Guideline: 2014-03

Political Financing Handbook for Candidates and Official Agents (EC 20155)

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 ask that you consider a section designed for those political parties without elected members. In order to comply with the election financing rules, most tend to centralize election finance activities. Many do not have electoral district associations. We ask that you consider ways to streamline requirements for these entities.	Elections Canada agrees with the notion of developing guidance specific to the needs of parties without elected members. To that end, we will consider the development of a separate document and will seek input from parties on its scope and extent.
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 encourage Elections Canada to include here a reference to the requirement of registered EDAs to report the results of a candidate nomination contest. While the responsibility to file a notice rests with the EDA, that requirement is certainly of interest to the candidate, and including a reminder to that effect in the candidate's handbook may ensure a greater awareness of this requirement and compliance. Obviously, in the case where a candidate is appointed by the party leader in the absence of a registered EDA or in the replacement by the party leader of a nominee previously appointed by a registered EDA, this reminder would be irrelevant. In such a case, I am not aware of any reporting requirement for either the candidate or the EDA until the candidate files official nomination papers.	This requirement will be emphasized in the handbooks developed for registered parties and registered electoral district associations.
No comments were submitted by the Communist Party of Canada	
Comments received from the Conservative Party of Canada	**Elections Canada response to the Conservative Party of Canada comments**
Section 1.2 – Page 8 – Bank Account. The guide states that the name of the account has to be "Peter Raymond, Official Agent". The suggestion is to use "Peter Raymond, Official Agent for Joseph Carter". This will make it easier to have the bank accept cheques made out to the Joseph Carter campaign. Also, suppliers receiving a cheque will have a clue as to what the payment is for. We will also have instances of official agents being the official agent for two candidates, and this change would help keep the two accounts separated and manageable.	The manner in which the bank account is to be named is defined by subsection 477.46(2) of the *Canada Elections Act* ("CEA"). However, as long as the name of the account holder includes the name of the official agent and the title "official agent", Elections Canada will accept an account name that also includes the name of the candidate. Text has been added to this effect.

Section 2.3 – Page 22 – The use of EFR software for issuing receipts. We would support even more emphasis on the use of EFR software to issue receipts, and not to use paper receipts. This would also encourage official agents to use EFR software to do their reporting. Again, we would encourage more use of EFR software. Page 63 also refers to the benefit of EFR software. Perhaps a reference to this throughout would be appropriate.	For the 41st general election, held on May 2, 2011, 84 percent of candidates (excluding those who filed nil returns) filed using EFR. Elections Canada will continue to promote the use of the EFR software.
Section 3.2 – Page 33, bullet 2, final sentence. The word "or" is to be inserted between promote oppose.	The correction has been made.
Section 3.4 – Page 45 – Fundraising expenses. "Expenses incurred for fundraising activities are not election expenses". The note goes on to say, "The expense associated with the production and distribution of advertising and promotional materials related to a fundraising activity is an election expense to the extent that the advertising and promotional materials are used during the election period." Also on page 33 it is stated that, "Only some fundraising expenses are exceptions to that rule; later, we will discuss why." Could we clarify and simplify please. We are not clear as to which fundraising activities are envisioned as election expenses and which are not.	The text of the handbook has been clarified in this regard. Text has been added in section 3.2 to read as follows: "This generally means that any expense reasonably incurred for property or service used during the election period by a candidate's campaign is an election expense. <u>Only some fundraising expenses are exceptions to that rule. The exceptions are contribution processing fees and non-promotional expenses for a fundraising activity. In other words, while expenses related to a fundraising activity are not election expenses, any promotion related to the fundraising activity is</u>."
Section 3.4 – Page 45. "…the payment of salaries may be considered an inappropriate use of campaign funds that would need to be returned." "Inappropriate use of funds" does not appear to be defined in the document or the *Canada Elections Act* ("the Act"). The Act states "only the official agent, the candidate or a person authorized in writing by the official agent can incur electoral campaign expenses". [*Editor's note: This quotation is in fact from section 3.6 of the handbook.*] Could we have some clarity on the origination of "inappropriate use of funds".	All electoral campaign expenses must be reasonably incurred as an incidence of the election. In the event that campaign funds are used for non-campaign purposes, such as the payment of an individual's grocery bill, this expense would not have been reasonably incurred as an incidence of the election and would therefore be an inappropriate use of campaign funds. Another example would be if a decision was taken to make a payment to a campaign worker at the end of the campaign with unused campaign funds. In the absence of a salary agreement, such a payment could be considered an improper disposition of

	the campaign surplus (which must be disposed of to the registered party or the registered electoral district association in the candidate's electoral district).
Section 3.4 – Page 46. The example of fundraising expenses does not go on to note that fair market value of food, room cost, etc. would be deducted before calculating the amount to be receipted as tax deductible. A second question is, if at a meeting called to allow the candidate to speak to the voters, food and coffee is served, and then the chair suggests to the crowd that the campaign will accept donations, do the same rules apply. I.e., must the event be advertised as a fundraiser to be a fundraiser or can a meeting become a fundraiser by what is said in the meeting.	Elections Canada agrees that more guidance is needed in this area. We will propose to include the development of a separate interpretation note in the forward agenda of guidelines and interpretation notes, which is established in consultation with members of the Advisory Committee of Political Parties (ACPP). In this particular example, no tickets are sold and there is no fee charged to attend the event. The giving of a contribution is voluntary and is not linked to any benefit received by the individuals attending the event. The requirement to deduct the fair market value of the benefit received from the amount contributed is therefore not applicable to this example. In practice, contributions are often accepted at campaign events that were not organized as fundraising events. In the situation described in the comment, where an event held during the election period combines promotion and fundraising, the expenses associated with holding this event would be election expenses and not be subject to the exception for fundraising expenses.
Section 3.5 – Page 47. It is stated that transfers can occur to a candidate's nomination campaign. How could this occur as the candidate is not a candidate until the nomination process has been completed?	This provision exists in the CEA to enable a candidate to transfer funds from the candidate's campaign in order to pay any outstanding debts of the nomination campaign. It should also be noted that, for political financing purposes, an individual is deemed to be a candidate from the date a contribution or transfer is accepted, funds are borrowed or an expense is incurred. This can occur well before an individual is confirmed as a candidate after the call of an election.

