

**ELECTION HANDBOOK
FOR CANDIDATES, THEIR OFFICIAL AGENTS
AND AUDITORS**

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EC 20190

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1. Introduction

This handbook is designed to help candidates and their official agents comply with the provisions of the Act. While this handbook is officially approved by the Chief Electoral Officer, it does not take precedence over the legislation and, therefore, should be read in conjunction with the Act.

It represents the Chief Electoral Officer's interpretation of the *Canada Elections Act*. Any candidate considering other interpretations is strongly advised to seek independent legal counsel. In cases where different interpretations are followed, the Chief Electoral Officer or the Commissioner of Canada Elections can only offer assurance that they will carefully examine the merits of specific situations before appropriate action is taken.

Any questions about this handbook should be directed to the Office of the Chief Electoral Officer, 257 Slater Street, Ottawa, Ontario, K1A 0M6; by telephone: 1 800 486-6563; or on our Web site at www.elections.ca.

Candidates and official agents often require more technical information than the general public and are asked to identify themselves when communicating with Elections Canada. Their request will be promptly redirected toward the appropriate specialist.

All alleged violations of the *Canada Elections Act* should be brought in writing to the attention of the Commissioner of Canada Elections, at 257 Slater Street, Ottawa, Ontario, K1A 0M6, fax (613) 990-4877 or 1 800 663-4908. The Commissioner of Canada Elections, who is responsible for compliance with, and enforcement of the Act, assesses each case brought to his attention in relation to the law. Reliance on this handbook would be an important factor in his deliberations.

Elections Canada

2. Roles and responsibilities

2.1. Candidate

The provisions outlined below apply to all candidates and, unless otherwise specified, pertain to both general and by-elections.

2.1.1. Definition

A candidate is a person whose nomination as a candidate at an election has been confirmed by the local returning officer within 48 hours of a nomination paper being filed for this individual. Once confirmed, a candidate remains a candidate in that election until the candidate's official agent complies with the financial reporting requirements of the Act, including the payment of any unpaid claims, the filing of any amended return, and the disposal of any surplus electoral funds.

[2(1), 65(1), 71(1)]

In addition, for the purposes of the financial provisions, a candidate is deemed to be a candidate from the time contributions are accepted or electoral campaign expenses are incurred.

[82, 365]

2.1.2. Eligibility

Any Canadian citizen who is at least 18 years of age, may be a candidate, unless specifically disqualified under the Act. Candidates need not reside in or be registered on the list of electors for the electoral district in which they seek election. They may be candidates in only one electoral district at any election.

[65]

2.1.3. Leave of absence

Every employer of employees to whom Part III of the Canada Labour Code applies, shall, on application, grant any such employee leave of absence, with or without pay, to seek nomination as a candidate and to be a candidate for the period during the election period that may be requested.

[80]

2.1.4. Responsibilities and obligations

2.1.4.1. Election expenses

The candidate and the official agent should budget the campaign carefully, as election expenses are subject to limitations. In general, the candidate is responsible for all debts relating to the campaign and which remain at the end of the campaign. There is one exception, if the campaign is entitled to a reimbursement of election expenses and

personal expenses but has spent less than 30% of the expense limit, the official agent is personally responsible for the return of the overpayment.
[440, 446, 464(3)]

Candidates are officially nominated as soon as the returning officer confirms the nomination. Confirmed candidates must, following the election, file the Candidate's Electoral Campaign Return, even if they withdraw their nomination.
[2(1), 71(1), 451]

2.1.4.2. Personal expenses

The candidate must submit a personal expense statement in the prescribed form, along with supporting vouchers, to the official agent within three months of polling day, even if no expense is incurred. This statement must include all personal expenses paid by the candidate.
[409, 451(2)(c), 456(1), 464]

2.1.4.3. Nomination of candidate's representatives

A candidate can attend or appoint representatives to attend certain functions related to the electoral process. The Act grants a candidate or the candidate's representatives the right to enter any apartment building, condominium building or other multiple residence between 9:00 a.m. and 9:00 p.m. for the purpose of canvassing at the doors to the apartments or units in the case of an apartment building or a condominium building and campaigning in a common area in the case of a multiple residence. This right, however, does not extend to buildings whose residents' physical and emotional well-being may be harmed as a result of permitting canvassing or campaigning.
[81]

One representative may attend each registration desk, to observe but not take part in the proceedings of the registration officer.
[161(3)]

One representative may be present for the verification and counting of the special ballots received at the office of the returning officer at a time established by the Chief Electoral Officer.
[274]

A candidate may appoint persons as poll representatives (i.e., scrutineers) to observe proceedings at the ordinary and advance polling stations while voting is taking place, and during the counting of the votes. Only two representatives for each candidate may be present at any given time, with the exception of mobile polls where only one representative is allowed to be present and no representative is entitled to impede the voting process. In addition, a candidate's representative may not, during the hours of polling, at a polling station, use a communication device.
[135(1), 136(1)]

At a predetermined time and date after polling day, as published in the Notice of Election by the returning officer, the returning officer conducts the validation of the results. The candidate should attend or at least be represented.

[294]

2.1.5. Polling day activities

The Act has a number of provisions that control the environment inside or near a polling station to help ensure that a voter can cast his or her vote in an atmosphere free from partisan political influence.

[165, 166]

2.1.5.1. Activities at the polls

It is an offence to display any device, which could be taken as support to a candidate or a registered party in a polling station. Examples of such devices include any document, folder or other device that is visible inside the polling station and that bears the name of a candidate or party, a party emblem, colour, etc.

[166(1)(6)]

To facilitate the work of candidates' representatives and, at the same time, respect the provisions of the Act, folders and other materials supplied for use in a poll should be white or manila or some other politically neutral colour, without candidate or party identification on or in them.

To help make candidates' representatives easily recognizable, the deputy returning officer will supply an identification badge to be worn in the polling station.

[166(2)]

Candidates will receive copies of the Guidelines for Candidates' Representatives. These guidelines list what they may or may not do during polling hours. It is therefore important that candidates make their representatives aware of these directives.

2.1.5.2. Promotion on polling day

On polling day, no sound-amplifying equipment on an automobile, truck, or other vehicle may be used anywhere in the electoral district, and no sound-amplifying equipment, whether mobile or not, can be used within audible range of a polling station, to promote or oppose a candidate or a party.

[165]

Subject to the prohibition on political activity in a polling station or in any place where voting at an election is taking place, and on the use of sound equipment, a candidate can continue to campaign on polling day by:

[165, 166]

- making political speeches, meeting with electors and distributing publicity material; or
- displaying lawn signs, billboards, signs on vehicles and buses, inviting electors to vote for the candidate.

The *Canada Elections Act* prohibits the public display of partisan material in or on a polling station or in a hall, window or door of a polling station. This provision is backed up with an appropriate clause in the lease of polling places distributed by Elections Canada.

[166(1)]

The purpose of these restrictions is to ensure an electoral zone of a non-partisan nature for electors, where they will be able to exercise their political choices freely. The duty of election officials is to maintain the non-partisan nature of this electoral zone; political parties and candidates are expected to co-operate in this.

2.2. Official agent

An official agent, who will act as the treasurer of the campaign, must be appointed before any election expense can be paid or contributions received. This appointment may need to be made prior to the candidate's nomination and even before the issue of the writ.

[83(1)]

A candidate may have only one official agent at a time.

[83, 88]

The official agent of a candidate is responsible for administering the candidate's financial transactions for the candidate's electoral campaign and for reporting on those transactions in accordance with the provisions of the Act.

[436]

Election workers and supporters of the candidate should be notified of this appointment at once. If the official agent resigns, dies, becomes incapable of performing the tasks or the appointment is revoked, the candidate must appoint someone else immediately.

[87]

2.2.1. Qualifications and eligibility

To act as official agent of a candidate, a person must be capable of entering into contracts in the province or territory in which the candidate is seeking election.

[84]

Beyond this minimum qualification, the official agent should be a person capable of managing finances.

The following persons are not eligible to be the official agent of a candidate:
[84]

- a candidate;
- an election officer;
- an auditor appointed as required by this Act;
- a person who is not qualified as an elector; or
- a person who does not have the capacity to enter into contracts in the province in which this person ordinarily resides.

A candidate may have only one official agent at a time. If the official agent ceases to hold office for any reason, ceases to be qualified, ceases to be eligible, or the appointment is revoked, the candidate must appoint a new official agent at once. The candidate must immediately notify in writing the Chief Electoral Officer of the new appointment, stating the name and personal address of the new official agent. The candidate must also provide a declaration from the new official agent, indicating this person's acceptance of the appointment.

[86, 87, 88]

2.2.2. Responsibilities and obligations

2.2.2.1. Acceptance of appointment

The official agent must accept the appointment in writing on the declaration included with the candidate's nomination paper. Failing this, the nomination of the candidate will not be received by the returning officer.

[86]

2.2.2.2. Books and records

Both the candidate and the official agent are responsible for budget control and for ensuring that the election expenses limit is respected.

[497(3)(o), 502(1)(c)]

The official agent is required by the Act to maintain all books and records of contributions and expenses. This includes:

- obtaining the names, addresses and class of contributor for everyone who contributes money or makes a non-monetary contribution or a loan to the candidate (even if less than \$200);

- the issuing and controlling of official receipts; and
[438(3)]
- accounting for official receipts issued and the return of unused receipts to the returning officer within one month after polling day.
[438(2)]

Elections Canada supplies the necessary paper copies of the books, records and forms which will be available to the official agent at the office of the returning officer once the candidate's nomination is confirmed. Some of these forms are also available electronically from the Elections Canada Web site.

2.2.2.3. Financial accounts

The Act requires the official agent to open a separate bank account for each election 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, as soon as he or she is appointed.
[437(1), 437(2)]

2.2.2.4. Payment of expenses

The official agent is the only person authorized under the Act to pay or to authorize the payment of election expenses. The only exceptions are the candidate's personal expenses paid by the candidate, and the expenses paid out of a petty cash fund by persons authorized in writing by the official agent.
[411(1), 438(4)]

2.2.2.5. Receipt of contributions

The official agent must receive all contributions to the campaign. This means that all money given to a canvasser or to the candidate must be turned over to the official agent for deposit in the account. Neither the candidate nor any campaign worker may keep any part of that money to pay expenses.
[438(2)]

Non-monetary contributions, such as the donation or loan of goods and services, must also be made through the official agent. This is important because non-monetary contributions can also be expenses and, given the limitations on election expenses, the official agent must keep a detailed record of such donations.
[438(2)]

2.2.2.6. Returns

The official agent must record all financial information for the preparation of the Candidate's Electoral Campaign Return, and for examination by the candidate's auditor.
[451, 453(1)]

2.3. Auditor

On appointing an official agent, the candidate must appoint an auditor who is qualified under the provisions of the Act.

[83(2)]

A candidate may have only one official agent at a time.

