



Written Opinions, Guidelines and Interpretation Notes

Interpretation note: 2015-03 Candidate and leader debates

Comments made during formal consultation period June 18–July 3, 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
<p>The Animal Alliance Environment Voters Party of Canada (“AA/EV”) disagrees with many aspects of the draft interpretation OGI 2015-03 Candidate Debates for the following reasons:</p> <ul style="list-style-type: none"> • the draft interpretation is antithetical to the contribution provisions in the <i>Canada Elections Act</i> (“Act”); • in making the draft interpretation, the Chief Electoral Officer (“CEO”) is implicitly assuming novel law-making powers not provided for in the Act, or intended by Parliament; • the draft interpretation’s fatal flaw is due to it being crafted to rationalize and entrench historical, and arguably unlawful, practices in light of the new OGI regime, rather than being crafted to provide a defensible interpretation based on the Act, legal precedent, and the limits of authority of the Chief Electoral Officer; • the administration and interpretation difficulties the CEO is confronting due to Parliament’s unwillingness to address the issue of candidate debates—as requested by the CEO—can be resolved within the provisions of the Act without ambiguity, inconsistency, or novel or tortured rationales; the current draft interpretation, OGI 	<p>Elections Canada notes the party’s strong disagreement with OGI 2015-03. We also note that, if providing the opportunity to participate in a debate were to be treated as a non-monetary contribution, then this would be the case whether or not any candidate was excluded (as acknowledged in the party’s comment). Such an interpretation of the <i>Canada Elections Act</i> would effectively mean that candidate debates, including televised leader debates, are illegal in Canada, unless all costs related to the debate are paid for by the candidates or parties. The legislative history of the relevant provisions does not indicate that this was Parliament’s intent.</p>

2015-03 does not reflect this possibility;

- all of the interpretation’s legal deficiencies and the overreaching of the CEO can be resolved by removing the notion in the interpretation that some candidates can be excluded from a candidate debate by organizers. This is the provision that makes the interpretation incompatible with the Act, the powers of the CEO, legal precedent, and, it seems, the will of Parliament.

Based on the Background provided by Elections Canada in the draft interpretation note, it is clear that the CEO hopes to facilitate candidate debates exactly as they have been organized in the past as they are, according to Elections Canada,

...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.

This a laudable goal, and one with which AA/EV agrees. However, such sentiments and values are not recognized in the Act, not even in a preamble, nor in the administrative powers afforded the CEO and, therefore, have no place in the reasoning supporting any interpretation, including OGI 2015-03. Moreover, that something was done historically does not exempt it from the provisions of the Act today.

The provisions of the Act and Parliament’s unwillingness to address the issue of candidate debates as non-monetary contributions put the CEO in a difficult position with, it seems, two choices:

1. enforcing—strictly and simplistically—the letter of the Act, regardless of the harm done to the electoral process and democratic principles, as was done with the provisions regarding leadership campaign contributions and expenses incurred outside of the campaign period;
2. interpreting candidate debates by referencing provisions in the Act

that, then, would not reasonably entail any candidate or party concluding that a candidate debate was a non-monetary contribution being made by third parties contrary to the Act.

The CEO in OGI 2015-03 has chosen to do neither, choosing rather to create what is, in effect, a new provision in the Act, including creating a new class of contributor (candidate debate organizer), something beyond the authority of the CEO.

The fact is that a strict interpretation of the *Canada Elections Act* (“Act”) can be applied to candidate debates and, if done so, there would be no dispute about them being non-monetary contributions. However, for laudable and, perhaps, practical enforcement reasons, and historical practices Elections Canada has chosen not to strictly interpret the Act, choosing instead to interpret the Act from the viewpoint of arbitrary values and principles that are neither entrenched nor even mentioned in the Act. These values and principles, however, are applied inconsistently in the draft interpretation 2015-03 and are therefore an affront to the legal and democratic principles that made it possible for smaller parties to fully participate in elections.

It is the opinion of AA/EV that candidate debates as historically organized by third parties, other than broadcasters as defined in the *Canada Elections Act* (“Act”), clearly constitute a non-monetary contribution and should be treated as such by debate organizers and parties and candidates.

The organizers of candidate debates, if not individuals legally entitled to make political contributions, can operate in accordance with the Act by charging parties and candidates ‘fair market value’ to participate. The candidates should account for the payment as an election expense.

If the organizer is an individual who is entitled to make a contribution under the Act, the transaction should be duly recorded and reported as such by all affected parties. As well, if an individual is organizing a candidate debate, the amount they spend would, of course, be subject to contribution limits. All of this is recognized in the Background to OGI 2015-03.

AA/EV shares the CEO’s view that candidate debates provide a valuable

service for parties, candidates, and voters. However, because they provide a service and use of property to parties and candidates, which is then used to promote or oppose candidates and/or parties, they are intrinsically and unambiguously a non-monetary contribution under the Act. That they also benefit voters is irrelevant in terms of interpreting the Act. That the organizers of candidate debates are not usually intending to make a contribution to any candidate is also irrelevant in terms of interpreting the Act. The Act does not make allowances for the motives of those making non-monetary contributions, yet this line of reasoning is used by Elections Canada to rationalize the interpretation in OGI 2015-03.