Some key points should be emphasized by bolding them – many readers tend to scan rather than read: page 2 - Contributions are not eligible for tax receipts until after the candidate's nomination has been confirmed by the returning officer; page 4 – The candidate has to appoint an official agent and an auditor before...; page 6 – ...or a person authorized in writing by the official agent can enter into contracts and incur expenses; page 15 – ...subject to the individual's contribution limit.	Bolding is currently used in the handbook to identify section headings and key subject headings within each section. When a particularly important point needs to be highlighted, shaded text boxes are used. However, in order to ensure that the document remains easy to read and to preserve the effectiveness of text boxes, the number of text boxes must remain limited.
Comments received from the Green Party of Canada	**Elections Canada response to the Green Party of Canada comments**
The Green Party of Canada is not offering any changes to either of the Political Financing Handbooks, and commends Elections Canada for its continuing work of running fair elections in Canada.	
Comments received from the Liberal Party of Canada	**Elections Canada response to the Liberal Party of Canada comments**
*Unless otherwise specified, the comments below apply to both the Political Handbook for Nomination Contestants and Financial Agents (NC) and that for Candidates and Official Agents (Cand). **Need for Additional Guidance** There are several areas where the guidance in the Handbooks does not address the operational realities faced by nomination contestants, candidates and their respective agents. The Liberal Party of Canada has identified several areas where this is the case and where additional guidance would be of assistance to nomination contestants, candidates and their agents. In some instances, we recognize that ideally the CEA should be amended to address a given issue.	

i) Opening a Bank Account (pg. 7 for NC; pg. 8 for Cand)	
There continue to be difficulties opening bank accounts. For instance, if a candidate's official agent is trying to open an account pre-writ, some local banks require direction from their head office and it may take several days before the account can be opened. While the account has to be set up in the name of the official agent, most receipt donations are likely to be payable to the candidate's campaign. The official agent should make the bank aware of this when the account is opened so that deposits will not be refused. The Handbooks should be revised to provide such practical guidance.	Elections Canada agrees that there continue to be issues with opening bank accounts and making deposits to those accounts. We note that the CEA was in fact amended in 2003 to remove the candidate name and year from the name of the account. However, as long as the name of the account holder includes the name of the official agent and the title "official agent", Elections Canada will accept an account name that also includes the name of the candidate. Text has been added to this effect. The document titled *Access to Banking Services by the Candidate's Official Agent* should be updated to address bank account issues. Elections Canada will work with the Canadian Bankers Association and the Office of the Superintendent of Financial Institutions to update the document.
Note that there seems to be an error on page 8 at the end of paragraph 1. The example references the financial agent and that reference should be to the official agent.	The correction has been made.
ii) Contributions (pg. 8 for Cand)	
Donations for a candidate's campaign may be payable to the campaign and deposited into the campaign account. Often, donations intended for the campaign are payable to the riding and deposited into the riding account. Funds required to finance the election are then transferred to the candidate's campaign. Many campaigns and ridings prefer the funds to go through the riding.	The contribution content in section 2.1 addresses the rules for contributions to registered parties, registered associations, candidates, leadership contestants and nomination contestants. Section 2.4 of the handbook addresses what types of transfers can be received by candidates, including monetary transfers from registered electoral district associations.

For certain political parties, tax receipts are also prepared centrally so that there is a method to determine which donors have exceeded their limits. Further, whether ridings or the central office of a party prepare receipts, it amounts to considerably less work for the official agent. The Handbook should be amended to include a discussion of this real world practice.	
iii) Payment of Expenses (pg. 36 for NC; pg. 48 for Cand) The draft Handbooks appear to assume that supplier invoices are to be paid directly by the respective financial or official agent, normally by cheque, or by cash through a petty cash fund. Certainly this used to be the case. Today, however, it is very common for campaign workers to pay for small purchases, e.g. food for the campaign, office supplies, and on occasion larger expenditures such as printing, by credit or debit card rather than by cash. This saves the worker from asking for cash from whoever controls the petty cash fund for an estimated amount and then returning with the invoice and change. When this practice is followed, the agent needs to create a form indicating the worker's name, list of purchases showing suppliers' names, nature of the purchases, amounts and total.	Subsection 477.47(4) of the CEA states that only the official agent can pay expenses related to the candidate's campaign, with the exception of petty expenses authorized by the official agent. In the example described in the comment, where the expense is ultimately paid by the official agent from the campaign bank account, the campaign worker is essentially treated as the supplier of the property or service and should be listed as such in the candidate's electoral campaign return.
iv) Riding Services Packages The draft Handbooks require that a copy of original supplier invoices as well as invoices from the registered party for riding service packages and other materials provided to individual campaigns be included with a candidate's return. We understand that the total charges from the party to campaigns must approximate the sum of the charges from the individual third party suppliers. We are of the view, however, that such a reconciliation should be between Elections Canada and the registered parties and that the registered	In order to avoid exceeding the election expenses limit, it is important for official agents and candidates to be aware of the commercial value of the property or services that they receive. For this reason, third party documentation should be provided by the party to its candidates. Individual candidates' campaigns should then send this documentation to Elections Canada.