[83, 88]

2.3.1. Qualifications and eligibility

The auditor appointed by the candidate must be a member in good standing of any corporation, association or institute of professional accountants. The auditor may also be a partnership of which every partner is such a person.

[85(1)]

The auditor must be appointed at the same time as the official agent is appointed.

[83(2)]

The following persons are not eligible to act as an auditor of a candidate:

[85(2)]

- an election officer;
- the candidate or any other candidate;
- the official agent of the candidate or any other candidate;
- the chief agent of a registered party or an eligible party; or
- a registered agent of a registered party.

In addition to being disqualified as a candidate's auditor, the above-mentioned individuals cannot participate in any other capacity in an audit, or in the preparation of an audit report, if they are a partner or an employee of either:

[453(5)]

- the auditor; or
- the firm with which the auditor is associated.

A person may be appointed as an auditor for a candidate notwithstanding that the person is member of a partnership that has been appointed as an auditor for:

[85.1]

- a candidate in an electoral district other than the electoral district of the candidate for whom the appointment is being made; or
- a registered party.

A candidate may have only one auditor at a time for each election. If the auditor ceases to hold office for any reason, ceases to be qualified, ceases to be eligible, or the appointment is revoked, the candidate must appoint a new auditor at once. The candidate must immediately notify in writing the Chief Electoral Officer of the new appointment, stating the name and the permanent address of the new auditor and provide a statement from the new auditor, indicating acceptance of the appointment.

[86, 87, 88]

2.3.2. Right of access

The auditor must have access, at any reasonable time, to all documents of the candidate, and may require the candidate or the candidate's official agent to provide any information or explanation that is necessary to enable the auditor to prepare the audit report.

[453(4)]

2.3.3. Responsibilities and obligations

To fulfil the role of auditor, the individual selected by the candidate must:

- provide a statement accepting the nomination to be filed along with the nomination paper of the candidate;
[86]
- examine the books, records, invoices, bank statements and negotiated cheques, and perform the tests and verification necessary to permit the completion of the auditor's report;
[453(1)] and
- prepare a report to the official agent stating whether the return accurately presents the financial transactions contained in the books and records of the candidate. The auditor must also complete a checklist for audits in the form prescribed by the Chief Electoral Officer.
[453(3)]

2.3.4. Auditor's fees

The Act provides for a subsidy to be paid out of public funds directly to the auditor, upon confirmation of compliance with the relevant provisions of the Act. If the subsidy paid to the auditor by the Receiver General is less than the total fee charged by the auditor, the candidate is responsible to pay the excess.

[467]

3. Nominations – procedures and fees

3.1. Required documents

Candidates must submit specific documents for nomination, which are described in the following sections.

3.1.1. Nomination of candidates by electors

The candidate must be nominated by at least 100 persons (50 in the case of an electoral district listed in Schedule 3 of the Act) qualified as electors in the electoral district where the candidate intends to run. Those electors must sign the nomination paper and their signatures must be witnessed. Elections Canada recommends that candidates submit a larger number of names than required in order to avoid any problems when the names are verified by the returning officer to see if each is a qualified elector in the electoral district.

[66(1)(e), 66(1)(f), 71(2)(b)]

3.1.2. Nomination paper

The nomination paper must be submitted to the returning officer using the prescribed form obtained from the returning officer.

[66(1)(a)]

The nomination paper must include the required minimum number of witnessed signatures of qualified electors who are nominating the candidate.

[66(1)(e), 66(1)(f)]

3.1.3. Party leader's letter of endorsement

If the candidate is endorsed by an eligible or registered political party, or at a by-election by a registered party, a letter of endorsement signed by the leader of the party (or, at a general election, by a delegated official) must be submitted at the same time as the nomination paper, if the candidate wishes to have the political affiliation appear on the ballot paper.

[67(4)(c)]

An eligible or registered party may endorse only one prospective candidate in each electoral district. Only one registered party's name can appear on the ballot as endorsing a candidate.

[68(1)]

A candidate who is not endorsed by an eligible or registered party shall indicate on the nomination paper whether the candidate wishes to be referred to as "independent" or have nothing shown in the election documents. In the latter case, no designation

whatsoever would appear on the ballot with the name of the candidate and the candidate must sign page 2 of the nomination paper.
[66(1)(a)(v)]

3.1.4. Acceptance of official agent and auditor

The official agent must signify acceptance of his or her appointment by signing on page 6 of the candidate's nomination paper. In addition, the nomination paper must be accompanied by the statement of acceptance signed by the auditor in order to be received by the returning officer.
[66(1)(b), 67(4)(b)]

3.1.5. Taking of oaths

In addition to filing the necessary documents, candidates must make a declaration as to consent to nomination and designation of official agent and auditor. This oath must be taken before the returning officer at the time of filing, or before a person authorized to receive oaths. In either case, the candidate must take the oath in the presence of a witness. The witness must, in turn, take the oath of witness to consent of candidate before the returning officer.
[66(1)(b), 66(1)(c), 66(1)(d), 67(3)]

3.2. Nomination deposit

The nomination process requires the submission of a deposit of \$1,000 in Canadian funds, money order or cheque, payable to the Receiver General for Canada.
[67(4)]

All candidates are entitled to a full refund of their nomination deposits, provided they comply with the reporting requirements under the *Canada Elections Act* (i.e. they return to the returning officer, within one month after polling day, the unused official receipts, and they transmit to the Chief Electoral Officer, within four months after polling day, the Candidate's Electoral Campaign Return and related documents as required by the Act).
[468]

3.3. Deadline

A candidate's nomination documents may be filed by the witness to the candidate's consent with the returning officer after the issue of the latter's Notice of Election, but no later than 2 p.m. Monday, the 21st day before polling day.
[67(1)]

The returning officer must verify the nomination documents within 48 hours which will result in the returning officer confirming or refusing the nomination.
[71(3)]

3.4. Advantages of early filing of nomination paper

During the verification process, if there is a problem with the nomination documents, a candidate can correct or replace them until 2 p.m. on the 21st day before polling day. If the candidate files at the last minute, there is no opportunity to make any corrections if the above deadline has passed.

Candidates receive access to the preliminary lists of electors as soon as their nomination is confirmed by the returning officer.

[94(1)]

Official agents can issue tax receipts for contributions received in the period starting with the day on which the candidate is confirmed.

[438(3)]

3.5. Confirmation of nomination

No later than 48 hours after a nomination paper is filed, the returning officer will give notice to the prospective candidate of the confirmation of the nomination or of the refusal to accept the nomination.

[74(1)]

Before accepting or refusing a nomination, and in accordance with instructions issued by the Chief Electoral Officer, the returning officer will verify that:

- the nomination paper is complete, including the appropriate number of signatures of electors nominating the candidate; and
[71(2)(a)]
- that the signatures are those of electors who are entitled to vote in the electoral district in which the candidate intends to seek nomination.
[71(2)(b)]

3.6. Withdrawal

A candidate may withdraw from the election at any time prior to 5 p.m. on the closing day for nominations. If the candidate is one endorsed by a registered party and the withdrawal takes place after 2 p.m. on the closing day for nominations, the party will not be able to appoint a replacement candidate.

[74(1)]

The candidate who withdraws from the election must file, in person, a signed declaration to that effect with the returning officer. Two persons who are qualified as electors in the electoral district in which the candidate was confirmed must witness the declaration.

[74(1)]

A candidate who withdraws from the election must still submit the Candidate's Electoral Campaign Return and related documentation and declarations, together with the auditor's report and checklist. If no contribution was received and no expense was incurred, a return marked "NIL" must be submitted together with the Candidate's Statement of Personal Expenses and the auditor's report and checklist.
[451(1)]

3.7. Death of a candidate

If a candidate endorsed by a registered party dies during the period beginning at 2 p.m. on the fifth day before the close of nominations and ending at the close of the polls on polling day, the election in the electoral district is postponed and the closing day for nominations in that electoral district is moved to the second Monday following the date of the candidate's death.
[77(1), 469]

When an officially nominated candidate dies before the date specified for submitting the Candidate's Electoral Campaign Return, the official agent still has the responsibility of complying with the Act.
[451(1), 451(6), 456(2)]

3.8. Documents available to candidate

3.8.1. Notices and documents

Candidates can obtain copies of the following election notices and documents from the returning officer:

- two copies of the Advance Poll Notice;
[172(b)]
- one copy of the Notice of Mobile Poll;
[125(3)]
- one copy of the Notice of Grant of a Poll;
- up to 10 copies of a document setting out a description of the boundaries of the polling divisions in the electoral district;
[64(4)] and
- up to 5 copies of the returning officer's aide-mémoire (election calendar).

3.8.2. Lists

Candidates can obtain copies of the following lists from the returning officer:

- one printed copy of the preliminary lists of electors and one electronic copy, which includes Canadian Forces electors and electors who temporarily reside outside Canada, prepared pursuant to the Special Voting Rules and on the request of a candidate, the returning officer may provide a maximum of four additional printed copies of the preliminary list of electors;
[94(1), 94(2)]
- on the 11th and 3rd days before polling day one paper and one electronic copy of the revised and official lists of electors, and on request, up to 4 additional paper copies. It is recommended that candidates inform the returning officer of the number of additional copies required as early as possible to avoid unnecessary printing costs;
[107(3)]
- the list of names of the revising agents for the electoral district; and
[33(5)]
- the list of names and addresses of the deputy returning officers and poll clerks who will act at each polling station on polling day.
[112]

Lists of electors may only be used for communicating with electors during an election period, and for soliciting contributions and campaigning.

[110(3)]

3.8.3. Publications, forms and guidelines

Candidates can obtain copies of the following publications, forms and guidelines from the returning officer:

[478(1)]

- up to 5 copies of the consolidation of the *Canada Elections Act*, prepared by Elections Canada;
- up to two additional copies of this handbook;
- a kit containing the necessary documents to keep financial records and to submit returns;
- at the request of the official agent, official receipts for contributions for income tax purposes;
[477]

- forms for appointing representatives at the polls and registration desks (i.e., scrutineers); [135(2)] and
- the Guidelines for Representatives of Candidates at the polls and registration desk.

