



**Elections
Ontario**

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Election Finances Act **Guidelines for Administrative Monetary Penalties**

Effective: November 2023

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Introduction

These guidelines are provided by the Chief Electoral Officer and relate to the administrative monetary penalties. These guidelines describe the general approach of the Chief Electoral Officer to the administration of administrative monetary penalties under the *Election Finances Act* (the Act). These guidelines are not intended to constitute a binding statement of how the Chief Electoral Officer will exercise his or her discretion in every matter and to the extent that any conflict exists between these guidelines and the *Election Finances Act*, the *Election Finances Act* will prevail.

The Chief Electoral Officer is obligated by s. 2(1)(g) of the *Election Finances Act* to report to the Attorney General any apparent contravention of that Act. Payment of an administrative penalty by an entity or individual does not release the Chief Electoral Officer from this obligation, and the default giving rise to the administrative penalty may be considered by the Ministry of the Attorney General for prosecution should the default continue.

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1. The administrative monetary penalties

1. The administrative monetary penalties under s.45.1(1) of the *Election Finances Act*

1. Where the Chief Electoral Officer believes on reasonable grounds that a person or entity has contravened one of the following provisions of this Act, the Chief Electoral Officer may make an order requiring the person or entity to pay an administrative penalty.

The Chief Electoral Officer is obligated by s. 2(1)(g) of the *Election Finances Act* to report to the Attorney General any apparent contravention of that Act. Payment of an administrative penalty by an entity or individual does not release the Chief Electoral Officer from this obligation, and the default giving rise to the administrative penalty may be considered by the Ministry of the Attorney General for prosecution should the default continue.

s.12.1(1) Acceptance of contributions by or for unregistered Nomination Contestant

2. No person and no person, organization or entity acting on behalf of that person and no political party or any of its associations or organizations acting on behalf of that person shall accept contributions for the candidacy of that person in a contest related to seeking endorsement as an official party candidate unless that person is a nomination contestant registered under this Act.

s.14(1) Acceptance of contributions by or for unregistered Leadership Contestant

3. No person and no person, organization or entity acting on behalf of that person and no political party or association or organization thereof acting on behalf of that person shall accept contributions for the candidacy of that person for the leadership of a registered party or for a leadership campaign of that person unless that person is a leadership contestant registered under this Act.

s.18 Exceeding contribution limit

4. The contributions that a person makes to any one registered party shall not exceed, in a calendar year, \$3,300 plus \$25 for each calendar year that has begun on or after January 1, 2022.

5. The contributions that a person makes to registered constituency associations and registered nomination contestants of any one registered

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party or to the constituency association of any independent member shall not exceed, in a calendar year, \$3,300 plus \$25 for each calendar year that has begun on or after January 1, 2022.

6. The contributions that a person makes to registered candidates of any one registered party shall not exceed, in a campaign period, \$3,300 plus \$25 for each calendar year that has begun on or after January 1, 2022.

7. The contributions that a person makes to all registered candidates not endorsed by a registered party shall not exceed, in a campaign period, \$3,300 plus \$25 for each calendar year that has begun on or after January 1, 2022.

8. The contributions that a person makes to any one registered leadership contestant of a registered party shall not exceed, in a calendar year that falls during a leadership contest period or during which the contestant is required to be registered by virtue of subsection 14 (2.1), \$3,300 plus \$25 for each calendar year that has begun on or after January 1, 2022.

s.22(9) Information to be included in political advertisement

9. A political advertisement in any medium shall name,

- a) the person, registered party, registered constituency association or other organization or entity who is causing it to appear; and
- b) any other person, registered party, registered constituency association or other organization or entity who is sponsoring or paying for it.

s.32 Who may accept contributions for candidate or leadership contestant

10. No contribution shall be accepted by a registered nomination contestant, registered candidate or registered leadership contestant otherwise than through his or her chief financial officer or other person on record with the Chief Electoral Officer as authorized to accept contributions.

s.36.1 Release of election surveys on polling day

11. No person, organization or entity, including, for greater certainty, a political party, constituency association, corporation, trade union or third party shall publish, broadcast or transmit to the public, in an electoral district on polling day before the close of all the polling stations in that electoral district, the results of an election survey that have not previously been made available to the public.