parties should be allowed to submit directly to Elections Canada, on behalf of the candidate campaigns, documentation in support of the third party suppliers.	
Specific Comments	
HANDBOOK Pg. ix (NC); Pg. v (Cand)	
Why is reference to a total contribution "per event" for a nomination contestant – why not per "contest" or simply delete as with other entities? This would align the Handbook wording with that of the CEA. Same comment applies on Inflows.	This change has been made to the second bullet following the table on contributions, loans and loan guarantees limits.
Pg. xiii (NC); Pg. ix (Cand)	
Summary note says that "claims and loans may be paid without authorization from Elections Canada or a judge within 36 months." The wording in the Handbook says, "Do not pay unpaid claims or loans later than 36 months without first obtaining Elections Canada's or a judge's authorization." Perhaps an additional note could be added to say that prior to the 36 months, the claims may be paid without authorization to make it crystal clear.	The handbook now clarifies that authorization is not required to pay claims or loans within 36 months of election day.
STARTING THE CAMPAIGN INFLOWS Pg. 23 (Cand)	
The first paragraph on "Repaying a loan" – should it also say, "Authorization	The words "or a judge" have been added to the sentence.

is not required from Elections Canada **or a judge**…"? OUTFLOWS Pg. 31 (Cand) Third category of electoral campaign expense different from s. 375 of Act, which references auditors' fees and costs incurred for recounts. Are auditors' fees, including the amounts disbursed by Elections Canada, now eligible for the electoral expenses rebate?	Auditors' fees, including the amount subsidized by Elections Canada, are not eligible for the 60 percent reimbursement. Only paid election expenses as defined by section 376 and paid candidates' personal expenses as defined by section 378 are eligible for reimbursement.
Pg. 35 ? (Cand) With respect to surveys undertaken directly by a candidate's campaign or an EDA on behalf of a candidate, there is merit in further describing the treatment of surveys outside of an election period. More specifically, section 407(3)(*e*) states that an election expense includes "the conduct of elections surveys or other surveys or research <u>during</u> an election period." [*Editor's note: The section being cited was renumbered as s. 376(3)(*f*) by S.C. 2014, c. 12.*] Since section 407(3)(*e*) does not state that elections surveys or other surveys or research <u>outside</u> of an election period are to be included as election expenses, the strict interpretation of section 407(3)(*e*) would mean that pre-writ or post-writ surveys or research are not to be included as an election expense.	The handbook now clarifies that costs for surveys and research conducted outside the election period are not election expenses.
Pg. 50 (Cand) Note that the summary of updates document says that the proof of payment needs to be provided within three months after the day on which the expense was incurred, which is incorrect. The Handbook is correct in	This comment has been noted.

saying that it is within three months after election day.	
No comments were submitted by the Libertarian Party of Canada	
No comments were submitted by the Marijuana Party	
Comments received from the Marxist-Leninist Party of Canada	**Elections Canada response to the Marxist-Leninist Party of Canada comments**
We are submitting comments on three subjects. **1. Bill C-23 – Provisions on Loans, Guarantees and Suretyships** It seems to us that the information regarding bank loans is confusing and could be more precise. Page 15 of the Handbook states: "There is **no limit** to the amount a campaign can borrow from a financial institution. Note however that if the financial institution requires a loan guarantee, only the registered party, a registered association of the party, or individuals who are Canadian citizens or permanent residents can guarantee the loan. The amount an individual guarantees is subject to the individual's contribution limit" (MLPC emphasis). Elsewhere, on page v, the Handbook states: "A candidate is permitted to give a total of $5,000 in contributions, loans and loan guarantees to his or her campaign." We think the limits could be presented more straightforwardly. To say there is no limit but not speak of the limits is confusing.	The handbook statement that there is no limit on the amount that a candidate's campaign can borrow from a financial institution is correct. It is also correct that there are limits placed on the amount of a loan that an individual can guarantee. However, there is no limit on a loan from a financial institution that is guaranteed by a registered party or a registered association. A loan from a financial institution could also exceed the contribution limit if multiple individuals guaranteed the loan up to their contribution, loan and loan guarantee limits.
Our interpretation is that no candidate can borrow more than $5,000 without an authorized guarantor, which would be an individual or	This interpretation is not correct. The $5,000 amount the comment refers to is an exception to the limit for the total of

individuals each subject to the $1,500 contribution/loan limit, or a registered political party or registered riding association, which faces no limits. The Handbook states that "a campaign" can borrow an unlimited amount unless there is a need for a guarantor. We are not clear about who "a campaign" is. There is no such political entity as "a campaign." There are candidates, registered political parties, third parties, etc., and they have their campaigns and bank accounts for the financial transactions of those campaigns, but a "campaign" does not exist as a political entity or a legal person subject to expense limits, contribution limits and loan restrictions. Is Elections Canada drawing a distinction between a "campaign" taking out a loan and a "candidate" taking out a loan? Is there a difference between a candidate who does not need a guarantor and a candidate who does? If a candidate does not need a guarantor – either because of his or her personal wealth, or a virtual promissory note of a 60 percent reimbursement for election expenses – the individual is nevertheless *ipso facto* the guarantor signing on the dotted line. As such, he or she would be subject to the candidate's contribution limit and would require guarantors for any greater amount. We conclude that there is a limit on the amount "a campaign" can borrow, which is restricted to the amount a candidate can contribute. We request that this be clarified to prevent individuals going to the bank thinking that if they don't need a guarantor they can borrow "an unlimited amount."	contributions, loans and loan guarantees that a candidate provides to his or her own electoral campaign. This is not a limit on the amount a candidate's campaign can borrow. The term "campaign" is used throughout the handbook and is referring to the candidate's electoral campaign. The terms "electoral campaign" and "campaign" are used throughout the CEA, which makes a distinction between the candidate's ability to contribute and lend as an individual supporting his or her electoral campaign and the campaign itself.
2. Requirement to Open a Bank Account The guidelines should make it clearer that a bank account must be opened	The timeline of important deadlines for the candidate's

