

The Chief Electoral Officer may issue guidelines and interpretation notes on the application of the *Election Act*, and *Election Expenses Act*, in accordance with sections 3.(2)(f) and 3(1)(h) respectively, to official agents, auditors, political parties, candidates, potential candidates and any of the officers thereof. This guideline and interpretation note has been compiled through consultation with Elections Canada and inter-jurisdictional sharing of best practices on common themes among election legislation and current political finance issues.

Guideline and interpretation notes provide guidance and promote consistency in the interpretation and application of the Act. However, they are for information only and do not displace any provisions of the Act. Interpretation notes are subject to change with amendments to legislation. For any questions, please contact the Office of the Chief Electoral Officer.

## Interpretation Note: 2019-01

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### *Election Expenses Act*

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#### Issue

With recent amendments to the *Election Expenses Act (EEA)*, there are some areas that have undergone significant change. Primarily, changes have focused on the eligibility of who is permitted to contribute to a registered political party and/or registered candidate as well as the definition of what is considered a contribution.

Further to issues raised during previous election events, an updated interpretation is needed to address the changing needs of candidates concerning eligible election expenses – and whether childcare costs are permitted to be claimed as reimbursable election expenses.

This Interpretation note seeks to provide clarity regarding political contributions and answers the questions who can contribute, how much they can contribute, the distinction between monetary and in-kind contributions, financial transfers between political organizations, and eligible election expenses. Separate interpretation notes will be issued regarding campaign advertising and fundraising.

# Interpretation

## In-Kind Contributions

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### Legal Framework

The relevant provisions of the EEA in this context are as follows:

- Contributions are defined to include monetary donations and fees for membership as well as in-kind donations of property, goods or services provided free of charge or at less than market value, but does not include voluntary unpaid labour (s. 1.(d))
  - Contributions can only be made by individuals who are ordinarily resident in the province (s.11(1))
  - No one shall make anonymous contributions (s. 11(3))
  - Where property or services are donated in-kind at less than market value, the value of the contribution is the difference between the market value of the property or services when provided and the amount charged by the person providing the property or services. (s.12.1(7))
  - Any contribution of goods or service to a political party or candidate is considered an election expense (s. 1.(f)(ii)(ix))
  - Contributions are subject to a contribution limit of \$3000 (s. 12.1(1))
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Any person residing in Prince Edward Island may donate goods or services to be used by a political party or candidate during an election. These goods and services may be donated at reduced cost or free of charge. Any donation in-kind shall be considered an election expense and must be reported as such on the post-election reporting form and are subject to the spending limits.

**Example:** Donation of lawn signs

Market Value = \$ 100

Reduced cost = \$40

A donation may be made for lawn signs to be used during an election. The fair market value for these signs is \$100 however; you have been given a reduced cost of \$40.

Per Section 12.1(7) the contribution is the difference between what is charged and fair market value.

$$\text{\$100} - \text{\$40} = \text{\$60 contribution}$$

You have spent \$40 of your own money on the lawn signs, which you will have receipts to produce for reporting. This \$40 is an election expense. However, as in-kind donations are included within the definition of “election expense”, the contribution is also considered an election expense. Therefore, the **total fair market value of the contribution** is required to be reported as an election expense and will go towards the allowable spending limit.

These donations are also subject to the contribution limit of \$3000 and must come *only* from an individual. If the goods/services are being provided as products of a company, the contributor must be self-employed or sole proprietor of the business from which the services are being donated. The donation may not be made directly by the business.

## Election expenses - childcare

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### Legal Framework

The relevant provisions of the EEA in this context are as follows:

- Election expenses includes all expenses incurred during an election period for the purpose of directly or indirectly promoting or opposing the election of a candidate (s. 1.(f))
  - The CEO shall provide guidelines for the proper administration of the *Election Expenses Act* as he/she considers necessary for the guidance of official agents, auditors, political parties and candidates. (s. 3.(1)(h))
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While maintaining the spirit of the legislation, there has been a movement to modernize the definition of “election expense” to include areas such as childcare, which would provide greater flexibility for potential candidates who otherwise may face a barrier to putting their names forward for election due to additional expenses incurred for childcare expenses.

Currently, the definition of “election expenses” is silent on issues such as childcare. Through inter-jurisdictional scanning of best practices, it is of the opinion of the Office of the Chief Electoral Officer that Prince Edward Island will allow childcare expenses to be claimed as election expenses provided that they are expenses above and beyond what is normally incurred.