In the Background section of OGI 2015-03, Elections Canada asserts that,

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.

These are values with which AA/EV agrees, with the exception of “If all candidates are not invited to participate, there must be a reasonable basis for the exclusion.” There are no reasonable bases, given court decisions concerning Canada’s election laws, to exclude candidates from candidate

debates organized by third parties. Moreover, there is nothing in the Act to suggest that the importance of something to the democratic process has any legal relevance in terms of the Act, whatsoever. It may worth noting, too, that what is important to the democratic process is not something on which all political actors agree.

The Act does not recognize exceptions to the financing regime based on an event's benefit to the democratic process or voters.

A further argument in the Background is,

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.

It is not difficult at all to assert that the candidates are receiving property or service, because that is exactly what is happening. To suggest otherwise is not legally or practically defensible. If candidates were not receiving a valuable service, in this case for no cost, it is unlikely that any candidate would participate in a debate.

Candidates attend debates, as stated in section 376. (1)(a) of the Act, "to directly promote or oppose a registered party, its leader or a candidate during an election period." That is the only reason candidates attend debates. The organizers of a candidate debate may not intend to give a non-monetary contribution, but the candidates respond as if they are receiving one, and that is the crux of the issue at hand in OGI 2015-03.

A notion expressed in the Background is,

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.

The concept of “primary beneficiary” is not recognized in the Act when evaluating a contribution or an advertisement. To use it here to determine that a candidate debate organized by a third party is not a non-monetary contribution is reaching and inconsistent with the Act. Furthermore, it can be stated with some certainty that all advertising benefits the electorate and determining who is the primary beneficiary, political actor or electorate, is an exercise in arbitrariness, not interpretation based on the provisions in the Act.

The arbitrariness of this approach is highlighted by events that occurred in the Yukon during the 2011 federal election. During the 2011 election, Air North offered to fly all candidates to all the candidate debates at no cost in order to benefit the electorate. The offer was deemed a non-monetary contribution by Elections Canada and denied, thereby depriving many voters, the “primary beneficiary,” of the opportunity to hear their candidates in debate.

In the Background, efforts are made to justify candidates being excluded from candidate debates being organized by third parties. The argument is defended by,

“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 argument is specious both in principle and practice because candidate debates are not in any way analogous to news agencies. In practice, many community newspapers and local broadcasters make every effort to freely provide equal space and time to all candidates in all elections to make their

case. They rarely, if ever, exclude anyone.

In terms of *news* coverage, however, there is no doubt some candidates will get more coverage than others. But, a candidate debate organized by a third party is not news coverage—and has nothing similar to the reporting of news. It is the providing of a platform for candidates to express their views, much like a local newspaper giving all candidates 250 words to make their case or a local radio stations giving candidates 60 seconds to broadcast their messages as Toronto’s CFRB radio station has done. Local candidate debate organizers have nothing in common with news outlets.

A better analogy is the provisions in the Act, Section 81, that ensure all candidates can canvass multi-residence buildings or gated communities. The only exception to this right of candidates is where such canvassing might harm the residents, something not to be expected in a candidate debate.

There is no defensible reason why the spirit of Section 81 should not also apply to candidate debates.

In AA/EV’s opinion, candidate debates organized by third parties, rather than individuals legally entitled to make political contributions, constitute a non-monetary contribution. Of this there can be no doubt. To conclude otherwise requires the convenient and selective application of arbitrary values and objectives that, though laudable, are not recognized as relevant by the Act.

However, the very existence of the draft interpretation suggests that, in the absence of Parliamentary guidance, the CEO is taking it upon himself to interpret the Act to achieve a particular end he deems desirable, one that AA/EV generally agrees with. The issue for AA/EV is that third party organizers are permitted to exclude candidates from the debates for any reason as long as there is “a reasonable basis for the exclusion.” Unfortunately, nowhere in OGI 2015-03 is there any guidance or definition of “reasonable basis.” The lack of guidance *de facto* ensures that any and all reasons can—and will—be used to exclude any candidate from any candidate debate.

This arbitrary exclusion from public debate of smaller parties—now being considered for entrenchment in Elections Canada’s practices—is a direct affront to the reasoning the Supreme Court applied in *Figueroa v. Canada* to strike down laws effectively denying the participation of small parties in elections.

It may useful to remind ourselves of some of democratic concepts expressed in the ruling. Remind ourselves because if the Chief Electoral Officer has decided to arbitrarily interpret the Act based on democratic and social values he deems beneficial, those values should reflect the views of the Supreme Court which made it possible for all parties, large and small, to participate more fully in elections.

From *Figueroa v. Canada (Attorney General)*:

...the ability of a political party to make a valuable contribution to the electoral process is not dependent upon its capacity to offer the electorate a genuine “government option”. Rather, political parties enhance the meaningfulness of individual participation in the electoral process for reasons that transcend their capacity (or lack thereof) to participate in the governance of the country subsequent to an election. Irrespective of their capacity to influence the outcome of an election, political parties act as both a vehicle and outlet for the meaningful participation of individual citizens in the electoral process.

