

QUICK REFERENCE

Leader of an authorized political party

Control of election expenses and financing of municipal political parties and independent candidates

Chapter XIII of the *Act respecting elections and referendums in municipalities*

This document is intended for municipalities of more than 5,000 inhabitants.

Roles and duties

Leader of an authorized political party

The party leader's main responsibilities are to:

- appoint an official agent if it is someone other than the official representative (s. 382);
- appoint a party auditor no later than 30 days after the authorization of the party is granted (sections 388 and 389);
- approve the nomination of the official agent's deputies (s. 385);
- in short order, staff the positions of official representative, official representative's delegate, where applicable, and official agent as soon as they become vacant, and staff the position of auditor in the 30 days following the vacancy (sections 387 and 391);

- ensure that the information required to update the register of political parties is sent to the Chief Electoral Officer (s. 392, 424 and 425);
- certify the nomination papers of every candidate of his or her party (s. 163);
- sign a declaration, jointly with the official representative and official agent, regarding the party's financial return and return of election expenses (sections 481.1 and 492.1);
- make an application to have the party's authorization withdrawn, if applicable (s. 403);
- notify the returning officer if he or she would like to have authorization as a private intervenor, if the party does not present any candidates during an election.

→ Where the party leader, another of his or her officers, official representative, a delegate of that representative, his or her official agent or a deputy of that agent commits, permits or tolerates an offence under the *Act respecting elections and referendums in municipalities*, the political party is presumed to have committed the same offence and, as a result, might be prosecuted (s. 638).

Official representative and official agent of an authorized political party

The official representative of a political party also acts as the official agent of this party, unless the leader appoints another person to act in this capacity. If these positions are not held by the same person and if the position of official agent becomes vacant, the official representative is deemed to be the official agent until the position is filled (s. 382).

The official representative must:

- be responsible for opening a bank account for the party in a financial institution that has an office in Québec (s. 439);
- take compulsory training within 30 days after being appointed (s. 387.1);
- must keep the accounting records of the party;
- appoint canvassers and issue certificates to them, where applicable (s. 432);
- prepare a list of canvassers and attach it to the financial return (D-M-6);
- collect and cash contributions (s. 432);
- control the contribution receipt booklets that are distributed;

- ensure that the receipts used are receipts prescribed or approved by Élections Québec;
- ensure that a contribution receipt is given to every person who makes a contribution (s. 434);
- ensure that the contributor has signed, on the contribution receipt, the declaration stipulating that the contribution is made out of the contributor's own property, voluntarily, without compensation or consideration, and that they have not and will not be reimbursed in any way (s. 434);
- ensure the compliance of contributions (s. 440);
- send to the Chief Electoral Officer, quarterly, copies of contribution receipts issued during this period and intended for them;
- cash the sums collected at political activities or rallies (s. 439);
- ensure that the revenues from activities for which receipts were not issued do not exceed 3% of the total contributions collected during the period covered by a financial return (s. 440.1);
- return non-compliant contributions to the municipality (s. 440);
- be able to take out loans (s. 446);
- pay the interest on loans each year (s. 448);
- reimburse loans in accordance with the *Act* (s. 449);
- provide every candidate of his or her party with a list of advertisement expenses incurred before the filing of his or her nomination papers (s. 162.1);
- ask the treasurer of the municipality to reimburse the fees incurred to audit the annual financial return, when the revenue collected is more than \$5,000 (s. 490);
- be able to cash any other revenues in accordance with the *Act* (s. 439);
- replenish the election fund account of the official agent of the party (s. 458);
- pay, where applicable, claims for contested election expenses (s. 471);
- pay a claim made to the treasurer for which no amount had been provided for by the official agent (s. 471);
- receive the reimbursement of election expenses from the treasurer of the municipality, where applicable (s. 478);
- be responsible for incurring expenses other than election expenses (s. 443);
- be responsible for signing and producing the financial return and the reports on political activities (s. 479);
- sign a declaration prescribed by the Chief Electoral Officer, to accompany the financial return (s. 481.1);
- be able to act, where applicable, as the official agent of the party (s. 382).