even in the case of a candidate not needing a bank account since there are neither contributions to receive nor expenses to be paid. Specifically, on page iv, footnote 2 states that a bank account is "Required before contributions, transfers or loans are accepted or expenses are incurred." We propose that the following be added: "A bank account is required even if there are no contributions received nor expenses incurred." This would prevent candidates from mistakenly but quite logically thinking that a nil campaign does not require a bank account.	campaign lists the dates by which various activities must be completed. In this case, the bank account must be opened before any monetary transactions occur. The text proposed in the comment has been added to page 8, which discusses more specifically the requirement to open a campaign bank account.
3. Bank Account Closure and Return of Nomination Deposits Related to this matter is the timing of the bank account being closed. The Handbook places the closing of the bank account at the very end of the process, following the refund of monies such as the nomination deposit. For a candidate who has a nil return and who pays his/her nomination deposit out of their own personal funds, the guidelines should specify that the official agent can close the account before the nomination deposit is returned so long as the official agent directs Elections Canada to make the nomination deposit refund payable directly to the candidate (or any other individual who paid it on their behalf). While the Handbook generally implies that the above arrangement is possible, it would be clearer to have this spelled out so that candidates in a position to do so can quickly dispose of their reporting requirements.	The process described in the comment, where the campaign bank account is closed and the nomination deposit refund is assigned to the individual who paid the deposit, is accepted in practice. However, Elections Canada is reluctant to provide guidance suggesting that bank accounts be closed early in the process. In some cases, this can lead to compliance issues since subsequent financial transactions are then not deposited to or paid from the campaign bank account.
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
PACT agrees with the modifications made to the voter contact calling services section. We believe that these modifications serve to provide fairness in measuring electoral expenses subject to limits. We applaud the inclusion of surveys conducted on electors' choices in past elections, their intentions for upcoming elections and their views on the candidates and issues, as these surveys serve to support campaign efforts and provide actionable intelligence to campaign decision makers.	
PACT raises an objection to the interpretation that the use of comments in social media should not be considered election advertising. As the successor for the Online Party of Canada, we have much knowledge and experience in using the Internet to the advantage of an elections campaign. The use of social media to disseminate political messages and advertising is a powerful tool that can be used in a successful campaign. The platform used for this part of the elections campaign is free to use for any person, organization, candidate and political party, and the dissemination of information over such platforms can be analogous to the distribution of an internal newsletter to subscribed supporters and further dissemination by word of mouth. However, the composition, design, posting and management of these messages can also be analogous to the design, composition and printing of an elections campaign flyer or pamphlet, and the management of a calling centre that offers clarifying information or more information to support such a printed advertisement. Thus, even if the message is passed around for free and without control by the electoral campaign, the effort to compose, design, post and manage these messages and supporting media should be considered electoral expenses and should be subject to the appropriate limits, just as a printed flyer being passed around by supporters at will is subject to the limits of making those flyers. In regards to comments	Elections Canada agrees that more guidance is needed in this area. We plan to develop a separate interpretation note addressing advertising on the internet. The note in the handbook stating that posting comments on a social media platform is not election advertising means there is no requirement to place a tag line on the post indicating that it was authorized by the official agent. Any expenses incurred in developing, designing, posting and managing a social media campaign conducted during the election period are election expenses subject to the election expenses limit.

on social media on a post that has already been made, such as clarifying a question for another commenter, redacting a mistake on the original post or debating with a commenter on an issue, PACT believes that these efforts should also be considered as part of the elections campaign and should be subject to the appropriate limits. There are limits on the expenses related to staff and volunteers working on a phone line to answer questions and concerns from electors, as they are considered elections expenses. PACT sees no differences between these services being provided over the phone, email or on social media. These campaign support services serve the elections campaign in the same way, regardless of the medium being used, and they should be subject to the same electoral campaign expense limits measured for interactions over other communications media.	
PACT agrees with the modifications made to the sections related to the expenses of senators, ministers or other candidates. We believe that these modifications serve to provide fairness in measuring electoral expenses subject to limits.	This section of the handbook has been further clarified based on comments received on interpretation note 2014-02, titled "The use of Member of Parliament resources outside of an election period".
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
I would first like to commend Elections Canada on the high-quality product that was distributed as a draft Handbook. I understand that the preparation of this tool – which will surely prove to be extremely useful to candidates and their official agents – has been a long endeavour. It essentially consolidates many communication tools that had been prepared by Elections Canada over the years into one comprehensive document that provides valuable information on how the Act's rules on political financing apply to candidates' campaigns. The thoughtful manner in which the information is presented and the examples that are provided are conducive to effectively communicating the Act's requirements. This will prove to be extremely valuable for candidates and their agents, and will assist them in meeting these requirements. Comments are provided below under various subheadings, representing compliance and enforcement issues that I have noted with the draft Handbook. For ease of reference, I provide the sections and page numbers of the relevant text for each issue. The length of my written comments is reflective of the fact that the draft Handbook is an extensive document that covers many issues. *1. <u>Contributions made using corporate, association or group cheque</u>* "***Do's and Don'ts (page xii)"***; and ***"2.1 Contributions – Monetary contribution (page 13)"***: My Office has seen cases where agents of regulated entities believed that corporate cheques were acceptable as long as the name of an eligible contributor was provided. Although it may appear self-evident, in my view, it would be advisable to expressly state that cheques from corporations,	The do's and don'ts section is intended to be a high-level summary of important reminders of key legal requirements. For the sake of brevity and since this is a best practice rather than a legislative requirement, this comment has not been incorporated.

