

Legislative Reference Guide for Constituency Associations

THE ELECTION FINANCING ACT

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

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INTRODUCTION

Due to the financial nature of many of the provisions of the EFA, constituency associations, candidates, registered parties, and other participants are often required to file statements or forms that report financial balances and transactions. This document illustrates the commitment the Chief Electoral Officer (CEO) has to supporting the financial officer of a constituency association in this process.

The Compliance Program of Elections Manitoba

For compliance purposes, the EFA allows Elections Manitoba to review, examine, and inspect forms and returns filed under the EFA along with any underlying support. Elections Manitoba may select forms and returns or other related information for a more comprehensive review based on pre-established criteria or on a random basis.

The Compliance Assistance Program of Elections Manitoba

Elections Manitoba has a legislated mandate to provide assistance to financial officers, official agents, candidates, political parties, constituency associations and auditors in helping them comply with the EFA. Some of the assistance provided to constituency associations includes:

- Web site information – www.electionsmanitoba.ca;
- Meeting individually with constituency representatives;
- Telephone inquiries (during an election there are extended hours to answer questions);
- Periodic reminders to participants (e.g. a reminder of a filing deadline);
- Providing tools and printed material such as this Handbook.

Elections Manitoba works with constituency associations to rectify unintentional instances of non-compliance without serious consequences, nevertheless, the consequences can be serious if legislative requirements are not followed.

CHECKLISTS

Account in Financial Institution

The financial officer of a constituency association must ensure that:

- An account is maintained in a financial institution in the name of the constituency association [s.26(2)(a)].
- All money provided to the constituency association is deposited into the association's account [s.27(a)].
- Only money relating solely to the constituency association is deposited into the account [s.27(b)].
- All disbursements for the constituency association are made from the account [s.27(c)].

Nominating Candidates

- After a constituency association has nominated its candidate, the constituency association should promptly notify its registered party of the candidate's name, mailing address (where documents can be served), telephone number, and date of nomination [s.21(2)].

Records and Reporting

- All disbursements of a constituency association must be substantiated by an invoice or voucher [s.27(c)].
- 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].
- Constituency associations must disclose to Elections Manitoba within 30 days of the end of a year the details of all contributions, expenses, transfers and loan balances for the year (Form 924 and Form 934, Detailed Contributors' List) [s.64].

- The financial officer may apply in writing to Elections Manitoba for an extension to a filing deadline. A request must include a brief explanation of circumstances that are reasonably beyond your control. An extension request received after the filing deadline cannot be considered [s.69]
- If the financial officer fails to file Forms 924 and 934 for more than 30 days after it is due, a \$25 late-filing fee (up to a maximum of 30 days) will be payable.
- The financial officer of a constituency association must preserve the records on which a statement, return or other information is filed for at least 5 years from the date of filing or for any additional period considered necessary by the Chief Electoral Officer [s.72(1)].

Advertising

- A constituency association should advise its registered party of the amounts of all advertising undertaken in the 90-day pre-election period by the constituency association [s.58(4)].
- A constituency association should advise its nominated candidate of the amounts of all advertising incurred on behalf of the candidate with the knowledge and consent of the candidate during the election period. [s.50(1)].
- The financial officer of a constituency association should authorize all constituency association advertisements and a statement to that effect should appear on the advertisements [s.61].

Transfers and Loans

- A constituency association may lend money only to its registered party or its nominated candidate [s.48(3)].
- A constituency association may transfer money, property, or services only to its registered party or its nominated candidate [s.40 &41].

- When a constituency association transfers \$250 or more to its registered party or candidate, the association must provide a statement to the party or candidate that lists, for each contributor who contributed \$250 or more to the constituency association during the campaign period or candidacy period (as applicable), the contributor's name and residential address and the total amount contributed in the period [s.41(2)].

Miscellaneous

- A candidate's election financial statements must include election expenses incurred on behalf of the candidate by his or her constituency association [s.50(1)].
- A registered party may not allocate election expenses to a constituency association [s.51(4)].
- A constituency association cannot issue tax receipts for contributions [s.39(4)(b)].

EFA Terms and Concepts

I TIME PERIODS

It is essential to understand the different time periods in the Act in order to keep records and report as required. The following periods are defined under the EFA: [s.115]

Year – the calendar year.

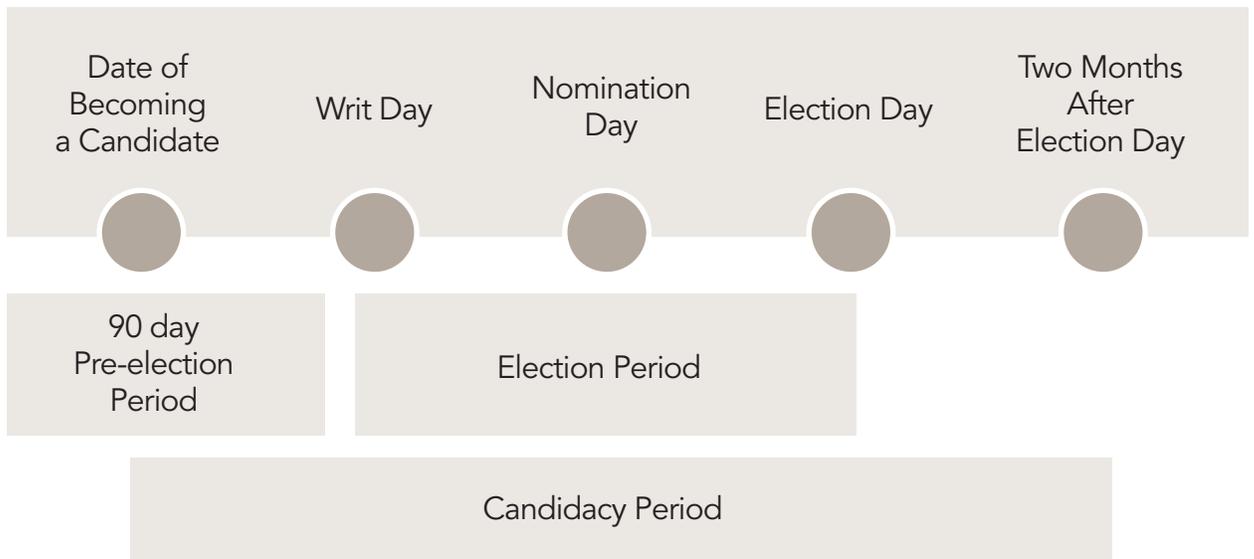
Candidacy period – the period that begins the day that a person becomes a candidate and ends two months after election day, or if the candidate withdraws, on the day of the withdrawal.

Campaign period – the period starting on the day an election is called and ending two months after election day.

Election period – the period starting on the day an election is called and ending on election day.

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.

Any period that ends on a holiday is extended until the next day that is not a holiday.



II

NOMINATING CANDIDATES

Upon nominating a candidate, a constituency association should notify its registered party of the candidate's name, address, telephone number, and date of nomination. After nomination, the financial officer of a registered party is required to report the candidate's name, the electoral division, and the nomination date to Elections Manitoba [s.21(2)].

After nomination, the individual is a candidate for the purposes of *The Election Financing Act* and the candidate must notify Elections Manitoba on Form 907 within 15 days of the individual who will be the candidate's official agent (if nomination occurs before an election period) [s.22(1)].

