



Written Opinions, Guidelines and Interpretation Notes

Interpretation Note: 2017-04

Volunteer Labour

Comments made during formal consultation period of January 3 to 17, 2018

Comments received from the Liberal Party of Canada	Elections Canada response to the Liberal Party of Canada
<p>The Liberal Party of Canada takes the position that any contemplated restrictions on the provision of volunteer labour and non-monetary contributions must be considered in light of / consistent with each citizen's right to play a meaningful role in the selection of elected representatives, and to participate in the democratic process as a volunteer for a political party.</p> <p>With respect to the methodology in which an individual can be compensated for services, the draft interpretation introduces a new interpretation of the term improper disposal of surplus, which concept we do not believe is supported by the provisions of the <i>Canada Elections Act</i> (CEA).</p> <p>On page 4 of the draft interpretation, the following statement is made "... if a volunteer receives compensation without a prior agreement being in place, the payment is an improper disposal of surplus." Additionally, the bottom of page 4 states "Political entities cannot pledge to pay their volunteers on condition that the campaign has surplus funds. This would constitute a gift and is therefore an improper disposal of surplus, subject to the exception below."</p> <p>Referencing the legal framework of the draft interpretation as shown on page 2, the last bullet states "A candidate's surplus of electoral funds is the amount by which the campaign's revenues exceed its electoral campaign expenses and outgoing transfers. Campaigns must dispose of their surplus only to specified political entities. (ss. 477.8, 477.82)" We believe this reference may be being used to incorrectly support the position of an improper disposal of surplus concept noted above.</p> <p>In paragraph 376(1)(a) the CEA defines an election expense as "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</p>	<p>Elections Canada accepts that agreements for compensation of volunteers may be incentive- or performance-based. Terms of the agreement could include remuneration based on performance measures such as frequency, length and level of involvement during the campaign. The note has been modified to clarify this point.</p> <p>However, compensation cannot be conditional on the campaign having sufficient funds after the election. An election expense cannot be incurred or not incurred based merely on whether or not the party has funds to pay.</p> <p>Elections Canada accepts that an agreement may be verbal or written, though we strongly recommend that agreements be made in writing as a best practice. If there are questions about whether an election expense was reasonably incurred, a written contract could serve as evidence in this regard.</p>

<p>leader or a candidate during an election period.” Furthermore, subsection 477.47(5) states “No person or entity, other than a candidate, their official agent or a person authorized under paragraph 477.55(c) to enter into contracts, shall incur expenses in relation to the candidate’s electoral campaign.”</p> <p>Given subsections 376(1)(a) and 477.47(5), an Official Agent would be entirely within their right to enter into a conditional agreement with a volunteer to provide compensation to that volunteer based on (i) performance, (ii) frequency, length, and level of involvement during the campaign, and (iii) ability of the campaign to raise sufficient contributions to discharge its obligations, including the conditional payment to the volunteer. Conditional agreements incorporating compensation are used regularly in Canadian business, and might include measurements such as gross revenue, net income, profitability, etc. Within the electoral regime, there is no support that a similar arrangement should not be categorized as a gift nor an improper disposal of surplus.</p> <p>There are numerous reasons why individuals volunteer in a campaign. These include civic responsibility, a personal friendship with the candidate or a candidate’s staff, or an individual wishing to make an impression to establish themselves in the political industry. On occasion individuals may perform exceptionally well and put in just as long or longer days than the candidate’s paid staff. Other times, an individual’s overall commitment and level of effort may exceed those of other volunteers. In those situations, having a volunteer conditional agreement would allow the campaign to pay the volunteer for a portion of their effort. As with other legal agreements, the agreement between the campaign’s Official Agent and the volunteer could be either verbal or documented in writing.</p>	
<p>What is not discussed in the draft interpretation is that an Official Agent could arrange with the Electoral District Association (EDA) to provide the volunteer services. If Elections Canada took the position that payments to volunteers were gifts, and such payments were made by the EDA that arranged the volunteers, it could compromise the election expenses regulatory regime as potentially permitting subsequently paid volunteers to be excluded from election expenses reporting.</p>	<p>An electoral district association may not make such arrangements with the campaign for the purpose of avoiding spending limits or reporting obligations. If the electoral district association incurs expenses related to the candidate’s electoral campaign by paying compensation or providing gifts to volunteers, those amounts must be reported as non-monetary transfers from the association to the candidate. The candidate’s campaign must in turn report a transfer received, an election expense for compensation paid and an “other” electoral campaign expense for gifts.</p>

