

Legislative and Administrative Framework - Election Expenses

July 15, 2008

Chief Electoral Officer of Canada appearance before the House Standing Committee on Access to Information, Privacy and Ethics



Outline

- Presentation objectives
- Part I Key principles underlying the legislative and administrative framework
- Part II Relevant aspects of the legislative framework
- Part III Relevant aspects of the administrative framework
- Conclusion

Objective

- to provide an overview of the legislative and administrative framework for the treatment of election expenses
 - relevant provisions of the Canada Elections Act
 - administrative processes
 - compliance and enforcement

I - Principles Underlying the Legislative & Administrative Framework

- transparency and fairness to maintain public trust
- expressed through provisions such as
 - public disclosure
 - expense limits
 - public funding
 - compliance and enforcement
 - distinctiveness between political entities each have their own regime with distinct rights and obligations under the Act
 - Role and Mandate of the Chief Electoral Officer (CEO)

II - Relevant Aspects of the Legislative Framework

- key definitions
- duties of official agents
- election expenses limits
- transfers between political entities
- reporting requirements
- reimbursements
- key differences in framework
 - parties and candidates
- non-compliance

Key Definitions

- Candidate electoral campaign expenses
 - all expenses reasonably incurred as an incidence of the election
- Candidate election expenses
 - any expense incurred, or property or service used to directly promote or oppose a candidate during an election period
- Candidate personal expenses
 - expenses of the candidate other than election expenses reasonably incurred as an incidence of the election such as meals, transportation and accommodation

Key Definitions (continued)

• Transfers

• allow specified political entities of the same political affiliation to move resources among themselves without being subject to the restrictions on the source and amounts of contributions that are set out in the Act

Contributions

• amount of money received that is not repayable or the commercial value of a service, or of property or the use of property or money to the extent that they are provided without charge or at less than their commercial value

Key Definitions (continued)

- Commercial value
 - lowest amount charged for a property or service by:
 (1) the person who provided it, if the person is in the business; or (2) another commercial provider, if the person who provided the property or service is not in that business
- Candidate's return
 - An account of all financial transactions for an election

Duties of Official Agents

- receive all contributions and deposit them in a designated bank account
- make all payments (except for petty expenses or the candidate's personal expenses) or accept non-monetary contributions or transfers
- keep a record of all receipts and disbursements
- prepare and submit all financial reports, declarations, and supporting documentation
- sign and issue receipts for all contributions (including receipts for income tax purposes)
- responsible for:
 - controlling of electoral campaign expenses e.g. for a candidate's campaign only official agent or candidate or someone authorized in writing can incur an electoral campaign expense
 - ensuring election expense limit is respected
- dispose of the campaign surplus
- close the campaign bank account

Note: Similar provisions exist for chief agents and registered agents of political parties

Election Expenses Limits

- separate limits for parties and candidates
- limits apply to election expenses, whether paid, unpaid and include the commercial value of non-monetary contributions or transfers

Spending Limit Calculation for Candidates

The maximum amount allowable for the election expenses of a candidate is calculated as follows:

- \$2.07 for each of the first 15,000 electors
- \$1.04 for each of the next 10,000 electors
- \$0.52 for each elector over 25,000

This figure is adjusted for electoral districts where there are fewer electors than the national average and for geographically large districts.

The resulting limit is adjusted by the inflation adjustment factor.

Spending Limit Calculation for Political Parties

The maximum amount allowable for the election expenses of a registered party is calculated as follows:

• \$0.70 per elector, in the electoral districts in which the registered party has endorsed a candidate multiplied by the inflation adjustment factor.

Election Expenses Limits for the 39th General Election

- average expense limit for candidates per electoral district was \$81,159
- limit for registered party that endorsed a candidate in all 308 districts was \$18,278,278

Transfers Between Affiliated Political Entities

Transfers:

- Transfers allow specific political entities of the same political affiliation to move resources (monetary and non-monetary) among themselves without being subject to the restrictions on the source and amount of contributions that are set out in the Act.
- However, transfers of expenses are not permitted.