associations or groups are not to be accepted, even if representations are made that the contribution is made on behalf of an individual associated with the entity. The making of a contribution by an individual using an instrument that links them personally to the contribution greatly facilitates the effective enforcement of the rules on contributions. Additional comments related to this are made below in Part 9 "Individual Contributions."	For a more detailed response on the issue of traceable instruments, please refer below to the response to the Commissioner's ninth comment, titled "Individual contributions".
2. Ineligibility to be a candidate	
"1.1 How to become a candidate – Eligibility (page 2)": The draft Handbook currently states that "[a] person who has committed an offence that is an illegal or corrupt practice under the *Canada Elections Act*" is ineligible to be a candidate." In my view, this statement could lead someone to believe that the ineligibility continues to apply indefinitely once a conviction for an offence that is an illegal or corrupt practice has been entered. This is not the case, however, as the Act provides for periods of ineligibility of five and seven years, respectively, for illegal and corrupt practices. To avoid any potential for confusion that may interfere with an individual's constitutional right to be a candidate at an election, I recommend that the above statement be clarified to indicate that the person is ineligible if the period of ineligibility under the Act has not yet expired.	The suggested clarification has been made.
3. Personal expenses of the candidate	
"1.1 How to become a candidate – The candidate's responsibilities and obligations (page 4)"; and "***4.2 Mandatory documents and supporting documentation – Candidate's Statement of Personal Expenses (page 56)"***:	Although Elections Canada shares the policy concerns raised, it is important to note that, to date, significant compliance and enforcement issues have not arisen as a result of the

The draft Handbook states that the candidate must include all personal expenses in the *Candidate's Statement of Personal Expenses.* Requiring them to include all items that meet the definition of "personal expense" means that these expenses are regulated and that: • only campaign funds can be used to pay them; • a candidate's official agent unable to pay these claims within three years is subject to a strict liability offence, and upon conviction, is liable to a maximum term of imprisonment of six months and/or a maximum penalty of $2,000; and • any property or services provided to the candidate free of charge for his or her personal use become contributions under the Act, subject to the rules on sources and amounts of contributions. Subsection 378(1) of the Act provides that the personal expenses of a candidate include items such as (1) the candidate's childcare expenses, (2) expenses relating to the provision of care for a person with a physical or mental incapacity for whom the candidate normally provides such care, and (3) in the case of a candidate who has a disability, additional expenses that are related to the disability. In my view, in including such items as "personal expenses" of the candidate, Parliament's intent was not to make it mandatory, but rather, to make it possible for campaign funds to be used to pay for them and to allow for them to be partially reimbursable by the state. In other words, it is likely the provisions were intended to be permissive and provide assistance to candidates with children, or those affected by their own or a dependent's disability. Indeed, the fact that a candidate has to incur such expenses does not confer any advantage over their competitors in an election – a factor that would explain and justify Parliament's intervention in regulating them.	requirement for candidates to report all personal expenses and fund them in accordance with the controls on contributions in the CEA. Also, the current legal framework does not allow electoral campaign expenses to be funded outside of the regime without compromising the integrity of the contributions regime. That being said, Elections Canada will include this issue in our next report on recommendations for amending the CEA so Parliament can consider whether or not the CEA should be amended to allow these categories of personal expenses (the candidate's childcare expenses; expenses relating to the provision of care for a person with a physical or mental incapacity for whom the candidate normally provides such care; and, in the case of a candidate who has a disability, additional expenses that are related to the disability) to be paid using unregulated funds.

Parliament's intervention in providing for them in the Act, in my view, was to remove or attenuate barriers to the participation in the electoral process of candidates finding themselves in these special situations. The consequence of having grouped these expenses with expenses that do confer an advantage to the candidate over other candidates (e.g., travel and living expenses) is to require that candidates report their expenses relating to childcare or a disability and that these expenses be paid for only with campaign funds. This makes it more difficult for these candidates to participate in the electoral process. For one thing, it requires that they not pay their childcare provider or the supplier of goods or services related to a disability unless they are able to gather sufficient campaign funds. Further, this means that they have to use scarce campaign resources to fund their childcare or disability needs, whereas other candidates without children and not affected by their own or a dependent's disability are able to dedicate all of their resources to promoting themselves in the election. Finally, such a candidate without campaign funds to pay for these goods or services can only accept that they be provided for free up to the applicable contribution limit. Depending on the facts, if someone already contributed the maximum amount to the candidate, it could be an offence for them to provide the childcare or the good or service related to a disability, free of charge to the candidate. This could lead a potential candidate with children or affected by their own or a dependent's disability to refrain from running in an election. To lessen the chances of this happening – and in keeping with the equality and democratic rights guaranteed by the *Charter* and with the election fairness principle's objective of creating a level playing field – I recommend that the Handbook indicate that the Commissioner has publicly stated that he will not view it in the public interest to take any compliance or enforcement action against a candidate who has not reported childcare or disability	

