



INFORMATION SHEET 18

NOMINATION CONTESTS: OBLIGATIONS OF NOMINATION CONTESTANTS

(Revised April 26, 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.

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Obligations Similar to Those of a Candidate

1. In recognition of the fact that a person who is a nomination contestant may also be a candidate at the same time, the obligations of a nomination contestant under the *Canada Elections Act* (CEA) are similar to those of a candidate.
2. Familiarity with one set of obligations will facilitate familiarity with the other.

Eligibility and Contribution Limits

3. There are restrictions on who can make contributions to nomination contestants and how much each contributor can give.
4. For details respecting who can make contributions to nomination contestants and the relevant contribution limits see the various information sheets respecting contributions.
5. Contributions given to a prospective nomination contestant will count towards the contributor's limit even if the recipient subsequently does not run as a nomination contestant, withdraws from the contest before the selection date, or the contest is cancelled before that date.
6. The Act expressly provides that contributions given by an individual to a person who presents himself or herself as seeking to be a candidate will be treated as contributions to that person as a "candidate", will count towards the contributor's limit as of the time it was given, and must be treated as such immediately on the giving whether or not the candidate has achieved his or her official status at that time or ever achieves it. (s. 405(3) CEA)
7. This means that a contribution by an individual to a potential "candidate" must be counted in the contributor's limits even if the recipient never becomes a candidate.
8. The same rule will operate with respect to contributions made to a person's nomination campaign. A person seeking the nomination of a registered party must, by definition, present himself or herself to prospective contributors as seeking the endorsement of a party and thus will be subject to the same rule.

Transfers

9. The *Canada Elections Act* allows specified entities of the same registered party (including nomination contestants) to sometimes transfer funds or provide goods and services to each other without being considered to be making a contribution. (See ss. 404.2(2) to (4) CEA.) This is to allow the various entities of the same registered party grouping (see below, paragraph 11) to support each other.
10. These exemptions from the contribution rules may be referred to generally as “transfers”, although technically under the Act one “transfers” money and “provides” goods and services.
11. What may be transferred or provided between the various entities of a registered party (the party, the registered electoral district associations of the party, the leadership and nomination contestants of the party and its candidates) varies according to which entity is making the transfer and to whom the transfer is being made.
12. For details respecting the transfer rules, see Information Sheet 5: *Transfers Between Affiliated Political Entities*.

Spending Limits for Nomination Contests

13. Just as a candidate has limits on the election expenses which he or she may incur in an election, there are limits on the nomination campaign expenses which a nomination contestant may incur for a nomination contest.
14. Where the nomination contest is for an electoral district for which candidates ran in the previous general election the nomination campaign expense limit will be 20 percent of the candidate election expense limit for that previous general election. (s. 478.14(a) CEA)
15. Otherwise the nomination campaign expense limit will be as determined by the Chief Electoral Officer. (s. 478.14(b) CEA)
 - 15.1 In the case of an electoral district created by a representation order under the *Electoral Boundaries Readjustment Act*, the Chief Electoral Officer will transpose the population at the time of the last general election into the new electoral districts and then calculate the candidate election expense limit that

would have resulted at that election using the transposed electors. The nomination campaign expense limit will be set at 20 percent of that total.

16. The nomination campaign expense limit will apply to all nomination campaign expenses OTHER than personal expenses. (s. 478.14, s. 478.15)
 - 16.1 A nomination campaign expense is an expense reasonably incurred by or on behalf of a nomination contestant during a nomination contest as an incidence of the contest (and includes personal expenses). (definition s. 2(1) CEA)
 - 16.1.1 In order to be considered a nomination campaign expense the expense must be incurred *during the contest as an incidence of the contest*.
 - 16.1.2 Expenses incurred prior to the beginning of a contest will not qualify as nomination campaign expenses unless those expenses relate to something which is consumed during the contest (such as the advance printing of pamphlets which are then distributed during the contest).
 - 16.1.3 Expenses incurred after the selection date of a contest will also not qualify as nomination campaign expenses unless the liability for those expenses arose during the contest and the expenses are an incidence of that contest.
 - 16.2 “Personal expense” of a nomination contestant has a similar meaning as “personal expense” respecting a candidate and means the expenses that are reasonably incurred by or on behalf of a nomination contestant in relation to the nomination campaign and include:
 - (a) travel and living expenses;
 - (b) child care expenses;
 - (c) expenses relating to the provision of care for a person with a physical or mental incapacity for whom the contestant normally provides such care; and