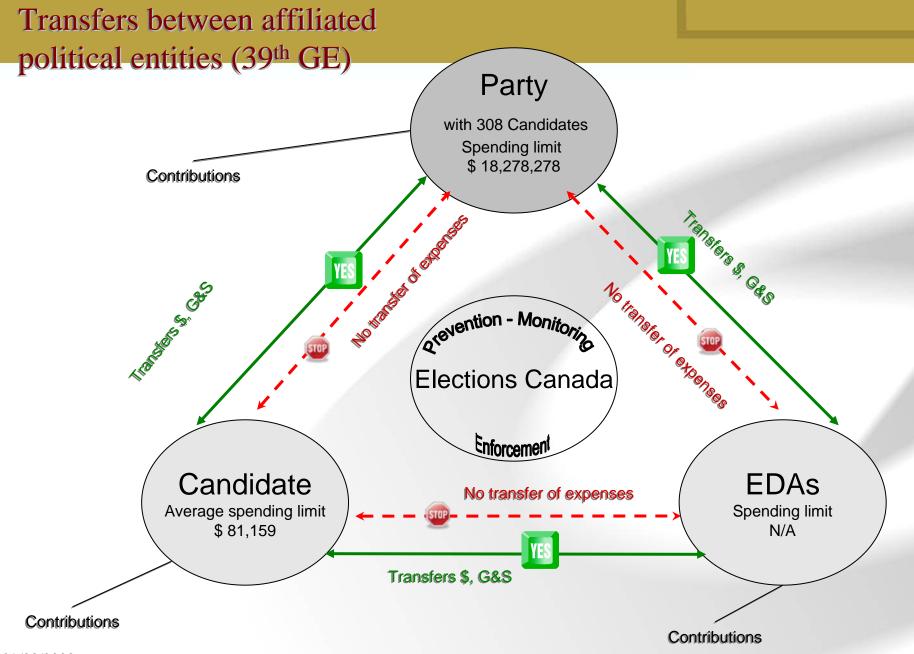
Transfers Between Affiliated Political Entities (continued)

		TO					
		Candidate	Registered Association	Registered Party			
FROM	Candidata	Monetary = No	Monetary = Yes	Monetary = Yes			
	Candidate	Non-monetary = No	Non-monetary = Yes	Non-monetary = \mathbf{Yes}			
	Desirence I American	Monetary = Yes^1	Monetary = Yes	Monetary = Yes			
	Registered Association	Non-monetary = Yes	Non-monetary = Yes	Non-monetary = Yes			
	Designation of Designation	Monetary = Yes^1	Monetary = Yes^2	n/a			
	Registered Party	Non-monetary = \mathbf{Yes}	Non-monetary = Yes^2	n/a			

¹ Monetary and non-monetary transfers are permitted after a candidate has been confirmed by the returning officer. After polling day, monetary transfers are only allowed to pay unpaid claims and loans of the candidate's campaign.

Note: There are additional rules governing transfers involving nomination and leadership contestants.

² Registered parties may transfer goods and services and funds to associations, whether registered or not.



Transfers Reported in Candidate Returns

39th GE	Bloc Québécois	Conservative Party of Canada	Liberal Party of Canada	New Democratic Party	
Monetary transfers to Candidates from Party	\$ 743,616	\$ 3,725,110	\$ 1,530,959	\$ 845,721	
Non-monetary transfers to Candidates from Party	\$ 9,105	\$ 24,724	\$ 282,430	\$ 81,604	
Monetary transfers to Candidates from EDA	\$ 2,379,159	\$ 6,164,357	\$ 6,618,959	\$ 2,958,992	
Non-monetary transfers to Candidates from EDA	\$ 60,604.34	\$ 371,577	\$ 445,493	\$ 334,524	
Transfers to Party from Candidates	\$ 116,764	\$ 233,912	\$ 345,517	\$ 28,339	