3.8.4. Documentation of results

Candidates can obtain copies of the following election documents concerning the election results from the returning officer:

- the returning officer’s Certificate of the Result of Voting or, after a judicial recount, the judge’s certificate; [297, 308(b)] and
- a copy of the Return of the Writ (the official declaration that a candidate is elected or that the election resulted in a tie). [315(1)]

3.9. Nomination of election officers

Candidates or registered parties, as the case may be, may recommend lists of persons for appointment by returning officers to act in specific election officer positions. If they fail to make their recommendations or have not recommended a sufficient number of suitable persons, returning officers may solicit names from other sources. [33(1), 34(1), 36, 39(3), 39(4)]

3.9.1. Deputy returning officers and poll clerks

The returning officer appoints one deputy returning officer in each polling station from lists supplied by the current candidate representing the registered party whose candidate finished first in the electoral district in the last election, and appoints one poll clerk in each polling station from lists supplied by the current candidate of the registered party whose candidate finished second. [34(1)]

The returning officer will also appoint in the same manner deputy returning officers and poll clerks, as required, to verify the outer envelopes and to count local special ballots from lists of persons recommended by registered parties. [273(2)]

3.9.2. Revising agents

As close as is possible, the returning officer appoints one half of the revising agents among the persons recommended by the registered party whose candidate finished first in

the last election in the electoral district, and one half from among the persons recommended by the registered party whose candidate finished second.
[33(1)]

3.9.3. Registration officers

As close as is possible, the returning officer appoints one half of the registration officers among the persons recommended by the candidate of the registered party whose candidate finished first in the last election in the electoral district, and one half from among the persons recommended by the candidate of the registered party whose candidate finished second.
[39(3)]

4. Election financing

4.1. Campaign bank account

4.1.1. Financial institution

The Act requires the official agent to open a separate bank account for each election 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.
[437(1)]

4.1.2. Identification of account

The account must indicate the date on which it was opened and the name of the account holder as follows: Name of official agent, official agent for Name of candidate, year.
[437(2)]

For example:

“Roland Jones, official agent for Susan Brown, 2000”

4.1.3. Using the account

Cheques must be made payable to the official agent for the campaign.

All financial transactions of the candidate in relation to an electoral campaign that involve the payment or receipt of money are to be paid from, or deposited to, the account.
[437(3)]

The official agent may also authorize in writing the use of a petty cash fund.
[438(4)]

4.1.4. Closure of the bank account

The account must be closed after the election, the withdrawal or death of the candidate and following the disposal of any surplus electoral funds, generally within 60 days of receipt of the notice of estimated surplus from the Chief Electoral Officer.
[437(4)]

Where there are no surplus electoral funds, the account must be closed upon the resolution of unpaid claims.

On closing the bank account, the official agent must provide the Chief Electoral Officer with the final statement of the account.
[437(5)]

4.2. Contributions

4.2.1. Definition

A contribution means a monetary contribution or a non-monetary contribution.
[2(1)]

4.2.2. Monetary contributions

4.2.2.1. Definition

A monetary contribution is an amount of money that is not repayable.
[2(1)]

4.2.2.2. Fund-raising activities

A fund-raising activity is a function, such as dinner, cocktail party, etc., held by way of selling tickets for the primary purpose of soliciting contributions for a candidate.
[408(1)]

The amount of contribution is the difference between the price of the ticket and the fair market value of what the ticket entitles the purchaser to obtain.
[2(1), 408]

Official receipts may be issued for the contribution portion of the admission price. This amount must be considered a contribution made by the contributor named on the receipt. This must be reported under the appropriate class of contributor and, for any amount in excess of \$200, the names of persons or organizations, their addresses and the amount of the contribution must be disclosed. In the case of a contribution by a numbered company, the official agent must also obtain the name of the chief executive officer or president of that company.
[2(1), 408, 451(2)]

For example, if the official agent organizes a dinner with a fair market value of \$45 per attendee, and charges \$250 for admission to the function, an official receipt for \$205 may be issued to each person purchasing a ticket. The official agent must record in the candidate's return the name, address, class and the amount of \$205 as a contribution for each person or organization purchasing a ticket. [408]

4.2.2.3. Official tax receipts

For eligible monetary contributions, the official agent must deposit the money in the campaign account and may issue an official tax receipt in the name of the contributor for tax credit purposes.

[437(3), 438(3)]

Official tax receipts may only be issued by the official agent for monetary contributions received in the period beginning on the day the nomination of the candidate is confirmed by the returning officer and ending on the day which is 30 days after polling day, as long as the contributions received after polling day were in transit on polling day. Outside this period, only a registered agent of a registered party may issue official tax receipts for monetary contributions to the registered party.

Further information governing the issue of official receipts can be found in Information Circular 75-2R4 published by Canada Customs and Revenue Agency, which is included in the candidate's election financing kit distributed by returning officers to candidates whose nominations are confirmed by them.

4.2.2.4. Loans

Interest on loans whether it is payable or accrued or the commercial value of the use of the money without charge or at less than its commercial value for the period of the campaign is an election expense.

[2(1), 407(1)]

Loans are treated as a contribution for disclosure purposes. Their source, the amount of interest or discount and any amount paid or outstanding must be disclosed in the Candidate's Electoral Campaign Return.

[451(3)]

4.2.3. Non-monetary contributions

4.2.3.1. Definition

A non-monetary contribution is the commercial value of a service, other than volunteer labour, or of property or the use of property or money, to the extent that they are provided without charge or at less than their commercial value.

[2(1)]

Non-monetary contributions received by the candidate's official agent, to the extent that the property or service is used to directly promote or oppose a registered party, its leader or a candidate during an election period, are also election expenses.

[407(1)]

4.2.3.2. Use of capital asset

Candidates and official agents use many capital assets (such as desks, tables, filing cabinets, and computers) during an election.

The official agent must value the use of a capital asset at the current commercial value, or the cost of rental of a similar asset, which must be recorded as a contribution as well as an election expense. Consequently, the same rules apply for these capital assets as for other types of contributions.

[2(1), 2(2), 407(1)]

Capital assets purchased by the campaign and used during the election could form part of the campaign surplus and must be dealt with accordingly at the end of the campaign.

4.2.3.3. Commercial value

Goods and services must be recorded at commercial value. The commercial value is the normal price paid by anyone for goods or services in an open and competitive market. Thus, when discounts not available to other candidates are granted, the full commercial value, including all appropriate taxes, must be disclosed and the amount of the discount must be recorded as a contribution. These discounts are those other than normal trade discounts.

[2(1)]

Goods or services provided without charge by someone who normally provides them and the property or service is used to directly promote or oppose a registered party, its leader or a candidate during an election period, must be recorded as an election expense as well as a contribution at full commercial value.

[2(1)]

For example, when a printer provides a pamphlet to a candidate at no charge or an office equipment supplier loans a computer at no charge, the full commercial value must be recorded both as a contribution and as an election expense.

When a supplier normally provides the same type of goods or services on a commercial basis, the lowest amount charged to customers for the same type or quantity of goods or services, including all appropriate taxes, is the commercial value to be used.

[2(1)]

If the goods or services are provided free of charge by someone who is not in the business of providing such goods or services, to the extent that the property or service is

used to directly promote or oppose a registered party, its leader or a candidate during an election period, the commercial value of the goods or services must be recorded as an election expense and a contribution if the value of the non-monetary contribution exceeds \$200.

[2(2)]

The commercial value of goods or services with a value of \$200 or less provided free of charge by a person who does not commercially supply such goods or services is deemed to be nil therefore, it is neither a contribution nor an expense.

[2(2)]

For example, if a homeowner, who is not a contractor, supplies construction material worth \$175 left over from the renovation of his or her home, the goods would not be considered an election expense.

4.2.3.4. No official tax receipts

The *Income Tax Act* prohibits the issuance of official receipts by an official agent for non-monetary contributions. These can only be issued for monetary contributions.

[438(3)]

Further information governing the issue of official receipts can be found in Information Circular 75-2R4 published by Canada Customs and Revenue Agency, which is included in the candidate's election financing kit distributed by returning officers to candidates whose nominations are confirmed by them.

4.2.4. Sources of contributions

No person or entity, other than an electoral district association or a registered party may make a contribution or a loan to a candidate's electoral campaign that comes from money, property or the service of another person or entity.

[438(1)]

For example, if an employer provides money to an employee for the purpose of making a contribution, the contribution must be in the name of the employer and not in the name of the employee.

This prohibition also precludes one candidate's campaign from contributing directly money, goods or services to another candidate's campaign.

[438(1)]

There are no restrictions on the amount of contributions that can be accepted by the official agent. However, the following are not eligible to make a contribution to a candidate:

[404(1)]

- a person who is not a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*;
- a corporation or an association that does not carry on business in Canada;
- a trade union that does not hold bargaining rights for employees in Canada;
- any foreign political party; or
- a foreign government or an agent of a foreign government.

Where a contribution coming from any of the above sources is accepted, the official agent must within 30 days after becoming aware of the ineligibility, return the contribution unused to the contributor or, if that is not possible, pay the amount of it or, in the case of a non-monetary contribution, an amount equal to its value, to the Chief Electoral Officer who shall forward the amount to the Receiver General for Canada. The official agent must also disclose these returned contributions in the appropriate Part of the Candidate's Electoral Campaign Return.

[404(2)]

4.2.5. Acceptance of a contribution

A contribution is deemed accepted by the official agent in the case of a monetary contribution when it is deposited in the campaign bank account, and for a non-monetary contribution when the official agent authorizes the use of the property or service.

4.2.6. Identification of contributors

All contributions to the candidate must be reported in the Candidate's Electoral Campaign Return by class of donor.

[451(2)(f)]

The following are the classes of donors:

- individuals;
- business or commercial organizations;
- governments;
- trade unions;
- corporations without share capital other than trade unions; and
- unincorporated organizations or associations other than trade unions.

The name and address of any contributor who makes a loan, advance, deposit, contribution or gift in excess of \$200 in the aggregate must also be disclosed in the candidate's return.

[451(2)(h)]

In the case of a loan, advance, deposit, contribution or gift by a numbered company in excess of \$200 in the aggregate, the official agent must also obtain the name of the chief executive officer or president of that company.

[451(2)(h.1)]

4.2.7. Contributions from registered parties

Transfers from the registered party to the candidate are contributions.

[2(1)]

The registered party may make contributions to the candidate consisting of the following:

[2(1)]

- transfers of funds;
- the difference between the normal commercial value of merchandise (such as printing and office supplies) and the price charged to the official agent;
- the regular salary of employees of the party, assigned to assist the candidate in his or her campaign;
- the regular salary of those individuals assigned by a party or Minister to assist a candidate in his or her campaign and paid out of public funds; or
- a proportion of expenses incurred to promote or oppose a candidate or a party. (The Office of the Chief Electoral Officer will accept the basis of allocation used by the official agent, provided that in the opinion of the Chief Electoral Officer, it is reasonable and provided that the auditor agrees that the allocation is reasonable and in keeping with this handbook.)

All of these examples are considered contributions by a registered party and must be reported by the official agent in the Candidate's Electoral Campaign Return.

[(451(2)(h)]

The registered agent of a registered party may not transfer contributions to a candidate after polling day except to pay unpaid claims that are disclosed in the Candidate's Election Expenses Return or as authorized by the Chief Electoral Officer, or a court under Part 18 of the Act.

[476]

4.2.7.1. Directed contributions

Registered parties and any of their trust funds may also include as part of the funds transferred to the candidate, contributions received on behalf of the candidate. These contributions are called directed contributions. They are contributions by the original contributor to the candidate via the chief agent or registered agent of the registered party or the trust fund.