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s.37(2) and s.37(3) No political advertising during blackout period

12. “Blackout period” means, in any election, polling day and the day before polling day.

13. s.37(2) No party, constituency association, third party or candidate registered under this Act, and no person, corporation or trade union, whether acting with or without the party’s, association’s, third party’s or candidate’s consent, shall arrange for or consent to political advertising that appears during a blackout period.

14. s.37(3) No broadcaster or publisher shall allow a political advertisement to appear during a blackout period.

s.37.5(1) and s.37.5(5) Third Parties

15. s.37.5(1) A third party shall apply for registration under this section immediately after having incurred expenses of a total amount of \$500 for third party political advertising during a period referred to in section 37.10.1 [the non-election and election periods].

16. s.37.5(5) If the third party is an entity with a governing body, the application shall include a copy of the resolution passed by the governing body authorizing the entity to incur third party political advertising expenses.

s.37.10.1(1) and s.37.10.1(2) Third party spending limits

17. s.37.10.1(1) Election period: No third party shall spend,

- a) more than \$4,000 in any electoral district for the purpose of third party political advertising in that district during any election period, whether for a by-election or a general election, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar; or
- b) more than \$100,000 in total for the purpose of third party political advertising during any election period for a general election, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar.

18. s.37.10.1(2) Non-election period: No third party shall spend,

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- a) more than \$24,000 in in any electoral district for the purpose of third party political advertising in that district during the twelve-month period immediately before the issue of a writ of election for a general election held in accordance with subsection 9 (2) of the *Election Act*, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar; or
- b) more than \$600,000 in total for the purposes of third party political advertising during the twelve-month period immediately before the issue of a writ of election for a general election held in accordance with subsection 9 (2) of the *Election Act*, multiplied by the indexation factor determined under section 40.1 for the calendar year in which the election period begins and rounded to the nearest dollar.

s.37.10.2(1) Third party interim reporting

19. s.37.10.2(1) Interim reporting requirements: Every third party shall promptly file the following interim reports with the Chief Electoral Officer, in the prescribed form:

- a) When it has paid or committed to any person or entity to spend any funds on paid political advertising, it shall report the amount spent or committed, with a separate report being required each time its aggregate spending increases by an amount of at least \$1,000.
- b) When it has reached the applicable spending limit under section 37.10.1, it shall report that fact.

s.37.12(1) and s.37.12(8) Third party reporting

20. s.37.12(1) Third party political advertising report: The chief financial officer of every third party that is required to be registered in accordance with subsection 37.5 (1) shall file a third party political advertising report in the prescribed form with the Chief Electoral Officer within six months after polling day for an election in respect of which it was registered.

21. s.37.12(8) Certification regarding no coordination: Every registered third party in its third party political advertising report shall certify that the registered third party and its agents, employees, and independent contractors did not act in coordination with any registered political party, registered candidate, registered constituency association, registered nomination contestant, or registered leadership contestant, or any of their agents, employees or independent contractors.

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s.38(1), s.38(2), s.38(3) and s.38(3.1) Limitation of campaign expenses

22. s.38(1) Limitation - political party: The total campaign expenses incurred by a registered party and any person, corporation, trade union, unincorporated association or organization acting on behalf of the party during a campaign period shall not exceed the amount determined by multiplying the applicable amount by,

- a) in relation to a general election, the number of electors in the electoral districts in which there is an official candidate of that party; and
- b) in relation to a by-election in an electoral district, the number of electors in that electoral district.

23. s.38(2) Applicable amount - political party: For the purposes of subsection (1), the applicable amount is 80 cents, multiplied by the indexation factor determined for the calendar year under section 40.1 and rounded to the nearest cent.

24. s.38(3) Limitation of campaign expenses - candidate, constituency association: The total campaign expenses incurred by a registered candidate, the constituency association endorsing that candidate and any person, corporation, trade union, unincorporated association or organization acting on behalf of the candidate or constituency association during a campaign period shall not exceed the amount determined by multiplying the applicable amount by the number of electors in the candidate's electoral district.

