

CANDIDATE'S CHECKLIST

The Elections Finances Act (Manitoba)
The Elections Act (Manitoba)

WHY A CHECKLIST?

Once an individual becomes a candidate for a provincial election there are many responsibilities that he or she has in addition to campaigning. These responsibilities often begin well before an election is called and extend even after election day. Although a candidate will spend most of the time campaigning and may delegate many of his or her responsibilities, the candidate is not isolated from campaign decisions and needs to exercise due diligence to ensure that there is a system of checks and balances in place to ensure compliance with the requirements of *The Elections Finances Act* (the EFA) and *The Elections Act* (the EA).

Overwhelmingly, Elections Manitoba works with campaigns to rectify unintentional instances of non-compliance without serious consequences; nevertheless, the consequences can be serious if legislative requirements are not followed. The purpose of these checklists is to let a candidate know what is required with respect to the EFA and the EA.

WHEN DOES AN INDIVIDUAL BECOME A CANDIDATE?

For the purposes of the EFA an individual becomes a candidate in an election through one of the following two methods:

- 1) By being nominated by a registered political party or a constituency association of a registered political party, or by filing nomination papers with a returning officer during an election (whichever is the earliest). Most candidates in elections are affiliated with registered political parties.
- 2) By declaring himself or herself to be an independent candidate by filing Form 905 (on which the candidate must specify the date as of which his or her candidacy period will begin) or by filing the nomination papers, whichever is earlier.

Campaign period – the period that begins on the day the election is called and ending two months after election day. If the period ends on a holiday, the next business day becomes the end of the campaign period.

Election period – the period that begins on the writ day for an election (the day an election is called) and ending on election day. A minimum election period is 33 days but it can extend as long as 48 days.

Election Day – the day on which voting takes place for the election at the voting stations. This is the last day of the election period.

Selecting the right campaign team is critical. There may be several people working for a campaign but **a candidate must appoint an official agent** [EFA s.10(3.3), EA s.53(2)] **and an auditor** [EFA s.10.3].

A CANDIDATE'S OFFICIAL AGENT [EFA s.10(4), 55, 86]

An official agent is responsible for the financial matters of a candidate's campaign including maintaining a financial account, keeping financial records, issuing income tax receipts (for registered candidates), paying expenses, and filing a financial statement.

An official agent has several specific statutory responsibilities to ensure that a candidate's campaign complies with the EFA. It is important, therefore, that everyone associated with the campaign be committed to keeping the official agent informed of decisions having a financial impact on the campaign. All campaign payments should be made through the official agent. The official agent must be aware of all campaign financial transactions and will need to be involved before, during, and after an election.

A CANDIDATE'S AUDITOR [EFA s.10.2 - 10.5]

A qualified auditor is one who is in good standing and has one of the following professional designations: Chartered Accountant (CA), Certified Management Accountant (CMA), or Certified General Accountant (CGA). Please note that some accounting governing bodies may not permit some members to engage in public practice (i.e. to conduct an audit) even though the members may be in good standing.

An auditor's role is to conduct an audit of Form 922 (Candidate's Financial Statements and Supporting Schedules) in accordance with Generally Accepted Auditing Standards and to provide a written opinion to the candidate's campaign. The opinion must be filed with Elections Manitoba along with Form 922. The role of the auditor in the electoral process is important, adding value to the reporting process by providing independence, objectivity and credibility. Consequently, the reliability of publicly disclosed information is enhanced, and compliance with the EFA is improved. The opinion does not certify that all matters conform to legislative requirements.