III

BOOKS AND RECORDS

A financial officer of a constituency association must maintain books and records to support the financial transactions occurring within a constituency association. Detailed records must be maintained for contributions received in order to report the appropriate information to Elections Manitoba. All vouchers and documents verifying disbursements, loans, transfers, and income must be maintained as part of the books and records of a constituency association [26(2)(b)].

The financial officer must keep those books and records for a period of at least five years [s.72(1)].

IV FINANCIAL ACCOUNTS

The *Election Financing Act* requires the financial officer of a constituency association to:

- Establish and maintain an account at a financial institution;
- Deposit into this account all money provided to the constituency association, including contributions, loan proceeds, and transfers; and
- Make all disbursements for the constituency association, including transfers, from this account.

The number of accounts is not restricted, however, a constituency association must be sure to report its financial activities based on all of its financial accounts.

The maintenance of an account at a financial institution is important, and necessary, for the following reasons:

- It is a requirement of the EFA;
- It makes it easier for those responsible for the finances of the constituency association to monitor and control the financial activities of the association; and
- It facilitates an effective review by Elections Manitoba, when necessary.

Depending on the financial institution, the account must be like a business account or a not-for-profit or community account. Do not open a personal account. An account must return all cancelled cheques, and provide statements that show what went through the account. Some financial institutions provide photocopies of the front and the back of every cheque and this is acceptable. Bank statements, cancelled cheques, and deposit slips will form an important part of the association's books and records and you, as the financial officer, may be asked to provide copies of these documents to Elections Manitoba [s.109].

"Financial Institution" means:

- a) A bank;
- b) A credit union;
- c) A trust company or loan company authorized under law to accept money for deposit and carrying deposit insurance in accordance with the *Canada Deposit Insurance Corporation Act* [s.115].

V

INCOME

The types of income that normally arise are:

- a) Contributions (both monetary and non-monetary contributions);
- b) Transfers (of cash, property, and services);
- c) Fundraising (including raffles);
- d) Sale of merchandise; and
- e) Other income.

All monetary income must be deposited into the financial account of the constituency association and all disbursements must be supported by an invoice or voucher as proof of payment [s.27].

A. CONTRIBUTIONS

It is essential to have a good understanding of contributions so that you can effectively track and record them in detail.

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

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

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

- a) An amount determined to be a contribution under section 32(6) (fundraising events).
- b) An amount determined to be a contribution under subsection 32(7) (selling items).
- c) The value of services provided free of charge by a self-employed individual who normally charges for them.
- d) An amount determined to be a contribution in relation to a loan under section 45.

There are two types of contributions: monetary (cash) and non-monetary.

A.1. Monetary Contributions

A monetary contribution is any money paid to a constituency association that is:

- a) For the benefit of the constituency association;
- b) Provided without return compensation to the contributor; and
- c) Not a loan or transfer.

Monetary contributions include contributions in the form of money, cheque, credit card payment or other similar instrument. **Tax receipts cannot be issued for cash contributions made to constituency associations.**

A.2. Non-monetary Contributions

A non-monetary contribution is the provision of property or services provided free of charge or at less than market value to or for the benefit of a recipient. There is no compensation to the contributor, and the transaction is not a loan or a transfer.

Examples of non-monetary contributions are:

- Free office rent;
- Free use of cars or motor homes (for travel in the electoral division during a campaign);
- An individual providing furniture or equipment for a constituency association's office at no charge (such as the provision of a computer printer by an individual, without charge, to a constituency);
- Signs or pamphlets provided without charge;
- Campaign signs or lumber purchased and used in a previous election that is being re-used in a subsequent election.

Key point to remember: Regardless of whether the contribution is a monetary or non-monetary contribution, it may only be made by individuals normally resident in Manitoba. Businesses, Associations, and other organizations are not permitted to make contributions of any kind.

A.2.1. Value of Non-monetary Contributions

The value of a non-monetary contribution is the market value of the property or services at the time the contribution was made [s.32(2)].

Market value is defined as the lowest price generally charged by the supplier for an equivalent amount of the same property or services at or about the time and in the market area in which the property or services are supplied [s.115]. Where a non-monetary contribution is the service of a self-employed individual, the value of the contribution is the regular fee or amount that the self-employed individual would charge.

Example: John D. provided free of charge 20 tables to the constituency association for a fundraising event. If the constituency association rented the tables from a rental company the rental fee would be \$20 per table. Therefore, the market value of the non-monetary contribution is \$400.00.

The constituency association will report a non-monetary contribution received from John D. for \$400.

It is important to note that if the tables were donated by a corporation rather than an individual or a sole-proprietor, this contribution would have violated the contribution limit provisions of the EFA as only individuals normally resident in Manitoba may contribute to a party, candidate, leadership contestant or constituency association [s.33].

A.2.2. Discounted Non-monetary Contributions

If property or services are provided to a recipient at less than market value, the provider of the property or service is considered to have made a contribution equal to the difference between the market value and the amount charged [s.32(2)].

Example: An individual provides computers for two months (with a regular market price of \$2,500) to a constituency association for \$1,000.

In this case, the individual has made a non-monetary contribution of \$1,500 (\$2,500 – \$1,000). The \$1,500 must be recorded and reported as a contribution from the individual.

A.2.3. Non-monetary Contribution of \$25 or Less

Individuals normally resident in Manitoba (and only such individuals) may make two non-monetary contributions of \$25 or less in a year to a candidate, constituency association, registered party or leadership contestant without the contributions having to be recorded under the Act. A third such contribution by an individual in a year, regardless of value, must be reported [s.32(5)].

Key point: You must keep track of the number of non-monetary contributions of \$25 or less made by an individual in a year so that you can determine when the threshold for not recording such donations has been reached.

A.3. Deemed Contributions

A loan agreement entered into with a third party could result in a deemed contribution in the following circumstances:

- Where there is a lower than market rate of interest (i.e. less than the prime rate of the government's principal banker) [s.45(1)];
- Any payment on the loan that is not made by the debtor would result in a deemed contribution in the amount of the loan payment [s.45(2)]; and
- Any amount of the loan that remains unpaid 6 months after becoming due results in a deemed contribution in the amount of the unpaid amount (provided there were no legal proceedings initiated) [s.45(3)].

A.4. Who Can Contribute?

Only individuals normally resident in Manitoba may contribute to the following entities:

- A party registered in Manitoba;
- Any provincial candidate;
- Any constituency association of a party registered in Manitoba; and
- Leadership contestants.

Corporations, unions, trusts, federal political parties, federal riding associations and provincial political parties from other provinces are examples of organizations that are prohibited from making contributions. It should be noted that a candidate may contribute to his or her own campaign as long as the above requirements are met [s.32(3.6)].

The determination of whether an individual is considered to be **normally resident** in Manitoba involves the consideration of numerous factors called "residential ties". (It should be noted that that facts used to determine residency for electoral contribution purposes are the same factors used to determine residency for tax purposes). Below are three of the factors that may be taken into consideration by Elections Manitoba when determining whether an individual should be considered a resident.

1. Dwelling place or places in Manitoba: If the individual owns or rents where he or she lives, then this is typically sufficient for establishing residency.
2. Spouse or Common-law partner: If the individual's spouse or common-law partner normally resides in Manitoba, then typically the individual would be considered a resident of Manitoba.
3. Dependents: If the individual has children or other dependents that live in Manitoba, then typically the individual will be considered to live in Manitoba.

