



Interpretation note: 2014-02

The use of Member of Parliament resources outside of an election period

Comments made during formal consultation period January 22–February 6, 2015

Comments received from the Animal Alliance Environment Voters Party of Canada	Elections Canada response to the Animal Alliance Environment Voters Party of Canada comments
We agree with Elections Canada’s interpretation note on this issue.	
No comments were submitted by the Bloc Québécois	
No comments were submitted by the Canadian Action Party	
Comments received from the Christian Heritage Party of Canada	Elections Canada response to the Christian Heritage Party of Canada comments
As per the section quoted below, CHP Canada would like to record our ongoing contention that an MP—when using the “householder” privilege to communicate with his or her constituents—should not be allowed to	Elections Canada is not in a position to prescribe the content of householders, including whether or not they should be allowed to include the party logo. As mentioned in the interpretation

<p>include the party logo as part of that communication. Obviously, affairs under discussion and debate within the House would be of interest to constituents but the MP is a representative of all constituents and the inclusion of the party logo unnecessarily introduces partisan divisiveness. It also unfairly compels taxpaying citizens of other parties to subsidise—through the parliamentary printing privileges and through Canada Post—the advertisement of the MP’s party.</p>	<p>note, some parliamentary functions may also have a partisan element.</p>
<p>No comments were submitted by the Communist Party of Canada</p>	
<p>No comments were submitted by the Conservative Party of Canada</p>	
<p>Comments received from the Green Party of Canada</p>	<p>Elections Canada response to the Green Party of Canada comments</p>
<p>Whereas Elections Canada has received several inquiries recently on the use of resources provided by law to MPs and, in particular, there have been questions about whether the use of MP resources in specific situations outside of an election period is regulated under the CEA;</p> <p>And whereas the questions in each case were whether the activity was “parliamentary”, or whether it might constitute a contribution under the <i>Canada Elections Act</i>, and what the implications might be of such a finding;</p> <p>The Green Party of Canada offers that the solution to these questions is found in keeping the resources of an MP as completely parliamentary and completely separate from the duties of any Political Party function. As an elected official (MP) of the taxpayers in an electoral district, and because this is a completely non-partisan position, the Green Party of Canada will</p>	

<p>continue to hold to its tradition of absolutely no crossover between our MP offices and the Political Party that they are associated with.</p> <p>All staff persons of any Hill office, who have any function in the Green Party of Canada, carry the responsibility of keeping the two roles entirely separate. All persons associated with the Green Party of Canada are similarly instructed to keep all correspondence and dealings with the Hill Office staff as separate. As per the example in the backgrounder, in the case of householders, the Green Party of Canada uses the green colour offered by the House of Commons; however, the householders do not sport the logo of the Green Party of Canada, even though it is allowed under the current rules. None of the Parliamentary resources, whether they are material or non-material, are shared with any entity of the Party.</p> <p>The Green Party of Canada will continue this practice and offers that all MPs and Political Parties should do the same.</p>	
<p>Comments received from the Liberal Party of Canada</p>	<p>Elections Canada response to the Liberal Party of Canada comments</p>
<p>This guideline/interpretation does not appear to include the activities of Senators nor the use of Ministerial Departmental budgets. Is the intent to issue separate guidance in these areas, or should this guideline/interpretation be amended to be broader in scope?</p> <p>The Liberal Party of Canada generally agrees with Elections Canada’s approach to interpreting the use of Member of Parliament (MP) resources outside an election period. The <i>Canada Elections Act</i> (CEA) deals with the regulation of activities related to the electoral process, not those related to the parliamentary process. Thus, as stated in this Interpretation Note, as a general rule, the use of MP resources outside an election period will not constitute a regulated contribution or expense for purposes of the CEA. That said, and as recognized by Elections Canada, there is sometimes an overlap between electoral and parliamentary activities which makes it</p>	<p>The activities of senators and the use of ministerial budgets are dealt with in the political financing handbooks for parties and candidates. The treatment of this issue in the candidate handbook has been modified to reflect the more detailed treatment provided in the party handbook. It now reads as follows:</p> <p style="padding-left: 40px;">If a senator, a minister or another candidate campaigns on behalf of the candidate, the expenses related to that person’s involvement in the campaign are election expenses and have to be authorized in advance by the official agent, the candidate or a person authorized in writing by the official agent. Any expense incurred in relation to the campaign has to</p>

