



Information Sheet 24

The Requirement to Have an Auditor Under the *Canada Elections Act*

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Requirement to Have an Auditor

Who Must Have Auditor

1. Under the *Canada Elections Act*, some regulated political entities must always have an auditor. Others need only have one if specified statutory criteria are met.
2. Registered and eligible parties, registered electoral district associations, candidates, and leadership contestants must all have an auditor.
3. Nomination contestants and third parties must have an auditor when the specified criteria in the Act are met.
4. See the discussions below under “Timing” respecting when each political entity must have an auditor.

Timing – Registered and Eligible Parties, Registered Electoral District Associations, and Leadership Contestants

5. Prospective registered parties, registered electoral district associations and leadership contestants must have an auditor before filing their applications for registration with the Chief Electoral Officer. Their applications for registration must include the name and address of the appointed auditor as well as the auditor’s signed consent to act.¹

¹ Paragraphs 366(2)(g), 403.02(1)(e), 403.02(2)(b), 435.06(1)(d) and 435.06(2)(b).

Timing – Candidates

6. A prospective candidate should have an auditor at the time the candidate first accepts a contribution or incurs an electoral campaign expense – even if the person is not yet confirmed as a candidate by a returning officer. At the time the candidate is confirmed by a returning officer during an election, the duty to have an auditor will be imposed retroactively upon the candidate back to the time he or she first accepted a contribution or incurred a nomination campaign expense.² In any event, prospective candidates must have an auditor before filing their nomination papers with the returning officer.³

Timing – Nomination Contestants and Third Parties

7. Third parties that incur election advertising expenses of \$5,000 or more and nomination contestants who accept contributions of \$10,000 or more, or who incur nomination campaign expenses of \$10,000 or more, must appoint an auditor at that time.⁴

² Subsection 83(1) directs that a candidate shall appoint an official agent before accepting a contribution or incurring an electoral campaign expense. Subsection 83(2) then provides that a candidate shall appoint an auditor on appointing an official agent.

Although the Act defines a “candidate” as a person whose nomination has been confirmed by a returning officer (s. 2), once a person is confirmed as a candidate by a returning officer the person is deemed to have been a candidate retroactively back to the time the person first accepted a contribution or incurred an electoral campaign expense (ss. 82 and 365). Thus, a prospective candidate who collects a contribution or incurs an electoral campaign expense should have an auditor at that time, insofar as, when the person is subsequently confirmed as a candidate by a returning officer during an election, the person will retroactively be required to have had one.

³ Subparagraph 66(1)(a)(iv) and paragraph 67(4)(b).

⁴ Subsections 355(1) and 478.25(1).

One Auditor at a Time

8. Nomination contestants, candidates, leadership contestants, registered electoral district associations, eligible parties and registered parties may have only one auditor at a time.⁵

Replacement of Auditor

Replace Without Delay

9. Every political entity that is required to have an auditor by the *Canada Elections Act* must, without delay, appoint a new auditor in the event of the death, incapacity, resignation or revocation of the appointment of its auditor.⁶
10. The obligation to act without delay means whatever steps are required to appoint a replacement auditor must be taken as quickly as circumstances permit.

Offence to Fail to Appoint or to Appoint Replacement

11. There are offences under the *Canada Elections Act* respecting the failure to appoint an auditor, or to fail to appoint a replacement auditor as required by the Act.⁷

⁵ Sections 88 (candidate), 380 (registered or eligible party), 403.14 (registered electoral district association), 435.13 (leadership contestant) and 478.26 (nomination contestant).

⁶ Sections 379 (registered or eligible party), 403.13 (registered electoral district association), 87 (candidate) and 435.12 (leadership contestant). The obligation to replace an auditor for nomination contestants and third parties is implicit in subsections 355(1) and 355(5) and section 478.25 respectively.

⁷ Subsection 486(1) (candidate – both failure to appoint or re-appoint), and paragraphs 497(1)(b) (registered or eligible party – failure to re-appoint), 497(1)(h.05) (registered electoral district association – failure to re-appoint), 497(1)(q.04) (leadership contestant – failure to re-appoint), 496(1)(d) (third party – failure to appoint (express) or re-appoint (implicit)) and 497(1)(z.32) (nomination contestant – failure to comply with express obligation to appoint and failure to comply with implicit obligation to re-appoint when necessary).

