

INTERPRETATION BULLETIN No. 03

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Party Mergers

Introduction

The Chief Electoral Officer has developed this Bulletin to provide information for political parties that are considering merging, amalgamating or consolidating. The Bulletin also explains how the Chief Electoral Officer interprets relevant legislation. The information is intended to provide an overview of the 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 *Election Act* does not contemplate merged or amalgamated parties. As organizations, political parties take various sizes, shapes and governance structures. It is only the registration of the political parties – with all the financial privileges and obligations that result – that is governed by the EFCDA.

The joining of two political parties' registrations is not a subject expressly contemplated by the EFCDA. In the event of a merger, a number of questions may arise, including:

- What are the options for merger?
- What happens to the financial assets of the parties?
- What happens to the non-financial assets?
- What is the name of the new entity?

The objective of this Bulletin is to provide general information to assist parties in answering these questions. The information provided below is largely based on general and theoretical questions. Information may change, depending on specific circumstances. The Chief Electoral Officer and his Office (Elections Alberta) are neutral, and exercise jurisdiction as set out in the legislation that governs them.



Questions and Answers

1. Why does the EFCDA care about party mergers?

The EFCDA is not involved in the internal workings of political parties, including who their members are, how they govern themselves, whether they are incorporated or not, etc. The concept of merging two parties does not appear in the EFCDA. The rules in the EFCDA are about contributions, receipting, spending limits, advertising and reporting. However, those rules have an impact on what joining parties can and cannot do in certain respects. The definition of “contribution,” for instance, is key in all movement of assets or value into a registered party.

2. What is a “contribution?”

The EFCDA places restrictions on the movement of assets which fall under the definition of “contribution”.

The EFCDA defines contribution as:

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;

Section 1(5) provides:

- 1(5)** For the purposes of subsection (1)(e), “services” does not include
- (a) volunteer labour provided by a person, so long as that person does not receive from his or her employer, or any person, compensation or paid time off to volunteer,
 - (b) audit and professional services provided free of charge to the recipient for work relating to compliance with this Act,
 - (c) services provided free of charge by a person acting as the chief financial officer for work relating to compliance with this Act, or
 - (d) services that a candidate, nomination contestant or leadership contestant provides in support of his or her own campaign,

but for greater certainty, “services” includes services provided by a person who is self-employed if the services are normally charged for by that person.

The definition of “contribution” comes up frequently when answering many of the questions related to election financing and disclosure, including a possible party merger. It is worth looking back to the definition whenever a question arises, particularly when dealing with financial assets flowing in or out of a registered party.

Any movement of assets from one political party to another that falls within the definition of “contribution” is prohibited by section 16 of the EFCDA. Contributions from corporations, associations, societies, and other organizations are not permitted. Only an individual ordinarily resident in Alberta may make a “contribution.”

The definition of “contribution” applies on all days of all years, regardless of whether the day falls within an election period or not. The only difference may be in relation to the expense limits of the EFCDA, as there are limits on election expenses.



3. How can two parties form a single registration?

The EFCDA concerns itself only with political parties as registrations, and there is no formal mechanism to “merge” the registrations of two parties.

Practically, there are two options within the scope of the legislation.

- 1) Bring both parties together under the registration of one of the existing parties; or
- 2) Apply for registration of a new political party.

The following answers are designed to clarify the rules about either option.

4. The existence of multiple registered parties

It is possible for multiple registered political parties to exist simultaneously after a new party has been formed. For more information, see the Cancellation of Registration section below.

However, be vigilant of whether parties are “associated” with each other as set out in section 41.2(7) and (8). There is no prohibition on multiple registered parties existing, even while associated. If they are associated, however, they will be subject to a single expense limit for the purposes of section 41.2(1) and (2).

This dynamic can also create some challenges if one registered party wishes to share resources with another registered party.

5. Can funds be moved between parties?

While the movement of funds between two parties is not expressly prohibited by the EFCDA, there is no mechanism in place which would permit this type of movement to occur lawfully. Flow of funds from one party to another would be “contributions” and therefore prohibited by section 16 of the EFCDA.

This is contrasted with section 38 of the EFCDA, which governs “transfers” within a party. A transfer of money, real property, use of real property, goods, services, or debts to eliminate a campaign deficit amount among a registered party, its registered constituency associations, and its registered candidates is permitted without being a “contribution.”



6. What can be shared between parties?

a. Leadership

Two registered political parties may have the same leader, address for records and notices, principal officers, financial institution, signing officers, and chief financial officer.

b. Funds

Registered parties must each maintain their own separate deposit accounts. Contributions to each registered party must be kept separate, and funds must be maintained separately.

Once funds have been deposited to the correct account, any movement of funds could be a contribution as defined by the EFCDA.

c. Membership

Membership in a registered political party is an internal matter that the Chief Electoral Officer does not oversee or regulate. The rules for party membership are outside the scope of the EFCDA.

d. Staff, Office Space, and Infrastructure

A staff member could potentially be employed by multiple registered parties at the same time. In general, as long as the value of the staff member's services equals the fair market compensation paid for those services, it would not be a prohibited "contribution."

In relation to office space – owned or used – if the value of the real property, or the use of it, exceeds the amount paid, then the excess amount would constitute the provision of real property or use of real property "without compensation" and would likely fall under the definition of "contribution."

The use of goods and services, such as computer hardware, software, or an IT technician may involve a "contribution" once again depending on whether or not fair market value was paid by the registered party that gained the benefit.

e. Intangible Assets

Whether the transfer of intangible assets is a contribution according the EFCDA depends on whether the assets fall into the definition of "contribution" in section 1(1)(e). Generally, membership lists, voter and supporter data, and intellectual property likely do not fall into the definition of contribution.