...it is important to note that political parties have a much greater capacity than any one citizen to participate in the open debate that the electoral process engenders. By doing so in a representative capacity, on behalf of their members and supporters, political parties act as a vehicle for the participation of individual citizens in the political life of the country. Political parties ensure that the ideas and opinions of their members and supporters are effectively represented in the open debate occasioned by the electoral process and presented to the electorate as a viable option.

If those ideas and opinions are not subsequently adopted by the government of the day, it is not because they have not been considered, but, rather, because they have received insufficient public support.

...Large or small, all political parties are capable of introducing unique interests and concerns into the political discourse. Consequently, all political parties, whether large or small, are capable of acting as a vehicle for the participation of individual citizens in the public discourse that animates the determination of social policy.

...Irrespective of its effect on the outcome of an election, a vote for a particular candidate is an expression of support for a particular approach or platform. Whether that vote contributes to the election of a candidate or not, each vote in support of that approach or platform increases the likelihood that the issues and concerns underlying that platform will be taken into account by those who ultimately implement policy, if not now then perhaps at some point in the future.

...As a consequence, there is no reason to think that political parties that have not satisfied the 50-candidate threshold do not act as an effective outlet for the meaningful participation of individual citizens in the electoral process. There is no correlation between the capacity of a political party to offer the electorate a government option and the capacity of a political party to formulate a unique policy platform for presentation to the general public. In each election, a significant number of citizens vote for candidates nominated by registered parties in full awareness that the candidate has no realistic chance of winning a seat in Parliament — or that the party of which she or he is a member has no realistic chance of winning a majority of seats in the House of Commons. Just as these votes are not “wasted votes”, votes for a political party that has not

satisfied the 50-candidate threshold are not wasted votes either. As a public expression of individual support for certain perspectives and opinions, such votes are an integral component of a vital and dynamic democracy.

In AA/EV's view, excluding any candidate from a candidate debate organized by a third party is a direct affront to the principles expressed and entrenched in Canadian law as precedent by the Supreme Court.

If the CEO is going to use his discretion to interpret the Act in such a manner as to deem that candidate debates organized by third parties are not non-monetary contributions, he should be informed and influenced by the principles explicitly articulated by the Supreme Court in *Figueroa v. Canada* and provisions in the Act.

Furthermore, if there are, in fact, "reasonable [bases] for the exclusion" of some candidates, Elections Canada must state unambiguously what those exclusions might be, as has been done in Section 81, and how they are not an affront to the principles entrenched in law by the Supreme Court. It is AA/EV's view that there are in federal elections rarely any reasonable or defensible bases for excluding candidates from participation in candidate debates. In AA/EV's experience exclusion from debates is always based on political considerations that the Supreme Court has discounted as untenable in a democracy.

The challenge facing the CEO and candidate debate organizers is how to ensure that candidate debates are organized to be consistent with the Act and do not entail a non-monetary contribution.

The solution is apparent in both the Act and in the values expressed by the CEO in the Background to the interpretation.

Depending on how a "candidate debate" is organized, it could be considered providing a benefit to voters and not candidates and, therefore, not be subject to the provisions pertaining to non-monetary contributions.

Historically, debates are organized by inviting candidates to attend a debate

and then promoting the debate to voters and interested parties. This is clearly a non-monetary contribution, particularly when the organizers do not invite all candidates, which has the effect, intended or not, of promoting some candidates and opposing others. However, if the organizers ask voters and interested parties, first, to gather at a certain time and place and all candidates are then invited to debate at that time and place in front of the audience, that is unambiguously organizers providing a benefit to the voters and not the candidates.

Such an approach would reflect the spirit in Section 81, where a group of voters is at a certain location and the candidates can, if they choose, take their message to them. As reflected in Section 81, such an approach to candidate debates would only apply if no candidates were excluded.

Put simply, for a candidate debate not to trigger the non-monetary contributions provisions of the Act, the audience must be planned to be assembled *before* the candidates are informed where and when the audience will be gathered and in expectation of candidates appearing before them.

It is, AA/EV submits, contrary to the contribution provisions of the Act for a group to organize a candidate debate and ask voters to attend; it is not contrary to the Act for a group to organize an audience and ask candidates to debate before it. The distinction may be subtle, but it makes the crucial difference. However, should the organizers of the audience exclude any candidate for any reason they are then actively, whether they intend to or no, campaigning for or against certain candidates, and the event would then be a non-monetary contribution. Excluding a candidate from appearing before an audience would be no different than a manager of multi-resident building preventing all but candidates from major parties canvassing on their property, something not permitted by the Act.

Based on the above arguments, references to the Act, and the principles expressed in *Figueroa*, AA/EV's views on the actual draft interpretation are 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.

This is, of course, inconsistent with the Act. Providing a public forum for a candidate is, *ispsso facto*, a non-monetary contribution, and has the effect of a non-monetary contribution. There is nothing in the Act to suggest otherwise, and the office of the CEO is not empowered by Parliament to, in effect, change the Act.

