

INTERPRETATION BULLETIN No. 02

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Campaigning Outside of a Campaign Period

Introduction

The Chief Electoral officer has developed this Bulletin to provide information for political participants, and individuals in particular, who are active in campaigning outside the campaign period. The information is intended to provide an overview of relevant sections of the *Election Finances and Contributions Disclosure Act* (EFCDA). Links to the EFCDA and other bulletins are available on the Elections Alberta website at www.elections.ab.ca.

The EFCDA is concerned about transparency, accountability and fairness. To that extent, the objectives of the EFCDA are optimized when money going in and out of regulated entities is tracked and reported.

This Bulletin address questions around who can campaign, when, and using whose money.

It is important to distinguish between an “election period” and a “campaign period.”

- 1) An “election period” is writ day through polling day. See the definition at section 1(1)(f.1) of the EFCDA. But note: under section 41.1(1), “election expenses” are not just restricted during an election period, but restricted also for nomination contestants during nomination contests.
- 2) A “campaign period” varies depending on what kind of campaign it is: nomination contest, leadership contest, by-election, general election, etc. For a general provincial election (that is not a snap election), the “campaign period” is February 1 until two months after polling day. See the definition at section 1(1)(b) of the EFCDA.

The EFCDA does not seek to restrict people’s ability to campaign. However, the Act does seek fairness, accountability and transparency through requirements for registration, reporting, contribution limits and (sometimes) expense limits.



Questions and Answers

1. Who is a “candidate” under the EFCDA?

A candidate is defined in the EFCDA as:

1(1)(c) “candidate” means

(i) *with respect to an election under the Election Act, a person*

(A) *who is selected for endorsement as the official candidate of a registered political party for the electoral division, or*

(B) *who, after the commencement of the campaign period, declares the person’s candidacy as an independent candidate at the election in the electoral division;*

The implication of section 1(1)(c)(i)(A) is that, if a person is not yet selected by their party for endorsement, they are not yet a “candidate.”

Individuals who fall under section 1(1)(c)(i)(B) are independent candidates who will not be endorsed by a registered political party for their candidacy. Recall that, for the purposes of section 1(1)(c)(i)(B), the “commencement of the campaign” is February 1.

Independent candidates may not accept contributions or incur expenses until they are registered as candidates, which they may not do until February 1. For the rest of this Bulletin, the discussion focuses on 1(1)(c)(i)(A) types of individuals.

2. Does the EFCDA restrict how parties and constituency associations spend their money?

There is little restriction in the EFCDA as to what parties and constituency associations can spend their money on. Trust principles may apply, but those are outside the EFCDA.

Constituency associations have no spending limits, but expenses they incur or non-monetary contributions they make to (a) candidates, may count toward a candidate’s spending limit, or to (b) parties, may count toward a party’s spending limit, or to (c) nomination contestants, may count toward a contestant’s spending limit. Registered candidates, political parties and nomination contestants are subject to limits on the amounts they can spend during an election or contest (sections 41.2 to 41.4 of the EFCDA).





It is important for registered political parties and constituency associations to keep in mind that, under section 16, anyone who is not an individual ordinarily resident in Alberta cannot make a “contribution.” It is also important to understand what a “contribution” is.

- 1(1)(e)** *“contribution” means, subject to subsection (5), any money, real property, goods or services, or the use of real property, goods or services, provided*
- (i) to a political party, constituency association, candidate, nomination contestant or leadership contestant, or*
 - (ii) for the benefit of a political party, constituency association, candidate, nomination contestant or leadership contestant with the consent of the political party, the constituency association, the candidate, the nomination contestant or the leadership contestant,*
- without compensation from that political party, constituency association, candidate, nomination contestant or leadership contestant;*

Certain services, including volunteer labour, are not “contributions,” as clarified in section 1(5).