The official agent must report these contributions in the Candidate's Electoral Campaign Return by class of donors as if they were received directly from the original donor, and if the contribution exceeds \$200, the name, address and amount of the contribution must also be disclosed in the Candidate's Electoral Campaign Return. In the cases where such contributions come from a numbered company, the official agent will also have to disclose the name of the chief executive officer or president of the company.

[451(2)(h.1)]

4.2.8. Contributions from electoral district associations

Transfers from electoral district associations of registered parties are contributions.

[2(1)]

The commercial value of non-monetary contributions provided by the electoral district association of a registered party for the election of a candidate and used during the writ period must be considered as contributions and expenses.

[2(1), 407(1)]

No electoral district association may transfer contributions to a candidate after polling day except to pay unpaid claims that are disclosed in the Candidate's Election Expenses Return or as authorized by the Chief Electoral Officer, or a court under Part 18 of the Act.

[476]

4.2.8.1. Responsibility of official agent

Where a candidate's official agent receives monetary and non-monetary contributions from an electoral district association, the official agent must obtain from the electoral district association written assurance that all contributions accepted on behalf of the candidate were from a source authorized by the Act.

[404(1)]

In addition, the official agent must obtain a written statement providing the names, addresses and amounts of any persons or organizations whose contribution exceeding \$200 formed part or all of the contribution to the candidate. The official agent must then disclose these names, addresses, classes of contributors and amounts in the Candidate's Electoral Campaign Return.

[451(2)(h)]

In the case of a contribution by a numbered company, the official agent must also obtain the name of the chief executive officer or president of that company.
[451(2)(h.1)]

In the absence of information identifying a contributor who contributed through an electoral district association, the official agent must obtain, for disclosure in the return, the name and address of every contributor by class who made a contribution of a total amount of more than \$200 to that electoral district since the election before the one to which the return relates.
[451(2)(i)]

4.2.9. Contributions of trust fund

The commercial value of non-monetary contributions provided by a trust fund established for the election of a candidate and used during the writ period must be considered as contributions and expenses.
[2(1), 407(1)]

4.2.9.1. Responsibility of official agent

Where a candidate's official agent receives monetary and non-monetary contributions from a trust fund established for the election of a candidate, the official agent must obtain from the trust fund written assurance that all contributions accepted on behalf of the candidate were from a source authorized by the Act.
[404(1)]

In addition, the official agent must obtain a written statement providing the names, addresses, classes of contributors and amounts of any persons or organizations whose contribution exceeding \$200 formed part or all of the contribution to the candidate. The official agent must then disclose this information in the Candidate's Electoral Campaign Return.
[451(2)(h)]

In the case of a contribution by a numbered company, the official agent must also obtain the name of the chief executive officer or president of that company.
[451(2)(h.1)]

In the absence of information identifying a contributor who contributed through a trust fund established for the election of a candidate, the official agent must obtain, for disclosure in the return, the name and address of every contributor by class who made a contribution of a total amount of more than \$200 to that trust fund since the election before the one to which the return relates.
[451(2)(i)]

4.2.10. Miscellaneous contributions

4.2.10.1. Contributions by candidate

Candidates are permitted to contribute to their own campaign through the official agent.
[404(i)]

If the contribution is one of money that the official agent deposits in the campaign account, the candidate is entitled to receive an official tax receipt.
[437(3), 438(3)]

4.2.10.2. Unpaid claims

With some exceptions, an unpaid claim that, on the day that is 18 months after polling day of the election to which the return relates, remains unpaid, in whole or in part, is deemed to be a contribution to the candidate.
[450(1)]

4.2.11. Anonymous or ineligible contributions

There are no restrictions on the amount of contributions that can be accepted by the official agent. However, the following are not eligible to make a contribution to a candidate:
[404(1)]

- a person who is not a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*;
- a corporation or an association that does not carry on business in Canada;
- a trade union that does not hold bargaining rights for employees in Canada;
- any foreign political party; or
- a foreign government or an agent of a foreign government.

An anonymous contribution is any monetary or non-monetary contribution whose contributor or class of contributor cannot be determined by the candidate's official agent, if the amount or commercial value of the contribution is \$200 or less.
[452(a)]

A contribution is also considered an anonymous contribution, if the amount or commercial value of the contribution is over \$200 and the official agent is unable to disclose the amount, the name, address and the class of the contributor and in the case of a contribution by a numbered company, the name of the chief executive officer or president of that company.
[452(b)]

4.2.11.1. Exceptions

The “collection plate” or passing-the-hat method of funding the campaign would not necessarily result in anonymous contributions, even though the total collection may exceed \$200. The official agent must ensure that no single contribution exceeds \$200 and that all contributions are from eligible contributors as defined by the Act.

[452(a)]

However, if it is apparent that someone placed an amount exceeding \$200 in the collection, then that contribution must be judged as anonymous.

[452(b)]

Funds raised through the sale of T-shirts, pins, etc., would also not be considered anonymous contributions if the amount paid in excess of the cost of the item does not exceed \$200 and the class of donor is known.

[452(a)]

The official agent will have to determine the classes of contributor present at such activities and then enter the total of contributions received from such a collection under the category “funds obtained through various activities” in the Candidate’s Electoral Campaign Return under the appropriate classes of donors.

[451(2)(f)]

4.2.11.2. Returning to the contributor

Where a contribution coming from any ineligible sources is received, the official agent must within 30 days after becoming aware of the ineligibility, return the contribution unused to the contributor.

[404(2)]

The official agent must also disclose these returned contributions in the appropriate section of the Candidate’s Electoral Campaign Return.

[451(2)(k)]

4.2.11.3. Remitting amount to the Chief Electoral Officer

In the case of an ineligible contribution, if it is not possible for the official agent to return the contribution to the contributor, the official agent must pay the amount of it or, in the case of a non-monetary contribution, an amount equal to its value, to the Chief Electoral Officer who shall forward the amount to the Receiver General for Canada.

[404(2)]

The official agent must also, without delay, pay the amount of any anonymous contribution or, in the case of an anonymous non-monetary contribution, an amount equal to its value, to the Chief Electoral Officer who shall forward the amount to the Receiver General for Canada.

[452]

The official agent must also disclose these transactions in the appropriate section of the Candidate's Electoral Campaign Return.
[451(2)(k)]

4.2.12. Official tax receipts

4.2.12.1. Tax credits for contributors

The *Income Tax Act* provides tax credits for contributions of money to confirmed candidates during an election as follows:
[560(1)]

- 75% of the first \$200;
- 50% of the next \$350; and
- 33 1/3% of amount over \$550.

The maximum credit allowable is \$500. To claim the tax credit, taxpayers must submit an official receipt when filing their tax return.
[560(1)]

4.2.12.2. Use of the form

The Chief Electoral Officer provides official tax receipts for use by official agents.
[477]

An official agent may only issue an official receipt for a monetary contribution. Only the official agent may sign the official receipts, although canvassers may issue temporary non-official receipts when receiving contributions.
[438(3)]

In certain circumstances, the Chief Electoral Officer will provide duplicate receipts where a request is submitted to him in writing by the official agent of the candidate.

4.2.12.3. Obtaining official receipts

The returning officer will provide official receipts to official agents only after the candidate's nomination has been confirmed. If more receipts are needed, the returning officer will provide them until 30 days after polling day.
[478(1)]

4.2.12.4. Deadline for the return of official receipts

Official receipts may be issued up to 30 days after polling day for monetary contributions to a candidate whose nomination was confirmed by the returning officer, and received during the election, or in transit on polling day.

[438(3), 560(1)]

The unused receipts and copies of the receipts issued to contributors must be returned by the official agent to the returning officer no later than 30 days after polling day. The receipts are pre-numbered and must be all accounted for. In addition, the official agent must send another copy of the official receipts issued to the Chief Electoral Officer.

[478(2)]

4.2.12.5. Report to Canada Customs and Revenue Agency

Within four months after polling day, the official agent must submit a return to Canada Customs and Revenue Agency concerning contributions received and official receipts issued, and forward with the return the first copy of all receipts issued. This return is in the candidate's kit provided by the returning officer.

[*Income Tax Act*]

4.3. Electoral campaign expenses

4.3.1. Definition

An "electoral campaign expense" of a candidate is an expense reasonably incurred as an incidence of the election, such as

[406]

- an "election expense";
- a "personal expense"; and
- any fees of the candidate's auditor, and any cost incurred for a recount of votes cast in the candidate's electoral district that have not been reimbursed by the Receiver General.

4.4. Election expenses

4.4.1. Definition

An "election expense" includes any cost incurred, or non-monetary contribution received, to the extent that the property or service for which the cost was incurred, or the non-monetary contribution received, is used to directly promote or oppose a registered party, its leader or a candidate during an election period.

[407(1)]

“Cost incurred” refers to an expense that is incurred, whether it is paid or unpaid.
[407(4)]

A limit is imposed on the election expenses that a candidate may incur during an election.
[440]

4.4.2. Election expenses limit

4.4.2.1. Calculation of spending limits

The election expenses limits are determined on the basis of the following four steps.

Step 1: Names on the Lists of Electors
[441(1)]

Spending limits are initially based on the number of names appearing on the preliminary lists of electors or on the revised lists of electors for the electoral district, whichever is greater. The Chief Electoral Officer publishes in the *Canada Gazette* not later than the 31st day before polling day the number of names on the preliminary lists of electors and no later than the 7th day before polling day the number of names on the revised lists of electors.

The limit is calculated as follows:

- \$2.07 for each of the first 15,000 electors;
- \$1.04 for each of the next 10,000 electors; and
- \$0.52 for each elector over 25,000.

Step 2: Adjustments for Electoral Districts with Number of Electors Below the National Average
[441(2)]

The Act also provides higher limits for candidates running in electoral districts where there are fewer electors than the national average. This adjustment adds to the actual number of names for the electoral district.

Step 3: Adjustments for Geographically Large Electoral Districts
[441(3)]

If the number of electors per square kilometre of the electoral district is less than 10, the candidate’s spending limit is increased by the lesser of \$0.31 per square kilometre and 25% of the amount calculated in Step 1 above.

Step 4: Indexing of Limits

The limits determined by the above criteria are then adjusted by the inflation adjustment factor in effect as of the day of the issue of the writ.
[440]

4.4.2.2. Death of a candidate

In the case where an election is postponed following the death of a candidate endorsed by a registered party, all candidates at this “postponed election” are entitled to election expense limits equal to one and one half times the amount normally stipulated.
[441(4)]

4.4.2.3. Notification of spending limits

To calculate the amounts that may be spent in each electoral district, the Chief Electoral Officer must determine the number of names on the preliminary lists of electors not later than the 31st day before polling day, the number of names on the revised lists of electors no later than the 7th day before polling day and have this information published in the *Canada Gazette*.
[93(3), 105(2)]

Following the publication of the number of names on the preliminary lists of electors, the Chief Electoral Officer notifies the returning officer of the spending limits applicable to their respective electoral districts. In turn, the returning officer advises each campaign of the spending limit. Following the publication of the number of names on the revised list of electors, candidates will be advised directly by the Chief Electoral Officer of any revisions to their spending limits.

