

FINANCIAL OFFICERS

Legislative Reference Guide For Leadership Contests

The Election Financing Act

Legislative references in this guideline are to *The Election Financing Act* (EFA) unless otherwise stated

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About The Guide

This Guide helps to explain some of the important concepts of *The Election Financing Act* with respect to leadership contests, including responsibilities of the financial officer for a registered party.

The Guide does not take precedence over *The Election Financing Act* (EFA) and should be read in conjunction with the EFA.

The Guide, in some cases, provides only general information which may or may not be applicable to a particular circumstance. You are strongly advised to request an interpretation where clarification is needed. Requests should be in writing and should include sufficient details in order for a specific response to be provided.

Legislative references in this guide are to *The Election Financing Act* (EFA) unless otherwise stated.

EFA - Terms and Concepts

I. Definitions

A. Leadership Contest

- Any procedure by which a registered party selects a leader.

B. Leadership Contestant

- A person seeking the leadership of a registered party at a leadership contest called by that party for the purpose.

C. Leadership Contest Period

- Starting when a leadership contest is officially called, as set out in Form 941 filed by a registered party
- Ending two months after the day the leadership is determined or, if the contestant withdraws, on the day of the withdrawal

II. Responsibilities of the Financial Officer

The financial officer of a registered party that proposes to hold a leadership contest shall promptly file a statement with the Chief Electoral Officer, using Form 941, setting out the date of the official call of the leadership contest and the date fixed for the leadership vote [s.21(3)].

In addition, using Form 942, the financial officer shall immediately notify the Chief Electoral Officer of the name and contact information of each leadership contestant, and the day they became a contestant [s.21(3)].

III. Maintaining a Financial Account

The EFA requires that the official agent for each leadership contestant open a financial account in the name of the contestant [s.23(a)]. All monetary receipts and disbursements of the contest are required to flow through this account and the account may only be used for this purpose [s.27]. Records must also be kept (such as invoices, vouchers, or other similar documents) to support each deposit or disbursement.

The financial account requirements are no different than the requirements for a financial officer or candidate and further information can be found in each respective Handbook.

IV. The Auditor

Every leadership contestant must appoint an auditor (using Form 945). The auditor examines Form 947 and the books and records that are kept for the contestant's campaign and then provides a report on the examination.

There is a public treasury subsidy (of up to \$1,500) available to be paid to the auditor to help defray costs. The auditing subsidy is not necessarily intended to cover the entire cost of the audit and an invoice may be received from the auditor for an amount greater than the subsidy.

V. Income

Types of income that normally arise in a leadership contest are contributions, both monetary and non-monetary, sale of merchandise, and fundraising, including raffles.

All monetary income must be deposited into the financial account of the leadership contestant.

A. Contributions

It is essential to have a good understanding of contributions so that you can effectively track and record them in detail. **Tax receipts cannot be issued for contributions to leadership contestants [s.39(4)].**

The following are contributions when provided to a recipient or for a recipient's benefit (s. 32(1)):

- Money provided without compensation (**monetary contribution**).
- Property or services provided free of charge or at less than market value (**non-monetary contribution**).

Examples of contributions include (s.32(3)):

1. Fees paid for membership in a political party.
2. Fees paid to attend a political party conference or convention, including a leadership conventions, that exceed the reasonable expenses of the conference or convention
3. An amount determined to be a contribution under section 32(6) (fundraising events)
4. An amount determined to be a contribution under subsection 32(7) (selling items)
5. The value of services provided free of charge by a self-employed individual who normally charges for them.
6. Money, property or services that a candidate or leadership contestant provides in support of his or her own election campaign.
7. An amount determined to be a contribution in relation to a loan under section 45.

A person who is or intends to become a leadership contestant may not receive contributions before the beginning of the leadership contest period [s.35(6)].

The rules in the *FO's Handbook* in the *Contributions* sections with respect to the value of non-monetary contributions, discounted non-monetary contributions, indirect contributions, non-monetary contributions of less than \$20, deemed contributions, forgiven or unpaid trade payables, and other general provisions also apply to leadership contestants/contests.

Key Note: Tax receipts may not be issued for contributions to leadership contestants [s.39(4)].