expenses, or who has not otherwise treated them as regulated expenses or contributions under the Act. The CEO may wish to review this situation and determine if, in his view, Parliament should be invited to amend the relevant provisions of the Act to remove any possible doubt that candidates with childcare or disability requirements do not have the additional burden of finding sufficient contributions from eligible sources to pay for these particular expenses.	
4. <u>Role of the official agent</u> "***1.2 What has to be done at the beginning of the campaign – Definition (page 5)"***; ***"1.2 What has to be done at the beginning of the campaign – The official agent's responsibilities and obligations (page 6)"***; and "***1.2 What has to be done at the beginning of the campaign – Create a campaign budget (page 8)"***: The draft Handbook states that "[t]he official agent is responsible for administering the campaign's financial transactions and reporting those transactions to Elections Canada as required by the *Canada Elections Act*." While this accurately reflects the description of the official agent's responsibilities pursuant to section 477.45 of the Act, in my view, it would be helpful to spell out as clearly as possible what the full ramifications of this provision entail for official agents. This will make it easier for them to fully grasp the nature of their role and the extent of their responsibilities. We have seen a number of cases where official agents did not play the important role that is required of them pursuant to the legislation. It would be helpful if the Handbook provided examples of what would be best practices for the official agent to adopt, in light of this general responsibility	This section of the handbook has been expanded to discuss the importance of establishing internal controls and processes to ensure that the expenses limit is not exceeded.

over all financial transactions. The draft Handbook already explains that the preparation of a campaign budget is a recommended practice. Another practice that should be strongly recommended is that they put in place effective controls to monitor the spending done by the candidate, the official agent and any authorized individual, to ensure that they do not, as a group, exceed the spending limit. Another best practice for them to adopt in light of their responsibility over the financial transactions of the campaign is to ensure that everyone involved with the campaign is aware of who has the authority to incur expenses, and that these individuals keep him or her informed of the expenses that are actually incurred. Finally, the official agent should insist that he or she be kept informed of the financial transactions of the campaign, and should interfere to address any non-compliance in a timely fashion.	
5. Campaign bank account	
"1.2 What has to be done at the beginning of the campaign – Open a bank account (page 8)": In this section, the name of the bank account that must be opened is given as: "(name), financial agent. For example: "Peter Raymond, financial agent"." In accordance with subsection 477.46(2) of the Act, the reference should instead be to "official agent."	The correction has been made.
6. Membership fees	
"2.0 Campaign inflows (page 11, sixth bullet)": The discussion in the draft Handbook on the "membership fee" exclusion found at subsection 364(7) of the Act does not mention the requirement	The text of this section has been revised to include all of the conditions that must be met for a membership fee to not be considered a contribution.

that an amount is only excluded from what constitutes a contribution if the payment is made by the individual who wishes to become a member of the registered party him- or herself. In my view, it would be prudent to refer to all of the conditions that must be met in order for the exclusion to apply. This will avoid having individuals make excessive contributions by paying the memberships of other individuals, under the misguided belief that this amount is excluded from what constitutes a contribution.	
7. *No commercial value*	
"2.1 Contributions – What is commercial value? (page 14, Note)"; and "***2.3 Administering contributions and loans – Auctions and draws (page 20, in the second bullet)"***:	Text has been added at the start of section 2.1 to indicate that, when the term "individual" is used in this section of the handbook, it refers to an individual who is a Canadian citizen or a permanent resident.
The draft Handbook notes that the Act deems certain non-monetary contributions to have a nil commercial value for the purposes of the Act. To avoid any potential confusion, and as provided for in subsection 2(2) of the Act, it would be useful to emphasize that the "no-commercial-value" rule only applies where the good or service was provided by an eligible contributor. As currently drafted, it implies that any individual making such a contribution would be captured by the exception. Individuals who are not Canadian citizens or permanent residents could erroneously assume that the non-monetary contribution they are making has a nil value for the purposes of the Act.	
8. Returning ineligible contributions	
"2.3 Administering contributions and loans – Returning ineligible contributions (page 18)":	The purpose of this section of the handbook is to explain what is to be done in the event that an ineligible contribution is accepted. Elections Canada's interpretation of section 372

The text in the draft Handbook that describes the requirement to return the amount of an ineligible contribution pursuant to section 372 of the Act suggests that the whole amount of a contribution that is made that causes the contribution limit to be exceeded must be returned – unused – to the contributor, or if that is not possible, must be paid to the Receiver General. I agree that this is the correct interpretation of section 372.	(return of contributions) is that the requirement to return the contribution applies to the ineligible portion of the contribution rather than the entire contribution.
An interpretation that allowed the official agent to accept the contribution but only return the amount by which the contribution limit was exceeded would not be consistent with subsection 368(3). That provision prohibits an official agent from knowingly accepting a contribution that exceeds the limit. Further, allowing excessive contributions to be accepted effectively puts the contributor in an offence position for having contributed an amount that exceeds the limit (even if the exceeding portion of the contribution is returned to him or her at a later date). Accordingly, in my view, the last sentence in the example provided should read "[h]e sends a cheque of <u>$600</u> to the contributor", this $600 being the total amount of the second contribution that caused the contributor to exceed the limit by $100.	The guidance provided in the handbook does not indicate that the official agent can accept an ineligible contribution. The first paragraph of the section of the handbook titled "Returning ineligible contributions" states that the official agent must not knowingly accept an ineligible contribution. The remainder of this text addresses what to do in the event that an ineligible contribution is accepted. Accordingly, no change has been made to the handbook.
9. <u>Individual contributions</u> ***"2.3 Administering contributions and loans – What to keep in mind when administering contributions? (pages 22 & 23)"*:** Some of the circumstances discussed as acceptable practices for making and recording contributions would seem to deviate from the Act's provisions that require that contributions over $20 be made using a traceable instrument that links, on the very face of the instrument, the contributor to the contribution being made. These include the discussions on "joint bank accounts", on contributions from "partnerships" and contributions from	Although the CEA does not require that contributions over $20 be made using a traceable instrument, Elections Canada agrees that as a best practice official agents would be well advised to only accept contributions made by way of a traceable instrument that links the contributor to the contribution. Text has been added to this effect.