Reporting Requirements for **Candidates**

- Candidates file their electoral campaign returns four months after polling day.
- A declaration as to the accuracy and completeness of the return must be submitted by the candidate and the official agent.
- The return is accompanied by an auditor's report
 - provides an opinion as to whether the return presents fairly the information in the books and records
- Vouchers (supporting documentation) must be submitted

Reporting Requirements for Candidates (continued)

- Expenses reported must be incurred by the official agent, candidate or someone authorized in writing.
- In the case of a non-monetary transfer or contribution, it must be accepted by the official agent.
- All expenses must be reported at their commercial value.
- The level of detail required is much greater than for party.

Election Expenses Reporting Requirements for **Parties**

- Parties file a return on election expenses six months after polling day for a general election.
- The return is accompanied by an auditor's report
 - providing an opinion as to whether the return presents fairly the information in the books and records.
- No vouchers are required.
- Expenses reported must be incurred by the chief agent or a registered agent.
- In the case of a non-monetary transfer or contribution, it must be accepted by the chief agent or registered agent.
- Returns are considered to be accurate, unless an obvious error is identified.
- In-depth reviews are not conducted as we do not have the information, tools or statutory authority to do so.
- The Act does not provide Elections Canada with audit or inspection powers of party books and records, or authority to order production of documents.

Candidate Election Expenses Reimbursements

- A candidate who is elected or receives at least 10% of the valid votes cast at the election is entitled to a reimbursement of 60% of the actual paid election expenses and the paid personal expenses, to a maximum of 60% of the election expenses limit.
- This reimbursement is paid in instalments:
 - Initial = 15% of election expenses limit;
 - Final = 60% of paid election and personal expenses less the initial reimbursement, to a maximum of 60% of the election expenses limit.

Candidate Election Expenses Reimbursements (continued)

Electoral campaign returns are reviewed by Elections Canada to verify that the candidate and official agent have complied with the various provisions of the Act.

• A review of the candidate's documentation supports the payment of reimbursements and identifies potential and actual noncompliance situations.

Party Election Expenses Reimbursements

- Eligible parties receive a 50% reimbursement of their paid election expenses at a general election.
- eligibility = receive 2% of national vote or 5% of votes (on average) in ridings in which a candidate was endorsed
- paid in one instalment after receipt of the party return on election expenses

Key Differences Between Parties and Candidates

Item	Party	Candidate		
Election expenses limit	Based on the number of electors in all ridings in which the party endorses candidates	Based on the number of electors in the riding and adjusted for geographically large ridings and for ridings with less than average populations		
Election expense reimbursement	50% of paid election expenses	60% of paid election expenses and paid candidate personal expenses		
Expenses incurred by	Chief agent or registered agent	Candidate, official agent or person authorized in writing by the official agent		
Supporting documentation provided to EC (as required by the Act)	None	All vouchers, invoices, returned cheques, deposit slips, bank statements and any additional documentation requested		

Key Differences Between Parties and Candidates (continued)

Item	Party	Candidate		
Level of popular support required for reimbursement is lower for political parties than candidates	2% of national vote or 5% in the electoral districts in which it endorses a candidate	10% of the vote		
Election expenses eligible for reimbursement	General election	General election and by-election		
Reporting of election expenses	For a general election – 6 months after polling day and for a By-election in fiscal return	4 months after polling day for both general elections and by-elections		
	Non-detailed	Transaction level		

Non Compliance – Statutory Offences & Penalties for Candidates

	Maximum Penalty						
Offence	Without Intent		With Intent				
	Fine	Imprisonment	Fine Imprisonment		Other		
Exceeding Election Expenses Limit (Candidates and Official Agents)	\$1,000	3 months	\$5,000	5 years	can't sit or be elected as a member in the House of Commons for 5 years		
Failure to file or filing Incomplete Election Return (Official Agents)	\$1,000	3 months	\$5,000	5 years			
Filing False or Misleading Election Return (Official Agents)	n/a	n/a	\$5,000	5 years			