Other factors that may be considered include having a Manitoba driver's license or Manitoba Health card. Residency is determined on a case by case basis through consideration of all of the relevant residency factors.

In general, if it can be determined that an individual contributor has a true, fixed, and permanent home and principal residence in the province, or can provide the above mentioned identification cards, then this is probably sufficient for the purposes of accepting contributions (as they likely satisfy the eligibility requirement).

It is important to note that the "normally resident" criterion applies to the point in time the contribution is made, not to the year in which the contribution is made. An individual can contribute in a year where he or she moves in or out of the province; however, at the time the contribution is made the individual must be normally resident in Manitoba.

A.5. Collection of Contributions

If a contributor wants to make a contribution to a provincial candidate, leadership contestant, party, or constituency association he or she can do so in two ways:

1. The individual can make the contribution directly to the recipient; or
2. The individual can give the contribution amount to another individual normally resident in Manitoba who is collecting contributions to be forwarded to the recipient at a later date.

It is critical to understand here that the only manner in which contributions can be collected aside from direct contributions is through collection by an individual who is normally resident in Manitoba.

Note: Non-resident individuals and organizations are not permitted to collect contributions on behalf of recipients. [s.37(1)]

A.5.1. Responsibilities of an Individual Collecting Contributions

When an individual decides to undertake the responsibility of collecting contributions for a constituency association or other recipient, there are two specific requirements that he or she must follow.

Requirement 1 - Record keeping: When collecting contributions, the collector is responsible for maintaining a contribution record which will include the following information about the contributors from whom the collector has received payments:

1. The name of the individual serving as the collector;
2. The name of the recipient;
3. The contributor's name and residential address;
4. The amount or value contributed;
5. The date the contribution was collected or received;

Requirement 2 - Forwarding Contributions: If the collector is receiving cash contributions, then after collecting, must either forward the cash directly to the recipient or deposit the cash into his or her own bank account. In the latter case, the collector is required to immediately draft a cheque or money order on his or her account in the amount of the contributions collected, payable to the recipient. This cheque or money order needs to be forwarded to the recipient as soon as reasonably possible. Regardless of whether the contributions are forwarded as cash, cheque or money order, the contributions must be accompanied by the contribution record kept by the collector.

If the collector is receiving the contributions in the form of cheque or credit card payments, then these contributions must be collected already payable to the recipient, and must be forwarded to the recipient on a timely basis (i.e. as soon as reasonably possible). When forwarding the contributions, as with cash collections, the contributions must be accompanied by the detailed contribution records kept by the collector.

Key things to remember about forwarding collected contributions:

1. If an individual collects cash, he or she must:
 - i) Forward cash directly to the recipient or deposit the amount in his or her own bank account and then make a cheque or money order payable to the recipient and forward it to the recipient on a timely basis; and
 - ii) Forward a contribution record to the recipient at the same time. [s.37(3)]
- 2) If an individual collects cheques or credit card payments:
 - i) Cheques and credit card payments must be made payable directly to the recipient;
 - ii) Contributions must be forwarded to the recipient on a timely basis; and
 - iii) Contribution records must be forwarded at the same time. [s.37(3)]

A.5.2. The Role of Professional Fundraisers

S.37(1) permits professional fundraisers, event organizers, call centres, and other similar entities that are retained by the recipient for fundraising purposes to:

1. Solicit contributions on behalf of the recipient; and
2. Collect information from individuals who are interested in making contributions and forward this information to the recipient that retained the organization.

A.6. Contribution Limits and Restrictions

The Election Financing Act limits contributions as follows:

- Only individuals normally resident in Manitoba may contribute to a provincial candidate or leadership contestant, or to any registered party or constituency association of a party registered in Manitoba [s.33];
- The total value of all contributions (other than contributions to a leadership contestant during a leadership contest period) made in a year by an individual must not exceed \$5,000 [34(1)];
- The total value of all contributions made by an individual to one or more leadership contestants during a particular leadership contest period must not exceed \$3,000 [34(2)];
- Individuals must use their own resources when contributing. A director of a corporation, for example, may not make a contribution using corporate funds, but may contribute using his or her own personal funds [s.35(3)];
- Individuals cannot make contributions if in doing so they are expecting to be compensated or reimbursed by another person or organization for all or part of the value of the contribution [s.35(5)];
- No person or organization can provide (or offer to provide) reimbursement or compensation (either in part or in whole) to an individual for making a contribution [s.35(4)];
- No person or organization is allowed to accept a contribution from an individual if the person or organization knows that the individual expects to be reimbursed or compensated for all or part of the contribution made [s.37.4];
- No person may solicit or knowingly accept a prohibited contribution. Any contributions of this type must be returned. Further, if subsequent to receiving a contribution a person learns that the contribution was prohibited, then that contribution must be returned (even though it was not known to be prohibited at the time of receipt) [s.36(2), 37(4)];
- Anonymous contributions of more than \$10 must not be used and must be returned [s.38] except for some non-monetary contributions as outlined in s.32(5) (see “Non-monetary contributions of \$25 or less”). If the contributor cannot be identified, the contribution must be turned over to the Minister of Finance;

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

A.6.1. Use of Force or Intimidation

One final note is necessary concerning a matter taken very serious with regards to the contribution process. No one is permitted to directly or indirectly, use or even threaten to use force or violence, or threaten to inflict injury, damage, harm or loss, upon another person in order to get them to make (or to get them not to make) a contribution. Engaging in such behaviour is considered a general offence [s.99(11)].

A.7. Reporting Contributions

Reporting of contributions received is required for:

- a) Public disclosure; and
- b) Tracking individual contribution limits of \$5,000 (not public).

The EFA sets out specific, and differing, disclosure requirements for (a) and (b) above.

A.7.1. Public Disclosure (Form 924)

For every contributor who made one or more contributions in a calendar year to the constituency association totalling in aggregate \$250 or more (cash and non-monetary), the following information must be disclosed for the period [s.64(1)]:

- The name of the individual; and
- The aggregate value of contributions received from that individual.

Information to be disclosed above is reported on a constituency association’s Form 924 and is available for public inspection.

A.7.2. Tracking Contribution Limits (Form 934)

Constituency associations must also disclose to Elections Manitoba information concerning all contributions (both monetary and non-monetary) received during a candidacy period. Accordingly, records must be maintained for all contributions (monetary and non-monetary), and would include [s.64(1)]:

- A contributor’s full name and middle initial (if any);
- The contributor’s Manitoba residential address and postal code;
- The date of each contribution;
- The amount of the contribution (for a non-monetary, documents supporting the valuation of the contribution should be maintained).

Although records must be kept for the above, for reporting purposes where one contributor has made several contributions in a calendar year the contributions may be aggregated as one contribution for the calendar year. Information on aggregate contributions of less than \$250 is not public and is only provided for Elections Manitoba to ensure compliance with the contribution limit provisions of the EFA.

A.8 Issues Related to the Annual Limits on Contributions

The timing of when a contribution is recognized could have a significant impact on an individual's compliance with the dollar-value contribution limit, especially in instances where a contribution is "in-transit" at the time a new calendar year arrives. **The date of contribution is the date of payment by a contributor.** Generally, the date of payment is the date that a contribution is delivered to a recipient (i.e. a registered party, candidate, constituency association, or leadership candidate) or a recipient's recognized agent. However, the general rule will not apply in the following circumstances:

- In the case of a post-dated cheque, the indicated future date is the contribution date.
- Where a contributor mails a cheque the contribution date would be the date that the contribution was delivered to Canada Post (assuming it was not a post-dated cheque). It would be similar if the contribution was sent via courier. Where a contribution is "in transit", it is advisable to keep records supporting the date of contribution (such as post-markings from Canada Post, courier vouchers, or signed contributor declarations).