"unincorporated sole proprietors." In the case of the discussion on a "joint bank account" being used to make a contribution, in my view, the approach proposed is generally consistent with the Act's requirements, to the extent that it attributes the making of the contribution to the individual who actually signed the cheque. It is conceivable that some individuals may only have a joint account with their spouse, and do not have an individual personal account. The approach in the draft Handbook ensures that these individuals are able to make a contribution, while preserving the need for a traceable instrument that links the contributor to the contribution, since the signature on the cheque will provide this link. Where two individuals who share a joint account want to each make a contribution, they should sign their own distinct cheque drawn from the account. That said, from an enforcement point of view, the other proposals in the draft Handbook (those dealing in particular with partnerships and unincorporated sole proprietors) are problematic in that they allow contributions to be made through instruments that do not on their face link the contributor(s) to the contribution. This should be avoided. I would recommend that in this area a clear emphasis be put on clarity, traceability and transparency.	
10. <u>Non-monetary contributions</u>	
"3.1 Electoral campaign expenses – Definition (page 31)"; ***"3.1 Electoral campaign expenses – Definition (page 32, in the example provided)"***; ***"3.2 Election expenses – Assets (page 37)"***; ***"3.6 Administering electoral campaign expenses – Non-monetary contributions or transfers are also recorded as expenses (page 48)"***; and ***"3.6 Administering electoral campaign expenses – Non-monetary contributions or transfers are also recorded as expenses (page 49)"***:	Elections Canada agrees with the comment that all non-monetary contributions must be reported. However, our position is that non-monetary contributions are also electoral campaign expenses. Electoral campaign expenses are defined in the CEA to include election expenses (which specifically include non-monetary contributions), candidates' personal expenses and, essentially, all other expenses reasonably incurred as an incidence of the election. Election expenses are therefore a

Various parts of the draft Handbook state or imply that regulated expenses under the Act include costs incurred (whether paid or unpaid) as well as non-monetary contributions received. The Act provides for the regulation of different types of expenses incurred by a candidate as an incidence of an election. All of them constitute "electoral campaign expenses", but two subgroups of electoral campaign expenses that receive particular treatments under the Act are "personal expenses of the candidate" and "election expenses". Section 375, which describes what constitutes an electoral campaign expense, only mentions an "expense reasonably incurred", and not non-monetary contributions received. Similarly, subsection 378(1) that provides for what is included as a candidate's personal expense refers only to "expenses". The fact that non-monetary contributions would not be included as such expenses is consistent with the fact that they are not subject to any spending limit (other than those that are election expenses). In fact, subsection 376(1) includes as an election expense, any cost incurred, or non-monetary contribution received, to the extent that the property or service for which the cost was incurred or non-monetary contribution received is used to directly promote or oppose a registered party or a candidate during an election period. As such, the draft Handbook's statements that non-monetary contributions constitute regulated expenses is correct, as it relates to election expenses; a non-monetary contribution also constitutes an election expense if the property or service is used during an election to promote or oppose a party or candidate. This ensures that the spending limit on election expenses is not rendered ineffective by campaigns accepting goods or services, instead of monetary contributions with which they would otherwise have purchased these goods or services.	subset of electoral campaign expenses. It would be inconsistent for election expenses, which are a subset of electoral campaign expenses, to have a broader application than the overarching expense definition. That being said, considering that expenses related to property or services used outside of the election period are not limited, the requirement to report such non-monetary contributions as expenses is essentially a reporting requirement that provides the reader of a return with more information regarding what property or service was contributed. The format of the candidate's electoral campaign return that is prescribed by Elections Canada requires that non-monetary contributions also be reported as expenses. This provides transparency in the reporting of non-monetary contributions and enables compliance monitoring of the contribution limits. It should also be noted that the requirement to report non-monetary contributions as both contributions and expenses (or assets, as the case may be) is consistent with normal accounting practices.

It flows from the above that, with the exception of electoral campaign expenses that are election expenses subject to the spending limit, the Act does not provide that other electoral campaign expenses include a non-monetary contribution. As such, it would be impossible to enforce the failure to also report a non-monetary contribution as an "expense" if it was not specifically an election expense. This having been said, the transaction must still be reported as a non-monetary contribution that was accepted by the campaign.	
11. <u>Reporting the value of expenses</u>	
"3.2 Election expenses – Election advertising (page 35)"; ***"3.2 Election expenses – Election advertising (page 35, in the example provided)"***; and "***3.2 Election expenses – Voter contact calling services (page 36)"***:	The value at which expenses are to be reported is covered in section 3.1, "Electoral campaign expenses", of the handbook. The text in that section reflects the comments of the Commissioner.
The draft Handbook states that "[t]he commercial value of advertising conducted during an election, including the cost of production and distribution, is to be reported as an election expense." In my opinion, the Act does not require that election expenses be reported at "commercial value", but rather, that they be reported at the cost for which the good or service was purchased.	In regard to election advertising, the second paragraph under this heading in section 3.2 has been changed to: "Expenses incurred for advertising conducted during the election period, including the cost of production and distribution, are to be reported as election expenses."
Indeed, the Act requires that what must be reported is the actual cost incurred by the campaign. However, where the cost incurred is below commercial value, a non-monetary contribution arises and the value of this contribution also constitutes an election expense. As such, the commercial transaction for the purchase of property or services must be reported in a manner consistent with what was negotiated between the parties: • if the negotiated price is for an amount in excess of commercial	In regard to voter contact calling services, the last paragraph under this heading in section 3.2 has been changed to: "Expenses incurred for voter calls conducted during the election period, including the cost of production and distribution, are to be reported as election expenses."