Again, while these can all be shared between registered parties, it is important to be aware that parties associated with each other have only one expense limit under section 41.2.

7. Seed money for a new registered party

Prior to registering, a new political party may begin with funds of not more than \$5,000 as ‘seed’ money. This is provided for by sections 6(3) and 6(4) of the EFCDA. This seed money must be held in a non-profit corporation or trust prior to the registration of the party. There are reporting obligations associated with the non-profit corporation or trust.

The purpose of these non-profit corporations and trusts is to ensure a degree of accountability to the Chief Electoral Officer prior to registration of a party, and to provide seed money for the new registered party.

After the new party is registered, money may be transferred from the non-profit corporation or trust to the registered party’s account. This money is exempted from being a “contribution” under the EFCDA. However, any funds moved into the newly registered party beyond \$5,000 is subject to contribution restrictions. If funds come from a source other than an individual ordinarily resident in Alberta, that will likely be prohibited under section 16.

Once a party is registered, money may only be transferred out of its seed funds, and these expenditures must be reported. Nothing may be deposited into the non-profit corporation or trust. After the seed money has been spent, the pre-registration foundation has no further purpose and becomes obsolete.

8. What can be done with funds left over in the old parties after a new party is registered?

In some cases, an old registered political party may still have assets left after registration of a new political party. This raises the question of what the old party is permitted to do with those resources. In general, there are no restrictions in the EFCDA on what a registered political party can spend money on, as long as the expenditure does not constitute a prohibited contribution, and does not exceed any applicable spending limits.





There are numerous examples of what a registered political party could spend money on. This may include, for example, the running of negative advertising against another party. However, exercise caution as there may be circumstances under which negative advertising exclusively targeting another registered party or its leader could be a “contribution” by the old party to the new (which is prohibited). Recall that a “contribution” includes spending “for the benefit of” a registered party.

A party could also undertake activities like voter identification in some cases. However, activities such as targeted or ‘push-polling’ could potentially constitute a “contribution” to the new party (again, prohibited).

Note: Restrictions in place on third party advertisers under the EFCDA differ from those placed on registered political parties. Third parties are separate entities treated distinctly by the EFCDA. Please see Part 6.1 of the EFCDA, and our Third Party Advertiser (TPA) Bulletin at www.elections.ab.ca/third-party-advertisers/forms-Bulletins/. Consider whether a third party’s activities could be prohibited if they fall within the definition of “contribution” to a registered political party.

9. Cancellation of Registration

If a party is not registered, the party is not regulated under the EFCDA and, under section 6(1), cannot accept contributions.

A party may voluntarily apply to the Chief Electoral Officer for its registration to be cancelled, under section 10(1) of the EFCDA. There are also two chief ways a registered party’s registration may be involuntarily cancelled relating to lack of political participation.

- 1) The Chief Electoral Officer must cancel a party’s registration if the registered party does not endorse a candidate at a general election, under section 10(1.1); and
- 2) The Chief Electoral Officer may cancel a party’s registration if the party is no longer qualified for registration, under section 10(5).



Qualification for registration is set out partly in section 6(2) of the EFCDA, which provides:

6(2) *Any political party that*

- (a) held a minimum of 3 seats in the Legislative Assembly following the most recent election,*
- (b) endorsed candidates nominated in at least 50% of the electoral divisions in the most recent general election,*
- (c) endorses candidates in at least 50% of the electoral divisions following the issue of a writ of election for a general election, or*
- (d) subject to subsection (2.1), at any time other than during a campaign period, provides the Chief Electoral Officer with the names, addresses and signatures of persons who*
 - (i) represent 0.3% of the number of electors eligible to vote at the last general election,*
 - (ii) are currently eligible to vote in an election, and*
 - (iii) request the registration of that political party,*

is, subject to subsection (3), qualified for registration in the register of political parties.

These cancellations are triggered at the end of a general election period. If parties consolidate between elections, the registration of the original parties is not at risk of cancellation until the next general election has occurred.

Note that, if the registration of a political party is cancelled, section 10(10) requires the Chief Electoral Officer also to cancel the registration of any of that party's constituency associations.

10. What happens to assets held in Candidate Trusts?

The trust monies left after a candidate campaign are not tied to the registered political party who endorsed that individual as a candidate. Section 12(1) of the EFCDA provides:



Any campaign funds held by a candidate at the end of a campaign period that include contributions received by the candidate for the purpose of the candidate's campaign shall be held in trust to be expended for the candidate's candidacy at the next election.

These funds are held in trust for the candidate, not for the party that endorsed the candidate. The individual may use funds in their candidate's trust for a subsequent election under the banner of any registered party or as an independent candidate.

Under section 12, after an election, the individual has an option to "transfer" money to the party or constituency association that endorsed them as a candidate in the previous election.

11. Registering, changing, and conflicting party names

Sections 7(3) and 7(3.1) of the EFCDA address the naming requirements for new political parties, and the name change requirements for existing political parties respectively.

In order to determine if a name is acceptable, the Chief Electoral Officer considers several factors, including whether or not the name "so nearly resembles the name or abbreviation of the name of a registered party as to be likely to be confused with the name or abbreviation" of that other party. The Chief Electoral Officer makes this determination at the time of the proposed name change, and compares the proposed name to all registered parties that exist at that time.

The Chief Electoral Officer will reserve names prior to registration, but not specific words. No one party owns any particular word. Consent of one party for another party to use a similar name is not a factor the Chief Electoral Officer would consider, as it would not address the issue of voter confusion.

Elections Alberta publishes a list of expiration dates for reserved names on the Elections Alberta website: www.elections.ab.ca/parties-and-candidates/parties/. There is also a practical Bulletin for parties which seek to reserve a name which is also published in the FAQ section of the website: www.elections.ab.ca/voters/faq/.

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