A.1. Contribution Limits

The Election Financing Act limits contributions:

- Only individuals normally resident in Manitoba may contribute [s.33].
- Maximum contributions during a leadership contest to any combination of leadership contestants is \$3,000. This limit is separate and in addition to the \$3,000 annual contribution limit applicable to contributions made to registered parties, candidates, leadership contestants after the contest period has ended, and constituency associations [s.34].
- Individuals must use their own resources and cannot be reimbursed for a contribution [s.35(3)].
- No person may solicit or knowingly accept a prohibited contribution and such a contribution must be returned [s.37(4)].
- Anonymous contributions of more than \$10 must be returned. [s.38].
- There are penalties for making or knowingly accepting prohibited contributions [s.99(1)].
- No contributions can be made to contestants before a leadership contest begins [s.35(6)].
- Corporations, unions, trusts, federal political parties, federal riding associations, and provincial parties are examples of organizations that are prohibited from making contributions.

A contribution has not been made if a cheque is not honored on presentation (i.e. it has been returned marked "not sufficient funds" or "payment stopped" or something similar).

A.2. Reporting Contributions

Reporting of contributions received is required for:

- (a) Public disclosure; and
- (b) Tracking individual contribution limits of \$3,000 (not public).

The EFA sets out specific, and differing, disclosure requirements for (a) and (b) above, which are similar to the reporting requirements for registered parties and are described in the *FO's Handbook*.

A.3. Leadership Contest Workers

There are some recording issues concerning individuals working for leadership contests. Individuals may be paid by the contestant, paid by another, or not paid at all. Each of these circumstances is reported differently.

A.3.1. Contest workers paid by the contestant

If the contestant is paying an individual directly (fees and expenses for example) thru the financial account of the leadership contestant then the costs are expenses of the contest and should simply be reported as such.

A.3.2. Contest workers paid by another entity

An individual may be working for a contest and may be receiving compensation from a source other than a contestant. This is non-monetary contribution and a non-monetary expense since a service is being provided for the benefit of the leadership contestant.

It is also important to note that such a contribution would be considered a "prohibited contribution" if the worker was paid by an organization (including a union, or corporation), paid by another individual who is not normally resident in Manitoba (i.e. from outside of the province), or paid by an individual resident in Manitoba and the value of the services were greater than \$3,000.

A.3.3. Contest workers volunteering time

If an individual is volunteering on his or her own time (i.e. the individual is not getting paid or is using vacation time) such work is not considered a contribution or an expense but rather a volunteer service and does not have to be reported. The only exception is for services provided by a self-employed individual who normally sells or charges for the services provided. In this case, the contestant must record a non-monetary contribution and a non-monetary election expense for the market value of the self-employed individual's services.

B. Transfers

Transfers to leadership contestants from any of the parties, constituency associations, and candidates and transfers from leadership contestants to any of the parties, constituency associations, and candidates are not permitted under the EFA [s.40]. This excludes the transfer of a surplus to the financial officer of a registered party at the end of a leadership contest, or where a leadership contestant withdraws from a leadership contest [s.42(2)].

Where property or services are provided to a leadership contestant by a registered party, constituency association, or candidate but are ultimately paid for by the contestant, then a transfer has not occurred. Rather, the expense to the receiver of the property or services (i.e. the leadership contestant) is treated in the same way as any other supplier expense.

C. Fundraising Events

The legislation governing fund raising functions is identical to that of registered parties and is covered in the *FO's Handbook*.

VI. Loans

The *EFA* sets out specific requirements regarding the lending of money. Leadership contestants and the other political entities may all borrow funds to finance their activities. However, the following limitations have been established regarding the lending/borrowing of funds by political entities:

- 1) Leadership contestants cannot lend to any person or organization (including their party) money that has been raised for the purposes of a leadership contest [s.48(2)];
- 2) A constituency association cannot lend money to a leadership contestant [s.48(3)];
- 3) The maximum period of any loan made to a political entity (including refinancing loans) is 24 months [s.46(1)]; and
- 4) No person or organization shall, in a single year, provide a loan to a political entity in excess of \$3,000 [s.46(2)].

It should be noted that limitations 3 and 4 above are not applicable to loans made from financial institutions, registered political parties, or constituency associations [ss.46(3)].

A. Requirements for a Loan Agreement

Where an eligible loan is entered into, which includes lines of credit and financial institution overdrafts, all such loan agreements must [ss. 44.2(1)]:

- 1) Be in writing;
- 2) Set out the amount and term of the loan;
- 3) Include the name and address of the lender and any guarantors;
- 4) Details of any assignment of reimbursement made by the borrower

A copy of all loan agreements (including line of credit or overdraft agreements) must be filed with the Chief Electoral Officer **immediately after they are made**. Information regarding these loans is disclosed to the public by the CEO, except where the loan is made by a financial institution or is for an amount less than \$250 [s.47(2)]

Loan proceeds received must be deposited into the leadership contestant's financial institution account.