- (d) in the case of a contestant who has a disability, additional personal expenses that are related to the disability.
(s. 478.01 CEA)

16.2.1 Aside from not being subject to the expense limit, the status of a nomination campaign expense as a “personal expense” is also important because a nomination contestant can incur and pay for his or her own personal expenses. Except for payments of petty expenses (s. 411(1)(e)), this is the only nomination campaign expense which can be paid for by someone other than the contestant’s financial agent. All other nomination campaign expenses can only be paid for by the nomination contestant’s financial agent (who, in addition to the nomination contestant, also can incur and pay for the contestant’s personal expenses).
(s. 478.13 CEA)

The Financial Agent of a Nomination Contestant

- 17. A nomination contestant who receives no contributions, incurs no nomination campaign expenses, and neither makes nor receives any transfers as permitted under the Act, is not required to appoint a financial agent. The Act does not require that a nomination contestant have a financial agent (as it does in order for a candidate (s. 66) or a leadership contestant). (s. 435.06)
- 18. However, a nomination contestant cannot accept a contribution or incur a nomination campaign expense until he or she has a financial agent. (s. 478.04 CEA)
- 19. Therefore, a nomination contestant cannot accept a contribution or incur a nomination campaign expense until he or she has a financial agent. (s. 478.04 CEA)
- 20. Consequently, in order to avoid delays in being able to accept a contribution or incur a nomination campaign expense a person who wishes to be a nomination contestant should consider appointing a financial agent at the earliest opportunity.

21. Thus, a nomination contestant must have a financial agent from the time the contestant first accepts a contribution or incurs a nomination campaign expense.
 - 21.1 The nomination contestant must obtain the signed consent from the financial agent to act in that capacity.
22. The Act sets out restrictions respecting who can be the financial agent of a nomination contestant. (s. 478.05(1) CEA)
23. The following persons are not eligible to be a financial agent of a nomination contestant:
 - (a) an election officer or a member of the staff of a returning officer;
 - (b) a candidate or a nomination contestant;
 - (c) an auditor appointed as required by the CEA;
 - 23.1 However, a person can be the financial agent for a nomination contestant notwithstanding that the person is a member of a partnership appointed as an auditor for the registered party. (s. 478.05(2) CEA)
 - (d) a person who is not an elector;
 - (e) an undischarged bankrupt;
 - (f) a person who does not have the capacity to enter into contracts in the province in which the person ordinarily resides.
24. A person can be a financial agent for more than one nomination contestant as long as a separate bank account is maintained for each nomination contestant's campaign.
25. And the same person who acts as the official agent for a person in his or her capacity as a candidate can act as the person's financial agent respecting his or her status as a nomination contestant.

26. A corporation cannot be the financial agent for a nomination contestant. Although a corporation is a legal “person” it cannot be an elector and is, therefore, prohibited from acting as the financial agent of a nomination contestant by s. 478.05(1)(d).
 - 26.1 Corporations can act as registered agents for registered parties or electoral district agents of registered electoral districts because the Act expressly permits them to act as such in an exception to the requirement that those agents must be an elector. (ss. 376 and 403.1)
27. Nomination contestants can only have one financial agent at a time. (s. 478.08 CEA)
28. As is the case with candidates there is no authority to appoint other subordinate agents.
29. The name and address of each nomination contestant’s financial agent must be included in the report made to the Chief Electoral Officer at the end of a contest held by the responsible registered party or registered electoral district association. (s. 478.02(1)(c))
30. Subsequently, each nomination contestant must report any changes in that information in writing to the Chief Electoral Officer within 30 days of the change and include with that report the signed consent of any new financial agent agreeing to act in that capacity. (s. 478.1 CEA)