Notify Chief Electoral Officer of Appointment of Auditor and Any Changes

Notify Chief Electoral Officer of Initial Appointment

12. Political parties, registered electoral associations and leadership contestants must include their auditor information in their registration applications. They do not have to report this information to the Chief Electoral Officer earlier.
13. Candidates, even though they may be required to have an auditor before filing their nomination papers with a returning officer are, nevertheless, not required to report that appointment before the filing of those nomination papers.
14. Nomination contestants and third parties are not obliged to have an auditor until, in the case of nomination contestants, they accept or incur \$10,000 or more in contributions or in nomination campaign expenses, or, in the case of third parties, they incur \$5,000 or more in election advertising expenses. However, once either appoints an auditor it is required to report the appointment to the Chief Electoral Officer without delay.⁸

Offences Respecting Failure to Notify Chief Electoral Officer of Appointment

15. It is not an offence for a party or electoral district association to fail to have an auditor when applying for registration – rather, their applications for registration would be refused. Similarly, as there is no obligation on a candidate to notify the Chief Electoral Officer of the first appointment of an auditor, there is no offence for failing to do so. Rather, as noted above, the offence is for a candidate to fail to have an auditor from the first acceptance of a contribution to the candidate's campaign or the first electoral campaign expense. The nomination of a candidate who does not have an auditor will not be confirmed by a returning officer. See discussion in Information Sheet 25: Who May Be an Auditor Under the *Canada Elections Act* respecting “Effect of Appointment of Ineligible Person as Auditor.”

⁸ Subsections 355(4) (third parties) and 478.25(4) (nomination contestants).

16. It is an offence under paragraph 497(1)(z.33) for a nomination contestant to fail to notify the Chief Electoral Officer of the appointment of an auditor as required under the Act. It is an offence for a third party to fail to notify the Chief Electoral Officer of the appointment of an auditor as required under the Act if that omission was intended to delay or obstruct the electoral process (s. 480(1)).

Notify Chief Electoral Officer of Change

17. Within 30 days after a change in the information respecting the auditor, a registered or eligible party, registered electoral district association, or leadership contestant must report that change in writing to the Chief Electoral Officer. This obligation applies both to when the office falls vacant and later to the subsequent appointment of a replacement – unless the replacement appointment takes place within the initial 30-day reporting period and is included in the original report of change.⁹ Where the report is from a registered or eligible party, it must be certified by the leader of the party.¹⁰ Where the report is from a registered electoral district association, it must be certified by the chief executive officer of the association.¹¹
18. Nomination contestants and third parties must report the appointment of a new auditor to the Chief Electoral Officer without delay.¹²
19. Although the Act does not specify a time limit for candidates to report changes in auditors, in order to avoid subsequent confusion on the filing of campaign returns a candidate should also report any change in auditor to the Chief Electoral Officer and returning officer without delay.

⁹ Subsections 382(1) and 379(2) (registered or eligible party), 403.16(1) (registered electoral district association), and 435.15(1) (leadership contestant).

¹⁰ Subsection 382(1).

¹¹ Subsection 403.16(1).

¹² Subsections 478.25(5) (nomination contestants) and 355(5) (third parties).

20. Where the report details the appointment of a new auditor, it must include a copy of the new auditor's signed consent to act.¹³

Offences Respecting Failure to Report Change to Chief Electoral Officer

21. Failure to report a change in auditor as required by the Act is an offence for a registered or eligible party (s. 497(1)(c)), for a registered electoral district association (s. 497(1)(h.06)), for a leadership contestant (s. 497(1)(q.05)) and for a nomination contestant (s. 497(1)(z.33)).
22. It is an offence for a third party to fail to notify the Chief Electoral Officer of a replacement in auditor if that omission is intended to delay or obstruct the electoral process (s. 480(1)).

¹³ Subsections 382(4) (registered or eligible party), 403.16(2) (registered electoral district association) and 435.15(2) (leadership contestant), section 86 (candidate), and subsections 478.25(5) (nomination contestant) and 355(5) (third party). Where a candidate reports a change, the requirement to include with that report a copy of the auditor's consent is implicit in the combination of the requirement in section 86 for the candidate to get such consent and the requirement in paragraph 67(4)(b) that the consent originally secured be included with the submission of the candidate's nomination papers. If Parliament wished the consent to be included with the original nomination papers, it likely equally wished the consent to be provided along with any report in the change of auditor status.