



## **Information Sheet 25**

### **Who May Be an Auditor *Under the Canada Elections Act***

#### 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.

[December 1, 2005]

## **Must Be a Professional Accountant**

1. A person who wishes to act as an auditor for the purposes of the *Canada Elections Act* must be:
  - 1.1 a person who is a member in good standing of a corporation, an association or an institute of professional accountants, or
  - 1.2 a partnership of which every partner is a member in good standing of a corporation, an association or an institute of professional accountants.<sup>1</sup>

## **What Constitutes Being a Professional Accountant**

2. In order to be considered a “professional accountant,” a person must be qualified under the laws of a province to perform some form of accounting services in the province where the person is to serve as auditor under the *Canada Elections Act*.<sup>2</sup>
3. This view of the meaning of “professional accountant” is evident in light of the functions of auditors under the Act.
4. Auditors serve an important role in the verification of the financial obligations of nomination contestants, candidates, leadership contestants, registered electoral district associations, third parties and registered parties. They have express statutory powers to access confidential information of the regulated entity.
5. For these reasons, it is clear that Parliament, in requiring that a person be a “professional accountant,” was referring to persons qualified to practise as accountants under the relevant provincial schemes.
6. For example, a person who has received the professional designation of “CA” (chartered accountant), “CMA” (certified management accountant) or “CGA” (certified general accountant) from a provincial association of accountants is generally qualified to act as an auditor under the *Canada Elections Act*.

---

<sup>1</sup> Subsections 85(1), 355(2), 377(1), 403.11(1), 435.1(1) and 478.25(2).

<sup>2</sup> *R. ex. rel. Steeds v. Lewis*, (1997), 36 O.R. (3d) 688 (C.A.).

7. A person who is not licensed with a CA, CMA or CGA designation may still act as an auditor under the *Canada Elections Act* if he or she is recognized by provincial law as being able to practise as any form of “accountant” within that province.

### **Informing the Chief Electoral Officer or the Returning Officer of the Auditor’s Qualifications**

8. Prospective candidates, when submitting their nomination papers with the returning officer, must provide evidence that the auditor they appointed is a member in good standing of a corporation, an association or an institute of professional accountants or that the appointed auditor is a partnership of such persons.
9. For instance, the prospective candidate may indicate that the appointed auditor is a chartered accountant, certified management accountant or certified general accountant. Where the appointed auditor is not licensed with such a designation, the prospective candidate must provide evidence to the returning officer that the appointed auditor is eligible to perform accounting services in the province in which he or she is to serve as an auditor.
10. Leadership contestants, electoral district associations and political parties must provide similar information regarding the appointed auditor’s qualifications when filing an application for registration with the Chief Electoral Officer.
11. Nomination contestants and third parties who are required to appoint an auditor pursuant to subsection 355(1) or 478.25(1) (see Information Sheet 24: The Requirement to Have an Auditor Under the *Canada Elections Act*) are subject to the same obligation.
12. Electoral district associations and political parties that are already registered with Elections Canada but that have not yet provided evidence to the Chief Electoral Officer that the auditor they appointed is a member in good standing of a corporation, an association or an institute of professional accountants, or is a partnership of such persons, should provide such information at the earliest of the following events:

12.1 registered parties:

- 12.1.1 the filing of their yearly confirmation regarding the validity of their registry information under section 384
- 12.1.2 the filing of a financial transactions return pursuant to section 424
- 12.1.3 the filing of an election expenses return pursuant to section 429, or
- 12.1.4 the reporting of a change of auditor to the Chief Electoral Officer pursuant to section 382

12.2 registered electoral district associations:

- 12.2.1 the filing of a financial transactions return pursuant to subsection 403.35(1)
- 12.2.2 the filing of their yearly confirmation regarding the validity of their registry information under section 403.17, or
- 12.2.3 the reporting of a change of auditor pursuant to section 403.16

**Who Is Ineligible to Act as Auditor?**

- 13. A person who wishes to act as auditor for the purposes of the *Canada Elections Act* must ensure that he or she does not hold a position that renders him or her ineligible to act as an auditor under the Act.
- 14. Generally, a person must not be a participant in the electoral process if the person wishes to serve as an auditor. Specifically, the following persons are ineligible to act as an auditor for a nomination contestant, leadership contestant, candidate, registered association, eligible party and registered party under the *Canada Elections Act*:
  - an election officer or a member of the staff of a returning officer
  - a candidate

- an official agent of a candidate
  - the chief agent of a registered party or an eligible party
  - a registered agent of a registered party
  - electoral district agents of registered associations
  - leadership contestants and their leadership campaign agents
  - nomination contestants and their financial agents
  - financial agents of registered third parties<sup>3</sup>
15. In addition to the above, a person who acts as an officer of a registered party or an eligible party cannot act as the auditor for a registered or eligible party.<sup>4</sup>
16. Where the appointed auditor of a nomination contestant, candidate or leadership contestant is preparing an auditor's report as required under the *Canada Elections Act* with the assistance of an employee, associate or partner, he or she must ensure that the person assisting is not among the persons ineligible to act as an auditor under the Act. If the person assisting is among the ineligible persons listed, he or she may only assist the auditor in ensuring that the auditor has access to the relevant documentation and in requiring additional information or explanations from the candidate, nomination contestant or leadership contestant. The fundamental audit tasks must remain with the eligible auditor.<sup>5</sup>

---

<sup>3</sup> Subsections 85(2), 377(2), 403.11(2), 435.1(2) and 478.25(3).

