



Written Opinions, Guidelines and Interpretation Notes

Guideline: 2023-05

Political Financing Handbook for Nomination Contestants and Financial Agents

Comments made during the consultation period of August 15 to September 28, 2023

| Comments received from the Conservative Party of Canada | Elections Canada response to the Conservative Party of Canada |
|---|--|
| <p>Chapter 3 – Accepting and recording contributions – Page 35</p> <p><i>“The contributor’s name and home address must be recorded. A business address cannot be accepted in its place.”</i></p> <p>Language has been added to explicitly say that a business address cannot be accepted as the contributor’s home address. It also states that a contributor’s home address must be recorded.</p> <p>Many individuals living in rural communities use P.O. Boxes and General Delivery addresses as their primary address. Will an individual’s mailing address be accepted in place of a home address?</p> <p>Will it be expected that a Financial Agent confirm with 100% certainty that a donor has provided a home address? Or, will verbal and/or written confirmation from the donor that they are providing a home address be enough to satisfy this requirement? Additionally, what will happen in instances when an individual’s home address is also their business address?</p> | <p>Yes, a mailing address can be accepted if it is the address that the contributor regularly uses to receive mail for their household. This clarification has been added to the handbook (p. 31) and will be added in all other handbooks.</p> <p>Agents do not need to confirm the address type, but if Elections Canada notices an issue while auditing contributions, the auditor will contact the political entity to obtain a home address if one was not provided and confirm that the contribution was made using the individual’s own funds. An address that is both the individual’s home address and business address is valid as a home address.</p> |

| | |
|--|--|
| <p>Chapter 3 – Accepting and recording contributions – Page 35</p> <p>The new language regarding online payments is silent on the matter of a Nomination Contestant’s campaign being able to accept credit card payments from spouses residing in the same household on behalf of each other, since the credit card is paid from a joint bank account. We believe this should be clearly outlined and documented in this section of the handbook.</p> | <p>It is possible for spouses to make a contribution using the same credit card, even if only one spouse is named on the card, on the understanding that the credit card balance is paid from a joint bank account. But the campaign should put controls in place to get certification that contributors are using their own funds (for example, by adding a checkbox with this certification to its online contribution system). This information has been added to the handbook (p. 32) and will be added in all other handbooks.</p> <p>Please note that having a checkbox as a control does not preclude Elections Canada auditors from seeking more information from political entities about the source of contributions.</p> <p>We plan to revisit the subject of contributions made through intermediaries or joint accounts in more detail in a future interpretation note.</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</p> <p>None</p> <p>Specific Comments</p> <p>We provide the following specific points for consideration pertaining to the circulated track changes version:</p> <ol style="list-style-type: none"> 1. On page 17 under the “Bank Account” infographic, in the first check mark on the second line, for clarity, we suggest adding the word “nomination” in front of campaign. | <p>The word “nomination” has been added as suggested.</p> |
| <ol style="list-style-type: none"> 2. On page 26, in section 1, “Fulfill reporting obligations,” in the paragraphed section commencing with “Note,” we suggest somewhat modifying the text so it reads: “(Note that transfers that the contestant sends to affiliated political entities that may be described as a fee by the affiliated political entity are not nomination campaign expenses and are categorized as transfers.)” | <p>The suggested wording does not reflect Elections Canada’s position on expenses that nomination contestants pay to an affiliated political entity, such as contest fees or processing fees.</p> <p>Non-refundable contest fees and contribution processing fees must be reported as other nomination campaign expenses, not as transfers, because they are payments for services (e.g. entry into a contest). This is explained in the Nomination contest fees section in Chapter 13, Other Nomination Campaign Expenses. These fees count toward the thresholds to file a campaign return and auditor’s report.</p> |