<p>difficult to develop hard and fast rules regarding the use of MP resources.</p> <p>Elections Canada is proposing an overall approach that would limit the regulation of MP resources used outside an election to only those situations where it is clear that the activity cannot reasonably be attributable to a parliamentary function. The Liberal Party of Canada is supportive of this approach; and as stated on page 2 of the Interpretation Note, we agree that the list of regulated activities should not be closed.</p>	<p>be reimbursed using campaign funds or accepted as a non-monetary contribution if paid by an eligible contributor or as a non-monetary transfer if paid by the party or a registered association of the party.</p> <p>In the event that a senator, a minister or another candidate has travelled to a particular destination for purposes unrelated to the election and campaigns on behalf of the candidate while there, any incremental costs incurred to assist with the campaign are election expenses. (section 3.2 Election expenses)</p>
<p>The examples of MP expenditures provided in the guideline/interpretation essentially reflect the relationship between an MP and the electoral district they represent. It would be helpful if Elections Canada could include in the Note other examples or a reference related to, for instance:</p> <ul style="list-style-type: none"> • MPs making a non-monetary contribution in ridings in which they are not candidates; • An MP using parliamentary resources in part of his/her riding that will not be part of that riding following redistribution; • MPs who are retiring once the election is called. 	<p>The interpretation note covers the first bullet from this list in terms of MPs providing a non-monetary contribution to a regulated entity.</p> <p>With respect to the second and third bullets, no particular issue arises, either because the activity is in a part of the riding that will not be part of it following redistribution or because the MP plans to retire. The note already covers these situations for election expenses where a non-monetary contribution could be involved.</p>
<p>During the January 2015 technical briefing with the ACPP Sub-Committee there was a discussion regarding the transfer of intellectual property (IP), such as an issues return card from a Householder mailing. The broad consensus of the Sub-Committee was that providing the IP to a regulated political entity, including the entering of that IP into a political party database by MP staff during working hours, would not be considered as a contribution. This broad issue should be added to the Interpretation Note.</p>	<p>While Elections Canada does not disagree with this position (insofar as the intellectual property is gathered by the MP pursuant to a parliamentary function), we believe that it is already covered by the general principles outlined in the interpretation note.</p>

<p>Also during the January 2015 technical briefing, Sub-Committee members were advised by Elections Canada that the historical interpretation of allocating MP travel between partisan and Parliamentary activities had been changed. More specifically, if an MP travelled to a region on Parliamentary business using Parliamentary resources, but on that same trip engaged in partisan activities on behalf of or for a registered political entity, we understand that the new interpretation is that only incremental costs incurred to participate in the partisan activity are deemed to be contributions to the registered political entity. We also understood that this applied to both non-election and election periods. Could something regarding this matter be added to the guideline/interpretation?</p>	<p>This comment is now reflected in the candidate and party handbooks.</p>
<p>Additionally, the various political entity manuals will require updating.</p> <p>Specific</p> <ul style="list-style-type: none"> • As computers and printers in an MP’s office remain the property of the House of Commons and cannot be given or sold by an MP, the term “gives” should be replaced with “loans/provides” on both page 1, item 3 and page 7, item (d) at paragraph 2. • Would it be possible to add some commentary, on page 5 at paragraph 4, regarding MP websites as follows: if the MP’s URL during the campaign period were redirected to the candidate’s campaign website, then only the fee for the URL would need to be categorized as a contributed good and service reportable campaign expenditure. 	<p>The word “gives” has been replaced with “provides”.</p> <p>Elections Canada does not believe additional commentary is necessary regarding the treatment of URLs for a redirected website. As this cost would generally be less than \$200, it would not need to be recorded as a contribution.</p>
<p>No comments were submitted by the Libertarian Party of Canada</p>	
<p>No comments were submitted by the Marijuana Party</p>	

No comments were submitted by the Marxist-Leninist Party of Canada	
No comments were submitted by the New Democratic Party	
Comments received from the Party for Accountability, Competency and Transparency	Elections Canada response to the Party for Accountability, Competency and Transparency comments
<p>PACT agrees with the description of Elections Canada’s interpretation as present in this note. We believe that the methods of interpretation discussed therein are consistent in terms of accountability and provide the appropriate measurement of the use of resources related to the specified limits in the Candidates’ Handbook. These interpretations provide for fair measurement of elections expenses.</p> <p>PACT agrees with the interpretation and feels that there is no need for modification in Elections Canada’s interpretation.</p>	
No comments were submitted by the Pirate Party of Canada	
No comments were submitted by the Progressive Canadian Party	

No comments were submitted by the Rhinoceros Party	
No comments were submitted by the United Party of Canada	
Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections comments
<p>I am in agreement with the proposed approach put forth in this GI that, generally, the use of parliamentary resources by a Member outside of an election period will constitute activities that fall outside of the regulatory ambit of the Act. In particular, I share the view that Members' communications with constituents are at the very heart of our parliamentary system of government, and constitute a crucial feature of our democracy.</p> <p>The House of Commons provides budgetary entitlements to its Members to allow them to carry out their parliamentary functions, including communicating with constituents. The adoption of political financing rules cannot have been intended to reduce a Member's ability to perform their parliamentary functions and carry out such communications, in such a way, for instance, as to limit such communications to the amount of allowable contributions that can legally be made under the Act.</p> <p>Subject to three comments on particular issues that appear below, I am of the view that the circumstances that have been identified in the proposed GI as being subject to the Act's regulatory ambit are reasonable. They are consistent with our parliamentary tradition and Parliament's likely intent in adopting political financing rules in the Act.</p>	

1. *Householders*

On page 4 of the GI, it is stated that “[f]or a fixed-date election, any householder distributed in the 36 days before election day will be considered an election expense.” This statement follows a description in the proposed GI of Elections Canada’s current practice, which would still be applicable at by-elections or elections at a time other than at a fixed-date. This position is that the distribution of the householder will not cause an election expense to have been incurred if it was no longer possible to stop its distribution at the issue of the writs.