This information is also available on Elections Canada’s Web site at www.elections.ca.

4.4.3. Expenses that meet the definition

It is important to note that to be considered an election expense, a good or service, whether purchased or donated, must directly promote or oppose during an election, a particular registered party, its leader or a candidate.
[407(1)]

4.4.3.1. Examples of election expenses

Within the context of the definition, some examples of an election expense would be:
[407(3)]

- the production of advertising or promotional material and its distribution, broadcast or publication in any media or by any other means;
- the payment of remuneration and expenses to, or on behalf of, a person for their services as an official agent or any other capacity;

- the cost of securing a meeting space or the supply of light refreshment at meetings; and
- any product or service provided by a government, a Crown corporation or any other public agency. (Note that election advertising using a means of transmission of the Government of Canada is prohibited.)

4.4.3.2. Volunteer labour

Volunteer labour is any service provided free of charge by someone who is not self-employed outside of the person's normal working hours. It does not include service provided by a person who is self-employed if the service is one that is normally sold or otherwise charged for by the volunteer. The commercial value of volunteer labour need not be reported.

[2(1)]

Examples of volunteer labour are:

- a sign painter who is not self-employed working outside his or her normal working hours painting signs for the campaign;
- a secretary employed by a local business, who is on an annual leave or compensatory leave, working as a secretary in the campaign office;
- a self-employed insurance salesman working for the campaign free of charge doing door-to-door canvassing; or
- unemployed or retired persons working anytime.

The service of a person who is self-employed is not volunteer labour if the service is one for which that person is normally remunerated. An example of donated labour which must be reported as contributions and election expenses is a self-employed printer who prints free of charge material that directly promotes the candidate. The amount normally charged is a contribution and an election expense from the first dollar.

[2(1)]

Incidental expenses of volunteers for such things as meals, lodging and transportation, if paid by the campaign, are considered as election expenses and should therefore be reported as such in the Candidate's Electoral Campaign Return. If the incidental expenses are paid by the volunteer, subject to the commercial value for non-monetary contributions, these expenses may also need to be considered election expenses and reported in the return.

[2(2), 407(1)]

4.4.3.3. Expenses of senators and elected members

Where a senator or a person who is or was, during the last session, an elected member of the House of Commons or any provincial legislature campaigns on behalf of a candidate, the expenses related to that person's involvement in the campaign are election expenses of the candidate and must be authorized beforehand by the official agent.

[407(1)]

For example, if a minister or other Member of Parliament travels from Ottawa to a candidate's electoral district to assist in the candidate's campaign, the costs of travelling to the electoral district and the costs of accommodation and transportation within the electoral district are election expenses of the candidate.

Alternatively, if travel to the candidate's electoral district includes official ministerial business above and beyond assisting in the candidate's campaign, a proportion of the cost of the trip must be allocated as an election expense of the candidate. This allocation should be made on the basis of the proportion of time spent working on each activity.

The Office of the Chief Electoral Officer will accept the basis of allocation used by the official agent, provided that in the opinion of the Chief Electoral Officer, it is reasonable and provided that the auditor agrees that the allocation is reasonable and in keeping with this handbook.

4.4.3.4. Exempt staff of ministers, party leaders and party employees

If staff employed in the above categories engage in political activities the costs related to the involvement of those persons in the campaign during normal working hours are election expenses.

[407(1)]

For example, if a member of the minister's exempt staff engages in election campaigning work for the minister, for any other candidate, or for the party during normal working hours, a proportionate share of that person's salary together with any direct costs, such as travel and living expenses, must be included as election expenses of the particular campaign.

However, exempt staff of ministers must check the rules governing their political activities.

4.4.3.5. Poll agents

The payment of remuneration to poll agents and any related expenses paid by the campaign, such as meals and transportation, are election expenses.

Unremunerated poll agents are volunteer labour and are not election expenses. However, the payment by the campaign of any incidental expenses would be considered an election expense.

[407(1), 407(3)(b)]

4.4.3.6. Commercial value of used signs

Some signs can be used for more than one election. When signs are used in a second or subsequent election, the amount to be recorded as a non-monetary contribution and an election expense is the current commercial value for similar signs. That commercial value is the amount it would cost to purchase similar new signs, that is, the current replacement cost.

[2(1)]

If used signs are refurbished, restored or repainted, the value to be recorded is the amount it would cost to purchase a sign similar to the restored sign.

4.4.4. Expenses that do not meet the definition

Certain expenses incurred for the campaign are electoral campaign expenses but are not to be included as election expenses and therefore are not subject to the spending limit.

[407(1)]

4.4.4.1. Pre-writ expenses

Any expense incurred for goods and services consumed before the issue of the writ is not an election expense.

[407(1)]

For example, the cost of a flyer distributed prior to the issue of the writ is not an election expense.

The cost of promotional material sent by mail prior to the issue of the writs and distributed during the election period, but over which the candidate has no possible control when the election is called, would not be an election expense. The important consideration in these cases is the control of the candidate or official agent over the distribution after the issue of the writ.

[407(1)]

4.4.4.2. Nomination expenses

The expenses incurred for a candidate's nomination, during an election, other than costs incurred for the production of advertising or promotional material and its distribution, broadcast or publication in any media or by any other means, are also excluded from election expenses under the Act. However, people seeking nomination must be extremely cautious in their campaigning to ensure that the expenses incurred are truly for nomination purposes.

[407(2), 407(3)(a)]

Activities giving rise to these expenses should be directed exclusively to the members of their party and not to the electorate at large.

4.4.4.3. Notice of nomination meetings

Notices of nomination meetings must be limited to 1% of the election expense limits at the last general election in the same electoral district. If the boundaries of the electoral district have changed since the preceding general election, the one-percent limit for that electoral district is based on an amount determined by the Chief Electoral Officer. Further information on this amount is available from the returning officer or Elections Canada. This information is also available on Elections Canada's Web site at www.elections.ca.
[439(1)]

The notice of the holding of a nomination meeting should only identify the party organization and state the purpose, date, time and location of the meeting. These notices should not contain photographs of any individual seeking the party nomination.

4.4.4.4. Fund-raising expenses

The official agent must authorize all fund-raising functions.
[438(5)]

The expenses incurred in holding a fund-raising function, other than promotional material, are not election expenses, provided that a fixed charge is made for admission and the charge exceeds the proportional per capita cost of the function. However it is important to note that the net proceeds of such a function, however, are revenue of the campaign and must be reported.
[407(2)]

Where an activity combines fund-raising and promotion or opposition, that portion of the cost of the activity which directly promotes or opposes during an election must be reported as an election expense.
[407(1), 407(2)]

4.4.4.5. Unused inventory

Any material which was never used during the election period and remains on hand at the end of the election does not promote or oppose the election of a candidate and therefore is not an election expense.

However, such material should be considered an electoral campaign expense other than an election expense and retained, since it is subject to examination by the auditor.
[407(1)]

4.4.4.6. Other excluded expenses

There are other types of expenses which are not included as election expenses:
[407(1)]

- nomination deposit;
- salary paid to a candidate;
- cost of victory parties held after the close of polls on polling day;
- legal costs for recounts;
- charges by lawyers for legal services;
- proportion of rent and other costs of campaign offices before the writ is issued and after polling day;
- interest on loans for the period after polling day during which the loans are still outstanding; and
- costs associated with preparing the various reports required by the Act, other than the payment of remuneration to a person for their services as an official agent during an election period.

4.4.5. Election advertising

Election advertising means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated.

[319]

Election advertising thus includes articles such as billboards, bus signs, pamphlets, lawn signs, flyers, stickers, lapel buttons or pins, T-shirts, caps, etc.

[319]

4.4.5.1. Identification of election advertising

All election advertising that promotes or opposes a registered political party or the election of a candidate, including taking a position on an issue with which a registered party or candidate is associated, must indicate that it is authorized by the official agent of the candidate.

[320]

For example, a pamphlet promoting candidate Jane Brown should display the following message:

Authorized by the official agent of Jane Brown.

4.4.5.2. Rates charged for advertising

Candidates are entitled to the lowest rate made available to any advertiser for the same amount of broadcasting time purchased during the period. For example, when a candidate purchases 20 minutes of time for 40 commercials in a certain time slot, he or she is entitled to the lowest rate that any other advertiser would pay for those commercials, during the same time slot.

[348(a)]

Similarly, in the print media, a candidate must be charged the lowest rate that would be charged to any other advertiser for the same amount of space during the permitted period. For example, a candidate purchasing 500 agate lines of advertisements on 10 different occasions, should not be charged a higher rate than any other advertiser purchasing the same amount of space under the same conditions.

[348(b)]

4.4.5.3. Blackout period

The Act specifically prohibits the transmission to the public in an electoral district of an election advertising by any means on polling day before the close of all the polling stations in the electoral district.

[323(1)]

This prohibition would not apply to the following:

- the transmission of a notice of an event that the leader of a registered party intends to attend or an invitation to meet or hear the leader of a registered party;

[323(2)]

- the transmission of a message that was previously transmitted to the public on the Internet and that was not changed during the blackout period;

[324] and

- the distribution on polling day of pamphlets or the posting of messages on signs, posters or banners.

[166]

No person may knowingly conduct election advertising, or cause it to be conducted using a means of transmission of the Government of Canada. In addition, no person may broadcast election advertising with respect to an election outside Canada.

[330(1), 330(2)]

The transmission in an electoral district on polling day, before the close of all of the polling stations in that electoral district, of the result of an election survey that have not previously been transmitted to the public is prohibited. In addition, the Act prohibits the transmission of the result or purported result of the vote in an electoral district to the

public in another electoral district before the close of all polling stations in that other electoral district.
[328]

4.4.6. Payment of account

4.4.6.1. Liability for contracts

Unless a contract is entered into by the candidate or the candidate's official agent, or by a person authorized in writing by the official agent, a claimant cannot demand payment from the candidate. All bills for election-related expenses are the responsibility of the candidate, with the exception of any overpayment in the reimbursement of paid election expenses and paid personal expenses of the candidate, which is the personal responsibility of the official agent. The official agent is not personally responsible for campaign debts.
[446, 464(3)]

An executory contract cannot be enforced unless a note signed by the candidate or official agent supports it. A contract is an executory contract if its completion depends on the performance of one of the terms of the contract at some time in the future.
[446]

4.4.6.2. Presentation of accounts

A person that has a claim to be paid for an expense in relation to an electoral campaign must send, within three months after polling day, the invoice or other document evidencing the claim to the candidate's official agent, or the candidate, if there is no official agent.
[444(1)]

A claimant is barred from recovery of a claim to be paid if the invoice or other document evidencing the claim is sent more than three months after the election, unless the claimant, the candidate or the official agent applies for, and is granted, an authorization from the Chief Electoral Officer for the late submission.
[444(2), 447(1)]

If the authorization is refused, or its conditions cannot be met, an application may be made to a judge to authorize the payment of a claim by the candidate through the official agent.