Functions and Powers of Financial Agent

31. The financial agent acts as the financial officer of the nomination contestant and plays a central role in the operation of the nomination campaign. The financial agent is responsible for administering the contestant’s financial transactions for his or her nomination campaign and for reporting on those transactions as required by the CEA. (s. 478.11 CEA)
32. The powers, duties and functions of a financial agent are set out generally in sections 478.11 to 478.42 of the CEA.

33. Only the financial agent can accept contributions to the nomination contestant which the Act authorizes to be made to the contestant. (s. 478.13(1) CEA)
- 33.1 A contribution will be “accepted” when anything is done with it which indicates ownership of the contribution (such as depositing it into a bank account) other than such actions as are necessary for forwarding the contribution to the financial agent for acceptance.
- 33.2 Canvassers and other persons who are authorized by the nomination contestant to receive contributions will be able to receive contributions intended for the nomination contestant but they must only deal with those contributions so far as is necessary to forward them to the financial agent for acceptance.
34. Similarly it must be the financial agent who accepts any contributions which the nomination contestant makes to his or her campaign, any transfers which the nomination contestant may make to his or her campaign from his or her candidate account, and any goods and services which the registered party or registered association are permitted to make to the nomination contestant under the Act. (This is implicit in the responsibility of the financial agent for the accounts of the nomination contestant.)
35. Only the financial agent and the nomination contestant can incur nomination campaign expenses (this term includes the personal expenses of the contestant). (s. 478.13(4) CEA)
36. Only the financial agent can pay nomination campaign expenses. (s. 478.13(3) CEA)
- 36.1 However, a nomination contestant and his or her financial agent can both pay the contestant’s personal expenses. (s. 478.13(5))
- 36.2 And persons who are authorized in writing by the financial agent can pay petty expenses for office supplies, postage, courier services and other incidental expenses. (s. 411(1)(e) CEA)

Nomination Campaign Bank Account

37. The financial agent is required to open a nomination campaign bank account which can be used solely for the purposes of the contestant's nomination campaign. (s. 478.12 CEA)

37.1 The obligation to open a bank account arises at the time the first contribution (monetary or non-monetary) is accepted or the first nomination campaign expense is incurred.

38. No bank account need be opened where there are no campaign transactions of any kind – e.g. no contributions (monetary or non-monetary), no transfers, no loans, and no nomination campaign expenses.

38.1 This is not expressly stated in the Act but appears to be implicit.

38.2 Although subsection 478.12(1) provides that the financial agent of a nomination contestant shall open a bank account, it appears logical to assume that this obligation arises only in the case of campaigns which have some form of transaction for a financial agent to conduct.

38.3 Prior to the filing of a nomination contest report by the registered party or registered association under section 478.02 a person is not technically a nomination contestant (see Information Sheet 16: *Nomination Contests: Who is a Nomination Contestant?*). Consequently, prior to the filing of that report the person serving as the financial officer of a potential nomination contestant also will not technically be “a financial agent of a nomination contestant” and there will be no technical obligation to open a bank account at that time.

38.4 However, the deeming provision in section 478.03 which operates to retroactively make a person who is named as a nomination contestant in a nomination contest report a nomination contestant back to the time he or she first accepts a contribution or incurs a nomination campaign expense will also operate to similarly retroactively impose upon the financial agent an obligation to open the bank account as of the time the first contribution (or transfer) was accepted or nomination campaign expense incurred.