<p>On pages 2, 5, and 8, a nominal gift value of \$50 is put forward as being the maximum threshold. This amount is arbitrarily low, particularly when considering future inflationary implications. We propose this amount be up to \$200, in line with the recognition of contributed goods and services from individuals who do not normally sell such goods.</p>	<p>Elections Canada agrees that the maximum non-monetary contribution deemed to be nil, \$200, is a reasonable basis for the nominal gift threshold. The note has been modified to this effect.</p>
<p>On page 4 in the second last paragraph, it states “For example, a corporate supplier cannot offer a discount or volunteer part of its services.” Since corporations frequently offer discounts based on volume, etc., the example should be modified to read “For example, a corporate supplier cannot offer a discount outside of pre-established discounts in its normal course of business, nor volunteer part of its services.”</p>	<p>The text has been modified based on your suggestion.</p>
<p>In the second example on page 6 pertaining to sole proprietors and members of partnerships, the example needs to be more specific with respect to the field of law and the practice of the lawyer. For example, a self-employed litigator can volunteer to assist a campaign to implement policies and procedures in a different field of law such as the <i>Accessibility for Ontarians with Disabilities Act</i> without limit because that person does not normally charge for that service. This aligns with the provided analysis.</p>	<p>It is Elections Canada’s position that services a self-employed person would normally charge for are to be viewed generically rather than limited to a specific job description. A lawyer charges to provide legal services. As another example, a graphic designer may be self-employed in producing signs and flyers. If a party asks this person to design a wrap for their campaign vehicle, the service cannot be provided as volunteer labour.</p>
<p>In the second example pertaining to people who have incorporated their business the Interpretation Note states “Curtis does not draw a regular salary from the corporation; he simply withdraws the profits.” This should be modified to read “Curtis does not draw a regular salary from the corporation; he simply withdraws the profits via a dividend.” This difference is important as the timing of the payment of a salary should not determine an individual’s status as being a volunteer, or self-employed.</p>	<p>The text has been modified based on your suggestion.</p>
<p>Finally, the draft interpretation does not discuss volunteering for a political entity while the volunteer is on a paid vacation with their employer. We believe this warrants a discussion in the final interpretation to document Elections Canada’s existing practice of not considering such an arrangement as a contribution.</p>	<p>A paragraph on this subject has been added to the note, based on existing guidelines for a member of Parliament’s staff.</p>

Comments 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 the Elections Canada (EC) Draft Interpretation Note on Volunteer Labour. The draft addresses the definition of “volunteer labour” and provides guidelines as to when volunteer services must be treated as non-monetary contributions subject to political contribution limits and prohibitions. It also sets out criteria for establishing whether a volunteer is deemed to be a self-employed person. This is important because “volunteer labour” is defined as: “any service provided to a political entity free of charge outside of a person’s working hours [excluding] a service provided by a self-employed person who normally charges for that service, which is instead a non-monetary contribution.”</p> <p>Since non-monetary contributions are subject to the political contribution limits and prohibitions in the <i>Canada Elections Act</i> (CEA), a self-employed individual volunteering services they normally provide for a charge must be a Canadian citizen or a permanent resident and the value of their services cannot exceed the established limit for political contributions. If an individual is not deemed to be self-employed, there are no limitations. The Interpretation Note states such a person “is eligible to volunteer in the same capacity as their line of business, outside their working hours.” It follows that such an individual could take unpaid leave from their work and provide unlimited volunteer services. They would not have to be a Canadian citizen or a permanent resident. There would be no limit on the value of the services provided.</p> <p>The Intent of Volunteer Labour Provisions Excluding the Self-Employed</p> <p>In assessing Elections Canada’s interpretation, the MLPC thought it useful to consider the intent of the CEA provisions governing volunteer labour.</p> <p>The Interpretation Note states that owner(s) of a corporation do not fall into the category of the self-employed if they are on the corporation’s payroll as opposed to drawing on its profits. It says that if a corporate owner is on salary, has deductions taken at source, and receives a T4 for income tax purposes, the owner is not deemed to be self-employed. This approach may correspond to legal interpretations used by Revenue Canada, but goes against the common understanding of self-employment. Statistics Canada describes the self-employed as “working owners of an incorporated business, farm or professional practice, or working owners of an unincorporated business, farm or professional practice.”</p> <p>One indicator of the intent of CEA provisions is provided by the review conducted by the Royal Commission on Electoral Reform and Party Financing in 1989–91. During its hearings, people asked why the CEA treats self-employed and employed persons differently when it comes to the definition of volunteer labour. The Royal Commission explained the logic and argued that the distinction should be maintained.</p>	<p>Elections Canada acknowledges that “self-employment” may be defined differently in different legal regimes. It is our view that the definition chosen in the note, which promotes rather than restricts people’s participation in the democratic process, is the definition that reflects Parliament’s intention in drafting the volunteer labour provision of the <i>Canada Elections Act</i>.</p> <p>It is important to note that, while salaried owners of corporations can volunteer services they would normally charge for, their support is limited to services they can provide as an individual outside their working hours. They may neither instruct other employees of the corporation to volunteer, nor pay those employees to work on the campaign, nor use the corporation’s intellectual property, resources or assets to help the political entity. Any of those activities would result in an ineligible contribution from the corporation.</p>