Any official agent who pays a late invoice without an authorization is in contravention of the Act.
[497(1)(t)]

If a claimant dies before the end of the three-month period without having sent the invoice or other document evidencing the claim, a new three-month period begins on the day on which the claimant's legal representative becomes entitled to act for the claimant.

4.4.6.3. Deadline for payment

All expenses incurred in the conduct or management of an election must be paid within four months after polling day.

[445(1)]

4.4.6.4. Unpaid expenses

If an official agent has not paid an invoice, within four months after the election, the amount owing can only be paid pursuant to an authorization from the Chief Electoral Officer obtained by the candidate, the official agent or the claimant.

[447]

If the authorization is refused, or its conditions cannot be met, an application may be made to a judge to authorize the payment of a claim by the candidate through the official agent.

[448]

The payment of invoices after those four months without an authorization constitutes an offence under the Act.

[445(1), 497(1)(t)]

4.4.6.5. Payment of unpaid claims

Any amount owing later than four months after polling day can only be paid pursuant to an authorization of the Chief Electoral Officer obtained by the candidate, the official agent or the claimant. If the authorization is refused, or its conditions cannot be met, an application may be made to a judge to authorize the payment of a claim by the candidate through the official agent.

[447, 448]

When an authorization is given for a claim to be paid, the official agent, after submitting the candidate's return, must then submit to the Chief Electoral Officer an updated version of the Candidate's Electoral Campaign Return within 30 days after making the payment.

[455(1)]

With some exceptions, an unpaid claim that, on the day that is 18 months after polling day for the election to which the return relates, remains unpaid, in whole or in part, is deemed to be a contribution to the candidate and will be published by the Chief Electoral Officer.

[450]

4.4.7. Disclosure and reporting requirements

4.4.7.1. Monetary expenses

If an electoral campaign expense of \$50 or more is incurred on behalf of the candidate by the official agent or by a person authorized in writing by the official agent, the official agent must keep a copy of the invoice prepared by the person who provided the goods or services to which the expense relates, together with proof that it was paid.

[410(1)]

Where an electoral campaign expense of less than \$50 is incurred on behalf of the candidate by the official agent or a person authorized in writing by the official agent, the person who made the payment must keep a record of the nature of the expense together with proof that it was paid.

[410(2)]

4.4.7.2. Non-monetary expenses

When an official agent receives a non-monetary contribution from a donor, the official agent must obtain complete documentation as to the commercial value of the goods or services donated, the name, address and class of the donor, so that it may be, subject to its commercial value, reported in the Candidate's Electoral Campaign Return as a contribution and as an expense.

[2(1), 2(2), 451(1)(c)]

4.4.7.3. Supporting documentation

The official agent is required to file with the Chief Electoral Officer (head office), within four months from polling day, along with the Candidate's Electoral Campaign Return, all documents evidencing expenses set out in the return, including bank statements, deposit slips and cancelled cheques.

[451(1)(c)]

4.5. Reimbursements

4.5.1. Maximum reimbursement of election expenses

A candidate who is elected or receives at least 15% of the valid votes cast at the election is entitled to a reimbursement of 50% of the actual paid election expenses and the paid personal expenses to a maximum of 50% of the election expenses limit.

[464(1), 465(2)]

When an officially nominated candidate dies after the close of nominations but before the closing of the polls, the deceased candidate is deemed to have obtained 15% of the valid votes cast and qualifies for a reimbursement of election expenses paid and personal expenses paid and a full reimbursement of the candidate's nomination deposit. Both reimbursements are payable to the official agent.

[468, 469]

The Act requires that the reimbursement cheque be made payable to the official agent and to no other person. However, if the reimbursement has been assigned, a letter to that effect sent to the Chief Electoral Officer and signed by the candidate and the official agent allows the cheque to be sent to a person other than the official agent. In all cases, however, this cheque will remain payable to the official agent.

[464(2), 465(3), 471(3)(b)]

Candidates may also qualify for an additional payment. When election expenses are paid in accordance with the Act and the necessary updated version of the return is filed with the Chief Electoral Officer following the filing of the initial return, the official agent may receive a further reimbursement of 50% of the additional election expenses paid.

However, this reimbursement is paid only when the candidate qualifies for the original reimbursement and when that additional reimbursement does not bring the total reimbursement to more than 50% of the maximum election expenses allowed.

[465(1), 465(2)]

4.5.2. Responsibility not to exceed limit

Since it is an offence for a candidate and an official agent to exceed the election expenses limit, the official agent should monitor closely any spending on election expenses.

[497(1)(s), 497(3)(p), 502(1)(c)]

4.5.3. Only expenses paid by the official agent are reimbursable

Only those election expenses that were paid by the official agent out of the campaign bank account, and those personal expenses of the candidate either paid by the official agent out of the campaign bank account or by the candidate, are included in the calculation of the reimbursement.

[465(2)(a)]

All non-monetary contributions, including those from the registered party and from the electoral district association of the registered party endorsing the candidate in the electoral district, will not be included in the calculation of the reimbursement of election expenses and personal expenses of the candidate.

[465(2)(a)]

4.5.4. Instalments

The Receiver General for Canada issues a cheque in the name of the official agent for the reimbursement of election expenses and personal expenses as follows:

[464(2), 465(3)]

- 15% of the maximum election expenses allowed as soon as the Chief Electoral Officer has received the return of the writ for the electoral district from the returning officer;
[464(1)] and
- the balance of the reimbursement will be paid upon receipt of the copy of the Candidate's Electoral Campaign Return from the returning officer and upon confirmation of compliance with the relevant provisions of the Act.
[465(1)]

Note that if the amount of the first payment is more than 50% of actual election expenses paid, the official agent will be required to reimburse the excess.

[464(3)]

4.5.5. Repayment of nomination deposit

All candidates, including those that withdraw by 5:00 p.m. on the day nominations close, are entitled to a full refund of their deposit provided they comply with the reporting requirements under the *Canada Elections Act* (i.e. they return to the returning officer, within one month after polling day, the unused official receipts, and they transmit to the Chief Electoral Officer, within four months after polling day, the Candidate's Electoral Campaign Return and related documents).

[468(1), 468(2)]

4.5.6. Payment of auditor

Upon receipt of the candidate's return and the auditor's invoice and upon confirmation of compliance with the relevant provisions of the Act, the Chief Electoral Officer authorizes payment of a subsidy of the auditor's fees.

[467]

This subsidy cannot exceed 3% of the election expenses of the candidate to a maximum of \$1,500. As well, the payment cannot be less than \$250.

[467]

Candidates are responsible to pay any fees charged by their auditors, which are in excess of the subsidy provided by the Chief Electoral Officer. Candidates are therefore recommended to have the auditor confirm the audit fees in writing, on appointment of the auditor.

4.5.7. Cost of recount

In some cases, a candidate may apply to the Chief Electoral Officer for reimbursement of the costs actually and reasonably incurred for a recount, up to a maximum of \$500 for any day that the judge certifies he or she spent carrying out the recount.

[310(1)]

Recounts can occur in one of two ways:

- at the request of the returning officer, automatically within four days after the validation of the results, if the number of votes separating the candidate receiving the highest number of votes and any other candidate is less than 1/1000 of the votes cast; [300(1)] or
- on the application of an elector, including a candidate since the candidate must be qualified as an elector, within four days after the validation of the results. [301(1)]

4.6. Personal expenses of the candidate

4.6.1. Incremental concept

Personal expenses are any reasonable expenses of the candidate that would not have been incurred had the individual not been a candidate. Such expenses are not subject to the election expenses limit.

[409(1)]

Other campaign workers may use the goods or services acquired for the use of the candidate, provided that there are no additional costs involved.

However, if in any situation, due to the involvement of campaign workers, there are costs incurred in excess of what the candidate would normally incur, these additional costs will have to be charged as an election expense subject to the spending limit.

For example, if the official agent rents a mini-bus for the candidate and several campaign workers, the official agent must charge, as an election expense subject to the limit, the difference between the commercial value of renting a normal passenger car and the commercial value of the vehicle actually rented.

In all cases, the amounts charged as personal expenses of the candidate must be incremental, reasonable and incurred by the candidate or by the official agent for the benefit of only the candidate. The Chief Electoral Officer will review the expenses to determine if they are reasonable.

[409(1)]

4.6.2. Categories

The categories of personal expenses of the candidate are:

- transportation costs to the electoral district;
[409(1)(a)]
- transportation costs within the electoral district;
[409(1)(a)]
- cost of temporary lodging necessary for the election;
[409(1)(a)]
- cost of meals and incidental expenses related to the campaign;
[409(1)(a)] and
- all other necessary related personal expenses, including childcare expenses, expenses relating to the provision of care for a person with a physical or mental incapacity for whom the candidate normally provides such care, and in the case of a candidate who has a disability, personal expenses that are related to the disability and that are incurred as a result of the campaign.
[409(1)(b), 409(1)(c), 409(1)(d)]

For more detail on these categories, see the prescribed form for reporting the candidate's personal expenses included in the candidate's kit.

4.6.3. Deadline for statement

Within three months after polling day, the candidate must submit in the prescribed form to the official agent the statement of personal expenses paid by the candidate, together with all supporting vouchers for any personal expense of \$50 or more and proofs of the payment for any expenses under \$50.

[456(1)(a), 410(1), 410(2)]

The candidate must submit to the official agent the Candidate's Statement of Personal Expenses even if no personal expense has been incurred.

[456(1)(b)]

5. Candidate's Electoral Campaign Return

The Act requires that all disbursements related to the election be reported by the official agent, whether or not they are election expenses.

[451]

The official agent makes all entries in the Working Paper and transmits these documents to the auditor as soon as possible. The auditor must be given sufficient time to perform the audit before the deadline for submitting the return to the Chief Electoral Officer.

After the audit has been performed and the necessary changes have been made in the Working Paper, the official agent can then complete the Candidate's Electoral Campaign Return, ensuring that no changes are made to the final figures unless the auditor has been consulted. The completed return should then be submitted to the auditor for final verification to permit completion of the audit report.

The necessary detailed forms are included in the kit provided by the returning officer at the time of the candidate's confirmation of nomination. Elections Canada also provides, on request, an electronic version of the return.

After the period of four months provided for the submission of the Candidate's Electoral Campaign Return, the Chief Electoral Officer publishes, in a manner that he considers appropriate, a summary of each candidate's return together with the auditor's name and, if it applies, an indication that the auditor's report on a return was qualified.

[412(3)]

5.1. Maintaining books and records

Proper books and records must be maintained in order to properly monitor and report on contributions and expenses and to comply with the *Canada Elections Act* and the *Income Tax Act*.

The necessary detailed forms to keep records and to submit returns are provided in the election expenses kit at the time of the confirmation of the nomination.