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.

Providing a candidate an opportunity is a non-monetary contribution. It is irrelevant if a candidate has control or not. The Act is silent about such conditions. It is irrelevant, too, if the debate is organized to promote or oppose a political party or candidate. It is the candidates who are doing the promoting and opposing using the non-monetary contribution provided by the organizers. The Act does not take into account the notion of “primary beneficiary.” The notion is irrelevant.

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.

Again, the notion that a non-monetary contribution is dependent on the motives of the contributor is irrelevant in terms of the provisions in the Act.

So, too, is the degree of control the participants have over the event. The fact that the political participants choose to attend the event is proof that they are receiving property or a service. None would attend if they were not.

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.

It is not fact that “a public forum for candidate debates is not a non-monetary contribution.” It is an interpretation made with no reference to the Act or legal precedent. It is merely an historical artifact. It is, under the Act, irrelevant who attends or not by choice or who is excluded by the organizers. Those political actors who do participate are receiving a benefit, namely a venue and an audience organized by a third party at sometimes considerable expense. It is to receive the benefit, i.e. the non-monetary contribution, that candidates attend debates.

If candidates are excluded from the event then, whether intended to or not, the event constitutes promoting or opposing candidates. Third parties are permitted under the Act to transmit a debate and not have the transmission considered election advertising. However, such exemptions for third parties to the non-monetary contribution regime do not apply to the organizing of the debate. If the *transmission* of debates is expressly mentioned in the advertising provisions of the Act, surely if the intent of Parliament was to exempt candidate debates organized by third parties from the provisions of non-monetary contributions, that would have been expressly stated in the Act as well.

It is worth noting that none of the interpretations, 1-4, commented on above are based on any provisions in the Act, any legal precedents or opinions, or are within the competency of the CEO to assert. Only item (5) in the interpretation might meet these conditions.

To conclude, it is the view of the AA/EV that candidate debates organized by third parties can be conducted with due regard for the letter and spirit of

<p>the Act, the powers of the CEO, and legal precedent if:</p> <ol style="list-style-type: none"> 1. The organization of the venue and audience <i>precedes</i> the invitation to candidates. 2. The choice to appear at the venue is decided by individual candidates and not the organizers who arranged the venue and assembled the audience. 3. If, for some reasonable bases, some candidates must be excluded, the determination of which candidates are excluded must be done by some impartial method, such as being chosen by lot. <p>It might be worth noting that if it is true and defensible that,</p> <p>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.</p> <p>and this principle informs the draft interpretation. Allowing third party candidate debate organizers to exclude candidates, for any reason, corrupts this principle and renders the whole OGI 2015-03 a mockery of it.</p>	
<p>No comments were submitted by the Bloc Québécois</p>	
<p>Comments received from the Canadian Action Party</p>	<p>Elections Canada response to the Canadian Action Party comments</p>
<ol style="list-style-type: none"> 1. 3 (1) It is still not clear to me that excluding a candidate from a debate is not actually opposing that candidate by not allowing him/her to express his/her/party's views to the attending voters. What is clear to me is that the major parties have an unequal opportunity to express their views and that small parties are excluded for no reason other than the wishes 	<ol style="list-style-type: none"> 1. The “reasonable basis for exclusion” requirement was included in the background section to underline Elections Canada’s previous position. The note has been amended to further clarify that the current interpretation replaces our previous position.

<p>of the promoter of the debate.</p> <p>Similarly under bullet three of the Backgrounder. One wonders what constitutes a reasonable basis for the exclusion of a candidate? Could it be that pressure had been brought to bear upon the promoter to exclude any small parties because they could reasonably be expected to oppose all the views expressed by the represented parties and therefore self-protection (?) could be a motive for demanding the exclusion of small parties with more pragmatic/practical views on how Canadians could and should be better served?</p>	
<p>2. Legal Framework: Bullet 4 “...or oppose a registered party...” I still maintain that exclusion from either candidate debates or leaders debates amounts to opposition to those parties, and should therefore be charged as election expenses to those candidates or parties that do take part.</p>	<p>2. The “reasonable basis for exclusion” requirement was included in the background section to underline Elections Canada’s previous position. The note has been amended to further clarify that the current interpretation replaces our previous position.</p> <p>Providing a forum for debate does not constitute a non-monetary contribution (from the entity providing the forum) to the candidates or parties taking part in the debate. It is also not an election expense of the participating candidates or, in the case of leader debates, of the participating parties. If providing the opportunity to participate in a debate were to be treated as a non-monetary contribution, then this would be the case whether or not any candidate was excluded. Such an interpretation of the <i>Canada Elections Act</i> would effectively mean that candidate debates, including televised leader debates, are illegal in Canada, unless all costs related to the debate are paid for by the candidates or parties. The legislative history of the relevant provisions does not indicate that this was Parliament’s intent.</p>

