

Summary of Leadership Contest Guide for Official Agents

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 is a summary guide that references some of the important concepts with respect to leadership contests. For more detailed information, there is a more comprehensive guide available entitled *Leadership Contest Legislative Reference Guide for Official Agents and Leadership Contestants*.

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 for 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 Elections Finances Act (EFA)* unless otherwise stated. Definitions are included in bold italics

Leadership Contest Basic Provisions

Caveat – Leadership Reviews versus Leadership Contests

A periodic leadership review, where the leader of a political party is required by the constitution of the party to stand for re-election, is not automatically considered to be a leadership contest in the context of *The Election Financing Act*. Where the leadership of a political party is reviewed and is confirmed or unopposed then no leadership contest results and it follows that the requirements under *The Election Financing Act* concerning leadership contests do not arise.

A leadership review may, on the other hand, result in a leadership contest where the leader is challenged and a vote is required to determine the leadership of the party from among two or more individuals. In these cases it generally follows that the leadership provisions of *The Election Financing Act* apply.

While the above situations suggest a very clear cut distinction can be made between leadership reviews and leadership contests, there are situations that have occurred in which a review occurs simultaneously with a contest. Given the uniqueness of this situation, a description of the responsibilities of leadership contestants and financial officers has not been included in the body of this guide. However, this information is provided in Appendix C of *Leadership Contest Legislative Reference Guide for Official Agents*.

Basic Provisions of the EFA Related to Leadership Contests

The financial officer of a registered party is required to notify Elections Manitoba:

- When a leadership contest takes place (Form 941) [s.21(3)]; and
- Of any leadership contestants (Form 942) [s.21(3)].

The term *leadership contestant* refers to any person seeking the leadership of a registered party at a leadership contest. Upon becoming a leadership contestant, the individual is required to immediately:

- Appoint an official agent and notify Elections Manitoba (Form 944) [s.24(1)]; and
- Appoint an auditor and notify Elections Manitoba (Form 945) [s.28(2)].

Additional requirements of the EFA related to leadership contestants:

- Maximum contributions during the leadership contest period to any combination of leadership contestants is \$3,000, and only individuals normally resident in Manitoba can contribute [s.34(2)].
- This contribution limit is separate and in addition to the \$3,000 annual contribution limit applicable to registered parties, candidates, constituency associations, and a leadership contestant if the contribution is made after the leadership contest period ends [s.34(1)];
- No contributions can be made or accepted and no expenses can be incurred before the registered party officially announces the contest [s.35(6)];
- No tax receipts can be issued for contributions to contestants [s.39(4)];
- Within thirty days after the contest period, each contestant's official agent must file an audited statement of receipts/income, disbursements, and assets and liabilities, as well as a statement of contributions received [s.65];
- The "leadership contest period" is from the date of the call of a leadership contest until two (2) months after the date of the leadership vote [s.115];
- Advertising expenses of a leadership contest, whether incurred by a contestant or by the party, are not included in the party's annual advertising limit for the year of a fixed date election [s.60(1)];
- Registered parties, constituency associations, and candidates cannot transfer money, property or services to leadership contestants [s.40];
- A leadership contestant who has a surplus at the end of the contest must transfer the surplus funds to the registered party. Aside from this isolated exception, contestants **cannot** make transfers to registered parties, constituency associations, candidates or other contestants [s.42(2)];
- A contestant with a deficit at the end of the contest must continue to report annually contributions and other income used to reduce the deficit [s.65(3)]; and
- There is an audit fee subsidy up to a maximum of \$1,500 which will be paid by Elections Manitoba when the audited statements are filed (the audit fee invoice should be directed to Elections Manitoba; payment is GST exempt) [s.30(d)].

EFA Terms and Concepts

I. The Official Agent

A. Eligibility and Appointment

- Leadership contestants, candidates & auditors not eligible
- Official Agent consents to appointment on Form 944

B. Basic Duties (responsible for the finances of a leadership contestant)

- Opening and maintaining a bank account for the contestant;
- Ensuring that records are kept of all income, expenses, assets, and liabilities of the contestant;
- Making sure that detailed records are kept of contributions received;
- Paying all expenses of the contestant from the bank account [s.27];
- Authorizing advertisements and promotional material [s.61];
- Preparing the financial statement for the contestant (Form 947), getting it audited, filing it with Elections Manitoba on time [s.65];
- Filing the Leadership Contestant's Detailed Contributors' List [s.65];
- At the end of the contest, paying the surplus (if one exists) to the financial officer of the party [s.42(2)].
- Providing information to Elections Manitoba if requested [s.67].