Other potential consequences of filing late or incomplete without authorization, or not filing:

- forfeit \$1,000 nomination deposit
- ineligible to receive 60% election expense reimbursement
- unable to sit as a member (MP) in the House of Commons
- cannot be a candidate in a subsequent election

Non Compliance – Statutory Offences & Penalties for Parties

	Maximum Penalty						
Offence	With	out Intent	With Intent				
	Fine	Imprisonment	Fine	Imprisonment			
Exceeding Election Expenses Limit							
(Chief Agent)	\$1 000	3 months	\$5 000	5 years			
Exceeding Election Expenses Limit							
(Party)	\$25 000		\$25 000				
Failure to file or filing Incomplete							
Return (Chief Agent)	\$1 000	3 months	\$5 000	5 years			
Failure to file or filing Incomplete				- 4			
Return (Party)	\$25 000		\$25 000				
False or Misleading Return (Chief							
Agent)	n/a	n/a	\$5 000	5 years			

In addition, the CEO may deregister a party whose financial agent fails to file a return. Also, where the chief agent fails to produce a return or where the return contains a false or misleading statement, a judge may order the deregistration of the party and the liquidation of its assets.

III. Key aspects of the administrative framework

- Education, information and parties/candidates support
- Review of returns: Purpose
- Review of returns: Program
- Review of returns: Procedures
- Timing of reimbursements
- Statistical overview
- Non-compliance referrals
- The Commissioner of Canada Elections

Administrative Framework

- Three primary components:
 - Prevention through education, information and technical support
 - Monitoring of compliance through rigorous, systemic and impartial review of returns
 - Enforcement through the Commissioner of Canada Elections

Prevention Programs

- cross-country training sessions
- specific training sessions upon request of political parties
- videos, sample returns, 1-800 support line, software and presentations
- products on Web site and multimedia kits
- hot-line service for parties' counsel with electoral law expert counsel from EC

Monitoring of Compliance - Review of Candidate Returns : Purpose

- To issue reimbursements, the CEO must be satisfied that the candidate and the official agent have complied with the statutory requirements.
- This is accomplished through Election Canada's review of returns.

EC – Review of Returns: Program

- audit staff organized into 3 audit teams
- audit teams composed of 7 to 9 auditors, one regional team leader and an overall audit director
- teams organized on a geographic basis, for:
 - Québec and the Atlantic region
 - Ontario region
 - Central and Western Canada region
- no specific audit team designated for a particular party or its candidates
- invoice and proof of payment required in support of expenses
- additional documentation requested if deemed necessary

EC – Review of Returns: Program (continued)

- The audit process is not, and is not intended to be, a review of 100% of all documentation, vouchers, or transactions filed for all submitted returns.
- The audit process relies on the documentation supplied by the official agents and candidates.
- When the return and documentation are in order, the audit process can be relatively straightforward.
- If a problem is raised in the course of the review, this can result in a higher level of scrutiny with additional audit steps undertaken this could include a requirement to submit additional supporting documentation that could potentially resolve the issue.

EC – Review of Returns: Procedures

- The level of scrutiny given to returns takes into account the level of spending by the candidate and the possibility of a reimbursement pursuant to the threshold set out in the Act.
- A record of all communications is made and entered in a "candidate contact log summary."
- The return is released to the regional team leader who will review the file, vouchers, auditor's notes and candidate contact log summary.
- When the team leader's review is complete, the file is given to the director of political financing and audit who gives the final approval.