- 38.5 Where no contributions or transfers have been accepted and no nomination campaign expenses incurred the deeming provision does not operate.
- 38.6 In that case a person does not become a nomination contestant until he or she is named as such in a nomination contest report which is filed by the registered party or registered electoral district association after the contest is finished.
- 38.7 At that point, in the case of campaigns with no transactions of any sort, it would not be logical to read section 478.12 as imposing an obligation on any named financial agent to open a bank account. Parliament would not have wished to impose a meaningless obligation upon persons (and their banks) to open bank accounts at a time when the contest is over and the transactionless nature of the campaign is known. (If a contribution is accepted by the campaign after the selection date the obligation to open the bank account will arise at the acceptance of that contribution.)
- 38.8 A financial agent of a transactionless campaign who does not open a bank account for that reason may wish to advise the Chief Electoral Officer in a written statement that no bank account was opened as no contributions or transfers were accepted and no nomination campaign expenses were incurred. Obviously, where no bank account is opened no bank account will be closed and no final bank statement will be filed with the Chief Electoral Officer as required under subsection 478.12(5). The written statement will avoid any confusion respecting the failure to file the final statement.
39. The account must be opened in a Canadian financial institution (as defined in section 2 of the *Bank Act*, or in an authorized foreign bank as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act. (s. 478.12 CEA)
40. The account must name the account holder as follows: (*the name of financial agent*), financial agent

41. All financial transactions of the nomination contestant in relation to the contestant's nomination campaign are to be paid from or deposited to the nomination campaign account. (s. 478.12(3) CEA)
42. After the selection date of the nomination contest the financial agent is required to close the bank account once both all unpaid claims and the disposal of any campaign surplus have been dealt with as required under the Act. (s. 478.12(4) CEA)
43. On closing the account the financial agent must provide the Chief Electoral Officer with the final statement of the account. (s. 478.12(5) CEA)
 - 43.1 The final statement of the account must be provided even if the financial agent was not required to file a campaign return under s. 478.23. It is an offence to fail to file the final statement of the account as required by the Act. (s. 497(1)(z.25))

Claims Payments

44. The CEA requires that bills respecting expenses relating to a nomination campaign be submitted and paid within the time periods specified in the Act. This is to ensure not only that the affairs of a particular nomination contest are paid in a timely manner but also that contributions cannot be made to a contestant under the guise of an expense claim which is not paid.
45. The legislative scheme respecting the payment of claims which applies to nomination contests is similar to that which applies to candidates. (ss. 478.16 CEA and following)
46. A claim for an expense which is not paid within the times specified in the Act, or otherwise dealt with as provided in the Act, will be deemed to be a contribution to the nomination contestant as of the date on which the expense was incurred. (s. 478.22)

Auditor

47. Where an auditor is required, the auditor's function is to examine the financial return which the nomination contestant's financial agent is to make to the Chief Electoral Officer and to conduct any other examinations, in accordance with generally accepted auditing principles, that may be necessary in order to enable the auditor to give an opinion as to whether the return presents fairly the information in the financial records on which it is based. The Act specifies what must be included in the auditor's report. (s. 478.28 CEA)
48. Unlike the other political entities regulated by the *Canada Elections Act*, a nomination contestant is not required to have an auditor from the outset.
49. But an auditor must be appointed without delay once the contestant has accepted contributions of more than \$10,000 or incurred nomination campaign expenses (which include personal expenses) of \$10,000 or more. (s. 478.25 CEA)
 - 49.1 However, a nomination contestant may appoint an auditor, if he or she wishes, before there is a legal duty to do so. And it may be prudent to have pre-arranged with a person to be the contestant's auditor in order to avoid delay when the legal duty to appoint one arises.
50. The nomination contestant, without delay after appointing an auditor, must provide the Chief Electoral Officer with the auditor's name, address, telephone number and occupation and a signed declaration by the auditor accepting the appointment as auditor. (s. 478.25(4) CEA)
 - 50.1 If the auditor is replaced, the contestant must, without delay, provide the Chief Electoral Officer with the new auditor's name, address, telephone number and occupation and a signed declaration by the auditor accepting the appointment. (s. 478.25(5) CEA)
51. There is no state subsidy respecting auditor fees incurred by nomination contestants.
52. A nomination contestant can only have one auditor at a time. (s. 478.26 CEA)

