



## Written Opinions, Guidelines and Interpretation Notes

The Chief Electoral Officer issues guidelines and interpretation notes on the application of the *Canada Elections Act* to registered parties, registered associations, nomination contestants, candidates and leadership contestants, in accordance with section 16.1 of the *Canada Elections Act*. Before the issuance of any guideline or interpretation note, registered federal political parties and the Commissioner of Canada Elections are consulted and invited to provide comments on a draft version. Guidelines and interpretation notes provide guidance and promote consistency in the interpretation and application of the Act. However, they are for information only and do not displace the provisions of the Act.

### Interpretation Note: 2015-03 – Draft (June 2015)

## Candidate Debates

### Issue

Whether or not providing a public forum for candidate or leader debates constitutes a contribution to the participating candidates or parties as well as an election expense under the *Canada Elections Act* (“CEA”).

### Interpretation

The interpretation and approach of Elections Canada to candidate and leader debates is as follows:

- (1) Providing a public forum for candidate or leader debates with two or more participants does not constitute a non-monetary contribution from the entity providing the forum. It is also not an election expense of the participating candidates or, in the case of leader debates, of the participating parties.
- (2) During a debate, candidates are provided the opportunity to express and debate their political views in a public forum. Candidates are not, however, given control over how the debate is organized or facilitated, and therefore do not receive property or a service. A debate is also not set up to promote or oppose a particular candidate or party. The primary beneficiary of the service being provided is the electorate rather than the participating candidates or parties.
- (3) The expenses incurred by the entity holding the debate do not qualify as non-monetary contributions to or election expenses of participating candidates or parties since (i) a debate is not conducted to promote or oppose a particular participant, and (ii) the participants do not have control over how the debate is organized or facilitated, and are therefore not receiving property or a service.

- (4) The exclusion of one or more candidates or parties from a debate does not change the fact that the provision of a public forum for candidate debates is not a non-monetary contribution to the participating candidates.
- (5) There may be situations in which a debate is not a true debate, but rather a disguised contribution. This could be the case if a debate was conducted in a partisan manner to promote or oppose a particular candidate or party, or if the debate organizer gave control over the event to a particular candidate or party. In such cases, the totality of the circumstances would need to be examined to determine whether or not the debate was a true debate or a disguised contribution.

## Background

Candidate and leader debates are not always open to all candidates and parties. Questions have been raised about whether or not the exclusion of some candidates or parties from debates means that the candidates or parties who participate are receiving potentially ineligible non-monetary contributions.

The holding of debates is, and has consistently been, an important means through which electors receive information about the positions of the various candidates and parties. This information can be crucial in helping electors decide for whom to vote. In light of the importance of such debates to the democratic process, the Chief Electoral Officer's interpretation of the political financing rules has long been that expenses incurred to organize a forum for debate that allows the public to hear and question candidates do not constitute a contribution to any candidate provided that:

- The forum is open to the public.
- The debate is conducted in an impartial manner.
- All candidates are invited to participate. If all candidates are not invited to participate, there must be a reasonable basis for the exclusion.

In 2010, the Chief Electoral Officer articulated the above position in his recommendations to Parliament. He recommended that candidate debates be specifically addressed in the CEA in order to stipulate (i) under what circumstances expenses incurred to organize candidate debates would constitute a non-monetary contribution to the participating candidates as well as an election expense of the candidates, and (ii) under what circumstances expenses incurred to organize a debate among party leaders would constitute a non-monetary contribution to participating registered parties as well as an election expense of the parties.<sup>1</sup> Parliament essentially responded that no change is required to the CEA with respect to candidate debates.

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<sup>1</sup> *Responding to Changing Needs – Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election, 2010, Recommendation II.7* at [www.elections.ca/content.aspx?section=res&dir=rep/off/r40&document=part2&lang=e#2.7](http://www.elections.ca/content.aspx?section=res&dir=rep/off/r40&document=part2&lang=e#2.7).

## Legal Framework

The basic regulatory structure for political contributions and election expenses is as follows:

- Only individuals who are Canadian citizens or permanent residents can make political contributions.
- Both monetary and non-monetary contributions are subject to the contribution limits.
- A non-monetary contribution is defined in the CEA as the commercial value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their commercial value.
- An election expense is defined in the CEA as including any cost incurred, or non-monetary contribution received, by a registered party or a candidate, to the extent that the property or service that the cost was incurred for or that was received as a non-monetary contribution is used to directly promote or oppose a registered party, its leader or a candidate during an election period.
- Election expenses of parties and candidates are subject to the election expenses limits.

## Analysis and Discussion

### Non-monetary Contributions and Election Expenses

A non-monetary contribution is made when property or a service is provided, or the use of property or money is provided, to a political entity at less than commercial value. The CEA includes property or services received by way of non-monetary contributions in the definition of election expenses since if all property or services used to promote or oppose a candidate or party are not included as election expenses, the limit on election expenses would become largely ineffective. To determine whether or not providing a forum for a debate held during an election period is a non-monetary contribution, it is therefore useful to consider whether or not the expenses incurred to conduct the debate would constitute election expenses of a candidate or a party.

During a debate, candidates are provided the opportunity to express and debate their political views in a public forum. Candidates are not, however, given control over how the debate is organized or facilitated. It is therefore difficult to assert that the participants in a debate are receiving property or a service. The primary beneficiary is the electorate rather than a particular candidate or party, much like the situation of a media interview or news article concerning a candidate or party. In addition, a debate is not set up to promote or oppose the election of a particular candidate or party. These factors indicate that the expenses incurred by an entity to hold such a debate are not contributions to and election expenses of the candidates or parties.

Debates are traditionally held by media outlets or community associations. If providing a forum for a debate were to be considered a non-monetary contribution to participating candidates, such entities would be making illegal political contributions. Forums for debate could then only be provided by individuals who are Canadian citizens or permanent

residents, and the cost of the debate would be limited by the individual's contribution limit. This would effectively eliminate debates from the democratic process. Elections Canada is of the opinion that this was not Parliament's intent when it adopted the rules on political financing, since candidate and leader debates have a long history and play a very important role in Canadian democracy.<sup>2</sup>

### **Exclusion of Candidates from Debates**

Elections Canada's previous interpretation indicated that if candidates are excluded from a debate, there must be a reasonable basis for that exclusion. However, the exclusion of one or more candidates from a debate does not alter the fact that the expenses incurred by the entity holding the debate are not election expenses of the participating candidates or parties, and are therefore also not non-monetary contributions to the participating candidates or parties.

A similar concept applies to a candidate or a party leader who is the subject of a newspaper article or a television interview. The fact that other candidates may not receive the same coverage does not mean the media outlet is providing a contribution to the candidate who received the coverage. The expenses incurred by the media outlet in producing and distributing the article or interview are similarly not election expenses of the candidate or party.

### **Whether a Debate Is a True Debate**

If a public debate is conducted in a partisan manner to promote or oppose the election of a particular candidate or party, or if the debate organizer gives control over the event to a particular candidate or party, the expenses incurred by the entity holding the debate could be a contribution to and an election expense of the candidate or party who received preferential treatment. In such cases, the totality of the circumstances would need to be examined to determine whether the debate was a true debate or a disguised contribution. Any potential contribution to a candidate or party would need to have been accepted by the candidate or party.

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<sup>2</sup> Section 319 explicitly provides, under paragraph (a) of the definition of "election advertising", that "the transmission to the public of ... a debate" is not election advertising, this is an indication that parliament intended for debates to be permissible.