The Official Agent must be advised of all decisions having a financial impact on the leadership contestant's campaign.

II. Time Periods

A. Leadership Contest Period

- The period starting when a leadership contest is officially called and ending two months after the day the leadership is determined or, if the contestant withdraws, on the day of the withdrawal.

B. Important Items

- Contributions cannot be collected and expenses cannot be incurred prior to the leadership contest period.
- Form 947 (Leadership Contestant's Financial Statements and Supporting Schedules) must be completed, audited, and sent in to Elections Manitoba no later than 30 days after the end of the leadership contest period.

III. Maintain Account in Financial Institution

- Opened forthwith after official agent is appointed.
- The account should be in the name of the contestant [s.23(a)].
- Account is to be used for leadership contestant finances only.
- All monies must be deposited into this account.
- All disbursements from this account must be substantiated by an invoice/voucher.
- Petty cash procedures are recommended for small purchases (authorized advances, invoices and vouchers to support the expenditures).
- Official agent controls account but there can be additional signing authorities.
- Account must be setup to return cheques and provide statements (business account).

IV. Record Keeping by Official Agent

- Auditor is required to report if records are not adequate [s.29(2)].
- Lack of knowledge or volunteer status does not lessen responsibility.
- Important to provide a direct audit trail from Form 947 to transactions.
- Important to facilitate the ability to perform a bank reconciliation.
- Includes: bank statements, cheques, deposit books, invoices, notes, ledgers, journals, and explanations.

V. Auditor

- Who can audit: CA, CMA, CGA in good standing and be authorized to perform audits by their association, institute or society [s.28(1)].
- Who **cannot** audit: candidate, leadership contestant, financial officer of a registered party or constituency association, or a person involved in the raising or spending of money or custody of property of the leadership contestant [s.28(3)].
- Official agent prepares return; auditor audits the return.
- Audit subsidy up to \$1,500 paid by Elections Manitoba [s.30(d)].
- Subsidy is not the maximum fee, report excess fee over subsidy on Form 947.
- Auditor consents to appointment on Form 945 [s.28(2)].
- Audit will disclose non-compliance in the auditor's report [s.29(2)].
- Recommend arranging for auditor immediately.
- A statement is needed from auditor if replaced or resigning [s.28(5)].
- Auditor is paid only when the CEO is satisfied that the audit meets the requirements of the EFA [s.30]
- Official agent must provide auditor access to records [s.29(3)].

VI. Income

The types of income that normally arise during a campaign are:

- Contributions (both monetary and non-monetary);
- Transfers;
- Fundraising; and
- Sale of Merchandise;

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**).
- Non-monetary contributions (includes almost all contributions of property and services but not volunteer labour) must include self-employed volunteer and employers providing employees
 - Exceptions: volunteer financial officer, official agent, auditor, legal counsel, and a contestant on paid leave under a collective/employment agreement.
- Form 947 contributors' list disclosure (Schedule 2) – report contributions from contributors who contributed \$250 or more [s.65(1.1)(d)].
- Form 948 Detailed Contributors' List - a report that lists the name, address and the total amount contributed for each contributor [s.65(1.3)]
- The date of payment by the contributor is generally the date of contribution
 - Exception: post-dated cheque.
- **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)].**
- You must always know who is contributing (e.g. detailed information necessary to clarify contributions from joint chequing accounts).
- Individuals (and only individuals) may make two non-monetary contributions of less than \$25 in a year to each candidate, constituency association, registered party or leadership contestant without the contributions having to be recorded. A third such contribution by an individual in a year, regardless of value, must be recorded. Official agents must keep track of the number to know when the threshold has been reached. [s.32(5)].
- Contributions can be made directly or through individuals (Manitoba residents) [s.35(1)].

- Professional fund raisers and other such organizations can solicit contributions and collect information about potential contributors on behalf of entities [s.37(1)].
- Contributions must not be accepted without an accompanying contribution record.
- Contribution records must include:
 - The contributor's name and residential address;
 - The date the contribution was collected or received;
 - The amount or value contributed;
 - The name of the individual serving as the collector (if applicable); and
 - The signature of all contributors providing cash in excess of \$100 [s.37(2)]

A.1. Contribution Limits

- 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 .

B. Transfers

- Registered parties, another leadership contestant, constituency associations and candidates cannot transfer money, property or services to leadership contestants [s.40].
- A contestant who has a surplus at the end of the contest must transfer it to the registered party [s.42(2)].

