

SECOND BYLAW OF 2004 – Proposed Final Wording

CANADA ELECTIONS ACT

Introduction

204/20 The *Canada Elections Act* (“the Act”) requires the filing of audited returns by the chief agents of registered parties, (the official agents of candidates ()) and, in some cases, the financial agents of registered associations, leadership contestants and nomination contestants. Each return is to be reported on by an auditor who is a member in good standing of a corporation, an association or an institute of professional accountants and includes a partnership, every partner of which is such a member.

Ineligibility Provision - Statutory

204/21 The Act lists a number of persons (hereinafter referred to as “ineligible persons”) who cannot act as auditors for a registered party, candidate, registered association, leadership contestant or nomination contestant. These are:

- (a) an election officer or a member of the staff of a returning officer;
- (b) a candidate;
- (c) an official agent of a candidate;
- (d) a chief agent of a registered party or an eligible party;
- (e) a registered agent of a registered party;
- (f) electoral district agents of registered associations
- (g) leadership contestants and their leadership campaign agents;
- (h) nomination contestants and their financial agents; and
- (i) financial agents of registered third parties.

204/22 The Act prohibits an ineligible person from participating in the audit examination of the records or in the preparation of the audit report of a candidate, a leadership contestant or a nomination contestant (except to respond to the auditor’s request for information). There is no similar restriction placed on the auditor of a registered party or a registered association. An eligible person may be appointed as auditor for a candidate notwithstanding that the person is a member of a partnership that has been appointed as an auditor for a registered party or for a candidate in another electoral district.

Council Extension of Ineligibility Provisions

204/23 Without wishing to extend the statutory prohibitions unduly, Council considers that there are additional interests or relationships to those spelled out in the Act, which could impair, or appear to impair, an auditor’s objectivity. This interpretation, therefore, sets out Council’s view on unacceptable interests or relationships, in respect of audits under the Act, encompassing both those prohibited by the statute and those unacceptable professionally.

204/24 Council recognizes that too detailed a proscription, coupled with the widespread involvement of members, as citizens, in the political process, could make it almost impossible for the audit provisions of the Act to be given practical effect. Accordingly, this interpretation seeks to cover only the more obvious interests and relationships which might be considered unacceptable. Too narrow an interpretation could, in view of the many conceivable conflicts of interest, make it almost impossible for members and firms to serve the community's needs.

Definitions

204/25 "Candidate", "registered agent", "registered party", "official agent", "registered association", "leadership contestant", "nomination contestant" and "election period" have the meaning given to them in subsection 2(1) of the Act.

Audit of a Candidate

204/26 Council believes that a member may not be complying with Rule 204.1 if the member were to act as auditor of a candidate as well as being:

- (a) a paid worker during an election period for any candidate or any registered party;
- (b) a volunteer worker during an election period for that candidate or the registered party of that candidate where
 - i) the member exercises any function of leadership or direction in that candidate's or that party's campaign organization, or
 - ii) the member carried on any significant function involving the raising, spending or custody of that candidate's or that party's campaign funds;

or if an immediate family member, or a partner is:

- (c) a returning officer, deputy returning officer, assistant returning officer or election clerk in the electoral district of that candidate or is the candidate, official agent of that candidate or a registered agent of that candidate's registered party;
- (d) a paid worker during an election period for that candidate or that candidate's registered party;
- (e) a volunteer worker as described in (b) (i) above, during an election period, for that candidate or the registered party of that candidate.

Council believes that where a member is an "ineligible person" in respect of a particular candidate, the firm of which that member is a partner may not act as auditor of that candidate.

As noted in paragraph 22, the ineligible persons described in the Act may not participate in the audit examination of any candidate's return. Council believes that, as an extension of this, a member who could not act as auditor for a candidate because of any of the relationships detailed in paragraphs 26(a) and (b) above, should not participate in the audit examination of a candidate's return.

Audit of a Registered Party, Registered Association, Leadership Contestant or Nomination Contestant

204/27 In addition to the statutory prohibitions set out in the Act, the Council believes that a member may not be complying with Rule 204.1 if the member were to act as auditor of a registered party, registered association, leadership contestant or nomination contestant and the member, or an immediate family member, or a partner is a paid worker or volunteer worker who exercises any function of leadership or direction or carried on any significant function involving the raising, spending or custody of that funds belonging to the party, association or contestant, as the case may be.

Conclusion

204/28 Generally, members contemplating acting as auditors for registered parties, candidates, associations or contestants should be alert to any circumstances, not described in this Interpretation, which may place them in the position of impairment of objectivity or where an appearance of impairment might be presented. This type of question tends to arise, for example, where a donation of cash or of professional services is made. Members, as citizens, have the same responsibility to be involved in the political process as other citizens; such involvement may include financial support of a registered party, candidate association or contestant by a member, the member's immediate family or the member's partner. Council believes that the making of a financial contribution or the donation of professional services does not, of itself, necessarily create an impairment of objectivity, in these particular circumstances.

Members should recognize, however, the need to apply judgment to the question of the amount of any such contribution and must be satisfied that any such contribution does not in fact impair their audit objectivity or appear to impair it.

Council considers it of paramount importance that a member or a firm accepting an appointment under the Act makes such acceptance known to all partners so as to avoid any conflict arising within the provisions of the Act concerning ineligible persons.