



## **INFORMATION SHEET 16**

### **NOMINATION CONTESTS: WHO IS A NOMINATION CONTESTANT?**

**(Revised March 19, 2004)**

#### **DISCLAIMER**

These information sheets set out Elections Canada's current interpretation of the *Canada Elections Act* and are issued to assist the public in understanding the Act. The views expressed in information sheets are not law and are not intended to replace the official text of the Act. How the Act applies to any particular case will depend on the individual circumstances of that case. Elections Canada reserves the right to reconsider any interpretations expressed in information sheets, either generally or in light of the actual circumstances of any case, and in accordance with continuing legislative and judicial developments.

**CONTENTS**

Who Is a Nomination Contestant? ..... 3  
    Ordinary Meaning ..... 3  
    Legal Meaning..... 3  
Withdrawal Before Selection Date or Cancellation of Contest..... 5  
Obligations Where Replacement Contest Held or Where Contestant  
Continues On To Be a Candidate ..... 5  
End of Nomination Contestant Status..... 7

## Who Is a Nomination Contestant?

### *Ordinary Meaning*

1. In practical terms a nomination contestant is a person competing for the endorsement of a political party as its candidate in an election in a particular electoral district.
2. There is an obvious overlap between being a candidate for a party and being a nomination contestant. A person collecting contributions in order to be a candidate may at the same time be required to be a nomination contestant where more than one person wishes to be the party candidate for that district and a competition process is required to select who will have that right. Most contributors who make contributions to a person for his or her candidacy would expect that those contributions could also be used by the person in order to win any nomination contest necessary in order to be endorsed by a party as its candidate.
3. Depending on the rules of the particular party, this contest can take place at any time before or during an election. However, insofar as the purpose of such a contest is to select a person to be endorsed as a candidate in an election, in practical terms the contest must be completed with sufficient time to allow the selected person to be endorsed by the party and to have their nomination papers accepted by the returning officer by 2:00 p.m. on Monday, the 21st day before polling day in an election (the close of nominations). (s. 70 of the *Canada Elections Act*)

### *Legal Meaning*

4. “Nomination contestant” has a slightly narrower legal meaning for the purposes of the *Canada Elections Act* (CEA).
5. Only contestants in contests held for the selection of candidates for endorsement by registered parties will be a “nomination contestant” as defined by the Act. Parties which are not registered may also hold nomination contests to select persons to be endorsed as candidates, but such contests are not regulated by the *Canada Elections Act* and under the Act such contestants are not considered to be “nomination contestants”.

6. Furthermore, a contestant for registered party endorsement as a candidate is not legally a “nomination contestant” until the person is named as such in a nomination contest report which the registered party or the registered electoral district association makes to the Chief Electoral Officer following the holding of a contest. (See the definition in s. 2(1) CEA.)
7. Thus, a person in a contest to be endorsed by a registered party as its candidate is not formally a “nomination contestant” until the contest is completed, the nomination contest report is filed, and the person is named therein as a contestant.
8. However, once the nomination campaign report is filed, a nomination contestant named in the report will be deemed to be a nomination contestant respecting all of the obligations in Part 18 of the *Canada Elections Act* (Financial Administration) retroactive to the time he or she first accepted a contribution or incurred a nomination campaign expense. (s. 478.03 CEA)
9. Thus, a person who collects contributions or incurs nomination campaign expenses in the hopes of entering a nomination contest but who actually never does will not be a nomination contestant and will not be subject to the regulatory requirements of the Act.
10. But a person who collects a contribution or incurs a nomination campaign expense in the hopes of entering a nomination contest should, out of caution, follow all of the rules respecting nomination contestants in the event that he or she does run and is deemed to have been a contestant retroactive to the first contribution or expense in his or her campaign.
11. The legal status of “candidate” under the CEA also operates retroactively respecting the financial obligations of candidates.
12. A person who formally becomes a “candidate” on the acceptance of his or her nomination papers by a returning officer in an election (definition of “candidate” in s. 2 of the CEA) will be deemed to have been a candidate respecting the financial obligations of the CEA back to the time he or she first accepted a contribution or incurred an election campaign expense. (ss. 82 and 365 CEA)

13. Thus, a person can find himself or herself retroactively deemed to be both a “candidate” and a “nomination contestant” for overlapping periods of time.