C. Fundraising Event

- Definition: a social function or other event held for the purpose of raising money
- Fundraising income is not a contribution (i.e. no contributor names to record).
- Single ticket with a price of less than \$25 (100% fundraising income).
- Multiple tickets purchased for less than \$75 (100% fundraising income).
- Ticket price of \$25 or more (75% contribution, 25% fundraising income).
- When purchasing multiple tickets with a single ticket price of less than \$25 that total to \$75 or more then 75% of the total purchase is a contribution and 25% is fundraising income.
- Expenses recorded on Form 947.
- Property donated for fundraising purposes is recorded as a non-monetary contribution and as fundraising expenses if used. Property cannot be donated by prohibited contributors.

D. Sale of Merchandise

- Single item sold, item price less than \$25 (Other Income on Form 947).
- Multiple items sold, item price less than \$25, total less than \$75 (Other Income).
- Sale of items with price greater than \$25 (Net Profit is Contribution).
- Multiple items sold for more than \$75 (Net Profit is Contribution).
- Net Profit is amount received in excess of acquisition cost.
- Acquisition Cost is the greater of the actual cost of the item and the fair market value of the item (at the time it was acquired).

VII. Loans

- Loan agreement requirements [s.47(1)]
 - There must be a written agreement
 - Must be filed with CEO immediately after it is made.
- Deemed contributions or transfers when there is:
 - A forgiven or unpaid loan [s.45(3)];
 - A low interest rate [s.45(1)]; or
 - A guarantor payment [s.45(2)].
- Maximum loan term is 24 months [s.46(1)].
- Maximum loan amount is \$3,000 [s.46(2)].
- Public disclosure of loans unless under \$250 or made by financial institution [s.47(2)].
- Loan balance reported at end of each year by the contestant [s.65(3)].
- Leadership contestant's campaign may not loan campaign's money [s.48(2)].
- Deposit loan proceeds into campaign account [s.27(a)].

VIII. Expenses

- A leadership contestant must not incur expenses before the leadership contest period begins [s.99(4)].
- Report expenses for the leadership contest period only
- Non-monetary contributions used are recorded as a contribution and expense

IX. Advertising and Promotional Materials

- Official Agent must give written authorization to the leadership contestant's campaign for all advertisements and promotional material (Note: the contestant can provide authorization if an Official Agent has not yet been appointed).
- An authorizing statement must be printed, announced or shown with the advertisements/promotional materials.
- Examples of an authorizing statement:
 - "Authorized by the official agent for Martha White"
 - "Authorized by the official agent" (acceptable if the full name of contestant is evident).

X. Inventory

- Items not used during the leadership contest must be written off as expenses on Form 947.
- Keep these items for verification

XI. Official Agent Filing Responsibilities

- Form 947 - Leadership Contestant's Financial Statements
- Auditor's Report
- Form 948 - Leadership Contestant's Detailed Contributors' List
- Copies of invoices or other documentation for all expenses.
- Filing extensions are possible for circumstances reasonably beyond the control of the official agent
 - Extension requests should be made in writing, describing the reasons for the request
 - Extension requests must be submitted prior to the filing deadline.
- Failing to file the required forms constitutes an offence under the Act and late filing fees will apply.

A. Financial Statements (Form 947)

- Must be filed within 30 days after the end of the leadership contest period [s.65(1)].
- Form 947 is a public document and is available for public inspection [s.71.4].
- Form 947 must be complete and accurate.
- Elections Manitoba may request information to verify or clarify the return [s.67(1)].

B. Detailed Contributors' List (Form 948)

- Filed at the time of filing Form 947 [s.65(1)].
- Details of all contributions.
- Form 948 must be complete and accurate.
- Not a public document (i.e. not available for public inspection) [s.71.4].

XII. Leadership Contestant Filing Responsibilities

- Form 945 – Notice of Appointment of Auditor for a Leadership Contestant.
- Form 949 - Leadership contestant's outstanding liabilities and loan status (to be filed each year until the outstanding liabilities are eliminated) [s.65(3)].
- Must be filed within 30 days of the end of the year .
- Must report contributions made after the leadership contest period towards a leadership contestants' deficit on Form 949.
- Report loan balance 30 days after the end of each year until the balance is less than \$250 [s.65(3.1)].
- Leadership contestant keeps records for 5 years from date of filing [s.72(1)].

XIII. 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*.