The official agent must:

- open an **account separate** (election fund) from that of the official representative (s. 457);
- take compulsory training within 10 days after being appointed (s. 387.1);
- be able, with the approval of the party leader, to appoint a sufficient number of deputies and mandate them to incur or authorize election expenses up to the amount set out in their deed of appointment (s. 385);
- deposit in the election fund account only the sums made available to him or her by the official representative (s. 458);
- manage the election fund account at his or her disposal and account for its use;
- keep a cash disbursements journal;
- manage petty cash;
- incur or authorize elections expenses (s. 460);
- be able to authorize an advertising agency (s. 456);
- ensure that any payment of election expenses is supported by an invoice and that the current price is paid (sections 461 and 466);
- ensure that all advertising complies with the *Act* (s. 463);
- ensure that the election expenses limit for each candidate is respected (s. 465);
- ensure that the provisions of the *Act* regarding claimed expenses are respected (s. 467);
- ensure that the provisions of the *Act* relating to contested claims are respected (s. 471);
- account for personal expenses paid by candidates and are subject to reimbursement (s. 454);
- pay all uncontested election expenses before filing the return of election expenses (s. 468);
- file the return of election expenses and sign the declaration of the official agent provided for in this return (s. 492).

The auditor of the party

The auditor has access to all the books, accounts and documents pertaining to the financial affairs of the party (s. 489).

The auditor of an authorized political party audits the party's financial return showing collected¹ revenues in excess of \$5,000 and issues his or her report to the official representative, on or before the fifth day before April 1 of each year, in accordance with the Chief Electoral Officer's directive (D-M-9) in this respect.

1. The amounts collected are receipts from operating activities (e.g. contributions), related activities (e.g. reimbursement of election expenses and audit fees or interest income) and the receipts from non-operating activities (e.g. loans).

The return must be sent to the party leadership. It can also contain comments or observations to explain any deviation from generally accepted accounting practices as well as from the *Act* or from directives of the Chief Electoral Officer.

The Chief Electoral Officer

The Chief Electoral Officer is responsible for ensuring that Chapter XIII of the *Act respecting elections and referendums in municipalities* is applied in municipalities of 5,000 inhabitants or more (s. 367).

Essentially, the Chief Electoral Officer must:

- authorize independent candidates and political parties (s. 368);
- ensure that parties and candidates comply with the *Act* (s. 368);
- give directives on the application of Chapter XIII (s. 368);
- receive and examine the returns that are submitted to him or her (s. 368);
- keep a register of authorized entities (parties and authorized independent candidates (s. 424));
- process withdrawals of authorization (sections 403 to 407);
- publish notices of authorization or withdrawals of authorization (s. 423);
- give appropriate instructions to treasurers of municipalities and coordinate their duties under chapter XIII of the *Act respecting elections and referendums in municipalities* (s. 376);
- have access to all the books, accounts and documents pertaining to the party's financial affairs (s. 368);
- inform the parties, candidates and public (s. 90.6). In addition, he or she can:
- train official representatives and official agents (subparagraph 90.6(5));
- make inquiries into the application of Chapter XIII and initiate proceedings (s. 90.1 and 647);
- conduct studies on political financing and election expenses (s. 367).

The returning officer

The returning officer ensures the smooth operation of the election and, in that capacity, ensures the training of other election officers and direct their work. As well, for political financing, this person must:

- under the authority of the Chief Electoral Officer, grant authorization to authorized independent candidates who apply for it and provide them with the appropriate forms (s. 375);
- promptly notify the treasurer and Élections Québec of any nomination papers he or she has granted;

- promptly forward to Élections Québec the original version of any authorization granted and a copy to the treasurer;
- direct the authorized independent candidate to the treasurer for the filing of certain documents;
- transmit to the treasurer and to Élections Québec the number of persons entered on the lists of electors;
- transmit to the treasurer and to Élections Québec the official results of the poll;
- authorize private intervenors (s. 512.5).

The treasurer

The role of the treasurer is to assist the Chief Electoral Officer with the application of Chapter XIII of the *Act*. In particular, he or she must:

- give instructions and relevant documents to any authorized independent candidate (Guide for official representatives and official agents of authorized independent candidates, and booklets of contribution receipts);
- display and update the list of official agents of political parties (and their deputies, where applicable) and authorized independent candidates (s. 394);
- calculate the preliminary and final limits of election expenses and file a copy with official agents;
- pay an allowance to the official representative of the authorized party of a municipality of 20,000 inhabitants or more, upon presentation of supporting documents (s. 449.2);
- calculate and pay the matching sums for municipalities of 20,000 inhabitants or more;
- receive the annual financial returns of political parties and the political activities reports;
- where the financial return must be audited, reimburse part of the audit fees to the party for this return out of the municipality's general fund (s. 490);
- receive and audit the returns of election expenses of political parties and authorized independent candidates;
- reimburse, in accordance with the *Act*, the election expenses of parties and authorized independent candidates who are eligible (sections 475 and 476);
- publish a summary of the returns of election expenses, in a newspaper distributed in the territory of the municipality (s. 499);
- issue notices for failure to submit a return within the stipulated deadlines to those concerned (sections 64 and 502 to 504);
- file with Élections Québec a copy of any financial return and activity reports and, upon request, copies of any return of election expenses received (s. 500);
- produce and file with the municipal council, where applicable, on or before April 1 of each year, a report on the activities referred to in Chapter XIII of the *Act* for the previous fiscal year and send a copy to Élections Québec (s. 513).