Examples that illustrate the contribution date:

- If a contributor gives cash to a representative of a constituency association on March 15th, the contribution date is March 15th. This is true, even if the cheque is forwarded to the constituency association and does not arrive until April 2nd and/or is not cashed until April 10th.
- If a contributor mails a cheque on December 20th (dated December 20th); the cheque arrives on January 4th of the following year; and the cheque is deposited on January 12th; the contribution date will still be December 20th as that is the date that the payment was made.
- If a contributor mails a cheque on December 20th; the cheque arrives on January 4th of the following year; and the cheque is post-dated for January 12th; the contribution date will be January 12th.

Examples of contributions, non-contributions, and prohibited contributions are provided in Appendix A.

Note: No contribution has been made if a cheque is not honoured on presentation (i.e. it has been returned marked “Not Sufficient Funds” or “Payment Stopped” or something of similar effect).

Contribution Summary

Who Can Contribute	<ul style="list-style-type: none">• An individual normally resident in Manitoba• Organizations are not allowed to contribute
Contribution Limit	<ul style="list-style-type: none">• \$5,000 maximum per calendar year (in aggregate to all political entities)
Type	<ul style="list-style-type: none">• Monetary<ul style="list-style-type: none">- Cash, cheque, and credit card• Non-monetary<ul style="list-style-type: none">- Property or services provided free of charge- Valued at fair market value
Reporting	<ul style="list-style-type: none">• Contributor’s name and residential address• Amount of contribution or value of non-monetary contribution• Date received• Cannot contribute

A.9. Penalties

Any violation of the contribution provisions could result in the following maximum fines [s.99(1), 100(1)]:

- Individual - \$5,000;
- Organization or Corporation - \$50,000.

Further, an additional fine may be imposed of up to twice the amount of the prohibited contribution [s.100(2)].

B. TRANSFERS

A “**transfer**” means a transfer of money, property or services among registered parties, candidates, constituency associations and leadership contestants without compensation from the entity or person receiving the transfer [s.115]

Key concept to remember: Transfers received are recorded as income whereas transfers given are recorded similar to that of expenses.

B.1. Prohibited Transfers

A person or entity listed in Column 1 of the following table **must not** transfer money, property or services to a person or entity listed opposite in Column 2:

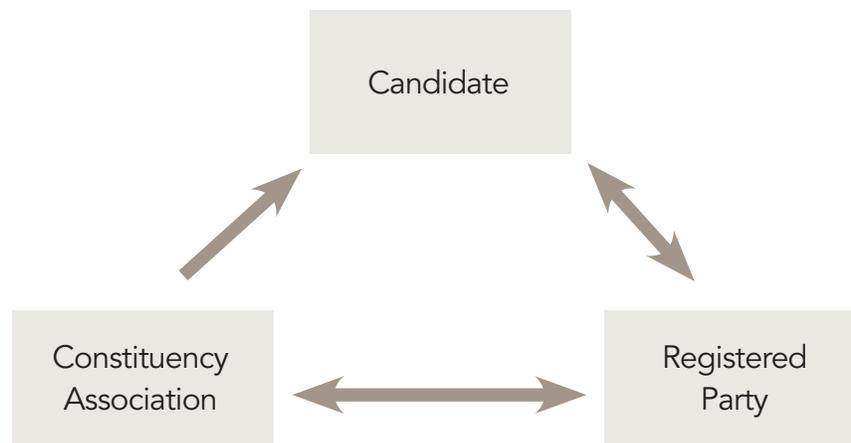
Transferred from	Transferred to
A registered party	A leadership contestant
A candidate	A registered party, other than the party that has endorsed the candidate A Constituency association Another candidate A leadership contestant
A constituency association	A registered party, other than its registered party Another constituency association A candidate, other than the candidate it has nominated A leadership contestant
A leadership contestant	A registered party except when there is a surplus Another leadership contestant A constituency association A candidate

Since federal political parties and federal riding associations are not registered under the EFA, the provision of money, property, or services from such organizations are not transfers. Rather **they are contributions but would be prohibited** under the contribution limit provisions of the EFA. [s.115 "organization"; "transfer"]

B.2. Permitted Transfers

A person or entity listed in Column 1 of the following table **may** transfer money, property or services to a person or entity listed opposite in Column 2. Such a transfer is not a contribution [s.41(1)].

Transferred from	Transferred to
A registered party	A constituency association of the party A candidate endorsed by the party or nominated by a constituency association of the party
A candidate	The registered party that has endorsed the candidate
A constituency association	Its registered party The candidate nominated by the constituency association or endorsed by its registered party



B.3. Constituency Associations – Source of Transfer

Where a constituency association makes a transfer to a registered party (during a campaign period) or to a candidate (during the candidacy period), and the value of the transfer is \$250 or more, the constituency association must advise the party or the candidate of the following [s.41(2)]:

- a) The name and address of each individual whose contributions in that period totaled \$250 or more; and
- b) The total value of the contributions from that individual in that period.

The party or the candidate must disclose this information from the constituency association on Form 921 (party return) or Form 922 (candidate return).

B.4. Deemed Transfers

Similar to a deemed contribution, a loan agreement entered into between and amongst a registered party, a constituency association, leadership contestant, or a candidate could result in a deemed transfer in the following circumstances:

- Where there is a lower than market rate of interest (i.e. less than the prime rate of the government's principal banker) [s.49(a)];
- Any payment on the loan that is not made by the debtor but is instead made by a registered party, constituency association, or candidate would result in a deemed transfer in the amount of the loan payment [s.49(b)]; and
- Any amount of the loan that remains unpaid 12 months after becoming due results in a deemed transfer in the amount of the unpaid amount [s.49(c)].

Note: Candidates and constituency associations are not permitted to make loans to leadership contestants.

For more information consult the *Loans* section.

C. FUNDRAISING EVENTS

A “**fundraising event**” is a social function or other event held for the purpose of raising money for a registered party, candidate, leadership contestant, or constituency association [s.115]. Examples: Dinners, dances, luncheons, and raffles.

Depending on the circumstances, a portion of a fundraising event's income may be a contribution (and a portion may not be) which impacts the contribution limits and the issuance of income tax receipts.

The general rule for income generated from a fundraising event is that 75% of the ticket price or individual charge is deemed a contribution and 25% is fundraising income [s.32(6)]. The general rule is applicable in the following circumstances:

- The ticket price or individual charge is for an amount of more than \$25; or
- The ticket price or individual charge is for an amount that is \$25 or less, but multiple tickets totaling \$more than \$75 are purchased.