53. Only the following are eligible to be an auditor for a nomination contestant:
- 53.1 A person who is a member in good standing of a corporation, an association or an institute of professional accountants; or
 - 53.2 A partnership in which every partner is a member in good standing of a corporation, an association or an institute of professional accountants. (s. 478.25(2) CEA)
54. In order to avoid conflicts of interest, the Act prohibits the following persons from being an auditor for a nomination contestant:
- 54.1 election officers and members of the staff of returning officers;
 - 54.2 chief agents of registered parties or eligible parties and registered agents of registered parties;
 - 54.3 candidates and official agents of candidates;
 - 54.4 electoral district agents of registered associations;
 - 54.5 leadership contestants and their leadership campaign agents;
 - 54.6 nomination contestants and their financial agents; and
 - 54.7 financial agents of registered third parties. (s. 478.25(3) CEA)
55. However, one can be an auditor for more than one political entity under the CEA.

Surplus

56. A nomination contestant's nomination campaign surplus must be disposed of to:
- (a) His or her registered party;
 - (b) The registered electoral district association that held the contest;
or

- (c) The official agent of a candidate for that district who has been endorsed in an election by the registered party by the time the surplus must be disposed. (s. 478.41(2) CEA)
 - 56.1 A nomination contestant cannot transfer his or her surplus to his or her own candidate account unless an election has been called and he or she has been endorsed as the party's candidate at the time of the disposal.
 - 56.2 Nor, in practical terms, can a nomination contestant transfer money during a nomination contest campaign from his or her nomination account to his or her candidate account.
 - 56.2.1 The transfer does not fall within the transfer provisions found in s. 404.2 and will therefore count as a contribution;
 - 56.2.2 Nor would the transfer be recognized as an expense in the calculation of the nomination campaign surplus which means that the amount of the transfer would have to be made up from the person's own funds in the disposal of surplus.

57. A nomination campaign surplus is the difference between:

- 57.1 Contributions received by the nomination contestant and nomination campaign expenses (including personal expenses) and transfers made to the registered party, registered association that held the contest, or the endorsed candidate in the district. (s. 478.39 CEA)
- 57.2 Campaign contributions not allocated to expenses reasonably incurred as an incidence of the contest or to permitted transfers will create a shortfall in the nomination contestant surplus. Any such deficit will have to be covered by the nomination contestant or the financial agent, depending on who is responsible for the improper spending.

Nomination Campaign Return

58. After a nomination contest is completed nomination contestants must file a nomination campaign return. (s. 478.23 CEA)

59. The statutory requirements respecting the nomination campaign return are set out in section 478.23 and following sections and are similar to those respecting a candidate electoral campaign return except as follows:
 - 59.1 Persons who drop out of a nomination contest before the selection date of the contest do not have to file a return (as they are not nomination contestants).

 - 59.2 A return is only required to be made if \$1,000 or more in contributions have been accepted or \$1,000 or more in nomination campaign expenses have been incurred.
(s. 478.23(1) CEA)

 - 59.3 A return is only required to be audited if the nomination contestant has accepted \$10,000 or more in contributions or incurred \$10,000 or more in nomination campaign expenses.
(s. 478.23(1) CEA)

 - 59.4 The return must be filed within four months of the selection date UNLESS the selection date falls within an election period or 30 days before it, in which case the submission dates for candidate returns apply (ss. 478.23(6) and (7) CEA) (four months after polling day or after the publication of the notice of the withdrawal of a writ or the deemed withdrawal of a writ). (s. 451(4))