EC – Review of Returns: Procedures (continued)

- The Act provides a certain degree of flexibility allowing for:
 - the correction of errors or omissions
 - the granting of filing deadline extensions
 - payment of claims beyond deadline
- Where non-compliance is detected, and can be corrected, auditors will work with the official agents to ensure the return is complete and in compliance with the Act.
- Where this is not possible, the non-compliance will be referred to the Commissioner of Canada Elections.
- Potential non-compliance issues are reviewed by the Campaign Finance Steering Committee. Potential non-compliance cases are discussed and decisions made to refer files.
- Based on a sample, the OAG, in their performance audit of Elections Canada found "...that Elections Canada staff followed the process consistently in every case."

EC - Timing of Reimbursements

- For the 39th general election, Elections Canada committed to issuing the final reimbursements of election expenses within six months after the filing deadline if the returns were filed:
 - on time
 - electronically
 - without errors or compliance issues
- Of 884 files entitled to a reimbursement, 540 met all these criteria and all were paid within this deadline.

Statistical Overview

39th General Election Candidate Statistics

Registered Party	Candidates	Extension Requests CEO Court Total		Amendment Requests	Eligible for Reimbursement	Election Expense Reimbursements			
AAEV Party of Canada	1	0	0	0		0	\$	-	
Bloc Québécois	75	4	1	5	11	73	\$	2,465,134.15	
CAP	34	6	0	6	3	0	\$	-	
Christian Heritage Party	45	3	0	3	6	0	\$	-	
Communist	21	0	0	0	0	0	\$	-	
Conservative	308	103	14	117	193	303	\$	9,483,138.32	
FPNP	5	4	0	4	2	0	\$	-	
Green Party	308	74	9	83	34	7	\$	61,057.84	
Independent	85	20	7	27	6	3	\$	76,001.84	
Liberal	308	101	35	136	183	283	\$	8,591,430.81	
Libertarian	10	0	1	1	1	0	\$	-	
Marxist-Leninist	71	0	0	0	0	0	\$	-	
NDP-New Democratic Party	308	106	18	124	99	214	\$	3,459,145.96	
No Affiliation	5	0	0	0	2	1	\$	46,280.12	
PC Party	25	4	1	5	0	0	\$	-	
Radical Marijuana	23	5	1	6	0	0	\$	-	
WBP	4	0	0	0	0	0	\$	-	
Grand Total	1636	430	87	517	540	884	\$	24,182,189.04	

EC – Non-Compliance Referrals

• Potential instances of non-compliance raised during the Elections Canada review that cannot be addressed administratively (e.g. correction of returns, extensions to filing deadlines) are referred to the Commissioner of Canada Elections.

Enforcement Program: Commissioner of Canada Elections

- Appointed by the Chief Electoral Officer pursuant to section 509 of the *Canada Elections Act*, the current Commissioner was appointed in September 2006.
- The mandate of the Commissioner is to ensure that the *Canada Elections Act* and the *Referendum Act* are complied with and enforced.
- OAG reviewed the investigation process and "found that the Commissioner's office followed it consistently".

Enforcement Program: Preliminary Assessment

- When a public complaint or referral is received, the Commissioner:
 - follows an assessment process to determine if the allegation, if proven, would constitute an offence under the Act;
 - Determines suitable enforcement action
 - Considers the nature of the offence and whether the information available is sufficient to warrant an investigation;
 - Determines the scope of investigation required;

Enforcement Program: Referral to the DPP

- The Commissioner makes a recommendation to the DPP (also called a referral) but the decision to prosecute is made by the DPP.
- If charges are laid, counsel acting on behalf of the DPP will conduct the prosecution. The judge sentences any person convicted by applying the range of penalties provided in the Act.

Conclusion

- The mandate of Elections Canada is to apply the legislative framework in an impartial and transparent manner.
- Legislative framework regulating election expenses is an important element in maintaining a level playing field.
- Administrative framework works hand in hand with effective compliance and enforcement.
- Effective compliance and enforcement are critical to maintaining public trust in the electoral process.