

# Recommended changes to the *Elections Act*

The current edition of the *Elections Act* (the “*Act*”) was proclaimed December 21, 2011, and came in to force January 1, 2012. Since then, certain deficiencies in the *Act* have been identified by Elections Nova Scotia (“ENS”) or brought to the attention of ENS staff by political parties, electoral district associations, potential candidates or members of the Election Commission.

Some of the deficiencies occur simply because the *Act* is silent on a subject while others occur where the *Act* is unclear, requiring the reader to attempt to interpret the intentions of the legislature, rather than apply the *Act* with certainty.

## Definition of Election Expenses

The definition of ‘election expenses’ does not include the necessary close-out costs of an election office and costs for a candidate to travel outside their electoral district to attend a provincial rally or meeting. After consultation with the Nova Scotia League of Equal Opportunity and the Nova Scotia Disabled Persons Commission, it became clear that the *Act* does not exclude from the definition of ‘election expenses’ costs necessary for disabled candidates to campaign.

An amendment to the *Act* specifically allowing for the close-out costs of an office for seven days after election day, the costs for a candidate to travel outside their district to attend a provincial rally or meeting and the incremental costs incurred by a disabled candidate to run in an election is recommended.

## Candidate Expenses

There is no fixed date for an election in Nova Scotia yet certain activities are necessary in anticipation of an election. The *Act* is impractical in how it deals with

this issue. As an example, the registered parties often choose their candidates in anticipation of an election. There are only a few manufacturers of campaign signs in Nova Scotia. In the past, electoral district associations purchased signs on behalf of their candidate and stored them until the writ was issued. Once the writ was issued, the candidate would purchase the signs from the electoral district association and use them. The current wording in the *Act* does not recognize these costs as election expenses eligible for reimbursement.

While the *Act* does allow for the transfer of services, money or property between a registered party and any of its electoral district associations and candidates, it prohibits transfers if such expenditures would be considered ‘election expenses’ during the writ period.

It is proposed that an amendment to the *Act* be made to allow for the transfer of literature, objects or materials of an advertising nature from an electoral district association to a candidate and an explicit reference be added in the *Act* that materials consumed during the writ period (i.e. literature, objects or materials of an advertising nature) be allowable expense transfers from an electoral district association to a candidate but that materials consumed pre-writ are not.

## Contribution Limits for Independent Candidates

The *Act* establishes contribution limits for candidates with a party affiliation but it fails to establish contribution limits for independent candidates.

Therefore, we request an amendment to the *Act* which specifically establishes contribution limits for independent

candidates at five thousand dollars, in accordance with the limits set for candidates with a party affiliation.

## Contributions From Fundraising Events

It appears that there was a drafting oversight when subsection 246(2) was drafted as it fails to include registered third parties.

Subsection 246(2) should read:

(2) Where the total amount paid by an individual for a fundraising event held on behalf of a registered party, electoral district association, candidate or registered third party minus the value of the benefit, which equals the cost of the event, received by the individual is more than fifty dollars, the amount of the fee paid that exceeds the benefit received is a contribution to the registered party, electoral district association, candidate or registered third party and the contribution is attributable to the individual who paid the fee.

## Purchasing Tickets to Events

The *Act* provides that an individual resident in the Province may make a contribution to a candidate, electoral district association or registered party but no corporation, partnership or trade union (an “organization”) may make a contribution to a registered party, electoral district association, candidate or registered third party.

The language in the *Act* fails to specifically prohibit an organization from purchasing tickets to events, a portion of which is a political contribution. In order to avoid any confusion and to prevent abuse, an amendment to the *Act* is recommended to prohibit the purchase of tickets to such events by an organization.



### **Contributions by Will**

The Act allows for contributions by an individual to each registered party, their electoral district associations and the candidates of that registered party, up to five thousand dollars in any calendar year.

The Act also provides that an estate may make contributions to registered parties and electoral district associations but an estate is treated like a person and also limited to a maximum contribution of five thousand dollars.

The members of the Election Commission have suggested that the registered parties should be able to accept contributions made by an estate in excess of five thousand dollars. It would not be possible for the personal representative, as trustee, to dispose of the entirety of the bequest in one calendar year if the bequest exceeded five thousand dollars. If the Act was amended to accommodate larger bequests and the contribution was to extend over two or more years, there would be an onerous burden on the personal representative of an estate. It would also be unreasonable to deny the ability to wind down the estate as quickly as possible. It would be preferable to the personal representative, the registered parties and ENS that the personal representative be able to pay out the bequest in its entirety at the earliest possible opportunity. Persons considering gifts to political parties by bequest might be encouraged to do so, if the rules permitted the entirety of a bequest to be transferred over in one year.

It is proposed that the Act be amended to allow that the total amount of a bequest be sequestered by the registered party or electoral district association immediately

and drawn down in annual installments of no greater than five thousand dollars. There should also be a restriction on the ability to borrow against these sequestered funds, that they be held in trust and that all interest earned be reported as part of the respective party's or electoral district association's annual reporting requirements.

It is also proposed that the Act be amended to define the word "estate" to make it clear that this specifically refers to a testamentary disposition.

### **Claiming to be the Candidate of a Political Party**

The current wording of the Act does not require that an individual prove that they have the endorsement of a party before registering as a candidate and nothing in the Act prevents them from asserting that they are representing a specific party and soliciting contributions and incurring expenses under the association with the party.

The issue to consider is who is actually harmed by this behaviour. The party who the individual claims to represent may have no intentions of endorsing this candidate and likely would not appreciate someone claiming to be their candidate. Also, this claim could be misleading to the electorate and is therefore a concern of ENS.

In order to clarify this situation, an amendment to the Act is recommended to prevent a candidate from misrepresenting party affiliation to the public. It is recommended that, at registration, all candidates be deemed independent unless they provide ENS with evidence from the party or the leader of the party that they are registering as the candidate for that party.

### **Gathering Information of 16 and 17 Year Olds**

Young Nova Scotians are vastly under-represented in the Register of Electors. ENS wishes to obtain elector registration information regarding 16 and 17 year old Nova Scotians as it does for eligible electors (residential address, mailing address, legal name, sex, contact information, and day, month and year of birth).

Subsection 42(4) of the Act reads: 42(4) Notwithstanding subsection (1), the Register of Electors may contain information about persons who reside in the Province and may become eligible to vote.

The *Freedom of Information and Protection of Privacy Act* establishes a test to be met before the collection of personal information about an identifiable individual is permitted. A portion of the test states, "the collection of that information is expressly authorized by or pursuant to an enactment."

The language in the Act does not clearly authorize the collection of information pertaining to 16 and 17 year old Nova Scotians. Therefore, we request an amendment to the Act which specifically authorizes the collection of personal information pertaining to Nova Scotians who are 16 and 17 years old. This information is to be held in the Register of Electors until they are 18, when their consent to be a registered elector will be requested. Obtaining elector information of 16 and 17 year olds will improve the quality of the Register of Electors. Elections Nova Scotia will contact these electors to ask for their consent to be added to the Register of Electors once they become 18 years old.

