



INFORMATION SHEET 22

PAYMENTS OF REIMBURSEMENTS OF ELECTION EXPENSES AND NOMINATION DEPOSITS TO PERSONS DESIGNATED BY OFFICIAL AGENTS UNDER THE *CANADA ELECTIONS ACT*

(May 13, 2005)

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.

Ability of Agent to Direct Payments to Others

1. Under the *Canada Elections Act*, a number of payments may be made by the Receiver General to an official agent of a candidate: the interim reimbursement of election expenses (section 464), the final reimbursement of election expenses (section 465), the nomination deposit (section 468), and the election expenses reimbursement payable respecting a cancelled election (section 470).
2. In all of these cases, the Act provides that the payment is to be made to the official agent or to a person designated by the official agent.¹

Contents of Direction

3. An official agent may designate the person to whom such payments are to be made by providing a written direction to the Chief Electoral Officer. The direction should identify the following:
 - 3.1 the candidate
 - 3.2 the official agent
 - 3.3 the electoral district in which the candidate ran for election
 - 3.4 the election to which the direction is to apply
 - 3.5 which payments are to be paid pursuant to the direction – that is, one or more of these:
 - 3.5.1 interim election expenses reimbursement under section 464
 - 3.5.2 final election expenses reimbursement under section 465
 - 3.5.3 nomination deposit under section 468
 - 3.5.4 election expenses reimbursement arising out of a cancelled election under section 470
4. If the official agent wishes all the payments listed above to be made to another person according to the direction, the direction may simply refer to all payments to be made by the Receiver General to the official agent under the *Canada Elections Act*.
5. The direction must be dated and signed by the official agent.

¹ Subsections 464(2), 465(3), 468(2), and 470(1).

6. The candidate may also sign the direction, along with the official agent. However, while the official agent's signature is required, the additional signature by the candidate is optional.

Payment Cannot Be Divided

7. The official agent may direct that any or all the payments listed above are to be paid to another person. However, if a particular payment is to be paid to another person other than the official agent, it must be paid in its entirety. The official agent cannot direct that only a part of any of the above payments be made to another. This is because the various sections of the *Canada Elections Act* provide that the particular payment that would be made to the official agent may be made to another (as designated by the official agent). It is the payment that would be made to the official agent that can be redirected. The Act does not provide for only *part* of the payment in question to be made to another person with the remainder being payable to the official agent.
8. The official agent may also direct that separate payments be paid to different persons. However, each individual reimbursement or return of deposit must be paid to a single person. The official agent cannot direct that part of a payment be paid to one person and part to another. (The Act does not provide for the division of the individual payments in question among different persons.)

Person to Whom Payments May Be Paid

9. The official agent may provide for the payment to be made to any person: to the chief agent of his or her registered party, to a bank, or to any other person. However, choosing the person to whom the payment is directed may have implications respecting the candidate's surplus and the official agent's liability respecting any overpayment made in the interim election expenses reimbursement. These latter two points are discussed below.

Implications for Calculation of Candidate's Surplus

10. Directing the payment of the above amounts to a person other than the candidate's registered party, a registered electoral district association of the candidate's registered party, or to a creditor in payment of an electoral campaign expense may have implications for the calculation of the candidate's surplus.

The amount of any payment made to another person pursuant to a direction by an official agent, notwithstanding that it was paid to another, will still be included in the calculation of the candidate's electoral revenues.² However, the payment to the person pursuant to the direction will not be counted as an expense or a transfer in the calculation of surplus unless the payment is to

10.1 the candidate's registered party

10.2 a registered electoral district association of the candidate's registered party, or

10.3 a creditor in payment of an electoral campaign expense³

Thus, if the payment does not fall into one of these three categories, the candidate or the official agent will have to replace the amount of the payment in the candidate's campaign revenues, as part of the requirement to dispose of the candidate's surplus.

Official Agent's Liability Respecting Payment of Interim Election Expenses Reimbursement

11. An official agent who directs payment to another person of an interim election expenses reimbursement under section 464 will nonetheless remain personally liable under subsection 464(3) for any overpayment included in that interim

² Subsection 471(2):

471. (2) The electoral revenues of a candidate include any amount that represents

- (a) a monetary contribution made to the candidate;
- (b) an election expense or personal expense for which the candidate was reimbursed under this Act;
- (c) the candidate's nomination deposit for which he or she was reimbursed; and
- (d) any other amount that was received by the candidate for his or her electoral campaign and that is not repayable.

³ Subsections 471(1) and (3):

471. (1) The surplus amount of electoral funds that a candidate receives for an election is the amount by which the candidate's electoral revenues referred to in subsection (2) are more than the total of the candidate's electoral campaign expenses paid by his or her official agent and the transfers referred to in subsection (3).

471. (3) A transfer made by a candidate is a transfer of

- (a) any funds that the candidate transfers, during the election, to a registered party or a registered association;
- (b) any amount of a reimbursement referred to in paragraphs (2)(b) and (c) that the candidate transfers to that registered party; and
- (c) any funds transferred by the candidate under paragraph 404.2(2)(d).

reimbursement – notwithstanding that the payment of the interim reimbursement may have actually been made to another person, pursuant to the direction.⁴

Provide Direction to Chief Electoral Officer and Copy to Person

12. The official agent's direction should be forwarded in writing to the Chief Electoral Officer before the pay-out of the payment that is the subject of the direction in question. A copy of the direction should be provided to the person named in the direction as the person to be paid.

Revoking or Changing the Direction Once Given

13. Once the official agent has provided the Chief Electoral Officer with a direction to make any or all of the above payments to another person, the Chief Electoral Officer will not accept any revocation or change in that direction without the written consent of the person named as the recipient of the payment in the original direction.
14. This approach reflects the change (based on practices existing at that time) made in the Act as part of Bill C-24 (now S.C. 2003, c. 19) to provide express authority to make a payment, otherwise payable to the official agent, to another person, if this person is designated by the official agent. The authority to make a designation is discretionary, but once it is made, it will be considered as binding on the official agent unless the person to whom the payment was originally directed consents to its revocation.
15. Thus, if the official agent wishes to revoke or change a direction that the official agent has already filed with the Chief Electoral Officer, the official agent must provide a written revocation or change to the Chief Electoral Officer, along with the written consent to the revocation or change signed by the person to whom the payment in question was originally directed to be paid.

⁴Subsection 464(3):

464. (3) An official agent of a candidate shall without delay return to the Receiver General any amount received by him or her under subsection (2) that is more than 60% of the total of

(a) the candidate's personal expenses that have been paid by him or her, and

(b) the candidate's election expenses that have been paid by his or her official agent, as set out in the candidate's electoral campaign return.

Payment Subject to Compliance with the Act

16. Payment will be made pursuant to a direction given by an official agent only in the event that payment of the amounts in question is authorized to be made to the official agent. A person to whom an official agent has been directed that a payment (otherwise payable to an official agent) be made is in no better position than the official agent with respect to entitlement to that payment. For that reason, payment will be made under sections 464, 465, 468 and 470 only to the extent that there is compliance with the requirements of those sections, and to the extent that the official agent would be entitled to such payment in the absence of the direction.