5.1.1. Supporting documentation

Where an expense of \$50 or more is incurred, on account of, or in the conduct or management of the election, a bill, showing the nature of the purchase must accompany the return, and the price charged, if any.

[410(1)]

Payments from petty cash funds held by the official agent or other persons authorized in writing by the official agent should be only for amounts less than \$50 and should be supported by vouchers; however, only proof of such payments needs to be transmitted to the Chief Electoral Officer with the return since vouchers for amounts under \$50 are not required to be transmitted.

[410(2)]

If goods or services are donated by a person or commercial organization that normally sells such goods or services, then a "no-charge" invoice should be provided showing the normal selling price of the goods or services donated.

[2(1), 451(1)(c)]

If the goods or services are being donated by a person or organization that does not issue invoices, a simulated invoice showing the date of the contribution, the name, address and class of the contributor, the nature of the goods or services contributed and the commercial value of such goods or services, should be prepared by the contributor or by the official agent. In the case of a contribution by a numbered company, the official agent must also obtain the name of the chief executive officer or president of that company.
[2(1), 2(2), 451(1)(c), 451(1)(h.1)]

The official agent must provide the auditor with access to:
[453(4)]

- copies of official receipts issued;
- bank statements and cancelled cheques;
- a list of cheques issued but not yet cashed at the bank;
- copies of all bills, vouchers, and proforma invoices;
- details of loans obtained;
- details of the proceeds of fund-raising functions and other miscellaneous revenues;
and
- the Candidate's Electoral Campaign Return.

5.1.2. Retention period

The *Income Tax Act* requires that the official agent keep records and books of accounts for all amounts contributed and all expenditures made in order that these amounts can be verified. The official agent must retain these records for two full years after the end of the calendar year to which the records or books of accounts relate.
[*Income Tax Act*]

For example, if an election had been held on November 12, 2000, books and records would have to be retained until December 31, 2002.

5.1.3. Destruction of books and records

The Act requires the returning officer to retain all returns forwarded to him or her by the Chief Electoral Officer and permit any elector to examine them and make extracts from them, for a period of six months.
[413(1), 413(2)]

This means that the Candidate's Electoral Campaign Return and all related documents can be seen and copied by electors for a period of up to six months after the deadline for submission of the return. Although returning officers are not required by law to provide copies to electors, copies are normally provided at a cost of \$0.25 per page. At any time after the initial six months, the information contained in the returns is also available by contacting Elections Canada or on the Elections Canada Web site.
[413(2)]

Since documents are destroyed by the returning officer after three years or sooner on the written order of the Chief Electoral Officer, it is recommended that candidates make copies of documents for their own purposes.
[413(3)]

5.2. Content of the return

The Candidate's Electoral Campaign Return, which the official agent must send within four months after polling day to the Chief Electoral Officer, pursuant to the *Canada Elections Act*, consists of the following 14 parts:

5.2.1. Part 1 – Summary

This part includes information on the candidate and the official agent. It also lists the documents being submitted and provides a summary of the information on the return that will be published by the Chief Electoral Officer.
[451(2)(f), 451(2)(g), 451(2)(h)]

5.2.2. Part 2 – Declarations

This part contains the sworn statements of the candidate and the official agent regarding the completeness and the accuracy of the return.
[451(1)(d), 451(1)(e)]

5.2.3. Part 3 – Statement of contributions received - Summary

This part summarizes by class of contributor, all contributions received (money, property, services, discounts and loans).
[451(2)(f), 451(2)(g), 451(2)(h)]

5.2.4. Part 4 – Statement of contributions received - Details of operating loans

This part lists, by class of contributor, the name and address of each lender, as well as the date, principal, interest rate or discount, amounts repaid, and balance owing of the loan.
– Details of operating loans
[451(3)]

5.2.5. Part 5 – Statement of contributions received - Details of monetary contributions greater than \$200

This part lists funds raised by various activities and all contributions of \$200 or less received by the official agent, by class of contributor. In addition, if a contribution exceeds \$200, the name, address, class of contributor and the amount contributed must be disclosed.

[451(2)(h)]

5.2.6. Part 6 – Statement of contributions received - Details of non-monetary contributions

This part lists, by class of contributor, the name and address of contributors and the commercial value of contributions of property or services and of discounts granted by suppliers. Non-monetary contributions with a commercial value of \$200 or less are reported only by total amount and by class of contributor.

[451(2)(h)]

5.2.7. Part 7 – Statement of contributions received - Contributions returned to donor or otherwise dealt with in accordance with the Act

This part lists, by class of contributor, the name and address of contributors, the amount of contribution or the commercial value of property or service granted by suppliers that were returned to the donor or remitted to the Chief Electoral Officer. The official agent must also indicate the dates on which the contributions were received and returned or remitted.

[451(2)(k)]

5.2.8. Part 8 – Details of transfers from an electoral district association

This part provides details of transfers from an electoral district association. It also lists, by class of contributor, the names and addresses of contributors that contributed more than \$200 in total to an electoral district association. If the specific contributor information is unavailable, all contributors who contributed to the electoral district association an amount in excess of \$200 since the last election must be disclosed.

[451(2)(b), 451(2)(i)]

5.2.9. Part 9 – Details of transfers from trust fund established for the election of a candidate

This part provides details of transfers from a trust fund established for the election of the candidate. It also lists, by class of contributor, the names and addresses of contributors who contributed more than \$200 in total to a trust fund established for the election of the candidate. It also provides the amount of the contribution. If the specific contributor information is unavailable, all contributors who contributed to that trust fund an amount in excess of \$200 since the last election must be disclosed.

[451(2)(b), 451(2)(i)]

5.2.10. Part 10 – Details of transfers from registered party or one of its trust funds

This part provides details of transfers from the registered party or one of its trust funds. Where the contribution exceeds \$200, it will also list by class of contributor the names, addresses, and amount of contributions that were directed through the party to the candidate.

[451(2)(b), 451(2)(i)]

5.2.11. Part 11 – Statement of electoral campaign expenses

This part lists all of the electoral campaign expenses of the candidate by date, and provides the name of the supplier, the cheque and voucher numbers, the amount paid, the non-monetary contribution received or the amount to be paid, and a classification of the expense by nature and its commercial value.

[451(2)(a), 451(2)(b)]

5.2.12. Part 12 – Statement of electoral campaign expenses other than election expenses

This part provides the official agent with a means to explain those electoral campaign expenses that are not included in the election expenses of the candidate. It recaps the name of the supplier, the cheque, voucher number, the amount of discount, the unpaid amount and the expenditure classification. It also lists loan payments and transfers to the registered party and the electoral district association of the registered party.

[451(2)(b)]

5.2.13. Part 13 – Statement concerning personal expenses

This part is a summary of the candidate's personal expenses classified by nature of the expenditure (cost of transportation to and within the electoral district, temporary lodging, meals, etc.) and distinguishing personal expenses paid by the candidate from those recorded by the official agent.

[451(2)(c)]

5.2.14. Part 14 – Statement of unpaid claims

This part provides a listing of claims that remain unpaid, indicating the name of the supplier, the class of contributor to which the supplier belongs (on a day that is 18 months after polling day, with some exceptions, an unpaid claim becomes a contribution of the supplier) and the amount of the claim. If the claim is a disputed claim, the official agent will note the disputed amount next to the agreed amount.

[451(2)(d), 451(2)(e)]

5.3. Deadline for filing

5.3.1. When and where

Within four months of polling day, the official agent is required to transmit the audited Candidate's Electoral Campaign Return to the Chief Electoral Officer (head office).
[451(4)]

A candidate or the official agent may apply to a judge for an order relieving the official agent from the obligation to provide the Candidate's Electoral Campaign Return where the documents have been destroyed by an act of God or superior force, including a flood, fire or other disaster.
[462(1), 462(2)]

A person applying for such an order must notify the Chief Electoral Officer that the application has been made.
[462(1)]

5.3.2. Supporting documentation

The official agent must file the return along with the official agent's and candidate's declarations, all documents evidencing the expenses set out in the return, including bank statements and cancelled cheques.
[451(1)(c)]

An elected member who does not file the required documentation, including the declaration of the candidate, will not be allowed to sit or vote in the House of Commons, until they are provided or made, as the case may be.
[463(2)]

5.3.3. Auditor's report and checklist

The official agent must include with the return the auditor's report, checklist and invoice for fees.
[451(1)(b)]

5.3.4. Extension by Chief Electoral Officer

If the official agent cannot transmit the return within four months after polling day, prior to expiry of this four month period, the official agent or the candidate may apply to the Chief Electoral Officer for an authorization to transmit the return and declarations within an extended time.
[458(1)(a)]

If the authorization is refused or the filing of the return within the extended period cannot be met, within two weeks after the rejection or within two weeks after the expiration of the extended period, as the case may be, an application may be made to a judge to allow for the transmission of the return and declarations within an extended time.

[459(1)(b)]

Otherwise, the agent and the candidate may be liable to prosecution.

[497(1)(u), 497(1)(v), 497(3)(r), 497(3)(s)]

5.4. Amended return

5.4.1. Errors and omissions

The Chief Electoral Officer may, in writing, request the official agent or the candidate to correct the return, within a specified period.

[457(2)]

The candidate or the official agent may apply to a judge for an order relieving them from complying with a request to correct the return.

[459(1)(a)]

Such application must be made within the time period specified by the Chief Electoral Officer for the correction, or within two weeks after the expiration of that period.

[459(2)]

The Chief Electoral Officer must be notified of such an application.

[459(1)]

5.4.2. Authorization of the Chief Electoral Officer

The Chief Electoral Officer may on the written application of a candidate or the candidate's official agent who becomes aware of the need for a correction, authorize the correction of a Candidate's Electoral Campaign Return or any updated document since the original filing, if he is satisfied by the evidence submitted by the applicant that the reason for the application was for :

[458(1), 458(2), 458(3)]

- the illness of the applicant;
- the absence, death, illness or misconduct of the official agent or a predecessor;
- the absence, death, illness or misconduct of an agent, a clerk or an officer of the official agent, or a predecessor of one of them; or
- inadvertence or an honest mistake of fact.

5.4.3. Corrections by Chief Electoral Officer

The Chief Electoral Officer may correct a Candidate's Electoral Campaign Return or any updated document provided since the original filing, if the correction does not materially affect its substance.

[457(1)]

For example, the reclassification of an expense would be the type of correction that could be made to a Candidate's Electoral Campaign Return. An omission in the return could not be remedied by this process. It would require that an updated version of the return be filed by the official agent.

5.4.4. Payment of unpaid claims

Any amount owing later than four months after polling day can only be paid pursuant to an authorization of the Chief Electoral Officer obtained by the candidate, the official agent or the claimant. If the authorization is refused, or its conditions cannot be met, an application may be made to a judge to authorize the payment of a claim by the candidate through the official agent.

[445(1), 447(1)]

When an authorization is given for a claim to be paid, the official agent must then submit to the Chief Electoral Officer an updated version of the Candidate's Electoral Campaign Return within 30 days after making the payment.