**Requirements:** For childcare expenses to be eligible as election expenses, a candidate must provide detailed receipts from the month prior to the beginning of the election period for their childcare costs as well as detailed receipts for the childcare costs during the election period for which they are claiming election expenses. Only those expenses which exceed what is normally incurred will be eligible for reimbursement. Childcare costs will be considered reimbursable eligible election expenses, not subject to the election spending limit.

**Example:** A parent requires childcare services Monday-Friday during working hours of 8am-5pm. During an election period, they require additional childcare services in the evenings and on weekends while they are campaigning. The candidate must provide childcare receipts for the month prior indicating they normally receive childcare services for the month at a cost of \$600/month. On top of what they normally would incur, they have also spent an additional \$300 on childcare services on evenings and weekends for campaigning purposes. Only the \$300 which exceeds their regular childcare spending is eligible for reimbursement.

**Example #2:** A parent who does not require childcare services on a day-to-day basis may require full time care for their child/children during the election period for campaigning. The candidate is eligible to claim the full amount of the childcare during the election period. This candidate must submit a signed affidavit attesting to the fact that they normally would not incur childcare expenses due to their given circumstance and that all expenses for the election are above and beyond their normal expenditure.

**Estimated election spending limit:** \$1.75/elector in an electoral district. Estimate of 3600 electors = \$6,300. A candidate may claim applicable childcare expenses (above normal costs), which potentially could exceed spending limits. Candidates will be reimbursed for the lesser of election expenses subject to a minimum payment of \$2,000 and a maximum payment of \$4,000 regardless of total election expenses incurred.

**Regulated childcare provider costs:** The provincial government currently regulates costs for Early Learning and Childcare Centres across PEI. These costs will form the basis of what an “expected” childcare expense will be when submitting childcare costs as election expenses.

Full day rates per child:

- \$170 per week – birth to 22 months
- \$140 per week – 22 months to 3 years
- \$135 per week for 3 years to school entry

4 week election period = (maximum)  $\$170 \times 4 = \$680$ /month per child for regulated childcare centres.

Election expenses for childcare will be assessed on an individual basis with consideration given to costs for childcare outside of business hours.

For more information on Early Learning and Childcare Centre rates please see:

[https://www.princeedwardisland.ca/sites/default/files/publications/eelc\\_directory\\_eed\\_programs.pdf?fbclid=IwAR1FpaKntw2V7u8Pu9UrSd2OxAE7BrzDh5leOahBc-VByOsN-8\\_KzbTdWjo](https://www.princeedwardisland.ca/sites/default/files/publications/eelc_directory_eed_programs.pdf?fbclid=IwAR1FpaKntw2V7u8Pu9UrSd2OxAE7BrzDh5leOahBc-VByOsN-8_KzbTdWjo)

## Contribution limit

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### Legal Framework

The relevant provisions of the EEA in this context are as follows:

- Contributions may only be made by individuals who are ordinarily resident in Prince Edward Island (s. 11.(1))
  - “Ordinarily Resident” means an individual who, when away, intends to return to Prince Edward Island. (s. 11.1(1))
  - A contribution made to an association or organization of a political part is a contribution made to the political party. (s. 11.(5))
  - Contributions are subject to a \$3000 limit (s. 12.1(1))
  - Contribution made to a candidate is deemed a contribution made to the party. (s.12.1(2))
  - An individual may contribute the maximum to all political parties and any independent candidate (s. 12.1(4))
  - No one shall make an anonymous contribution (s.11 (3))
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The recent changes to contributions has resulted in contributions being only permitted by individuals who are ordinarily resident in PEI. Ordinary residence has been defined in the EEA as being the place to which, when absent, the individual intends to return. If an individual lives and works outside of PEI temporarily, but has family in PEI and intends to return at any point, he/she is considered ordinarily resident in PEI for the purpose of contributing to a political party or candidate.

The contribution limit has been set to \$3,000. A contribution made to a candidate affiliated with a registered party is deemed to be a contribution to the party. Each individual is allowed to donate the maximum to each registered party and each independent candidate.

### Contributions prior to amendments to Election Expenses Act

If an individual, corporation or trade union has contributed prior to June 13, 2018, the contribution limit and residency requirements do not take effect. The aggregate amount of a donation by any one individual may surpass the current \$3000 limit, however the individual is deemed to have met the limit and cannot contribute further.

### Reporting – For Official Agents beginning April 1,2019

Further to the required reporting of contributors’ names and addresses over \$250, Elections PEI will now be requiring all official agents to submit the names and address for all contributors. Only those required by legislation will be published online.