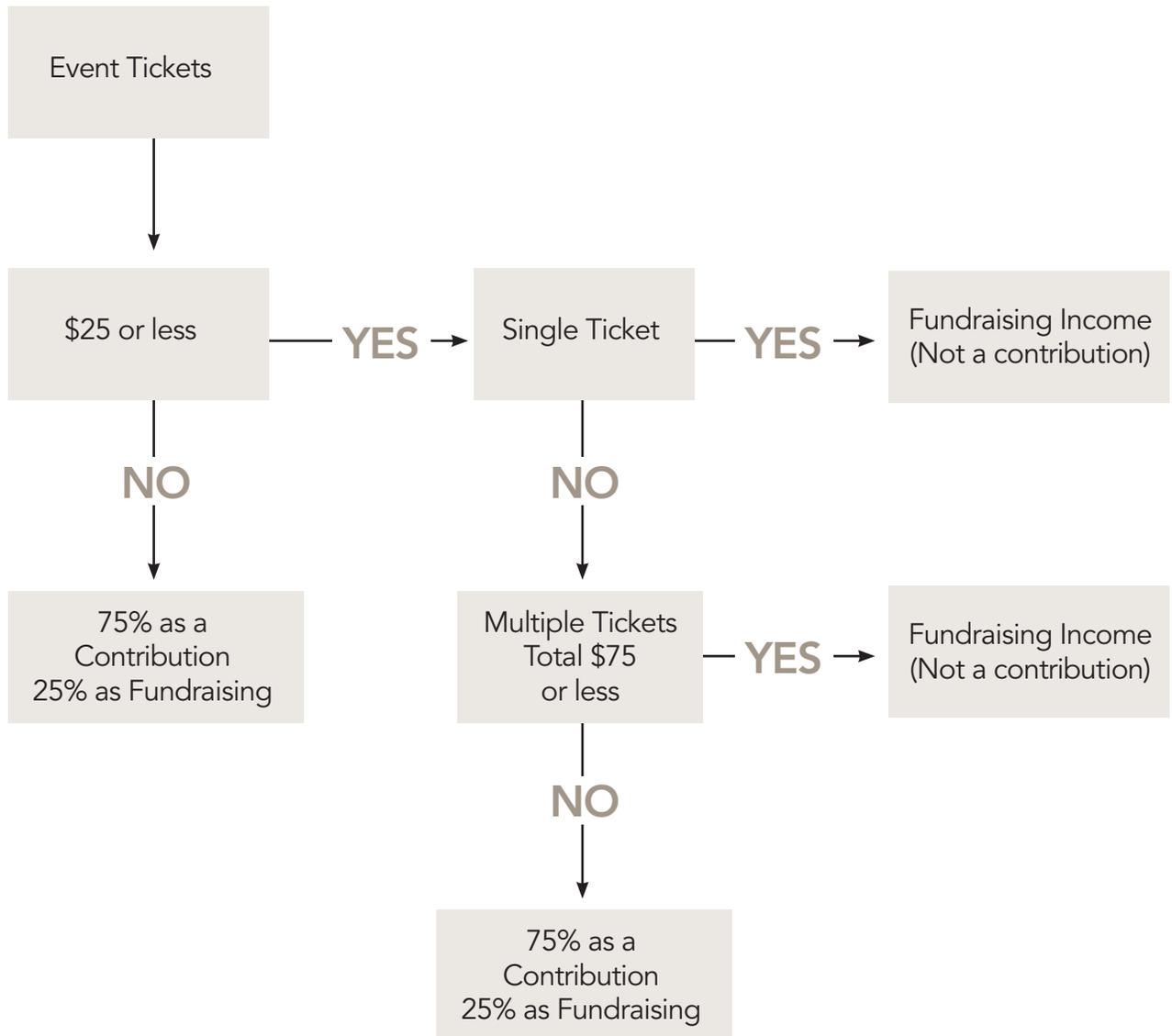
Where the ticket price or individual charge is \$25 or less or where multiple tickets, priced at \$25 or less each, purchased for a single fundraising event total \$75 or less, all of the income reported is fundraising income [ss.32(6)] (i.e. **no portion is considered contribution income**). As a result, a prohibited contributor such as a corporation or union may purchase a single fundraising event ticket as long as it is \$25 or less, or multiple tickets totalling \$75 or less (the individual ticket price must be \$25 or less). The purchases would not be contributions under the Act and, therefore, there would be no requirement to record the contributors' information.

A prohibited contributor may not provide property or services (non-monetary contributions) for fundraising events, directly or indirectly, in any amount.

Example: A golf bag donated directly by a company or union to a constituency association's fundraising event or to an individual who subsequently provides it to the candidate's fundraising event would be a violation of the EFA.

When a fundraising event is held where raffle tickets are sold, it is considered that each activity is a separate and distinct fundraising event. Each of these events would be subject to the EFA requirements. The sale of liquor at a fundraising event, even though there is a separate ticket price, is not considered fundraising if the liquor price is controlled by the Manitoba Liquor Control Commission and it is required that tickets be used.

C.1. Fundraising Event Income Classification Decision Tree



Example 1: A constituency association held a breakfast function (for the purpose of raising funds) for which tickets were sold for \$10. Fifty tickets were sold and it cost the constituency association \$8 per person to put on the function. A company purchased 4 tickets for \$40; the remaining forty-six tickets were sold individually.

Since the ticket price was \$25 or less, the forty-six individual tickets purchased would not result in contribution income. In addition, because the company purchased multiple tickets for an amount not exceeding \$75 and each ticket cost \$25 or less each, the company has not made a contribution and consequently, contribution income would not be recorded. Instead, the \$500 of income ($\10×50 tickets) would be recorded as fundraising event income.

Example 2: A dinner was held for a constituency association for the purposes of raising funds. Two hundred individual tickets were sold for \$150 each. The total cost of the function was \$10,000.

Since the ticket price is more than \$25, each individual who purchased a ticket made a contribution of \$112.50 ($\$150 \times 75\%$) to the constituency association. Contribution income would be reported in the amount of \$22,500 and income in the amount of \$7,500 ($\150×200 tickets $\times 25\%$) would be reported as fundraising income.

A constituency association cannot issue income tax receipts when it holds a fundraising event, or for any contributions it receives [s. 39(4)]. However, if the requirements of the EFA above are met with respect to a fundraising event hosted by a constituency association, 75% of the ticket price or individual charge is recorded, and disclosed, as a contribution. No income tax receipt would be provided.

D. MERCHANDISE SALES

When an item is sold for the purposes of raising money for a candidate, leadership contestant, registered party, or constituency association, it is critical that the resulting income be classified correctly. What is especially of concern is the amount of such income that should be considered a contribution as this will impact:

1. The contribution limits by source (only individuals); and
2. The contribution limits by amount (maximum of \$5,000).

D.1. Contributions from a Sale of Merchandise

When, for the purpose of raising money, an item is sold by or on behalf of a candidate, leadership contestant, constituency association or registered party, the amount by which the proceeds from the sale exceed the item's acquisition cost is a contribution [s.32(7)]. The acquisition cost of merchandise sold is determined as the greater of the actual cost of the item and the fair market value of the item (at the time it was acquired).

D.1.1. Sales of Items with Prices Greater Than \$25

When the selling price of the item or items sold is more than \$25 there are two possible situations that may result:

- a) Selling price (SP) equals the Acquisition Cost (AQ) resulting in a sale with no net profit and thus no contribution income.

$$SP = AQ \rightarrow \text{No contribution}$$

Example: Merchandise sold by a candidate's campaign at a price of \$350, where the market value cost to acquire the merchandise was also \$350, would not result in a contribution.

- b) Selling price is greater than acquisition cost resulting in net profit on the transaction and thus a contribution must be recorded.

$$SP > AQ \rightarrow \text{Contribution}$$

Example: Merchandise sold at a price of \$350, where the cost to the constituency association to acquire the merchandise is \$250, would result in a net profit (and a contribution) of \$100.