There are intra-party “transfers” under section 38 that do not count as “contributions,” and section 38 must be read very carefully. In summary:

- 1) A party and its constituency associations and candidates may transfer funds, real property (or the use of it), certain debts, goods or services (or the use of them) among themselves. These are not “contributions” and not “election expenses” subject to the limits.
- 2) The rules for nomination contestants and leadership contestants are different. A party and its constituency associations, candidates, nomination contestants and leadership contestants may transfer only goods or services (or the use of them) among themselves. These are not “contributions” and not “election expenses” subject to the limits.





3. Are individuals who are MLAs different from other individuals thinking of running for election?

No. MLAs are Members of the Legislative Assembly for the purposes of the current sitting of the Assembly. Under the Election Act and under the EFCDA, MLAs have no special status (other than being implicated in government advertising restrictions). If they plan to run again, then they are potential nomination contestants and potential candidates for the next election.

4. Are rules for incumbents different from the rules non-incumbents?

No. As with MLAs, whether an individual has been elected or nominated in the past is irrelevant to a future election. For the purposes of campaigning outside of an election, the relevant fact is whether the person has been selected by the party for endorsement or not.

5. Outside of a campaign period, when are door knocking and flyer distribution permitted?

The answer to this depends on who the person is, whether they have been selected for endorsement by their party, what they are saying, what the flyers say, and who has paid for the flyers.

Situation 1:

An individual is knocking on doors outside of an election period (the 28 day period) and outside the campaign period (after February 1). This individual is currently an MLA. They are engaged in activities relating to constituency business, speaking to constituents. The individual is not saying any partisan things, not handing out literature from her party, not promoting the party and not promoting herself “for” the electoral division. This is acceptable.

Situation 2:

An individual is door knocking and promoting the party or the local constituency association for that party. He is distributing leaflets that are paid for by the party or by the constituency association. He does not promote himself as an individual, and certainly not “for” the electoral division, and does not state that he will be running in the next election. This is acceptable.



Situation 3:

An individual is door knocking around a constituency. He may be an MLA or not. He is promoting himself “for” the electoral division – “Joe Smith for Edmonton-Ellerslie” – impliedly for the 2019 Provincial General Election. For this individual, what he may and may not do depends at what point he is in the party nomination process.

A) The individual has already been selected for endorsement by the party.

This means he has been through a contest or selection of sorts with the party and has been selected as the party’s candidate for endorsement in that electoral division for the next election. The party must have reported the nomination contest to the Chief Electoral Officer, and the individual, as nomination contestant, must have registered and reported to the Chief Electoral Officer under section 9.3 of the EFCDA.

Under section 9(3.1) of the EFCDA, the nomination contestant who is selected by the party for endorsement as the official candidate is deemed to be a registered candidate. From that point forward, this individual is a “candidate” as defined in the EFCDA and subject to all the rules that candidates are subject to, including sections 9(1) and (1.1):

9(1) *Subject to subsection (1.1), no candidate and no person acting on behalf of a candidate shall*

(a) accept contributions, or

(b) incur any campaign expenses,

unless the candidate is registered under this section.

(1.1) *No registered candidate and no person acting for a registered candidate shall accept contributions or incur any campaign expenses except during the campaign period.*

Due to sections 9(1.1) and 17(3), this individual cannot be spending his own money for leaflets. It is possible that the party or the constituency association could pay for leaflets he is distributing. It would not be a “election expense” until after writ day – and even then it could be a “transfer” under section 38, as long as the leaflets do not directly promote or oppose the individual’s candidacy in the election. This is because:



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- Under section 38(2), a party may transfer goods or services to any of its registered candidates and it is neither a contribution nor an election expense (see section 38(3)).
 - An “election expense” under section 41.1(1) will mean that the leaflets will count towards the candidate’s expense limit if the leaflets are directly promoting the individual as a candidate and if the leaflets are to be used “during an election period.”

If the party or constituency association is paying for the individual’s leaflets, section 134 of the *Election Act* applies and the authorized sponsor contact information must appear on the leaflet in accordance with the legislation and guidelines. This is acceptable as the expenditure of money will be tracked and reported.