<sup>4</sup> Subsection 377(2).

<sup>5</sup> Subsections 435.33(4), 453(5) and 478.28(4).

### **Ineligibility to Act as Auditor for Third Parties**

17. Under the *Canada Elections Act*, the following persons are ineligible to act as auditor for a third party:

- the third party's financial agent
- a person who signed the application for registration of the third party
- an election officer
- a candidate
- the official agent of a candidate
- the chief agent of a registered party or an eligible party
- a registered agent of a registered party<sup>6</sup>

### **Partnerships of Accountants Acting as Auditors**

18. A partnership of professional accountants may itself be appointed an auditor for the purposes of the *Canada Elections Act*.<sup>7</sup> Where a partnership is appointed as the auditor, each individual partner of the partnership can serve as the auditor for the person appointing the partnership.

19. For that reason, every individual partner in the partnership must be a member in good standing of a corporation, an association or an institute of professional accountants.<sup>8</sup>

---

<sup>6</sup> Subsection 355(3).

<sup>7</sup> Subsections 85(1), 355(2), 377(1), 403.11(1), 435.1(1) and 478.25(2).

<sup>8</sup> Subsections 85(1), 355(2), 377(1), 403.11(1), 435.1(1) and 478.25(2).

20. If an individual partner holds a position that would render him or her ineligible under the *Canada Elections Act* to act as auditor for the person for whom the partnership wishes to act, then the partnership cannot act as the auditor for that person except in the following circumstances:

20.1 auditor for candidate: a partnership can be appointed as the auditor for a candidate notwithstanding that one of its individual partners is appointed as official agent for another candidate in another electoral district (section 85.1)

20.2 auditor for registered party: a partnership can be appointed as the auditor for a registered party notwithstanding that one of its individual partners has been appointed as an official agent for a candidate (section 85.1) or agent for a registered association (subsection 403.1(3)) or agent for a leadership contestant (subsection 435.1(3)) or agent for a nomination contestant (subsection 478.05(2)).

### **Effect of Appointment of Ineligible Person as Auditor**

21. No person who is ineligible to be an auditor of a nomination contestant, candidate, leadership contestant, registered association, eligible party or registered party may so act.<sup>9</sup>

22. A person who wilfully contravenes this rule may be found guilty of an offence under the *Canada Elections Act*.<sup>10</sup>

23. A person who is ineligible to act as auditor for a third party but who still serves in such a position with the intention of delaying or obstructing the electoral process may also be found guilty of an offence.<sup>11</sup>

---

<sup>9</sup> Subsections 90(2), 381(2), 403.15(2) and 435.14(2), and section 478.27.

<sup>10</sup> Paragraphs 486(3)(b), 497(3)(b), 497(3)(f.05), 497(3)(m.03) and 497(3)(z.1).

<sup>11</sup> Subsection 480(1).

24. Any requirement in the *Canada Elections Act* respecting an auditor will not be met in the event that the person serving as the auditor is not eligible to do so.
25. For example, the Chief Electoral Officer must refuse the application for registration filed by a political party, electoral district association or leadership contestant if the appointed auditor is ineligible to act under the *Canada Elections Act*.<sup>12</sup>
26. Similarly, a person will not be confirmed by a returning officer as a candidate unless the person appointed as auditor for the candidate is eligible under sections 85 and 85.1.
27. However, once made, a decision by a returning officer to confirm the nomination of a candidate is final and cannot be reopened by the returning officer.
28. For that reason, if a person has erroneously had his or her nomination as a candidate confirmed notwithstanding the ineligibility of the person appointed as the candidate's auditor, the returning officer cannot revoke the confirmation on the grounds of the ineligibility.
29. The failure to have an eligible auditor, however, constitutes an offence<sup>13</sup> and the ineligibility may serve as grounds for the subsequent bringing of an application for a contested election under Part 20 of the *Canada Elections Act*.<sup>14</sup>
30. Depending on the internal rules of the registered party, a leadership candidate who appoints an ineligible person as an auditor may be subject to having his or her status as leadership contestant withdrawn by the party. Unlike the confirmation of a person as a candidate, which cannot be reversed by a returning officer, a registered party that has accepted a person as a leadership contestant may withdraw that acceptance in accordance with section 435.17. If the party's rules provide for such action, the party, on learning that a contestant did not have an eligible auditor, could withdraw the contestant's status as a leadership contestant.

---

<sup>12</sup> Subsections 369(1), 403.02(3) and 435.06(3).

<sup>13</sup> Subsection 486(1).

<sup>14</sup> Section 522 and following.



31. A report prepared by a person who is not eligible to be an auditor under the *Canada Elections Act* will not be accepted as an auditor's report for the purposes of the Act even if the appointment of that person as auditor was not contested earlier – in the case of a candidate, on the confirmation of candidate status by a returning officer, or, in the case of a leadership contestant, registered electoral district association and registered party, on registration, or, in the case of a third party and nomination contestant, on advising the Chief Electoral Officer of the appointment of an auditor.
  
32. Lastly, the appointment of an ineligible person as an auditor does not amount to compliance with the various statutory obligations to have an auditor and thus may constitute an offence – see Information Sheet 24: The Requirement to Have an Auditor Under the *Canada Elections Act*.