Key Point to Remember: Net profit is equal to sale proceeds less acquisition cost.

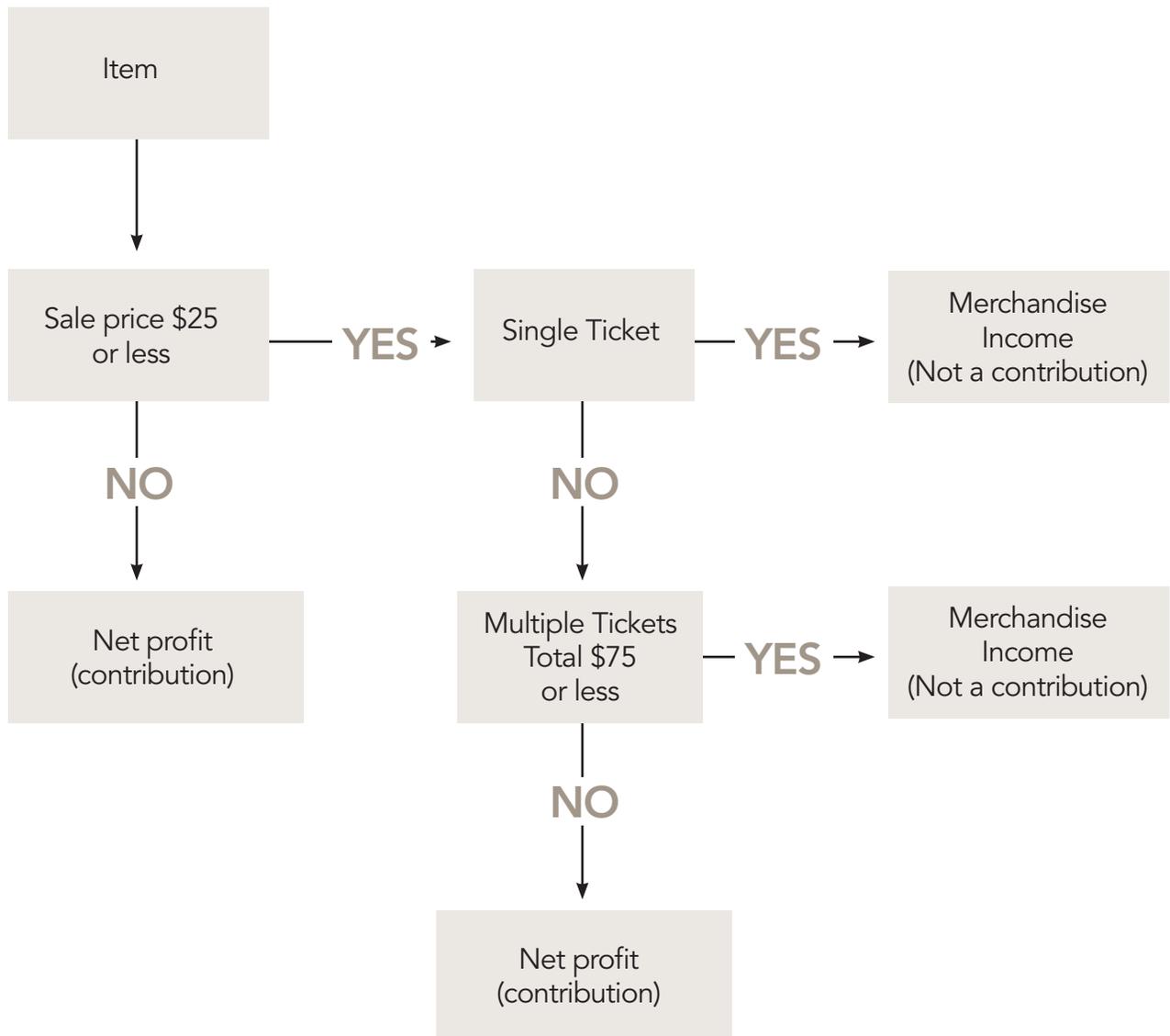
D.1.2. Exception for Nominal Amounts: Sales of Items with Prices \$25 or Less

While the above rules work in the general situation, when the proceeds from the sale of merchandise is nominal in amount, exceptions exist which allow the entire amount of the proceeds to be considered "other income". The exception conditions are as follows:

- A single item sold for proceeds \$25 or less; or
- Multiple sales of the same item totaling more than \$75 (where the individual item price is \$25 or less).

In either situation, all of the income recognized in the sale would be classified as sale of merchandise income as opposed to a contribution income.

D.2. Sale of Merchandise Income Classification Decision Tree



Example: A constituency association chose to sell t-shirts in order to raise funds. The t-shirts had a selling price of \$12 and cost the constituency association \$8 each to acquire.

In one transaction, a single t-shirt was sold. Under the general rules for a sale of merchandise, \$4 (the difference the selling price of \$12 and the cost of \$8) would be recognized as a contribution. However, in following the decision tree above, we classify this income according to the following steps:

1. The selling price on the T-shirt is \$25 or less.
2. The sale is of a single item.
3. Therefore: All income should be classified as sale of merchandise income (i.e. no contribution should be recognized).

In a second transaction, an individual purchases 10 t-shirts. We will again consider each of the steps in the above decision tree:

1. The selling price on each individual T-shirt is \$25 or less.
2. The sale is not of a single item (i.e. move to the “Multiple Sales” box).
3. The total revenue from the sale is \$120, which exceeds the proceeds threshold for sales of multiple items (\$75).
4. Therefore: This sale should be treated according to the regular contribution rules for sales of merchandise.

Total revenue = \$12/shirt x 10 shirts = \$120 → Reported as sale of merchandise income to the extent of the acquisition cost.

Total Acquisition Cost = \$8/shirt x 10 shirts = \$80 → Reported as expense.

Net Profit = \$120 - \$80 = \$40 → Reported as a contribution

E. OTHER INCOME

In addition to contributions, fundraising, transfers, and sales of merchandise, all other income of a party, candidate, leadership contestant or constituency association must be recorded.

Sources of other income include:

- Income from investments (e.g. bank account interest, credit union dividends, and GIC interest); and
- As noted in the section above, revenue from the sale of merchandise that is not in excess of the cost of the merchandise.

VI LOANS

The EFA sets out specific requirements regarding the lending of money. Candidates, leadership contestants, constituency associations, and registered parties 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. Candidates cannot lend to any person or organization (including their constituency association or party) money that has been raised for the purposes of an election [s.48(1)];
2. A constituency association may only lend money to its nominated candidate or its registered party [s.48(3)];
3. The maximum period of any loan made to a political entity (including refinancing loans) is two years [s.46(1)]; and
4. No person or organization shall, in a single year, provide a loan to a political entity in excess of \$5,000 [s.46(2)].

It should be noted that limitations 3 and 4 above are not applicable to loans made **by a** financial institution, by a registered party or constituency association to a candidate, or between a registered party and a constituency association [s.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 [s.47(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 guarantor;
4. Include the details of any agreements made to assign any portion of the election expense reimbursement;

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 constituency association financial institution account.

B. LOANS DEEMED TO BE CONTRIBUTIONS

Loan proceeds may be received to finance election or other expenses. Such loans are generally not contributions. However, there are circumstances where a loan results in, or is deemed to be a contribution. Loans deemed to be contributions are not eligible for tax receipts [s.39(4)(a), 45(4)]. Where any of the following deeming provisions apply, and the deemed contribution is from a corporation, union, or other prohibited contributor, a violation of the EFA has occurred.