Ultimately, a candidate's campaign is responsible for ensuring that an auditor's fee is paid in full. However, an auditor will be paid from the public treasury for the value of audit services provided and billed up to an amount not exceeding \$1,500 (i.e. an auditor could receive less than the maximum amount). Auditors will be paid after submitting a bill for the full amount of services provided and after Form 922 has been filed, if the audit meets the requirements of the Act. In most cases auditors will be paid shortly after Form 922 has been filed. The auditor should send an invoice for the total audit fee to Elections Manitoba and to the candidate's campaign. The payment from the public treasury is not necessarily intended, and may not be sufficient, to cover the entire cost

of the audit. The portion of an audit fee that is in excess of an amount paid from the public treasury is the responsibility of the candidate's campaign. An auditor may also be eligible for an additional subsidy of up to \$500 to consult with the official agent to ensure that the record keeping system is sufficient for audit purposes. An invoice must also be submitted before a payment can be made for record keeping services.

PRIOR TO THE ELECTION PERIOD (prior to writ day)

Checklist for an individual who becomes a candidate prior to an election being called:

- An individual who becomes a candidate prior to an election being called has 15 days to notify Elections Manitoba (Form 907) of the person the candidate intends to appoint as official agent. However, notification on Form 907 does not replace the need to appoint that person in the nomination papers that are filed with the Returning Officer during an election period (Form 400) [EFA s.10(3.1) - (3.4)].
- A candidate must appoint a qualified auditor and provide notification to Elections Manitoba in the prescribed form (Form 908). Notification on Form 908 must be provided not later than the time of filing nomination papers with a returning officer during an election period under the EA. Notification of an auditor's appointment is not required until the time of filing nomination papers under *The Elections Act*; however, it is strongly recommended that an auditor be appointed as soon as possible. An early appointment allows for consultation and assistance in structuring record keeping and will likely result in a more efficient audit of a candidate's financial statements after the election [EFA s.10.3].
- Advise the official agent to attend at least one training session offered by Elections Manitoba (sessions are offered prior to and during an election period), to carefully review compliance assistance information provided by Elections Manitoba, and to contact Elections Manitoba if there are questions [Strongly recommended].
- If an official agent has not yet been appointed but an individual has become a candidate, the candidate must open an account in a financial institution and keep books and records for all financial transactions. After appointing an official agent, turn over all books and records to this individual. Every monetary transaction of the campaign must go through the financial institution account [EFA s.10(5), 55].
- Everyone associated with the candidate's campaign must be advised of the official agent's statutory role and the need to advise the official agent of all decisions having a financial impact on the campaign and all financial transactions of the candidate's campaign. Further, everyone associated with the candidate's campaign should be made aware that if they collect contributions or incur expenses on behalf of the campaign, then they are required to provide information about these collections or expenses when so requested by the official agent. If an individual fails to provide an official agent with information requested by the agent, then the individual would be considered to have committed a general offence. All campaign payments should be made through the official agent [EFA s.10(4); 55, 83, 86, 87.2, 88].

- All advertising and promotional material must be authorized by the official agent and a statement of the official agent's authorization must appear with the advertising or promotional material. This is required during both election and non-election periods [EFA s.48(1), 54.2(1)].

DURING THE ELECTION PERIOD (writ day to election day)

During an election period a candidate must ensure that:

- The Returning Officer has the campaign's contact information (i.e. name, phone number, fax number, and address of the campaign office and a campaign contact person). [Strongly recommended]
- Valid nomination papers (Form 400) are received by the Returning Officer prior to 1:00 p.m. on Nomination day (i.e. the Monday 15 days prior to election day in a by-election and Tuesday, 21 days prior to election day in a general election). Some key points to remember [EA s.55]:
 - Both the candidate and the official agent must complete and sign part 1.
 - There must be, at least, 100 names in part 2 (130 -150 names recommended).
 - All names in part 2 must be eligible voters residing within the electoral division.

Note: No one is permitted to be an official candidate in an election unless valid nomination papers have been filed on or before the 1 p.m. close of nominations deadline. Returning Officers must verify that at least 100 signatures on the nomination papers are those of qualified voters in the electoral division. Filing nomination papers with the Returning Officer as early as possible once the election is underway may avoid non-acceptance since there will be time to rectify any errors or omissions prior to the deadline. Also, Official Income Tax Receipts cannot be obtained from the Returning Officer or Elections Manitoba until all verification of the nomination papers is complete and the official nomination papers receipt has been issued.

