of an election is not to enable Canadians to exercise their right to elect and be elected and to an informed vote, but to be efficient in micro-targeting electors to get a particular result.

The 2011 Federal Election brought the use of data about the electorate in election campaigns to the fore, with the Conservative Party being acknowledged as the leader in the field. Following that

The term “efficient campaigns” is used objectively in the background section to describe a key motivation behind voter data collection rather than as a matter of legal interpretation. It allows readers to understand the context in which the interpretation note was written.

election, the late Senator Gerstein boasted that the Conservative Party's Constituent Information Management System accounted for the margin of victory of some 40 Conservatives. "Yes, you heard me," he said, "There are roughly 40 Conservative members in the House of Commons who would not be there were it not for our party's extremely effective use of its database."

It is also the election that brought us the Robocalls Scandal, which revealed for all to see that elector databases were being used not only to "Get Out the Vote," but also to suppress the vote.

The Liberal Party quickly caught up. After the 2021 snap Federal Election, Trudeau's former top adviser Gerald Butts responded to concerns about the low number of votes with which the Liberal Party won the election (32.6 per cent of the valid ballots). The Liberals ought to be congratulated for figuring out how to win with fewer votes, he said. He said they won by using a process he called vote efficiency. Butts tweeted that the last three Trudeau Liberal campaigns were among "the most efficient" in Canadian history, and he praised the "super geniuses" of Data Sciences, a Montreal-based analytics firm that handles voter identification, for getting out the vote and digital advertising for the Liberal Party and local campaigns across the country. "We count seats, not votes, so smart campaigns focus on delivering them," he tweeted.

Tom Pitfield, another Liberal insider, is the CEO of Data Sciences. According to Pitfield, legislated spending caps have forced parties in Canada to look at the electoral map strategically and figure out which seats they need to win. "The whole game plan since 2015 is to be agile and to deploy limited resources as efficiently as possible to the places where they'll have the greatest impact," he explained.

The "greatest impact," particularly in the first-past-the-post system of counting votes, is achieved using data analytics to maximize the voter turnout in what are called battleground ridings. This is U.S.-speak picked up from the companies which are now hired by political parties to manage their campaigns. All of it abandons even the pretense of attempting to use elections to mobilize the Canadian people behind a political vision for the country.

Increasingly, ridings which a party is unlikely to win are simply ignored. Not a few political analysts are questioning whether the

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| <p>technological methods used for these “efficient campaigns” belong in a democracy.</p> <p>All to say that, in the opinion of the MLPC, the entrenchment of this concept of “efficient campaigns” into legal interpretation does not bode well.</p> <p>This concept of “efficient campaigns” is diametrically opposed to the concept upon which the party-dominated system of representative democracy purports to be based. Political parties were supposed to serve as “primary political organizations” to involve the electorate in political affairs such as the formulation of economic and social policies and, at election time, to give rise to the expression of a clear and coherent political will in the form of party government. Although this is no longer the case and a cartel party system has taken over, talk about “efficient campaigns” as an aim should not wend its way into Elections Canada documents.</p> | |
| <p>We conclude that the interpretations should clearly say that whereas databases and data analytics must be treated as an election expense, they must not be eligible for any reimbursement.</p> <p>All in all, the <i>Canada Elections Act</i> is beyond salvaging because it has become thoroughly self-serving. Repeated changes to the law and its provisions have only made its original aim of conducting what were called free and fair elections, limited as that aim was, even more remote.</p> <p>A new election law is required to conform to the demands of a modern democracy in which the electoral process is funded, not political parties, which should be made to limit their campaigns to funds raised from their own members on the basis of contribution limits.</p> <p>Public funds should be used to enable the political participation of all members of the polity. It should certainly not be used to facilitate political parties violating the right of the electorate to an informed vote by micro-targeting them on the basis of data analytics. It is beyond the pale to call elections based on such practices fair and free.</p> | <p>Elections Canada does not have the discretion to exclude election expenses from reimbursement based on how the property or services are used. Under the <i>Canada Elections Act</i>, if an election expense is reasonably incurred and paid using regulated funds, it is partially reimbursed to candidates and parties that meet the conditions for reimbursement.</p> |

| Comments received from the Commissioner of Canada Elections | Elections Canada response to the Commissioner of Canada Elections |
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| We agree with the content of the proposed interpretation note. | Elections Canada notes your comment. |

The following parties did not submit comments to Elections Canada regarding OGI 2022-03:

- 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
- Maverick Party
- National Citizens Alliance of Canada
- New Democratic Party
- Parti Rhinocéros Party
- People's Party of Canada