

# INTERPRETATION BULLETIN No. 2

DECEMBER 19, 2022

## Campaign Period Restrictions and Overlapping Reporting Periods

### Introduction

The Chief Electoral Officer has developed this Bulletin to provide information for political participants, and individuals in particular, who may campaign outside the campaign period, as well as provide information on apportioning expenses that may span multiple reporting periods. 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](http://www.elections.ab.ca).

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

This Bulletin addresses questions around who can campaign, when, using whose money, and how to allocate expenses that are subject to a spending limit.

### Campaigning Outside of a Campaign Period

A “campaign period” varies depending on what type of campaign it is.

For a nomination contest, the campaign period begins when the nomination contestant is deemed to be a nomination contestant under section 9.3(2) of the EFCDA, beginning on the date on which the earliest of the following occurs:

- a. the person announces the person’s intention to seek the endorsement as the official candidate of the registered party for the electoral division;
- b. the person first receives a contribution;
- c. the person first incurs a campaign expense;
- d. the person first borrows money for the purposes of this Act.



The nomination contestant's campaign period ends two months after the day on which a nomination contestant is selected for endorsement by a registered party in that nomination contestant's electoral division.

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;*

For a candidate, a constituency association (CA), and a registered party, a "campaign period" starts on the day the writ of election is issued (writ day) and ends two months after election day.

Candidates and nomination contestants cannot campaign outside a campaign period. However, a candidate's party or CA, or both, can campaign on the candidate's behalf outside of the candidate's campaign period.

## **What Activities can be Undertaken by Parties and CAs Before the Campaign/Election Period for a General Election Begins?**

### Expenses

Outside of the election period (writ day to election day) there are no constraints on what a CA or party can spend to promote or oppose a candidate or party

However, during the election period (May 1 to May 29 for the 2023 election held on the fixed election date) candidates (EFCDA section 41.3) and parties (EFCDA section 41.2) are subject to expense limits.

CAs are not subject to election expense limits because any election expense incurred by a CA on behalf of a candidate is an election expense for the candidate, while any election expense incurred by a CA on behalf of a party is an election expense for the party (EFCDA sections 41.2(5)(b) and 41.3(3)(b)).



## Contributions to Parties and CAs

Parties can accept contributions year-round. CAs can accept contributions at any time except during the campaign period for a general election (EFCDA s.17(2)). In the case of a by-election, this prohibition only applies to a CA that runs a candidate in the by-election.

## Candidates

In contrast to CAs, candidates can only accept contributions during the campaign period. As a result of amendments to the EFCDA, the campaign period and expense period for candidates both start on writ day. The election period ends on election day and the campaign period ends two months after election day.

EFCDA section 9(1) prohibits candidates from accepting contributions or incurring any campaign expenses until they are registered. Section 9(2) prohibits any registered candidate from accepting contributions or incurring campaign expenses except during the campaign period.

This means that the earliest a registered candidate can accept contributions or incur expenses is writ day. Before writ day, all contributions must go to the registered party or CA and only the registered party or CA can incur expenses.

## **Post Nomination Contest Contributions**

The campaign period for a nomination contest extends for two months following the selection date for the nomination contest. This means that the winning nomination contestant will become a candidate once they are endorsed by their party. As noted above, the earliest a registered candidate can accept contributions or incur expenses is writ day.

This also means that the same person is simultaneously prohibited from incurring expenses or accepting contributions as a candidate, but allowed to incur expenses and accept contributions for the remainder of their nomination contest campaign period. This can occur in a general election or a by-election.

To resolve this seeming contradiction, and to best meet the objectives of these provisions, the Chief Electoral Officer takes the view that winning nomination contestants are prohibited from accepting contributions beyond what is necessary to pay outstanding nomination contest expenses. Further, the winning nomination contestant should not incur more expenses for campaign activities as candidates are prohibited from incurring expenses.

In other words, a winning nomination contestant should not be allowed to leverage the extended campaign period to collect contributions for their candidate election campaign.



## Recording Expenses When the Campaign Period for a Nomination Contestant Overlaps with the Election Period for a Candidate

### Overview

As noted above, the campaign period for nomination contestants extends for two months after the selection date. Depending on the timing of the nomination contest, the winner's nomination contest campaign period may overlap with the campaign period for the general election (or by-election).

For example, for a nomination contest that ends on April 1, 2023, the nomination contest campaign period will end on June 1, 2023, which would overlap with the entire campaign and election periods of the candidate.