Although I suspect that the intent was to have both rules apply to elections held at a fixed-date, the current wording could lead someone to think that only material distributed within the 36 days before polling day are to be considered as election expenses. This does not seem to be an appropriate position to take, considering that there is no maximum election period provided for in the Act. For instance, in a situation where the election period for an election was 45 days instead of the 36-day minimum, it would provide incumbents with a substantial advantage if only householders distributed in the last 36 days of the campaign had to be reported as election expenses.

As such, I believe that the statement about fixed-date elections should be clarified. While it makes sense to ensure that all householders distributed in the 36 days before a fixed-date election are captured as election expenses because the timing of the mail-out provides an advantage that the Member should have known would arise, it is still important to capture all householders sent during the entire election period, unless it was no longer possible to stop the mail-out at the issue of the writs in the case of an election that is longer than 36 days.

This part of the interpretation note has been clarified in accordance with this comment by adopting the wording of the candidate handbook.

2. Permanent billboards

I also note that Elections Canada's past treatment of a particular type of expense – that is, the cost of permanent billboards designed to last that contain a Member's advertisement – no longer seems to be valid in light of changes to the Act recently adopted by Parliament.

The GI states as follows at page 5:

"The agency has accepted that the total cost of a permanent billboard designed to last for the MP's term is not the appropriate measure of the election expense where that billboard remains in place during an election as election advertising. It has accepted as reasonable the value of a "functionally equivalent" but temporary sign, in keeping with the short election period."

With changes to the Act that came into force on December 19, 2014, this interpretation appears, in my view, difficult to sustain. The new paragraphs 376(3)(a) and (b) of the Act now provide as follows:

376. (3) An election expense referred to in subsection (1) includes a cost incurred for, a non-monetary contribution in relation to, or a provision of goods and services in relation to,

(a) the production of advertising or promotional material;

(b) the distribution, broadcast or publication of such material in any media or by any other means during the election period, including by the use of a capital asset. (emphasis added)

Whereas the former paragraph 407(3)(a) included both the production and distribution of advertising material as election expenses, Parliament split the two concepts in different paragraphs in the new section 376, and

Elections Canada does not agree with the position set out here. Please see our response to comment number 13 of the Commissioner of Canada Elections respecting the candidate handbook (2014-03). For the agency's position on permanent billboards, please see the section of the candidate handbook entitled "Websites and billboards".

In reviewing this comment, Elections Canada determined that a full discussion of assets used during the election period is not necessary for the purposes of the interpretation note, which deals with the use of assets outside the election period. Therefore, some of the note's content referred to in the comment has been removed.

<p>specified that the distribution of advertising by the <u>use</u> of a capital asset is an election expense. Further, the new concept of “capital asset” is now defined in subsection 2(1) of the Act as follows:</p> <p>““capital asset” means any property with a commercial value of more than \$200 that is normally used outside an election period other than for the purposes of an election.”</p> <p>In my view, the intent of Parliament in making these changes was to require that, where a capital asset – such as a permanent billboard – is used to allow for the distribution of advertising material, what must be reported as an election expense is the value of the use of the capital asset during the election period. As a result, in addition to the production costs incurred for producing the advertising message, it would be preferable if the election expense to be reported was considered to be the commercial value of the cost of renting such a permanent billboard during the election period in order to allow for the distribution of the advertising material.</p>	
<p><i>3. Individual making the contribution</i></p> <p>The GI suggests that where a Member’s parliamentary resources are given to, or used to promote, a regulated entity in circumstances that fall under the regulatory ambit of the Act, the Member will be considered to have made a contribution to that regulated entity. For instance, the following statement is found in the chart on page 2:</p> <p>“The value represented by the activity or resource may be treated as a non-monetary contribution from the MP to the recipient entity (party, association, nomination contestant or leadership contestant). A contribution is subject to the rules on individual contribution limits for the contributor, and to the rules on excessive contributions and reporting for the recipient entity.”</p>	<p>Elections Canada agrees that the question of who made the contribution is a factual one. For this reason, the interpretation note states on pages 2 and 7 that the contribution “may” be from the MP.</p>

While, in most cases, this will presumably be the case, it should be noted that this is essentially a question of fact. If a Member acted with due diligence and provided rules and controls on those with delegated authority to use the parliamentary resources in an appropriate manner, it may be difficult to establish in all cases that the Member was the controlling mind who made the contribution. Where, for example, someone with delegated authority did not follow the rules and made the contribution without the Member's knowledge or, indeed, contrary to the Member's instructions, this other person may be the one who ultimately is found to have made the contribution. For instance, if a senior employee at the office of the Member has full authority to direct the work of other employees – and uses this authority to request that the employees perform work on behalf of a registered association despite the clear instructions of the Member that this is not to be done – then the senior employee who directed others to carry out the work could be the contributor, for the purposes of the Act.