<p>3. Exclusion of Candidates from Debates: Para #1 and whether a debate is a true debate: Again we have that “reasonable basis” catch-all phrase which has no real meaning in reality because of the pressure which can be brought to bear by the major parties in threatening to boycott such a debate should small parties be allowed to attend which amounts to them taking control of the debate and how it is conducted. Under these circumstances (to which I was subjected in 2008 by the way) there is little doubt in my mind that this amounts to opposition to these candidates. To me, this is equivalent to the debate not being a true debate but indeed a disguised partisan contribution to the major parties, allowing them an unfair platform of exposure to the voting public.</p>	<p>3. The “reasonable basis for exclusion” requirement was included in the background section to underline Elections Canada’s previous position. The note has been amended to further clarify that the current interpretation replaces our previous position.</p> <p>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 the debate was a true debate or a disguised contribution. The following are relevant, but non-exhaustive, considerations: the manner in which the event is conducted, the degree of control a candidate or party exercises in the organization of the event, how candidates or parties are selected to participate, and the audience.</p> <p>Questions related to the exclusion of candidates and to what constitutes a true debate have been further addressed in the note.</p>
<p>Comments received from the Christian Heritage Party of Canada</p>	<p>Elections Canada response to the Christian Heritage Party of Canada comments</p>
<p>The exclusion of small-party candidates from public candidate debates during elections (including leaders’ debates) has long been a contentious issue and Elections Canada has attempted—with this draft—to put this issue to bed. However, it has not succeeded, since the issue is one of fairness and equal opportunity. At issue is the whole question of equal access for candidates and parties to public forums and means of communications and equal access for the voting public to the ideas and platforms of all parties and all candidates.</p>	<p>While debates represent an opportunity for participating candidates, the primary recipient of the service being provided in a debate 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 either case, the expenses related to holding the debate or interview are those of the media outlets or third parties organizing the event, not expenses of the party or candidate. Candidates or parties may</p>

In the past, it has been suggested that the exclusion of one or more candidates from any debate platform should be seen as a monetary contribution from the organizers of the debate to the parties or candidates who have been invited and allowed to participate. Aside from the clear provision in the Act that contributions are not permitted by other than individuals, this position is reasonable. It is very easy to see that the participants in such a debate gain visibility and credibility in the eyes of the voting public. They have an opportunity to explain and promote their platform planks and voters become more familiar with them. This is especially true of televised debates where large numbers of voters may be led to believe that only those parties represented by the participants on the platform are recognized as legitimate...that only those parties have ideas worth consideration at the polls.

Elections Canada has chosen to address this suggestion (that candidate exclusion constitutes a contribution to other candidates) as illogical and unenforceable because entities like chambers of commerce, etc. cannot legally make contributions. That is exactly the point. We are not asking Elections Canada to begin identifying and quantifying non-monetary contributions from chambers and other debate organizers; we want those entities to cease contributing to the big parties and begin using their debate forums to allow voters to hear the ideas of all parties so that they can make informed decisions on Polling Day.

On page one of the Interpretation Note, point #2 says:

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.

I would like to address the 4 bolded statements in this paragraph:

be able to exert some degree of influence over how the debate is organized or facilitated (as is the case in a media interview), but this does not mean the debate should be treated as an expense of their campaigns.

If providing the opportunity to participate in a debate were to be treated as a non-monetary contribution, then this would be the case whether or not any candidate was excluded. Such an interpretation of the *Canada Elections Act* would effectively mean that candidate debates, including televised leader debates, are illegal in Canada, unless all costs related to the debate are paid for by the candidates or parties. The legislative history of the relevant provisions does not indicate that this was Parliament's intent.

With regard to the party's comment in item 3, sections 81 and 81.1 of the *Canada Elections Act* address very specific issues of canvassing in residential areas and campaigning in public places. They are not meant to apply to debates.

1. The first is obviously missing the point: **only some candidates** (not all) “...are provided an opportunity to express and debate, etc.” The unfair benefit is the crux of the problem.
2. “Candidates are not given control...” That is not true if the candidate’s friends in the chamber of commerce (or any other group hosting the debate) decide to exclude another candidate who may represent a threat to the electoral success of their friend. In this way, a powerful candidate, well-connected in his or her community, may unfairly influence the organization of the debate. We know that this has happened and does happen.
3. “A debate is not set up to promote or oppose...” Of course this deals with motives which may or may not be known. However, we agree that the **end result** should not be the unfair promotion of nor the diminishing of the hopes for electoral success of any candidate or party. The result of every debate **should be** an informed electorate who have heard the platform positions of **all** candidates and make their important ballot decisions based on that information. To deny voters that information and to deny some candidates that opportunity to be seen and heard is contrary to the stated purposes, in the “Values” of Elections Canada which call for: “**cohesiveness and consistency in administering the *Canada Elections Act***”. The continued acceptance by EC of discrimination against some parties by some debate organizers is a glaring example of **inconsistency**. As mentioned in our OGI discussions, a similar situation would be created if apartment building superintendents were allowed to permit some—not all—candidates access to the building for the distribution of flyers, etc. Although non-monetary, it is obvious that such discrimination would be a disadvantage for those candidates excluded and an advantage for those candidates permitted access. Debate access functions in exactly the same way. Those granted access are being materially helped by the debate organizers. This should not be.
4. “the beneficiary is the electorate...” Again, this is only true if the electorate is fully informed and has the opportunity to hear from all