B: The individual has not yet been selected by her party or constituency association for endorsement, but she is in the middle of the selection process (whatever that selection process might look like).¹

The individual must have already registered as a nomination contestant with the Chief Electoral Officer, and the party or constituency association may not make a contribution, including goods and services, or transfer funds to the individual before the individual is registered as a nomination contestant – see section 35(1)(b) of the EFCDA.

35(1) *No registered party, registered constituency association, registered candidate, registered nomination contestant or registered leadership contestant shall, directly or indirectly,*

(a) ...

(b) *contribute or transfer funds to any political party, constituency association, registered candidate, registered nomination contestant or registered leadership contestant not registered under this Act.*²

¹ The process for selecting for an endorsement is a nomination contest under the definition in the EFCDA. This process can be as simple as a constituency association deciding on who their candidate will be, or as complicated as a full blown contest with voting, etc. Regardless of the form of the contest, the party must report the contest prior to its occurrence, and all contestants (even if there is only one) must register and report with the Chief Electoral Officer – all under section 9.3 of the EFCDA.

² Very likely, the “registered” qualifier before candidate, nomination contestant and leadership contestant in (b) is a drafting error.





After the individual is registered with the Chief Electoral Officer, the party or constituency association may transfer goods or services (only) to the nomination contestant under section 38(2) without it being a contribution. The nomination contestant is subject to the nomination contestant expense limit in section 41.4, whether the leaflets are paid for by her own nomination campaign money or by the party or the constituency association. The leaflets would be considered an “election expense” under section 41.1(b).

This activity is acceptable, as long as all these conditions are met. The individual must report her contributions and expenses, and the flow of money, goods and services is tracked.

C: The individual is not yet selected for endorsement by his party, nor is he in the middle of a nomination contest.

For a nomination contest, a “campaign period” is the period beginning on the date the nomination contestant is required to register, and ending two months after the date the individual is selected for endorsement.

This individual has not yet announced his intention to run for the nomination, because that announcement would trigger the requirement for him to register as a nomination contestant under section 9.3. However, he is promoting himself on leaflets with his name and/or photograph, with the leaflets paid for by the party or the constituency association. At this point, this individual is no different from any other individual going around introducing himself to his neighbours. He is neither a “candidate” nor a “nomination contestant.” As well, a party or constituency association can spend funds on whatever and whomever it likes (subject to trust principles), as long as it does not make a prohibited contribution to a candidate or nomination contestant.

However, this does not make this situation necessarily acceptable. It is important to note the following:

- For the party: The party has effectively selected this person for endorsement by paying for leaflets with his name and/or photo on them. As such, the party has failed to comply with the nomination contest requirements for the party under section 9.3. The party needs immediately to send to the Chief Electoral Officer the statement contemplated under section 9.3(1). Until this individual is registered as a nomination contestant with the Chief Electoral Officer, the party cannot make a contribution to the individual or even transfer anything to the individual under section 38 – see section 35(1)(b). After the individual is registered as a nomination contestant, the party may transfer goods or





services (only) to the individual (section 38(2)), but cannot transfer funds or real property or debt (section 38(1)). Later, if the individual is successful in the nomination contest and is eventually deemed registered as a “candidate”, the party can then transfer funds, real property, goods or services without it being a “contribution.” In this scenario, the flow of money and non-monetary contributions will be reported and tracked

- For the individual: By promoting himself for a particular electoral division for a particular party, the individual is effectively announcing his intention to “run” for the endorsement selection. He is by definition a “nomination contestant”, which is “a person who seeks endorsement in a nomination contest as the official candidate of a registered party for an electoral division” (section 1(1)(i.5)). Note that, before February 1 which is the beginning of an election “campaign,” you have to be a nomination contestant before you can be a candidate, in the way that “candidate” is defined at section 1(1)(c). In this case, the individual has failed to register as a nomination contestant, and he must do so immediately under section 9.3(4), or else he cannot accept a contribution or incur a campaign expense – see section 9.3(5). Also, the party or constituency association cannot pay for this individual’s leaflets until he is registered as a nomination contestant – see the bullet point above. Only after he is registered as a nomination contestant, and subsequently as a candidate, will the flow of money and contributions be tracked and reported.

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