It stated: “Many political consultants and pollsters, as well as writers and editors, are self-employed; they rely on contracts with their clients. A blanket exemption for services provided by self-employed people would create an inequity. Campaigns that could draw on a range of such people to produce the goods or perform the services they normally sell or charge for would have an advantage over campaigns that could not. Campaigns that do not have access to such contacts would be required to pay for such services or, if they were paid for by the person’s employer, the service would be counted as a contribution and an election expense.”

This indicates that the provision was meant to prevent electoral competition from being undermined by the more “well-connected” political parties. This was particularly important in the period prior to the introduction of somewhat open, competitive bidding for government contracts when polling and advertising companies contributed their services during an election with the hope of their chosen party forming the government and rewarding them with lucrative contracts. At the time, corporations could make unlimited contributions to political parties, so their free services could be very substantial, particularly in polling and marketing. Certainly, the concept of self-employment was meant to include the owners of corporations and did not merely refer to partnerships and sole proprietors.

The research of the Royal Commission on Electoral Reform and Party Financing also examined volunteerism from other perspectives, including the growing inability of political parties to attract volunteers and the displacement of political party volunteers by professional election teams and commercial providers of political campaign services.

In one research document entitled “Capital-Intensive Politics,” Thomas Axworthy wrote: “The mass party, dependent on an organization or an army of volunteers to bring out the vote, has been displaced — if not replaced — by the direct-mail wizardry of the pollster, advertising executive and campaign consultant.” It stated: “One no longer needs to build a party, a union, or a volunteer movement: with sufficient resources one can simply purchase the technological means to influence the populace.”

This description of the predominant campaign practices of the political parties in the House of Commons was long before the technological developments of the past decade, at a time when fax machines were considered state-of-the-art communications technology. Today, big-data political campaigning has become the *sine qua non* of capital-intensive politics.

The MLPC thinks the EC Interpretation Note gives a green light to the growth of inequities that the exclusion of self-employed persons was said to prevent. Already, the millions of dollars spent for voter databases are not considered an election expense, making a mockery of the notion that elections are conducted with expense limits. Now, it would seem that the contributed services of salaried owners of data-management and social media corporations, among others, could also escape the control of election expense limits. A series of Canadian and foreign companies could be listed as examples, from Vox Pop

<p>Labs Inc. to Cambridge Analytica, whose owners could provide “volunteer labour” to Canadian political parties, according to the Interpretation Note.</p> <p>The MLPC thinks that the draft EC guidelines on volunteer labour are problematic because of the underlying incoherence and irrationality of the election law itself. The electoral financing regime makes a mockery of claims that it is designed to prevent the influence of big money in elections and guarantee an “even playing field.” This is particularly the case in the current conditions where political parties have been taken over by corporate interests. The MLPC thinks that the Interpretation Note could be written in a manner which acknowledges the underlying problem and that ignoring this problem is perilous. Elections Canada cannot make rational what is irrational, nor give coherence to a law that is incoherent. An Interpretation Note is required to set guidelines consistent with the aim of establishing an “even playing field,” not guidelines which essentially give the big parties leave to circumvent election spending limits.</p> <p>It is clear that substantive democratic reforms are needed if Canadians are to be enabled to exercise their democratic rights in an environment where vestiges of power and privilege are eliminated. In the meantime, Interpretation Notes can perhaps mitigate the disadvantages encountered by those parties which do not share the privileges of power.</p>	
<p>Comments received from the Rhinoceros Party</p>	<p>Elections Canada response to the Rhinoceros Party</p>
<p>In my opinion, all expenses, including “nominal gifts provided to volunteers,” should be counted as campaign expenses.</p>	<p>Nominal gifts provided to volunteers up to the threshold are “other” electoral campaign expenses of candidates because they are given as a thank-you after the election. By contrast, compensation paid to volunteers for election work under an agreement is an election expense, subject to the limit for parties and candidates.</p>