<p>candidates. If some candidates are excluded and denied the visibility and credibility conferred on the participants, voters are likely to be either entirely unaware of those candidates or to assume that their ideas are considered by “neutral” bodies such as chambers of commerce to be unworthy of consideration. That makes chambers—and other debate organizers who presume to exclude some parties—partisan (not neutral).</p>	
<p>In summary, we do appreciate the efforts of the Chief Electoral Officer in attempting to motivate Parliament to establish, through legislation, guidelines such as those previously articulated by the CEO—guidelines that would ensure that all candidates are invited to participate in publicly-held candidate debates. We believe the parameters defined by the CEO were correct and are sincerely disappointed that Parliament has declined to act on this matter. However, we still believe that in the interest of fairness, consistency and of providing the electorate with sufficient information about all candidates and parties involved in an election that it would be reasonable to require debate organizers to invite all candidates to participate. Their failure to do so clearly provides an unfair advantage to some candidates (usually those who already have significant public visibility) and a corresponding disadvantage to other candidates (usually those whose platforms are least known and understood).</p> <p>We ask Elections Canada, rather than accepting Parliament’s lethargy on this matter, to continue to promote fairness and equal access for voters, candidates and parties during election campaigns.</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</p>

<p>"If all candidates are not invited to participate, there must be a reasonable basis for the exclusion."</p> <p>This phrase is too vague and open to abuse by third parties that have an agenda to exclude on arbitrary grounds. This exclusion has the potential go against the interest of offering information to the public and therefore the spirit of debates. Without Elections Canada setting specific guidelines for what is considered "reasonable exclusion" it is left up to outside parties to make that determination.</p> <p>Guidelines for reasonable exclusion should be transparent for both leadership and local candidate debates. If the goal of a debate is to give the public an opportunity to hear from the candidates and become more informed on their choices, then a "reasonable exclusion" must be limited to anything considered crucial to enhancing the transmission of that information.</p> <p>Exclusion on the grounds of popularity does not seem to speak to the spirit of the Act, nor to democracy, nor to common sense.</p>	<p>The "reasonable basis for exclusion" requirement was included in the background section to underline Elections Canada's previous position. The note has been amended to further clarify that the current interpretation replaces our previous position.</p>
<p>Comments received from the Liberal Party of Canada</p>	<p>Elections Canada response to the Liberal Party of Canada</p>
<p>Pages 1 and 4:</p> <p>Some clarification is needed with respect to the meaning of "control". On page 4, for example, the OGI states that if the debate organizer were to give control over the event to a particular candidate or party, the expenses incurred by the party holding the debate could be a contribution to and an election expense of the candidate or party receiving preferential treatment. What constitutes "control"? If, for example, the debate organizer were to allow one or more participating parties to unduly influence the debate format or the questions to be posed during the debate, would this be considered "control" such that the entity holding the debate would be making a contribution to the party or parties? The clarification being sought</p>	<p>Although there might be a degree of control exercised by a candidate or a party over the conduct of a debate, this is one of several circumstances that need to be examined to determine whether a debate is a true debate or a disguised contribution.</p> <p>Also, the primary recipient of the service being provided in a debate 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. The fact that other candidates or parties may not receive the same coverage does not mean the media outlet is providing a contribution to the candidates or parties that received the coverage. The expenses</p>

<p>has nothing to do with the number of participants invited to take part in the debate.</p>	<p>related to holding a debate or an interview are those of the media outlets or third parties organizing the event, not expenses of the party or candidate. Candidates or parties may be able to exert some degree of influence over how the debate is organized or facilitated (as is the case in a media interview), but this does not mean the debate should be treated as an expense of the campaigns. Nor does the expense qualify as a non-monetary contribution to the participating candidates or parties.</p> <p>Questions related to the degree of control or influence over a debate have been further addressed in the note.</p>
<p>General Comment</p> <p>It would be helpful to address the treatment of a situation such as a board of trade holding a regularly scheduled ticketed luncheon and inviting a single candidate as the keynote luncheon speaker.</p>	<p>This OGI specifically covers debates with two or more participants.</p> <p>However, the example given of one single candidate being invited as the keynote speaker is an example of a non-monetary contribution, since the event would directly promote a particular candidate.</p>
<p>No comments were submitted by the Libertarian Party of Canada</p>	
<p>No comments were submitted by the Marijuana Party of Canada</p>	