| | |
|--|--|
| <p>3. In the section “Volunteer labour is not a contribution” on pages 34 and 35, perhaps guidance regarding or at least referencing CRA requirements pertaining to payments to individuals should be added. This would apply equally to the section “Campaign workers and related expenses” in Chapter 9.</p> | <p>The following general guidance has been added: “Note: If the campaign pays its workers, it may have to issue T4 or T4A slips to them for income tax purposes. See the Canada Revenue Agency website for more information.”</p> |
| <p>4. On pages 36 and 37, in the column “What to keep in mind” for contributions through a partnership, the proposed draft changes go well beyond the legislative requirements. In addition to the requirement that a home address be provided, two bullets have been added (i) requiring that instructions be signed and dated by each contributor, and (ii) requiring a party to somehow ensure that “Each contributing partner’s next draw of income from the partnership should be reduced by the amount of that partner’s contribution,” putting an onus on a party to verify internal administrative and accounting practices of a partnership. Not only is this not possible, the legislation does not require a party to do so. It was our understanding that these matters had been resolved long ago in 2009 with the then-proposed revisions to Information Bulletin #10.</p> | <p>This guidance about partnerships has been in the handbooks since 2015 but showed as a tracked change in this release because the text was moved. The recordkeeping requirements for contributions through a partnership exist to ensure that contributions are being made by individual partners rather than by the partnership. While the reduction of a contributing partner’s next draw of income helps support the individual nature of the contributions, it is phrased as a suggestion and not something that the political entity is required to monitor. For greater clarity, we have changed the order of words to read: “Each contributing partner should reduce their next draw of income from the partnership by the amount of their contribution.”</p> <p>We plan to revisit the subject of contributions made through intermediaries or joint accounts in more detail in a future interpretation note. Please note that because Information Sheet #10 was issued before Elections Canada began the legislated OGI program and is not in the OGI Registry, it should no longer be read as Elections Canada’s official guidance. Information sheets have been superseded by the political financing handbooks.</p> |

| | |
|--|--|
| <p>5. On page 71, the added last sentence states, “This means that the penalties cannot be paid using the contestant’s campaign funds.” For guidance and clarity, the sources of funds for the payment of penalties should be added.</p> | <p>The following text has been added to the nomination contestant’s handbook and will also be added to the candidate’s handbook:</p> <p>“Almost any other source of funds can be used to pay the penalties, including payment by a registered party or association. Because a penalty is imposed on an individual in their personal capacity, if a party or association, another person, a corporation or a group pays the penalty for the individual, it is not reported as a transfer or contribution. The individual should be mindful of any conflict of interest regulations that may apply to their situation if the penalty is being paid by a corporation or group.”</p> <p>We plan to examine the relationship between legal fees, penalties and campaign funds in more detail in a future interpretation note.</p> |
| <p>6. On page 90, a new discussion and example is drafted to incorporate OGI 2022-03, <i>Voter Databases and Election Expenses</i>. More specifically, the new discussion pertains to the parliamentary database of a member of Parliament. We are concerned that this proposed advice will result in actions in contravention of both the <i>Canada Elections Act</i>, S.C. 2000, c. 9 and the Board of Internal Economy of the House of Commons Members’ By-Law (the “Member’s By-Law”).</p> <p>The proposed new discussion in the Draft Guideline notes that “[t]he House of Commons Members By-law should be consulted as it may place limitations on this type of activity”; however, in our view, this is insufficient. Elections Canada should not be seen to be sanctioning conduct that may be in contravention of the <i>Canada Elections Act</i> and the Members’ By-Law. We put forth our reasoning for this below.</p> <p>Canada Elections Act</p> <p>If a member of Parliament uses House of Commons-provided funds to collect personal information of electors and subsequently contributes that data from a parliamentary database to his or her election campaign, such a contribution could amount to a contribution by the House of Commons in violation of paragraph 368(1)(a) and section 508.1 of the <i>Canada Elections Act</i>, which make it a violation to circumvent the prohibition at subsection 363(1) against a contributor other than an individual who is a Canadian citizen or permanent resident of Canada making contributions to federal political entities.</p> | <p>We note your concerns with the discussion and example, from the perspectives of both the House of Commons <i>Members By-Law</i> and the <i>Canada Elections Act</i>.</p> <p>On its face, the <i>Members By-Law</i> appears to prohibit a member of Parliament from using elector information or data obtained from their parliamentary database for nomination purposes or electoral purposes. This is why we have added a reference to the by-law in the handbooks. However, the Board of Internal Economy of the House of Commons has the exclusive authority to determine what constitutes a contravention of the by-law. We also note that the by-law is subject to change at any time.</p> <p>It is true that the <i>Canada Elections Act</i> prohibits a contribution of property or services from the House of Commons to a candidate or other political entity. However, to resolve situations where parliamentary resources are sometimes used (such as when householders are issued after an election is called), Elections Canada’s position in the handbooks for over a decade has been that the campaign can pay the expense or report a non-monetary contribution from the parliamentarian. This would also apply to the use of parliamentary data. A discussion of the relevant issues is available in OGI 2020-04, <i>The Use of Member of Parliament Resources Outside of an Election Period</i> (first issued in 2015).</p> |

Members' By-Law

We are also concerned that candidates' use of elector information or data obtained from their parliamentary database to promote their re-election may amount to a violation of the Members' By-Law.