B. Loans Deemed to be Contributions

Loan proceeds may be received to finance expenses of a leadership contestant. Such loans are generally not contributions. However, there are circumstances where a loan results in, or is deemed to be a contribution. The deeming provisions are similar to those for a registered party or candidate and include loans made at low rates of interest, uncollected loans, and loans settled by third parties [s.45].

C. Reporting for Loans Outstanding

Where a loan to a leadership contestant remains outstanding at the end of a year, and is \$250 or more, the contestant must report the balance within 30 days of the end of the year to Elections Manitoba [s.65(3)]. The loan agreement does not have to be filed again.

VII. Expenses

As is the case with income from contributions, expenses are further defined as monetary (i.e. they are or will be paid with money or cash) or non-monetary (i.e. the use of property or services that were provided). There is no legislated limit in the *EFA* on the amount of expenses that a leadership contestant may incur, however restrictions do exist on the timing of expenses (see below). All monetary expenses must be disbursed from the financial account of the leadership contestant and must be supported by an invoice or voucher as proof of payment [s.27].

A non-monetary expense may result only from the acceptance of a non-monetary contribution and the “using up” of the property or service contributed. Non-monetary contributions are treated no differently for leadership contestants than for parties or candidates.

Expenses may be incurred indirectly by individuals with the knowledge and consent of the contestant (a transaction of this nature would be a non-monetary contribution and a non-monetary expense). However, individuals not normally resident in Manitoba, organizations (including unions), and corporations are prohibited from incurring expenses on behalf of and with the knowledge and consent of contestants as these would represent prohibited contributions.

Key Note: No leadership contestant may incur an expense related to a leadership contest before the leadership contest period begins [s.99(4)]

VIII. Authorizing Advertising and Promotional Material

The official agent of a leadership contestant is responsible for authorizing advertising (and promotional material) for the leadership contestant. [s.61] There is no legislative limit imposed by the *EFA* on the amount that may be spent on advertising (and promotional material) by a leadership contestant in a leadership contest]. The advertising expenses of leadership contestants do not impact the annual registered party limit on advertising expenses.

IX. Inventory

For purposes of leadership contests, inventory should not be recorded as an asset at the end of the leadership contest period, but should instead be expensed as incurred.

Section 640 (Inventory) of *Accounting Guide – Accounting For Purposes of The Election Financing Act* is not applicable to leadership contests.

X. Capital Assets

Capital assets should be expensed given the short-term nature of a leadership contest (i.e. treated in the same manner as capital assets of a candidate during an election as explained in Section 650 of *Accounting Guide – Accounting For Purposes of The Election Financing Act*).

XI. Reporting

All income and expenses of a leadership contestant in a leadership contest period must be reported.

Form 947, *Leadership Contestant's Financial Statements and Supporting Schedules* is the prescribed form that must be compiled, audited, and submitted to Elections Manitoba. This form includes statements on the income and expenses for the entire contest period as well as the assets and liabilities of the contestant's campaign as of the last day of the leadership contest period. Leadership contestants should also file copies of all vouchers and invoices in support of all expenses reported on Form 947.

Key Note: Form 947 has to be audited and filed with Elections Manitoba no later than 30 days after the end of the leadership contest period [s.65].

XII. Forms

A. Leadership Contest Period

- 941 Notice of Leadership Contest (Registered Party Responsibility)
- 942 Notice of Leadership Contestants (Registered Party Responsibility)
- 944 Notice of Appointment of Official Agent of a Leadership Contestant (Leadership Contestant Responsibility)
- 945 Notice of Appointment of Auditor for a Leadership Contestant (Official Agent Responsibility)
- 947 Leadership Contestant's Financial Statements and Supporting Schedules (Official Agent Responsibility)
- 948 Leadership Contestant's Detailed Contributors' List (Leadership Contestant Responsibility)

B. Post Leadership Contest Period (contestant's responsibility)

- 949 Leadership Contestant's Deficit and Loan Status [s.65(3)]

Contacting Elections Manitoba

General Inquiries:

Elections Manitoba
120 – 200 Vaughan Street
Winnipeg MB R3C 1T5

Telephone: 204-945-3225

Toll Free in Manitoba: 1-800-282-6069

Facsimile: 204-945-6011

General Email Address: election@elections.mb.ca

Website: www.elections.mb.ca

Inquiries on *The Election Financing Act*:

Email: finance@elections.mb.ca

Inquiries on *The Elections Act*:

Email: operations@elections.mb.ca

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