Comment received from the Marxist-Leninist Party of Canada	Elections Canada response to the Marxist-Leninist Party of Canada
<p>The Marxist-Leninist Party of Canada (MLPC) has reviewed Interpretation Note 2015-03-Draft (June 2015) titled Candidate Debates and submits the following opinions:</p> <p>We are in general agreement with the conclusion of the Elections Canada draft interpretation of the <i>Canada Elections Act</i> (CEA) in its application to candidate and leader debates.</p> <p>The electoral law, besides other things, does not guarantee the right of electors to an informed vote and it does not prohibit discrimination against candidates and political parties when it comes to debates. Further, as concerns the current act, the MLPC finds no provisions that could be used to either penalize organizations and/or individuals who organize debates that are not inclusive of all candidates and political parties or to force the inclusion of all participants.</p> <p>Judicial Rulings</p> <p>The fact that the CEA is not based on the principle of equality of all participants has been confirmed by the Canadian judiciary, which has declared on several occasions that the principle enshrined in the CEA is that of “equitability” and that this principle cannot be equated with “equality.”</p> <p>In regards to debates, the concept of “equitable treatment” versus “equal treatment” was very clearly articulated by the Ontario Court of Justice (General Division) following the 1993 general election when the Green Party challenged its exclusion from the leaders debates. The Green Party argued that its exclusion violated Section 3 of the Television Broadcasting Regulations, 1987 which stated that all broadcasters “shall allocate time for broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election.”</p>	<p>Elections Canada notes the concern raised with respect to the editorial choices of debate organizers. However, the same editorial freedom applies to media coverage and editorial content.</p>

The Ontario Court of Justice ruled that the CEA provides a “complete code” for political broadcasting during federal elections and takes precedence over the Television Broadcasting Regulations. The “complete code,” which also applies to the allocation of political advertising time, is based on the logic that political parties should be treated preferentially in the order of the number of votes and seats they won in the previous election. An appeal of this ruling was denied. Court cases since then, even those which are deemed to be historic in favouring the political parties without representation in the House of Commons, such as the *Figuroa* case, have rearticulated the absence of the right to equality in the CEA as pertains to various aspects of the electoral process.

Following the 1993 federal election and the Ontario Court ruling, the CRTC changed its election guidelines to specifically state: “The Commission no longer requires that so-called ‘debate programs’ feature all rival parties or candidates in one or more programs.”

In fact, the previous guidelines were never upheld. The CRTC’s guidelines for the 1989 and 1993 elections stated: “In the case of so-called ‘debates,’ it may be impractical to include all rival parties or candidates in one program. However, if this type of broadcast takes place, all parties and candidates should be accommodated, even if doing so requires more than one program be broadcast.” Notwithstanding these guidelines, in the 1993 federal election, the parties without representation in the House were not accommodated and only through their own initiative and at their own expense, was a separate televised debate held.

Are There “Corrective Measures” that Can be Applied?

The particular issue addressed in the draft interpretation on candidate debates is whether or not Elections Canada can nevertheless place a penalty of sorts on those organizations and individuals who favour the political parties with representation in the House of Commons (and their candidates) or some combination of them and discriminate against those without representation in the House.

The MLPC has reviewed the CEA in this regard and finds:

- a) no provision specifying that “debates” must include all candidates;
- b) no provision that would allow a debate of any sort, even a single candidate or party leader debating with a broadcast personality, to be treated as an advertising expense, since “debates” are excluded from the definition of “election advertising” contained in the CEA;
- c) no provision that would enable Elections Canada to turn the costs involved in convening a debate that discriminates against certain candidates and leaders into a “non-monetary contribution” as defined in the CEA.

Interpretative Arguments by Elections Canada

Notwithstanding these facts, the MLPC finds that the arguments presented by Elections Canada to elaborate its interpretation are flawed and perhaps compromise the authority of Elections Canada as a body that should uphold the principles of equality notwithstanding their absence in the CEA.

We cannot agree with various arguments which are essentially variants of the summary statement on page one: “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 a 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.”

The MLPC is concerned that such arguments seem to legitimize the current situation and law by suggesting that an exclusionary debate serves the electorate. It consequently seems to sanction the unequal treatment of candidates and political parties and the failure of the system to provide for an informed vote.

The primary beneficiary of debates which do not include all contestants is the particular group of political parties and candidates who get to be heard.

<p>Those who organize debates that do not recognize the right to equality of all participants do not recognize the right of the electors to an informed vote. They declare that the views of certain political parties and candidates are not worthy of being heard by the electors. It is obvious that such debates promote the included and oppose the excluded by negating their very existence.</p> <p>As a result of how the debates are organized, the electorate receives a censored rendition of Canadian political opinion. Furthermore, such debates do nothing to alleviate the crisis of legitimacy in which the democratic process is mired, in part because of the privileged position accorded to the political parties in the House of Commons.</p> <p>Finally, the MLPC does not think current reality is accurately reflected in the suggestion that candidates do not exercise control over how debates are organized or facilitated, with the possible exception of exercising control over the questions that may be asked. This is particularly the case with leaders debate, as illustrated by the current negotiations for the 2015 national debates. Negotiations, conducted largely behind closed doors, include such matters as agreement or disagreement with who the other participants in the debate will be.</p> <p>Certain political parties and candidates do have the power to control how a debate is organized or facilitated, contrary to what is claimed in the Elections Canada interpretative notes. Party leaders and candidates who stand for a modern democracy can reject debates which do not recognize the equality of all candidates and political parties and disinform, rather than inform, the electorate.</p>	
<p>No comments were submitted by the New Democratic Party</p>	
<p>No comments were submitted by the Party for Accountability, Competency and Transparency</p>	