[455(1)]

An unpaid claim that, on the day that is 18 months after polling day for the election to which the return relates, remains unpaid, in whole or in part, is deemed to be a contribution of the unpaid amount to the candidate.

[450(1)]

The contribution provisions would not apply to the following:

[450(2)]

- a claim that is the subject of a binding agreement to pay;
- a claim that is the subject of a legal proceeding to secure its payment;
- a claim that is the subject of a dispute as to the amount the candidate was liable to pay, or the amount that remains unpaid, or
- a claim that has been written off by the creditor as an uncollectible debt in accordance with the creditor's normal accounting practices.

If a candidate or an official agent believes that any of the above circumstances applies to an unpaid claim disclosed in the return already filed, the candidate or the official agent must accordingly notify the Chief Electoral Officer on a day that is before 18 months after polling day.

[450(3)]

6. Candidate's statements of surplus

6.1. Definition

The surplus amount of electoral funds that a candidate receives for an election is that amount by which the candidate's electoral revenues, such as:

[471]

- monetary contributions made to the candidate;
- an election expense or personal expense for which the candidate was reimbursed;
- the candidate's nomination deposit for which the candidate was reimbursed; and
- any other amount that was received by the candidate for the candidate's electoral campaign and that is not repayable;

are more than the candidate's electoral campaign expenses paid by the candidate's official agent and the following transfers:

- any funds that the candidate transfers, during the election, to the registered party that endorsed the candidate, or to an electoral district association of that registered party in the candidate's electoral district; and
- any amount of a reimbursement of election expenses and personal expenses of the candidate that the candidate assigned to that registered party.

6.2. Notice of estimated surplus

If the Chief Electoral Officer estimates that the Candidate's Electoral Campaign Return indicates a surplus of electoral funds, the Chief Electoral Officer will issue a notice of the estimated amount of surplus to the official agent who will then be required to submit the statement of surplus.

[472(1)]

6.3. Disposition of surplus

The official agent of a candidate is required to dispose of the surplus of electoral funds within 60 days after receiving the notice of estimated surplus. Any excess of revenues over expenses must be paid to:

[473(1)]

- in the case of a candidate who was endorsed by a registered party, to the registered party or to an electoral district association of that registered party in the candidate's electoral district;
[473(2)(a)] or
- in any other case, to the Receiver General for Canada.
[473(2)(b)]

6.4. Deadlines for disposition

The official agent of a candidate is required to dispose of the surplus of electoral funds within 60 days after receiving the notice of estimated surplus.

[473(1)]

An official agent of a candidate who has a surplus of electoral funds but has not received a notice of estimated surplus shall dispose of that surplus within 60 days after, as the case may be,

[472(2)]

- the later of the reception of the final instalment of the reimbursement of the candidate's election expenses and personal expenses and the reimbursement of the candidate's nomination deposit;
[472(2)(a)] or
- the provision of the Candidate's Electoral Campaign Return, if the candidate did not receive either of the reimbursements mentioned above.
[472(2)(b)]

6.5. Filing the Candidate's Statement of Surplus

An official agent of a candidate must, within 7 days after disposing of a candidate's surplus electoral funds, notify the Chief Electoral Officer, by means of the Candidate's Statement of Surplus, of the amount and date of the disposal and to whom the surplus was transferred.

[474(1)]

The Chief Electoral Officer will publish this information as soon as practicable after the disposition of the surplus of electoral funds by the official agent.

[474(2)]

7. Compliance and enforcement

7.1. Commissioner of Canada Elections

The Commissioner of Canada Elections ensures that the *Canada Elections Act* is complied with and enforced. Each case brought to the Commissioner's attention is assessed in light of the Act and the particular circumstances of the case. The decision to prosecute or to apply compliance measures must be taken by the Commissioner and may not be delegated or imposed. Any reliance in this publication would nevertheless be an important factor in the Commissioner's deliberation.

With the exception of offences relating to peace and good order at elections, the prosecution of offences under the *Canada Elections Act* can only be undertaken with the prior written consent of the Commissioner. The Commissioner may institute a prosecution following an inquiry, on the Commissioner's own initiative or after the receipt, within six months after its commission, of a written complaint alleging the commission of the offence. A prosecution for an offence under the Act must be instituted within eighteen months after the day on which the offence was committed, where the Commissioner believes on reasonable grounds that an offence under the Act has been committed and is of the view that the public interest justifies it. The Commissioner may also apply to a competent court, during an election period, for an injunction or may enter into a compliance agreement with a contracting party to ensure compliance with the Act. Once complied with, a compliance agreement terminates any prosecution of the contracting party and prevents the Commissioner from instituting such a prosecution.

7.2. Offences and punishment

All of the offences and penalties are found in Part 19 of the *Canada Elections Act*. The offences are either strict liability offences or offences requiring that the prosecution prove that the accused intended to commit the offence. Strict liability offences do not require the prosecution to prove an intention to commit the offence. It is a defence open to the accused to demonstrate that he or she acted with due diligence.

Candidates' and official agents' offences are found under Part 19 at section 497 of the *Canada Elections Act*.

The offence provisions are listed in sections 480 to 499 of the *Canada Elections Act*. The offences are categorized according to whether intent was required, and the procedures required to prosecute them:

- offences prosecuted on summary conviction;
- offences prosecuted on conviction on indictment.

7.3. Penalties

Penalties vary for convictions depending on the procedure selected to prosecute and the seriousness of the offence:

- on summary conviction, the person found liable may receive:
 - a fine of not more than \$1,000 to \$2,000;
 - imprisonment for a term of not more than three months to not more than one year;
 - or both.
- on conviction on indictment, the person found liable may receive:
 - a fine of not more than \$5,000;
 - imprisonment for a term of not more than five years;
 - or both.
- on summary conviction, the person found liable of an offence under subsection 495(4) (election survey and broadcasting) or the registered party found liable of an offence referred to in section 507 (registered party's election finances, such as: registered party's chief agent failing to provide the financial transactions return) may receive:
 - a fine of not more than \$25,000.

The Act also enables the court to impose additional penalties, having regard to the nature of the offence and the circumstances surrounding its commission. A person may be liable, in addition to any other penalty, to:

- perform community service;
- compensate any other person who has suffered damages as a result of the commission of the offence;
- perform any obligation the non-performance of which gave rise to the offence; or
- take any other reasonable measure that the court considers appropriate to ensure compliance with this Act;

- in the case a third party that is guilty of an offence under paragraph 496(1)(a) or (2)(a) (exceeding or circumventing election advertising expense limits), a fine of up to five times the amount by which the third party exceeded the election advertising expense limit.

Finally, the Act provides for additional penalties for persons convicted of illegal or corrupt practices:

- a person convicted of having committed an offence, that is an illegal or corrupt practice, is during the next five or seven years after the date of being convicted, not entitled to be elected to or sit in the House of Commons or hold any office in the nomination of the Crown or of the Governor in Council.

8. Appendix

8.1. Checklist for candidates and official agent

This checklist summarizes the measures that candidates and official agents must take to ensure that they comply with the *Canada Elections Act*. These points are explained in more detail in the preceding guidelines.

8.1.1. Candidate’s checklist

8.1.1.1. During the election

- 1. Appoint an official agent prior to accepting contributions or incurring electoral campaign expenses. This appointment may need to be made prior to filing your nomination paper and even before the issue of the writ.
- 2. Appoint an auditor immediately after appointing an official agent.
- 3. Ensure that the official agent is aware of the election expenses limit.
- 4. Confirm with your official agent that he or she has sole authority to control all financial aspects of your campaign.
- 5. Discuss the “Official Agent’s Checklist” items with your official agent periodically to ensure he or she is aware of responsibilities under the *Canada Elections Act*.

8.1.1.2. After the election

- 6. Submit to your official agent a detailed statement of your paid personal expenses within 3 months after polling day.
- 7. Check the accuracy and completeness of your return before submitting your declaration.
- 8. Submit to the Chief Electoral Officer your declaration concerning the Candidate's Electoral Campaign Return.

8.1.2. Official agent's checklist

8.1.2.1. During the election

- 1. Open an account in which all monies relating to the campaign will be deposited and from which all payments will be made.
- 2. (a) Advise campaign workers early in the campaign that your approval is required before incurring any expenses and that these expenses must be reported.
- (b) Advise campaign workers early in the campaign about prohibited sources of contributions.
- (c) Remind workers regularly of these requirements during the election period.
- 3. Keep up-to-date books and records of all expenses, contributions and unusual discounts.
- 4. (a) Authorize in writing, where appropriate, the payment of petty expenses.
- (b) Specify the amounts authorized.
- 5. Do not allow campaign advertising in any media on polling day.
- 6. Ensure that all signs and printed advertisements used during the election period are identified as having been authorized by you.
- 7. Return to the Chief Electoral Officer all anonymous contributions received and all unacceptable contributions that cannot be returned to the donor, making the cheque payable to the Receiver General for Canada.

- 8. Sign all tax receipts issued for contributions.
- 9. Ensure that any expense of \$50.00 or more is supported by a voucher and the proof of its payment. You must keep a record of the nature of all expenses of less than \$50.00 together with the proof that they were paid.

8.1.2.2. After the election

- 10. Return to the returning officer, within 1 month after polling day, any unused official receipts and the returning officer's copy of issued receipts.
- 11. Obtain, within 3 months after polling day, a statement of petty expenses from all persons who were given authority to incur such expenses.
- 12. Obtain from the candidate, within 3 months after polling day, a statement of personal expenses paid by him or her.
- 13. Do not pay claims received after 3 months following polling day without an authorization of the Chief Electoral Officer. If the authorization is refused or its conditions cannot be met do not pay without a judge's authorization.
- 14. Pay all lawful claims within 4 months after polling day.
- 15. (a) Ensure that the Candidate's Electoral Campaign Return is complete and has been audited.
- (b) Ensure that auditor is given sufficient time to audit and meet the deadline for reporting.
- 16. Check the accuracy and completeness of the election expenses return and declarations before submitting them.
- 17. File with the Chief Electoral Officer, within 4 months after polling day:
 - the Candidate's Electoral Campaign Return;
 - the auditor's report, checklist and invoice;
 - all documents evidencing expenses set out in the return, including bank statements, deposit slips and cancelled cheques; and
 - the candidate's and official agent's declarations concerning the return.

- 18. Send the green copies of the official receipts and one completed copy of form “Return of Contributions to a Candidate at an Election” to Canada Customs and Revenue Agency within 4 months after polling day.
- 19. Transfer, within 60 days of the receipt of the notice of estimated surplus of electoral funds, any campaign surplus to the party or the local association or, if the candidate was not sponsored by a party, to the Receiver General.
- 20. Advise the Chief Electoral Officer, within seven days after disposing of a candidate’s surplus electoral funds, in the prescribed form of the amount, date of the disposal and to whom the surplus was transferred.