B.1. Loans Made at Low Rates of Interest

A contribution results if a loan is given at a rate of interest that is less than the prime rate of the government's principal banker at the time the loan's interest rate was set. The applicable prime rate of interest and the effective date may be obtained from Elections Manitoba or its website [s.45(1)].

The deemed contribution is equal to the difference between the amount of interest that would be payable at the prime rate and the amount of interest that is actually payable.

B.2. Uncollected Loans

A loan becomes a contribution if it is not paid within 6 months after becoming due and the creditor has not commenced legal proceedings to collect the debt (see also Accounting Guide – *Accounting For Purposes of The EFA*, Section 670, "Loans Payable") [s.45(3)].

B.3. Loans Settled by Third Parties

Where someone other than the debtor makes a payment on a loan to the candidate, leadership contestant, constituency association, or registered party, that payment is deemed to be a contribution.

C. LOANS DEEMED TO BE TRANSFERS

Generally, loans from a registered party or constituency association are not transfers. However, such loans may result in, or be deemed to be transfers (similar to loans that are deemed to be contributions).

C.1. Loans Made at Low Rates of Interest

Where a loan from a registered party or constituency association is at an interest rate that is lower than the prime rate of the government's principal banker at the time the interest rate on the loan is determined, the difference between the amount of interest that would be payable

at the prime rate and the amount of interest that is actually payable in accordance with the loan agreement, is a transfer [s.49(a)].

Example: ABC Party loaned its candidate \$10,000 for her election campaign. ABC Party charged the candidate's campaign 5% interest at a time when the prime rate of interest was 7%. The loan was outstanding for 6 months. The amount of the interest payable on the loan was \$250 ($\$10,000 \times 5\% \times 6 \text{ months}/12 \text{ months}$). The amount of interest that would have been payable at the prime rate was \$350 ($\$10,000 \times 7\% \times 6 \text{ months}/12 \text{ months}$). The difference of \$100 ($\$350 - \250) is a transfer.

C.2. Uncollected Loans

A loan from a registered party or constituency association that remains unpaid 12 months after it becomes due is deemed to be a transfer [s.49(c)].

C.3. Loans Settled by Third Parties

Where a payment on a loan is not made by the debtor but rather by a candidate, constituency association, or registered party, that payment is deemed to be a transfer [s.49(b)].

D. REPORTING FOR LOANS OUTSTANDING

Every year that the loan balance is outstanding, information regarding the balance remaining unpaid must be provided to the CEO with the financial statements filed by constituency associations, or registered parties (i.e. Forms 920, 921, 922, 924, 947), along with a copy of the loan agreement [s.63(3.1), 64(1.1), 62(1.1), 62(2.1)].

VII ADVERTISING EXPENSES AND SPENDING LIMITS

Advertising expense means advertising that promotes or opposes (directly or indirectly) a registered party or a candidate or leadership contestant

- a) In newspapers, magazines or other periodicals, or on the Internet;
- b) On radio or television; and
- c) On billboards, buses or other property normally used for commercial advertising.

Advertising expenses do not include publishing a commentary, letter to the editor or a similar expression of opinion of a kind normally published without charge in a newspaper or other periodical publication or on the Internet, or normally broadcast without charge on television or radio.

Advertising expenses also includes direct production expenses [s.115].

A. COMPONENTS OF ADVERTISING EXPENSE

Direct production expense refers to all material and labour costs (or other similar service costs) that can be directly attributed to the cost of producing a specific advertisement. Material and labour costs incurred in the process of developing general themes or concepts that are not specific to a particular advertisement **would not** constitute a direct production expense. Direct production expenses associated with the development of advertising may come from sources such as:

- Advertising agencies performing work related to:
 - Project management (client service);
 - Art direction;
 - Design;
 - Copyright services;
 - Production management; and/or
 - Media planning or buying.
- Graphic design firms;
- Typesetting firms;
- Photographers or photo studios;
- Stock photography companies;
- Color houses (film output);
- Audio production houses;
- Video production houses;
- Talent (agency or direct pay);

- Printers – specific to outdoor, bus boards, transit;
- Website advertising designers.

Two other things to consider are that:

1. An advertisement relies on a medium (such as a newspaper or website) to deliver a message; and
2. Promotional expenses (which include signs, banners, brochures, leaflets, letters, cards, pamphlets, and handbills) are **not** considered to be advertising expenses and therefore, are not subject to the election period advertising spending limit.

With the above concepts in mind, the following examples should be considered.

Examples of costs considered to be advertising expenses:

1. The costs associated with placing an advertisement on a website.
2. The cost associated with placing a print advertisement (such as a meeting announcement) in a newspaper.

Examples of costs not considered to be advertising expenses:

1. The costs of operating/maintaining a website.
2. The costs associated with distribution of a piece of promotional material with a newspaper (e.g. a flyer) would be considered promotional expenses rather than advertising expenses.

Critical note: During an election period, no person can charge a political entity, or an individual acting with the consent of a political entity, a rate for advertising that exceeds the lowest rate the person charges anyone else for the same amount of equivalent advertising space or time during that period [s.56].

B. AUTHORIZATION OF ADVERTISING

A person or entity listed in Column 1 of the following table, or a person acting on their behalf with their knowledge and consent, must not publish, print or distribute advertising unless it is authorized by the person listed opposite in column 2 [s.61(1)].

Column 1	Column 2
A registered party	The party's financial officer
A candidate	The candidate's official agent The candidate, but only if the advertising is used before the candidate's official agent is appointed
A constituency association	The party's financial officer (in the year of a fixed date election) The constituency association's financial officer (at other times)
A leadership contestant	The contestant's official agent The contestant, but only if the advertising is used before the contestant's official agent is appointed

The person listed in column 2 must ensure that a public statement of the authorization appears with the advertising [s.61(2)].

The above requirements extend to any advertising done by a third party with the knowledge and consent of the party.

The statement of authorization should be in a form similar to the following:

- Authorized by the financial officer for (party's name);
- Authorized by the financial officer (if the full name of the party is evident on the material).

Authorization is required:

- At any time, if the advertising is by or on behalf of a registered party, a candidate or a constituency association, and
- During a leadership contest period, if the advertising is by or on behalf of a leadership contestant.

C. ELECTION EXPENSE LIMITS

The amount of election expenses that may be incurred by the party and campaign is limited by the EFA. Specifically, there are limits on two categories of expenses:

1. Total Election Expenses; and
2. Total Advertising Expenses.

A constituency association should advise its nominated candidate of the amounts of all advertising incurred on behalf of the candidate with the knowledge and consent of the candidate during the election period.

VIII ADVERTISING EXPENSE LIMIT IN FIXED DATE ELECTIONS YEARS

In addition to the election expense advertising limit discussed in Section VI, the EFA also contains a provision which limits the amount that can be spent by registered parties and candidates in the 90 day pre-election period in during the year of a fixed date election.

Key note: A constituency association should advise its registered party of the amounts of all advertising in the 90 day pre-election period by the constituency association [s.58(4)].

Advertising expenses is a defined term in the EFA [s.115], however, in the year of a fixed date election, the definition of advertising expenses expands as described in the following box.