The clerk or the secretary-treasurer

The clerk or the secretary-treasurer must, for an elector who undertakes to run as an independent candidate and who would like to be authorized as of January 1 the year preceding the year in which a general election is to be conducted in the municipality or, in the case of a by-election, as of the date of a seat becomes vacant;

- provide the appropriate forms and authorize any elector following the Chief Electoral Officer's delegation of authority (s. 375);
- inform Élections Québec of the vacancy of a seat and thereafter, send him or her election notice during the by-election;
- promptly send the original copy of any authorization granted to Élections Québec and a copy to the treasurer.

The private intervenor

A private intervenor can incur advertisement expenses up to \$300 on a public issue (e.g., the environment, the protection of a park, etc.) and cannot in any way directly promote or oppose a candidate or party. He or she must be authorized by the returning officer and file a return with the treasurer of the municipality.

Only an elector or a group that is not a legal person and is composed of natural persons, the majority of which are qualified electors, may apply for authorization as a private intervenor. An authorized political party that does not present candidates at a general election or by-election that would like to intervene as a private intervenor must advise the returning officer of the municipality who will allocate an authorization number to the party. The party is deemed to have an authorization as a private intervenor from the date the notice is received.

Sections 512.7, 512.8 and 512.12 to 512.20 apply to that party, given the required adaptations. For the application of these sections, the party leader is deemed to be the person representing the private intervenor referred to in the last paragraph of section 512.3.

An authorized political party that invoked the provisions of section 455 during an election period cannot obtain the status of private intervenor during that period (s. 512.1).

Funds held by a party at the time of an application for authorization

A party leader who sends a written application for authorization to the Chief Electoral Officer must declare the amount of funds at the party's disposal at the time of the application (s. 397(9)).

Funds held means cash and, in general, cash assets that were obtained by electors of the municipality for the formation of the party.

Opening balance sheet

The official representative of a political party that holds funds must, within 30 days following the granting of authorization by the Chief Electoral Officer, file an opening balance sheet as at the date of authorization. The balance sheet must indicate the amount and the nature of the funds, the full address of the financial institution where the funds are held and the account number, if any.

Possible use of funds held

The funds cannot be used to pay election expenses or to repay the principal or pay interest on a loan whose principal was deposited into the election fund account (sections 449 and 458).

Complementary information to the financial return

The annual financial return of a political party, which is filed by the party's official representative, must include a detailed follow-up statement of funds held on the date of the authorization and revenues generated by those funds since then. The statement is required for as long as the funds exist. The funds are used on a first in, first out basis.

Poll book of authorized political parties

The Chief Electoral Officer shall keep, in respect of each municipality, a register of political parties and authorized independent candidates (s. 424). The party register must contain the following information:

- the name of the party;
- the address where communications intended for the party must be sent;
- the address where are kept the books and accounts pertaining to the funds of the party, the expenses it will incur and the loans it takes out;
- the name, domiciliary address and telephone number of the party leader;
- the name, address and telephone number of at least two party officers other than the leader;

- where applicable, the name, address and telephone number of the official representative and his or her delegates, that of the official agent and his or her deputy, as well as a note as to whether or not they have taken the compulsory training on rules governing political financing and the control of election expenses;
- the name of party's auditor;
- the address of the permanent office of the party, where applicable;

Where applicable, any authorized political party must provide the Chief Electoral Officer with the nomination papers of the official representative and his or her delegates, that of the official agent and his or her deputies, and of the auditor. The Chief Electoral Officer must also be informed of any resignation from either one of these positions. In addition, political parties must provide the Chief Electoral Officer with information required to update the register (sections 392 and 425).

Application to withdraw an authorization

The Chief Electoral Officer can, upon the written request of a political party leader, withdraw his or her authorization (s. 403). A political party requesting a withdrawal of authorization must send the following to Élections Québec:

- a copy of the resolution passed in accordance with the party regulations and certified to be true by at least two officers;
- the closing financial return (for the period from January 1 of the current year to the date of the application for withdrawal);
- any other previous financial return, if it was not filed with the treasurer, and the auditor's report relating to the party, as the case may be;
- the sums and assets held by the party;
- the list of creditors, including their names and addresses and the amounts owing to each;
- all unused contribution receipts with a reconciliation report;
- any book, account or document relating to the financial affairs of the party, if so requested by Élections Québec;
- bank statements for the year of the withdrawal and proof that the account is closed.