25. s.38(3.1) Applicable amount - candidate, constituency association: For the purposes of subsection (3), the applicable amount is \$1.28, multiplied by the indexation factor determined for the calendar year under section 40.1 and rounded to the nearest cent.

s.38.1 Non-campaign expenses - registered party

26. The total political advertising expenses incurred by a registered party during the six-month period immediately before the issue of a writ of election for a general election held in accordance with subsection 9(2) of the *Election Act*, shall not exceed \$1,000,000, multiplied by the indexation factor determined under section 40.1 for the calendar year and rounded to the nearest dollar.

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s.41.1 Reporting, appointed candidates

27. Promptly after a candidate is appointed with respect to a registered party for an electoral district, the registered party shall notify the Chief Electoral Officer of the name of the candidate who was selected.

s.41.2 Constituency associations and parties

28. Every registered constituency association of a registered party shall disclose its financial statements to the chief financial officer of the registered party on a quarterly basis, or upon request.

2. Limitation, payment, and maximum amount of administrative monetary penalties

Limitation

1. The Chief Electoral Officer shall not make an order requiring the payment of an administrative penalty more than two years after the date on which the Chief Electoral Officer became aware of the contravention.

Payment

2. An administrative penalty shall be paid into the Consolidated Revenue Fund, and shall be in an amount determined by the Chief Electoral Officer in accordance with this section.

Maximum amounts

3. The maximum amount of an administrative penalty under this section shall be determined as follows:

1. For a contravention of section 18 is an amount equal to twice the amount that was contributed in contravention of that section, plus \$1,500, in the case of an individual, and plus \$5,000, in the case of a corporation or other entity.
2. For a contravention of subsection 22 (9), 37 (2) or 37.10.2 (1), \$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity.
3. For a contravention of subsection 37.5 (1), 37.5 (5) or 37.12 (8), \$10,000.
4. In all other cases, \$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity.

3. Criteria for penalty, notice and consultation

3. Criteria for penalty, notice and consultation

Criteria for penalty

1. The amount of an administrative penalty is to be determined taking into account,

- a) the degree of intention or negligence on the part of the person or entity that committed the contravention;
- b) the harm done by the contravention;
- c) whether the person or entity derived any advantage from the contravention;
- d) whether the person or entity made reasonable efforts to mitigate or reverse the contravention's effects;
- e) whether the person or entity has taken steps to avoid committing the contravention in the future;
- f) whether the person or entity has provided all reasonable assistance to the Chief Electoral Officer with respect to the contravention, including reporting it and providing any relevant information;
- g) the person's or entity's history of compliance with the provisions of this Act;
- h) the person's or entity's ability to pay the penalty;
- i) any aggravating and mitigating circumstances; and
- j) any other factor that, in the opinion of the Chief Electoral Officer, is relevant

Notice

2. The Chief Electoral Officer may take into account a factor under clause (6) j) only if a notice that sets out the factor has been published on the website of the Chief Electoral Officer.

Consultation

3. Before publishing a notice under subsection (7), the Chief Electoral Officer shall publish for the purpose of public consultation, a notice that sets out the proposed factor for at least 30 days on the website of the Chief Electoral Officer.

4. Procedure, appeal, and failure to pay

Procedure

1. An order requiring a person or entity to pay an administrative penalty shall be served on the person or entity and shall,
 - a) contain a description of the contravention to which the order relates, including the date of the contravention;
 - b) specify the amount of the penalty, and warn about the increasing amounts for subsequent contraventions;
 - c) give particulars respecting the time for paying the penalty and the manner of payment; and
 - d) provide details of the person or entity's right of appeal.

Appeal

2. A person or entity who is served with an order to pay an administrative penalty may appeal the Chief Electoral Officer's decision by filing an application with the Superior Court of Justice within 30 days from the date the order was served, and the following applies to such an appeal:
 1. The application must be accompanied with a copy of the order and state the reasons for the appeal.
 2. A copy of the application must be served on the Chief Electoral Officer not less than 30 days before the appeal is to be heard.
 3. The Superior Court of Justice may, on application, extend the 30-day period for making an appeal, if it considers it appropriate to do so.
 4. On hearing the appeal, the Superior Court of Justice may confirm, rescind or vary the amount of the administrative penalty.

Failure to pay

3. If a person or entity who is required to pay an administrative penalty fails to comply with the requirement, the Chief Electoral Officer may file the order that requires payment with a local registrar of the Superior Court of Justice and the order may be enforced as if it were an order of the court.