Section 4 of the Members' By-Law provides in relevant part:

“Parliamentary functions

4(1) The funds, goods, services and premises provided by the House of Commons to a Member under the Parliament of Canada Act, this By-law or any other by-law made under that Act may be used only for carrying out the Member's parliamentary functions.

...

Not parliamentary functions

(3) For greater certainty, the following activities, when performed by a Member, are not parliamentary functions:

(a) activities related to the private interests of a Member or a Member's immediate family;

(b) activities related to the administration, organization and internal communications of a political party, including participation in a party leadership campaign or convention, solicitations of contributions and solicitations of membership to a political party;

(c) activities related to a Member's re-election;

(d) activities designed, in the context of a federal, provincial, or municipal election, or any other local election, to support or oppose a political party or an individual candidate; and

(e) activities that are related to a meeting of an electoral district association, as defined in the Canada Elections Act, and that are carried out for nomination, electoral or sponsorship purposes or that relate to soliciting contributions or membership.

Precision

(3.1) For greater certainty, a Member's parliamentary or constituency office shall not be used as a meeting or organizational location in relation to any of the activities referred to in Section (3).

| | |
|--|---|
| <p>Requirements</p> <p>(4) Members shall ensure that the requirements set out in subsection (1) are met.”</p> <p>As a result, a Member of Parliament’s use of resources provided by the House of Commons for purposes other than carrying out his or her parliamentary functions appears to be in contravention of Section 4(1) above.</p> <p>Sections 32 and 7(2) of the Members’ By-Law prohibit Members of Parliament from using the Parliamentary Internet for purposes other than parliamentary functions. In the event that data in the Member’s Parliamentary database was derived from his or her Parliamentary website or received through use of the Parliamentary Internet, the use of that elector information for campaign purposes or for financial gain could amount to a violation of the Members’ By-Law.</p> <p>Moreover, the section of the Members’ Allowances and Services manual dealing with Members’ websites and domain names specifically prohibits Members from using their designated Members’ website to directly or indirectly:</p> <ul style="list-style-type: none"> • solicit contributions to or membership in any political party; • solicit donations or contributions for any person or cause; • include campaign or constituency association information; or • support or oppose the election of any candidate or party at any level of government. <p>Obtaining elector information from a Parliamentary website or through the use of the Parliamentary Internet and subsequently using that information from a Member’s Parliamentary database for election purposes would appear to support the election of a candidate and could be seen as soliciting contributions to or for the candidate or a political party.</p> | |
| <p>7. On page 112, it states “We recommend keeping a copy of all documents submitted.” For guidance, the length of time that documents should be retained should be added.</p> | <p>The sentence has been expanded to recommend a retention period of six years after the event to which the submitted documents relate. While there is no length of time dictated by the <i>Canada Elections Act</i>, we recommend six years because it is the limitation period for proceedings to be launched under the Act. The candidate’s handbook has also been updated to reflect this recommendation.</p> |

| Comments received from the Commissioner of Canada Elections | Elections Canada response to the Commissioner of Canada Elections |
|---|---|
| We have no comments to provide on the content of the proposed handbook. | Elections Canada notes your comment. |

Elections Canada noted an error in the draft that was sent for consultation and has made the following correction in the final version:

- In Chapter 9, the **Campaign workers and related expenses** section now states that campaign workers who receive a gift card to cover incidental expenses and who make a purchase of \$50 or more with the card **should** get an invoice, while workers who make a purchase of less than \$50 **should** record the date, amount and nature of the expense. The word **must** was used previously; however, the basic supporting document required to support the expense is the invoice and proof of payment for the initial purchase of gift cards. Further documents would be required only if the expenses were in question.

The following parties did not submit comments to Elections Canada regarding OGI 2023-05:

- Animal Protection Party of Canada
- Bloc Québécois
- Centrist Party of Canada
- Christian Heritage Party of Canada
- Communist Party of Canada
- Free Party Canada
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- Marxist-Leninist Party of Canada
- Maverick Party
- New Democratic Party
- Parti Rhinocéros Party
- People's Party of Canada