### Contributions

More specifically, if a nomination contestant has been selected for endorsement, they cannot accept contributions in the two months after the selection date, except for the purpose of paying any outstanding nomination campaign expenses.

If the nomination contestant does not have outstanding expenses and the candidate campaign/election period has started, those contributions should be counted as candidate contributions. The rule that registered candidates are not allowed to accept or incur expenses except during the campaign period still applies.

### Exception

Contributions may continue to be accepted by a candidate or nomination contestant, after a campaign period, strictly for the purposes of eliminating a campaign deficit, as outlined in section 43.1 of the EFCDA. Any deficit remaining, after the campaign period, must be eliminated within three months after the required filing date. A registered party or registered constituency association of a registered candidate may also transfer funds to the candidate or pay any outstanding liabilities during this same period.

### Campaign and Election Expenses

A campaign expense is any expense incurred, or non-monetary contribution received, by a candidate to the extent that the property or service that the expense was incurred for, or that were received as a non-monetary contribution, is used to directly promote or oppose a candidate during a campaign period.

An election expense is any expense incurred, or non-monetary contribution received, by a candidate to the extent that the real property, goods or services that the expense was incurred for, or that were received as a non-monetary contribution, are used to directly promote or oppose a candidate during an election period.



Campaign expenses involve the entire campaign period, while election expenses only involve the election period and have set spending limits.

Examples of Expenses:

- production, distribution, broadcast, or publication of advertising or promotional material in any media or by any other means during an election period
- payment of remuneration and expenses to or on behalf of a person for the person's services as a CFO or in any other capacity
- the conduct of election surveys or other surveys or research during an election period

If a nomination contestant continues to incur expenses after their selection date and those expenses are related or left over from their nomination contest campaign, those expenses should be reported as nomination contest campaign expenses notwithstanding that they arose in a candidate campaign/election period.

If an expense continues from the nomination contest through the candidate campaign/election period, the expense should be pro-rated between the two periods such that the portion of the expense that arose after the candidate campaign/expense period started is attributed to the candidate's campaign as an election expense, subject to the expense limit for candidates.

### **Example #1: Nomination Contestant/Candidate Expense Overlap**

A nomination contestant pays to produce and distribute a brochure that promotes their political affiliation and the individual's values. They produce 8,000 brochures at a cost of \$8,000 (\$1 each):

The nomination contestant distributes 2,500 brochures during their nomination contestant campaign period up to the contest selection date,

The nomination contestant is selected for endorsement,

After being endorsed as a candidate and the writ is issued the individual distributes the remaining 5,500 brochures during the election period, and \$5,500 is brought in as value from the individual's nomination campaign to their candidate campaign, and is reported as an election expense subject to the candidate's spending limit.



## Example #2: Candidate Expenses that Span Multiple Periods

In March 2023, a candidate's CA leases and pays for a campaign office for their candidate for three months from April through June 2023 for a total of \$6,000.

| Annual Period (Pre-writ)  | Start of Campaign Period and Election Period<br>May 1, 2023  | End of Election Period<br>May 29, 2023  | End of Campaign Period<br>July 29, 2023 |
|---|--|---|---|
|   | Writ of Election is issued   | Election Day  | + two months after Election Day         |
| <p><b>Candidate</b> cannot raise or spend their own campaign funds.</p> <p><b>Party and constituency association</b> can raise and spend funds for the candidate. The value of goods or services used in this timeframe is an annual operating expense.</p> | <p><b>Candidate</b> can raise or spend their own campaign funds. The value of goods or services paid by the candidate and used by the candidate, is an election expense of the candidate.</p> <p>The value of pre-paid goods or services from the <b>party or constituency association</b> used by the candidate, is an election expense of the candidate.</p> <p>Anything spent to promote the candidate or to oppose other candidates during this period counts toward the candidate's spending limit.</p> | <p><b>Candidate</b> can continue raising funds to cover any outstanding campaign expenses. The value of goods or services paid by the candidate and used by the candidate, is a campaign expense of the candidate.</p> <p>The value of pre-paid goods or services from the <b>party or constituency association</b> used by the candidate, is a campaign expense of the candidate</p> |   |
| <b>Example of Expense Apportioning</b>  |  |   |   |
| Campaign office for candidate in April: constituency association operating expense: \$2,000   | Campaign office for candidate in May: constituency association election expense on behalf of candidate: \$2,000, which counts toward the candidate's spending limit  | Campaign office for candidate in June: constituency association campaign expense on behalf of candidate: \$2,000, which is <u>not</u> subject to the candidate's spending limit   |   |