The advertising expense limit is separate from and in addition to, the election period spending limit. Election advertising costs may not be applied against the annual limit.

A. PENALTIES

Exceeding the annual advertising spending limit could result in a maximum base fine to the official agent of \$5,000. However, an additional fine may be imposed of in the amount of up to twice the amount of the overspending.

IX REPORTING**A. REPORTING OF CONTRIBUTIONS**

Reporting of contributions received is required for:

- (a) Public disclosure; and
- (b) Tracking individual contribution limits of \$5,000 (not public).

The EFA sets out specific, and differing, disclosure requirements for (a) and (b) above.

A.1. Public Disclosure (Form 924)

Where the aggregate of contributions (monetary and non-monetary) to a constituency association from an individual contributor totals \$250 or more in a year, the following information must be disclosed by the financial officer for the period [s.64(1)]:

- The name of the individual; and
- The aggregate value of contributions received from that individual.

Where the aggregate of contributions for an individual contributor is less than \$250, the amount is reported in summary with other such contributions but the name of the individual is not disclosed.

Information to be disclosed above is reported on Form 924 (Constituency Association Return).

A.2. Tracking Contribution Limits (Form 934)

Constituency associations must disclose in detail to Elections Manitoba information concerning all contributions (both monetary and non-monetary) received during a calendar year. Accordingly, records must be maintained for all contributions (except for some non-monetary contribution of \$25 or less), and would include [s.37(2)]:

- A contributor's full name and middle initial (if any);
- The contributor's Manitoba residential address and postal code;
- The date of each contribution;
- The amount of the contribution (for a non-monetary, documents supporting the valuation of the contribution should be maintained); and
- The signature of the contributor, if the contribution is cash of more than \$100.

Although records must be kept for the above, for reporting purposes where one contributor has made several contributions in a calendar year the contributions may be aggregated as

one contribution for the calendar year. Information on aggregate contributions of less than \$250 is not public and is only for Elections Manitoba to ensure compliance with the contribution limit provisions of the EFA.

B. IDENTIFICATION OF CONTRIBUTORS

Financial officers of constituency associations must always know and be able to identify the source of a contribution otherwise the contribution cannot be accepted and used [s.38]. There are two exceptions:

- Cash contributions of \$10 or less where the contributor is not known (contribution amount must still be recorded but not the identity of contributor).
 - Individuals normally resident in Manitoba (and only such individuals) may make two non-monetary contributions of \$25 or less in a year to each candidate, constituency association, registered party or leadership contestant without the contributions having to be recorded under the Act. A third such contribution by an individual in a year, regardless of value, must be recorded [s.32(2)]. What this means is that the political entities must keep track of the number of non-monetary contributions of \$25 or less made by a single individual in a year to know when the threshold of two has been reached.
 - Generally, determining the identity of the contributor will be straightforward if the contribution is made in the form of a cheque. The contributor will generally be the owner of the financial account on which the cheque was drawn.
 - **Note:** A contribution made with a cheque issued from a corporate bank account, even if done so at the instruction of a sole shareholder, would be a corporate contribution and would be prohibited.
 - The only exception to this general rule is if the contribution is drawn from the financial account of a sole proprietorship. Sole proprietorships and the individuals who own them are legally only one entity. Therefore, a contribution made with a cheque drawn on a sole proprietorship financial account would be a contribution of the individual who owns the sole proprietorship and would be:
 - a) Applied against the individual's annual contribution limit; and
 - b) Disclosed as the individual's contribution.
 - Nevertheless, it may be difficult to determine the legal structure of a business operation (i.e. partnership, sole proprietorship) just from the cheque. Contributions made by cheque should only be accepted if the cheque is drawn from a personal account.
- Entities must always know the identity of a contributor before a contribution may be accepted.** A contributor's identity should not be assumed.

- There may be a concern with identifying a contributor if a personal cheque is received that drawn on a joint account. In such a case, generally, the contribution is considered to be from the person who signed the cheque. Additional written instructions are required describing the contributions made per person if the cheque represents a contribution from more than one contributor. You should try to obtain written instructions from the contributors before cashing the cheque. Further, it would be beneficial to keep a photocopy of the cheque in situations where written instructions have been provided.

C. LATE FILING FEES

C.1. What if you cannot meet the filing deadline?

The financial officer of the constituency association may apply in writing to Elections Manitoba for an extension to a filing deadline. A request must include a brief explanation of circumstances that are reasonably beyond your control. An extension request received after the filing deadline cannot be considered [s.69].

C.2. What if you miss the deadline?

Provided that you did not request and receive approval for an extension, if you fail to file the required forms prior to the deadline you will be subject to late-filing fees. Late fees will be charged at a rate of \$25 for each day that the required forms are not filed (up to a maximum of 30 days).

Important Fact: The Chief Electoral Officer may publicly disclose the names of any person who is obligated to pay late filing fees as well as the amount owing [s.71(5)]

Appendix A – Examples of Contributions, Non-contributions, and Prohibited Contributions

I EXAMPLES OF CONTRIBUTIONS

- A provincial candidate (or another individual) providing money to eliminate the candidate's campaign liability.
- Expenses incurred by individuals on behalf of and with the knowledge and consent of candidates, political parties and constituency associations
- Where a payment on a loan is made by someone other than the debtor, a non-monetary contribution is deemed to have been made [s.45(2)].
- Where loans have been uncollected, unpaid, or forgiven the lender, in some cases, is deemed to have made a permitted contribution [s.45(3)].
- Membership fees are contributions [s.32(3)].
- Fees paid to attend a conference or convention [s.32(3)].
- 75% of the ticket price of a fundraising event where the ticket price is more than \$25, or where multiple tickets are purchased for one fundraising event totaling more than \$75 [s.32(6)].
- Net profit on a sale of merchandise (i.e. the price less the acquisition cost of the merchandise) where the individual items have a selling price of more than \$25, or where multiples of the same item (with a unit price \$25 or less) are purchased for total proceeds more than \$75 [s.32(7)].

II EXAMPLES OF PROHIBITED CONTRIBUTIONS

- Money, property, or services provided from federal political parties, federal riding associations, and political organizations in other jurisdictions are prohibited contributions [s.115 "organization"].
- Services of an employee provided by a prohibited contributor.
- Expenses incurred by organizations (other than a candidate's party or constituency association) on behalf of and with the knowledge and consent of candidates, political parties and constituency associations [s.33].
- A website provided to a registered party by a web development company at no charge (the company will have provided property or service to or for the benefit of the party which is essentially the definition of a non-monetary contribution).

- Where property or services are provided by a prohibited contributor at a price below market value, a non-monetary contribution has been made to the extent that the market value exceeds the price charged [s.32(2)].

III

EXAMPLES OF NON-CONTRIBUTIONS

- A service provided without compensation by an individual [s.32(1)(b)].
- A candidate on paid leave under a collective or other employment agreement is not a contribution.
- The services of a person who acts without compensation as a financial officer, auditor, or an official agent or legal counsel to a candidate or registered party [s.32(4.2)].
- A fundraising event ticket purchased where the individual ticket price is \$25 or less [s.32(6)].
- Multiple fundraising event tickets purchased for a fundraising event totaling \$75 or less where the individual ticket price is \$25 or less [s.32(6)].
- A sale of a single item of merchandise where the price of the item is \$25 or less [s.32(7)].
- When more than one of the same item of merchandise is sold and the total proceeds of the sale are less than \$75 [s.32(7)].

