

COMMISSAIRE AUX ÉLECTIONS FÉDÉRALES



COMMISSIONER OF CANADA ELECTIONS

Protected A

February 16, 2024

Our file: 2022-0458-3

Conservative Party of Canada
Attn: Trevor Bailey
1800-66 Slater Street
Ottawa, ON K1P 5H1

Dear Trevor Bailey:

This correspondence is in response to your complaint to the Commissioner of Canada Elections (the Commissioner), filed in July 2022, on behalf of the Conservative Party of Canada (CPC). The complaint alleged wrongdoing by the Patrick Brown leadership campaign concerning purported irregular party membership sales during the 2022 CPC leadership contest.

While political parties are free to establish their own membership rules and regulations, not all situations of concern to a political party are necessarily in contravention of the *Canada Elections Act* (the Act). Our review of the alleged conduct in your complaint is limited to the provisions of the Act.

Upon receiving your complaint and your subsequent submissions of supporting data, our Office undertook a thorough review of the information provided, and where appropriate, reviewed other information relevant to your complaint. For the reasons outlined below, the Commissioner has determined that while the review revealed potential minor breaches of the Act in relation to credit card transactions, it is not in the public interest for our Office to pursue the matter further.

Our review focused on the following sections of the Act:

Prohibition — ineligible contributors

363 (1) No person or entity other than an individual who is a Canadian citizen or is a permanent resident as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* shall make a contribution to a registered party, a registered association, a nomination contestant, a candidate or a leadership contestant.

Contribution limits

367 (1)(a) Subject to subsection 373(4), no individual shall make contributions that exceed \$1,500 in total in any calendar year to a particular registered party; (2022 limit \$1,675)

Prohibition — circumventing limits

368 (1) No person or entity shall (a) circumvent, or attempt to circumvent, the prohibition under subsection 363(1) or 367(6) or a limit set out in subsection 367(1) or (7) or section 371; or
 (b) act in collusion with another person or entity for that purpose.

Prohibition — concealing source of contribution

368 (2) No person or entity shall (a) conceal, or attempt to conceal, the identity of the source of a contribution governed by this Act; or (b) act in collusion with another person or entity for that purpose.

In the course of our review, we noted proactive steps taken by the CPC to ensure that controls were in place to govern the sale of CPC memberships. This was evidenced by the restrictions in place on acceptable forms of payment and the systematic review of transactions prior to accepting a membership purchase.

As you know, the *Political Financing Handbook for Leadership Contestants and Financial Agents January 2022*¹ (the Handbook) provides some general guidance on the legal consequences of a leadership campaign buying party memberships for its supporters. It states that a leadership campaign is permitted to pay for memberships, and this is recorded as a transfer to the registered party. More specifically, it sets out a common scenario:

“... a campaign will collect party membership fees from individuals, deposit the funds into its bank account and then send the funds to the registered party. This transaction is also a transfer. If the membership fee is no more than \$25 per year for a period of no more than five years, the individuals have not made contributions and the registered party does not need additional information from the campaign. Above those thresholds, the campaign will need to provide the registered party with details to record contributions from the individuals.”

The above excerpt is based in part on subsection 364(7) of the Act. Subsection 364(7) of the Act provides the following:

Exclusion — membership fees

The payment by an individual during a year of fees of not more than \$25 per year for a period of not more than five years for membership in a registered party is not a contribution.

¹ <https://www.elections.ca/content.aspx?section=pol&document=index&dir=lea/man&lang=e>



The donor eligibility requirement at subsection 363(1) (only a Canadian citizen or a permanent resident of Canada can make a contribution to a registered party) and the contributions limit at paragraph 367(1)(a) of the Act apply. As a result, if a registered party accepts such a contribution, it must disclose and report it pursuant to subsection 432(2) of the Act.