- Scrutineers are trained on the rules governing their conduct at the voting stations. When the nomination papers are accepted, the Returning Officer will provide a candidate or an official agent with Form 412 (Appointment of a Scrutineer). (Either the candidate or the official agent may sign Form 412 - Appointment of a Scrutineer) [EA s.114 (1)].
- There are no signs or posters and no campaigning permitted within 50 metres of a voting station. All signage within that radius must be removed prior to a voting day. Please remember that the returning office is a voting place [EA s.111; 112].

- Form 908 (Notice of Appointment of Auditor for a Candidate) has been filed with Elections Manitoba by the time of filing nomination papers [EFA s.10.3].
- Everyone associated with the candidate's campaign must be advised of the official agent's statutory role and the need to advise the official agent of all decisions having a financial impact on the campaign and all financial transactions of the candidate's campaign. Further, everyone associated with the candidate's campaign should be made aware that if they collect contributions or incur expenses on behalf of the campaign, then they are required to provide information about these collections or expenses when so requested by the official agent. If an individual fails to provide an official agent with information requested by the agent, then the individual would be considered to have committed a general offence. All campaign payments should be made through the official agent [EFA s.10(4); 55, 83, 86, 87.2, 88].
- If the candidate's campaign wishes to issue income tax receipts for contributions the candidate must be registered to issue income tax receipts. A candidate cannot register until he or she has filed Form 400 Nomination Paper and Form 911 Application for Registration (registration is different from nomination) with a returning officer in an election period (you will need your official nomination papers receipt to show that the Returning Officer has verified and accepted your nomination papers). Form 911 may also be filed with Elections Manitoba before the end of the candidacy period. Candidates are not permitted to register to issue tax receipts after the end of the candidacy period [s.25].
- Advise the official agent to attend at least one training session offered by Elections Manitoba (sessions are offered prior to and during an election period), to carefully review compliance assistance information provided by Elections Manitoba, and to contact Elections Manitoba if there are questions. [Strongly recommended]
- Check periodically that the official agent is [EFA s.90(1)]:
 - Maintaining and using an account in a financial institution for all monetary transactions of the candidate's campaign;
 - Regularly keeping records up to date;
 - Checking that election expenses do not exceed spending limits [a candidate may be held liable for spending that exceeds spending limits [EFA s.84(2) &(3)]; and
 - Getting assistance if required.
- All advertising and promotional material is being properly authorized by the official agent and a statement of the official agent's authorization appears with all advertising and promotional material [EFA s.48].

AFTER THE ELECTION PERIOD (after election day)

- Confirm that the official agent will file the financial statement (Form 922) within 4 months of election day. The responsibility for filing falls to the candidate if the official agent does not file by the deadline [EFA s.61(1), s.69].
- The candidate may be called upon to authorize the payment of a claim for an expense related to the campaign or file any required return if the Official Agent is unwilling or unable to do so [EFA s.55(4)].
- If there was a campaign deficit it becomes the responsibility of the candidate to report (using Form 925) the balance to Elections Manitoba by January 30th of each following year until the deficit has been eliminated [EFA s.68].
- Where a loan to a candidate remains outstanding at the end of a year, and is \$250 or more, the candidate must report the balance within 30 days of the end of the year to Elections Manitoba (Form 925) [ss. 44.2(2)]. The loan agreement does not have to be filed again.
- The candidate must retain the books and records upon which the candidate's financial statement (Form 922) is based for a period of at least 5 years [EFA s.58].

Contacting Elections Manitoba

GENERAL INQUIRIES:

Elections Manitoba

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General Email Address: elections@elections.mb.ca

Website: www.electionsmanitoba.ca

Candidates, official agents and others are **strongly encouraged** to contact Elections Manitoba as often as necessary in order to understand the requirements of *The Elections Finances Act* or *The Elections Act*.