<p>No comments were submitted by the Pirate Party of Canada</p>	
<p>Comments received from the Progressive Canadian Party</p>	<p>Elections Canada response to the Progressive Canadian Party comments</p>
<p>The following comments are offered regarding the Interpretation and Approach of Elections Canada to candidate and leaders debates.</p> <p>Regarding issue (2), we note that,</p> <p>Elections Canada interpretation and approach to candidate debates text states “Candidates are not...given control over how the debate is organized or facilitated, and therefore do not receive property or a service.” This statement is used to preface interpretation of how and why third party organized election period debates are understood, governed, and may be classified in the matters of monetary and non-monetary contributions to a political party or candidate election campaign.</p> <p>We, therefore, recommend any instruction, request, attempt, or requirement to limit the number of participants or to exclude participants in a candidate or leaders debate by any of the invited participants is an attempt to control how the debate is organized or facilitated and therefore would be a property or service delivered to the party or candidate making the request or demand and therefore should be deemed a non-monetary contribution to a campaign.</p> <p>Regarding issue (4), we recommend that,</p> <p>Where an election debate or public meeting concerning parties or candidates for election during a general or by-election, organizers of such events should make every effort to inform all parties or candidates for election in each riding of the time, place and opportunity to participate or to inform electors of party or candidate views on the subject(s) of the debate or meeting.</p>	<p>Although there might be a degree of control exercised by a candidate or a party over the conduct of a debate, this is one of several circumstances that need to be examined to determine whether a debate is a true debate or a disguised contribution.</p> <p>Also, the primary recipient of the service being provided in a debate 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. The fact that other candidates or parties may not receive the same coverage does not mean the media outlet is providing a contribution to the candidates or parties that received the coverage. The expenses related to holding a debate or an interview are those of the media outlets or third parties organizing the event, not expenses of the party or candidate. Candidates or parties may be able to exert some degree of influence over how the debate is organized or facilitated (as is the case in a media interview), but this does not mean the debate should be treated as an expense of their campaigns. Nor does the expense qualify as a non-monetary contribution to the participating candidates or parties.</p> <p>Questions related to the exclusion of candidates and to the degree of control or influence over a debate have been further addressed in the note.</p>

<p>Where a candidate or candidates is excluded from participating in a debate or debates, clear explanation for the exclusion should be provided upon request by the excluded parties or candidates, and an opportunity for appeal of a decision to exclude parties or candidates within a reasonable period of time in advance of the debate should be provided, in fulfilment of the purpose of the debate to provide a public forum for candidates to inform voters fully concerning the democratic choices available to them in elections held in each riding during either a general or by-election.</p> <p>Further, in fulfilment of this obligation to voters as a remedy to these concerns, we recommend, regarding issue (5), that,</p> <p>Where a candidate or candidates are excluded from participation in a debate for any reasonable cause, justification should be proved and communicated by the EC DRO and appeals by candidates or parties should be directed through the EC DRO to ensure public access to true debates rather than as actual or perceived partisan contributions to parties or candidates participating in an election at the riding level, and in the case of a Leader’s debate, by a representative of the Chief Electoral Officer at the national level.</p>	
<p>No comments were submitted by the Rhinoceros Party</p>	
<p>No comments were submitted by the United Party of Canada</p>	
<p>Comments received from the Commissioner of Canada Elections</p>	<p>Elections Canada response to the Commissioner of Canada Elections</p>
<p>Generally speaking, the Commissioner of Canada Elections agrees with the position proposed by the Chief Electoral Officer on the issue of candidates’ or leaders’ debates.</p>	

<p>1. That said, whether candidates, leaders, parties or their representatives exercised control over the organization or facilitation of a debate should not be a factor in determining if there was a contribution made. Candidates, party leaders and parties often influence how a debate in which they are invited to participate is organized. The fact that the organizers of the debate were pressured or influenced does not necessarily imply that they made a contribution. In order to conclude that a contribution has been made, it has to be established that the debate was not a true one, and that the organizers' intention was to promote or oppose a candidate or party.</p>	<p>1. Although there might be a degree of control exercised by a candidate or a party over the conduct of a debate, this is one of several circumstances that need to be examined to determine whether a debate is a true debate or a disguised contribution.</p> <p>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 the debate was a true debate or a disguised contribution. The following are relevant, but non-exhaustive, considerations: the manner in which the event is conducted, the degree of control a candidate or party exercises in the organization of the event, how candidates or parties are selected to participate, and the audience.</p> <p>Questions related to the degree of control or influence over a debate, and to what constitutes a true debate or a disguised contribution, have been further addressed in the note.</p>
<p>2. Further, to better reflect the subject covered by the interpretation note, the title should be changed to include an explicit reference to party leaders. In the context of a general election, it is often the party leaders' debate that attracts the most interest and attention from voters.</p>	<p>2. The title has been updated accordingly.</p>