Comments received from the Commissioner of Canada Elections	Elections Canada response to the Commissioner of Canada Elections
<p>Interpretation, p. 1</p> <p>Point (3), at the beginning of the first bullet, and elsewhere in the OGI: as a strongly recommended best practice—and in light of the various requirements in the Act for political entities to provide supporting documentation for their expenses—the agreement should be in writing.</p> <p>The absence of a written agreement could give rise to a number of enforcement issues. For example, in a case where there had been a failure to dispose properly of surplus electoral funds, a candidate’s official agent could allege that what was in reality a gift made after the election to a campaign volunteer instead constituted payment for services rendered on the basis of an oral agreement. Similarly, in a case where the election expense limit had been exceeded, even though payment to workers had in fact been made on the basis of an oral contract, a person could, after the fact, claim that the payment was really a gift to volunteers after the election, when it had been determined that excess electoral funds existed. In both of these examples, the absence of a written agreement would make it very difficult to establish the true nature of what transpired, thereby opening the door to potential abuses. Requiring a written agreement would largely prevent such abuses.</p> <p>Such a requirement finds support in some provisions of the Act, such as those dealing with the recovery of unpaid claims. For instance, pursuant to section 477.53 of the Act, in order to get paid, a person having a claim against a candidate must submit an invoice or a document evidencing their claim. Pursuant to sections 477.54 and 477.58 of the Act, only a claim for which an invoice or other evidencing document was submitted can be recovered by application to a court. Similar provisions exist in the Act for registered parties, registered associations, nomination contestants and leadership contestants. Moreover, in the case of candidates, nomination contestants and leadership contestants, there is a requirement to provide supporting documentation evidencing each claim at the time when the return is provided to the Chief Electoral Officer, and the Chief Electoral Officer may require additional supporting documentation. In addition, in <i>Canada (Chief Electoral Officer) v. Callaghan</i>,¹ the Federal Court of Appeal confirmed that, as part of his audit function, the Chief Electoral Officer has the authority to request the submission of documentary evidence sufficient to convince him that a reported expense was duly incurred by the relevant political entity. Although a written contract is not legally required for that purpose, in practice, there may be circumstances where a written contract could be the only acceptable evidence.</p>	<p>Elections Canada agrees that, as a strongly recommended best practice, the agreement should be made in writing in order to serve as supporting documentation if questions arise about the expense or surplus disposal. The note has been modified in several places to emphasize this point.</p>

¹ 2011 FCA 74 (CanLII).

<p>Also, the second sentence of the second bullet states that “the agreement becomes an unpaid claim or a non-monetary contribution”. However, it is the expense resulting from the agreement that becomes an unpaid claim or a non-monetary contribution. The same comments apply for the fourth bullet at p. 4.</p>	<p>The text has been modified to read as follows: “the expense resulting from the agreement becomes an unpaid claim or a non-monetary contribution.”</p>
<p>Analysis and Discussion</p> <p>Can volunteers receive compensation for part of their work? p. 4</p> <p>In the last bullet, the statement made in the first sentence applies only to political entities that are subject to rules relating to disposal of the surplus. Registered parties and their registered associations are not subject to this.</p>	<p>The first and last bullets have been modified to clarify that the risk of an improper disposal of surplus applies to candidates.</p>

The following parties did not submit comments to Elections Canada regarding OGI 2017-04:

- Alliance of the North
- Animal Protection Party of Canada
- Bloc Québécois
- Christian Heritage Party of Canada
- Communist Party of Canada
- Conservative Party of Canada
- Green Party of Canada
- Libertarian Party of Canada
- Marijuana Party
- New Democratic Party
- Progressive Canadian Party