### **Withdrawal Before Selection Date or Cancellation of Contest**

14. Insofar as the status of being a nomination contestant under the CEA is dependent on being named in the report of the contest made by the registered party or registered association following the completion of the contest none of the following will be nomination contestants:
- 14.1 A person who collects money to run in a nomination contest but never does so;
  - 14.2 A person who is a contestant in a nomination contest which is cancelled before the selection date;
  - 14.3 A person who withdraws from a nomination contest before the selection date.
15. In all of those cases the person will not be subject to the obligations of a nomination contestant including the rules respecting the disposal of surplus. Those obligations apply only to “nomination contestants”, i.e. persons who are nomination contestants on the selection date of a contest.

### **Obligations Where Replacement Contest Held or Where Contestant Continues On To Be a Candidate**

16. A person who fails to complete a nomination contest because the contest was cancelled or because the person withdrew from the contest may nonetheless continue on in the electoral process.
17. He or she may decide to enter a nomination contest called to take the place of the cancelled contest.
18. Or, whether the person withdrew from a contest or the contest was cancelled, the person may continue on to be a candidate in the election.
- 18.1 In both of those cases, all of the contributions in their full amount made to the person for the original nomination will be considered

to be contributions respecting the replacement nomination contest or the person's candidacy as the case may be and should be reported as such with the relevant return.

18.1.1 This is so in the case of a replacement nomination contest insofar as the contributors will not make contributions to the contestant with respect to a specific contest, but rather for the purposes of whatever contest the person must run in in order to secure the nomination for the district.

18.1.2 In the case of a person who continues on to be a candidate, rather than running in a replacement nomination contest, contributions made to that person for the purposes of a nomination must also be considered contributions made to that person for the purposes of his or her candidacy.

18.2 Consequently, where a replacement contest is held, or if the person continues on to become a candidate, the person should immediately transfer all funds in the original nomination account into his or her replacement nomination account or candidate account as the case may be.

18.3 To explain any deficiencies which may result the financial agent should include a note with the relevant return explaining:

18.3.1 The fact of the withdrawal (and the reason); or

18.3.2 The fact of the cancellation of the contest;

and the corrective actions which were taken as a result.

18.4 Similarly, where expenses were incurred in the original contest those expenses will not be reported either as nomination campaign expenses in the replacement contest or as electoral campaign expenses of the candidacy.

18.5 But, a note should be included with the relevant return to explain any discrepancies which will result in the calculation of the surplus as a result of such original expenses which would not be included in that calculation.

- 18.6 The note should report the expenses which were incurred in the original contest and include a copy of the relevant vouchers.
- 18.7 The Act does not impose an absolute duty on persons to comply with its requirements. At most the Act imposes a duty on persons to take all reasonable care in complying with their obligations.
- 18.8 Thus, where sufficient information is provided that it is evident that the person has acted reasonably in attempting to comply with the Act, any deficiencies resulting from the withdrawal from, or cancellation of, the original contest will not be considered to amount to breaches of the Act.

### **End of Nomination Contestant Status**

19. A person who achieves “nomination contestant” status under the CEA continues as a nomination contestant beyond the actual selection date of the nomination contest. Under the CEA a person remains a “nomination contestant” until his or her financial agent has complied with the various obligations respecting nomination contestants set out in sections 478.23 to 478.42 of the CEA in respect of the particular nomination contest. This includes the filing of the required report on the nomination campaign’s financing and expenses and any necessary disposal of surplus campaign funds as required under the Act. (Definition of “nomination contestant” is in s. 2(1) CEA.)
20. Contributions given to a “nomination contestant” in this period will be considered to be for the contest for which the person remains a contestant until the completion of the required obligations.