If the party obtains a withdrawal with debts, this will be taken into consideration when the same leader or official representative applies for authorization again.

Main penalties

The leader of an authorized political party who was elected and whose financial return or return of election expenses of the party is not filed within the prescribed time loses the right to attend the sittings as a member of the municipality council starting on the tenth day after the expiry of this prescribed time (s. 502).

Losing the right to attend the sittings of the municipality council also entails losing the right to attend, as a member, the sittings of any board, committee, commission or organization referred to in section 504 (s. 509).

However, a candidate may disassociate himself or herself from the party by submitting, within three months of the filing deadline for the return, a letter of resignation to the treasurer of the municipality, making sure to file a copy with the Chief Electoral Officer (s. 502).

The party leader is considered to be ineligible to run for office if he or she has not filed a financial report or a return of election expenses. Where the party no longer exists or the seat of a leader is vacant, the person who is ineligible is the last holder of the party leader's seat (s. 64).

Where the party leader, another of his or her officers, official representative, or one of his or her a delegate, official agent or one of his or deputies allows or tolerates an offence under the *Act*, the political party is presumed to have committed the same offence.(s. 638).

Apply for permission to sit and additional time to file a return

By ordinance, a judge may, upon request submitted prior to a person losing his or her right to attend sessions, allow said person to continue attending sessions for an additional period of no more than 30 days (s. 505).

The application must be made with a judge of the Court of Québec of the judicial district in which the territory of the municipality is located, in whole or in part (s. 508).

The application should include the following:

- the identification of the applicant: last name and first name, complete address, phone number and capacity;
- the identification of the persons involved: last name and first name, complete address and capacity, i.e., treasurer of the municipality, candidate for the office concerned during the election or an authorized party leader;
- the facts: nature of the return (financial or election expenses), last name, first name and address of the official representative, official agent of the candidate and the deadline for filing the return as required by the *Act*;

- the motives:
 - allow the person to continue to attend council meetings of the municipality for an additional period of no more than 30 days;
 - provide proof that the failure to file the return within the prescribed time is caused by the absence, death, illness or misconduct of the official representative or official agent or to any other reasonable cause;
- the objective, purpose, conclusion of the application: obtain an ordinance to allow an elected person to sit at the municipality council for an additional 30 days and the additional time required to file the return;
- a sworn declaration attesting to the truthfulness of the facts alleged in support of the application;
- a notice: no application can be heard unless a three-day notice has been given by the applicant to the treasurer, any candidate for the office concerned or the leader of each authorized party of the municipality.

Some interpretations of the *Act respecting elections and referendums in municipalities*

Volunteer work²

Pursuant to sections 428.1 and 461, a person can provide his or her personal services without remuneration as long as it is done freely and not as part of his or her work for an employer.

Therefore, volunteer work is work done by an individual, **personally, voluntarily, and who does so without compensation and for no consideration.**

Personally: Work performed by a natural person, who might be a qualified elector or not.

Voluntarily: Work performed voluntarily and without coercion.

Without consideration: Work for which no remuneration or cash benefit is received.

Pursuant to the *Act*, this work and its result or value are not considered as contributions or election expenses.

2. For more information, consult Chapter XIII of the AERM as well as the *Guide for official representatives of political parties* or the *Guide for official agents of political parties*.

Personal expenses of a candidate (s. 454)

The characteristics of a **personal expense** are, in the electoral context:

- an expense related to the candidate or a member of his or her immediate family (spouse, father, mother and children);
- an expense for transportation, food, clothing, child-care, hairdressing, etc.;
- **an expense that cannot include any advertising;**
- an expense that can only be incurred and paid by the official agent or the candidate.

In order for a candidate's election expense to be considered as **an election expense**, it is essential that:

- it is incurred directly or indirectly to promote his or her election;
- it has a personal nature for him or her or a member of his or her immediate family;
- it is reimbursed by his or her official agent by means of a cheque drawn on his or her election fund account.

When an authorized candidate's personal expense is considered as an election expense, it must be entered in the return of election expenses.

The candidate must produce invoices or other supporting documents, as well as proof of payment to the official agent, who will attach them to the return.

Strictly speaking, the official agent does not have to reimburse a personal expense incurred by a candidate, especially he or she incurred or authorized election expenses within the allowable limit.

In that case, any candidate should reach an agreement with his or her official agent at the start of the election period to set aside a certain amount for the reimbursement of personal expenses.