value but is reasonably incurred as an incidence of the election, the negotiated price is the amount of the election expense; and • if the negotiated price is for an amount lower than commercial value, a non-monetary contribution has also been made. In such a case, the respective values of the cost incurred and of the non-monetary contribution received together add up to the amount of the election expense to be reported, which reflects the commercial value of the property or service. Accordingly, the above-quoted statement from the draft Handbook should, in my opinion, be amended to reflect that advertising expenses are reported at the price at which they were incurred – which should at a minimum reflect their commercial value.	
12. <u>*Expenses of senators, ministers or another candidate*</u> "***3.2 Election expenses – Expenses of senators, ministers or another candidate (page 39)"***: The position put forth in the draft Handbook with respect to the support that a senator, minister or another candidate may give to a candidate during an election period appears to deviate from how the personal expenses of other supporters and volunteers are treated under the political financing rules. The draft Handbook proposes to treat any involvement by such a person as giving rise to election expenses, which must first be authorized by the official agent or the candidate. It appears clear that a campaign that calls upon a senator, minister or another candidate to come to assist them in the	Elections Canada agrees with the comment that whether or not election expenses have been incurred is a question of fact. However, the assumption underlying the approach in the handbook is that when a senator, minister or candidate campaigns on behalf of another candidate, they are doing so at the request of the campaign. Accordingly, no changes have been made in this regard. Note that this section of the handbook has been further clarified based on comments received on interpretation note 2014-02, titled "The use of Member of Parliament resources outside of an election period".

course of an election may have incurred expenses that are regulated if, for example, travel expenses are involved. Another example is where a campaign organizes a tour of notable senators or ministers to give speeches at organized events, in order to promote the election of the candidate. That said, and as a general proposition, the personal expenses of a campaign volunteer or supporter (and this does not necessarily exclude a senator, minister or other candidate) are not regulated under the Act, unless the campaign actually incurred expenses that promote the election of the candidate. Whether or not the campaign has incurred election expenses is essentially a question of fact that must be examined in light of all relevant circumstances. *13. <u>Use of permanent billboards</u>* ***"3.2 Election expenses – Websites and billboards (page 40)"***: For the reasons set out in my comments to GI 2014-02 on the use of Member of Parliament resources outside of an election period (comments provided concomitantly with the present document), I am of the view that recent changes to the Act adopted on June 19, 2014 require that, where a capital asset – such as a permanent billboard – is used to distribute advertising material, what must be reported as an election expense is the value of the use of the capital asset during the election period. This means that the election expense would consist of reporting the commercial value of the cost of renting such a permanent billboard during the election period, as the billboard constitutes the means of distributing the advertising message.	Subsection 2(1.1) of the CEA defines the commercial value of capital assets as the lower of the rental cost for the same kind of asset during the period in which it was used and the purchase price. The valuation of assets is covered in section 3.2 of the handbook under the heading "Assets". The billboard includes the sign that promotes the candidate and that cannot be rented. The commercial value of its design, production and installation must therefore be reported as an election expense. The portion of a billboard that can be rented is the structure the sign is attached to. Whether or not a rental market exists for the structure is a question of fact. Text has been added in section 3.2 to discuss how the commercial value of the structure is determined.

14. <u>Reporting requirements</u> ***"4.2 Mandatory documents and supporting documentation – Documents to be filed within four months after election day (page 55)"***; ***"Chart at page 60 – Candidate reports – extension requests***"; "***5.1 Distribution of funds administered by Elections Canada – Reimbursements (page 64)"***; and ***"5.1 Distribution of funds administered by Elections Canada – Auditor's subsidy (page 65)"***:	It is true that the CEA makes a distinction between the return and the declarations of the candidate and official agent regarding the return's completeness and accuracy. However, as noted, the form prescribed by Elections Canada includes the declarations as part of the return. To avoid confusion, the declarations have not been listed as separate documents to be filed with Elections Canada.
The draft Handbook states that there are three mandatory documents that must be provided within four months after polling day: the candidate's return; an auditor's report on this return; and the candidate's statement of personal expenses. Subsections 477.59(1) and (7) of the Act, however, require that four documents be filed within four months after polling day: a) the candidate's return; b) an auditor's report on that return; c) the candidate's declaration about the completeness and accuracy of the return; and d) the official agent's declaration about the completeness and accuracy of the return. While, as a matter of practice, Elections Canada has chosen to include the two declarations (mentioned at c) and d) above) on the first page of the prescribed form for the candidate's return, legally, they are three distinct instruments. An official agent who has submitted the completed return without one of the required declarations has not, pursuant to the Act, met his or her obligation to file the return and other mandatory documents. Moreover, the candidate's statement of personal expenses is not a	To address this comment, the bulleted list of documents to be filed under section 4.2, "Mandatory documents and supporting documentation", has been changed to: • the *Candidate's Electoral Campaign Return*, including the declarations signed by the candidate and the official agent • the *Candidate's Statement of Personal Expenses* • the *Auditor's Report*, including the *Checklist for Audits* and the auditor's invoice • all supporting documents

mandatory document pursuant to these provisions of the Act. Rather, it is provided as supporting documentation with the return. These distinctions are important and should be communicated to candidates and official agents. The failure to provide any of the four mandatory documents mentioned above would give rise to the offence of having failed to file the return and required documents, could impact on the reimbursement of election expenses owed to the candidate, and could render the candidate ineligible to run in future elections.	