Credit card transactions

The CPC provided our Office with 393,619 credit card transactions related to 582,351 CPC party membership sales associated to the 2022 leadership contest. The data combined CPC membership purchase information and the credit card payment processing company's data, which included partial credit card information described as the first four digits, the last four digits, and the four-digit expiry date (month/year).

Example: 1234-xxxx-xxxx-5678-0910 (First four, last four and expiry date.)

The potential for anonymous and untraceable purchases was reduced through the restriction of *Vanilla* credit cards at source through Moneris, the credit card processing company. Through the application of the CPC's rules and regulations during the review of the membership sales, the CPC appears to have mitigated potential over-contributions and reduced the possibility of ineligible contributions.

As Moneris will not provide the CPC with the remaining credit card numbers nor the credit card account holder data due to privacy reasons, we recognize that you are limited in your ability to assess who actually paid for a membership over and above the information provided to you. This also makes it difficult to determine if they are an eligible contributor and/or may have exceeded their own contribution limit. Our ability to access the complete credit card data, while also restricted, would be available only pursuant to judicial authorization obtained from a court, during a criminal investigation, with reasonable grounds to establish certain criteria.

Contribution limits

Three partial credit cards appear to have been utilized in multiple single-year membership transactions, each with a purchase total that appears to exceed the 2022 contribution limit of \$1,675. All these membership purchase transactions were identified by the CPC and rejected.

- 5524-xxx-xxxx-6868-2305 - \$3,930 in purchases. \$2,255.00 over the contribution limit.
- 4514-xxxx-xxxx-4952-2306 - \$2,880 in purchases. \$1,205.00 over the contribution limit.
- 4520-xxxx-xxxx-6406-2310 - \$1,845 in purchases. \$170.00 over the contribution limit.



All remaining partial credit cards have membership transaction totals within the 2022 limit. There is insufficient information available to assess if a single person may have more than one credit card.

The data identified a series of membership purchase transactions, for which there was no partial credit card information provided, with a combined transaction total exceeding the 2022 contribution limit. These purchase transactions included one-year memberships, as well as two-year and five-year memberships. Upon further review, the available information related to these transactions did not provide reason to suspect any violation of the Act.

Corporate credit cards

The payment by commercial credit card is not itself a contravention of the Act. A contravention occurs only if the contributor is ineligible or exceeds the prescribed limits.

The Commissioner received a separate complaint alleging that a corporate credit card from a company was offered to pay for the purchase of a CPC party membership for any employee who was willing to support the leadership contestant the company purported to support. The alleged membership purchases related to this scheme appear to have been identified through the CPC's membership sales review processes and cancelled by the CPC.

While the CPC membership application form states that the CPC does not permit the use of corporate credit cards, the data you provided corroborated the separate complaint made to the Commissioner and suggests that Moneris' controls may not have prohibited the use of all corporate credit card transactions.

Postal money order transactions:

The CPC provided the data related to 225 rejected membership purchases paid for by way of Canada Post postal money orders.

The data provided does not identify any cumulative transactions that may indicate an over-contribution, nor does paying for a party membership by postal money order inherently contravene the Act.

Summary

Our review identified the use of three credit cards with transaction totals exceeding the contribution limit (for the three credit cards combined, a total of \$3,630 (\$2,255+\$1,205+\$170)), which the CPC subsequently cancelled, and the potential use of one corporate credit card. Payment by money order in itself does not contravene the Act.



Based on the results of the review, and considering the factors outlined in the *Compliance and Enforcement Policy of the Commissioner of Canada Elections*², the Commissioner has decided that it is not in the public interest to pursue this matter further. Consequently, this file is now closed.

Our Office relies on Canadians and other members of the public to let us know when they believe that the Act has been contravened. We sincerely thank you for bringing this matter to our attention and for your interest in the integrity of the electoral process.

Sincerely,

The Office of the Commissioner of Canada Elections

² <https://cef-cce.ca/content.asp?section=abo&dir=bul&document=p1&lang=e#heading11>

