

CHECKLIST

The 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 with 5,000 or more inhabitants

Roles and duties of various officials

The leader of an authorized political party

The main responsibilities of the party leader are as follows:

- Appoint an official agent if it is someone other than the official representative (s. 382).
- Appoint an auditor of the party no later than 30 days after the authorization of the party is granted (s. 388 and 389).
- Approve the nomination of the official agent's deputies (s. 385).
- Fill the offices of official representative, official representative's delegate(s) (if necessary) and official agent as soon as they become vacant, and fill the office of auditor in the 30 days following the vacancy (s. 387 and 391).

- Ensure that the information required to update the register of political parties is sent to the Chief Electoral Officer and to the treasurer of the municipality (s. 392, 424 and 425).
- Certify the nomination papers of every official candidate of the party (s. 163).
- Sign a declaration, jointly with the official representative and agent, regarding the party's financial report and return of election expenses (s. 481.1 and 492.1).
- Submit an application for the withdrawal of the party's authorization, if necessary (s. 403).
- Notify the returning officer if he or she would like to have authorization as a private intervenor, in case the party does not present any candidates during an election.

→ When the leader of a party, another of its officers, its official representative or the official representative's delegate, its official agent or a deputy of the agent commits, permits or tolerates a violation of the Act respecting elections and referendums in municipalities, the political party is presumed to have committed this same violation and legal action can therefore be taken against it (s. 638).

The official representative and the official agent of an authorized political party

The official representative of a party acts as the official agent, unless the leader appoints another person to this position. Where the positions of official representative and official agent are not held by the same person and where the position of official agent is vacant, the official representative is deemed to be the official agent until the vacancy is filled (s. 382).

The official representative:

- Is responsible for opening the account of the party in a financial institution having an office in Québec (s. 439).
- Must take mandatory training within 30 days after being appointed (s. 387.1).
- Must keep the accounting records of the party. For this purpose, a computerized register known as the RCM (Municipal Accounting Register) has been developed.
- Must, where applicable, appoint people to solicit contributions and issue certificates (s. 432).
- Must prepare a list of the people appointed to solicit contributions and attach it to the financial report (D-M-6).
- Must collect and cash contributions (s. 432).
- Must control the booklets of receipts that are distributed.
- Must ensure that the receipts used are those prescribed by the Chief Electoral Officer, or if not, approved by the Chief Electoral Officer.

- Must ensure that a contribution receipt is given to every person who pays a contribution (s. 434).
- Must 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 it has not and will not be reimbursed in any way (s. 434)
- Must ensure that contributions are legal (s. 440).
- Must send to the treasurer of the municipality, every three months, the treasurers' copies and Chief Electoral Officer's copies of the contribution receipts issued during this period (s. 483)
- Must cash the sums received during political activities or political events (s. 439).
- Must 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 report (s. 440.1).
- Must return illegal contributions to the municipality (s. 440).
- May contract loans (s. 446).
- Must pay the interest due on loans each year (s. 448).
- Must reimburse loans in accordance with the Act (s. 449).
- Must provide every candidate of the party with a list of the publicity expenses incurred before the candidate filed his nomination papers (s. 162.1).
- Must ask the treasurer of the municipality to reimburse expenses incurred to audit the annual financial report, when the revenue collected is more than \$5,000 (s. 490).
- May cash any other funds in accordance with the law (s. 439).
- Must replenish the election fund of the official agent of the party (s. 458).
- Must, where applicable, pay claims for contested election expenses (s. 471).
- Must pay claims made to the treasurer for which no amount had been provided for by the official agent (s. 471).
- Where applicable, receives the reimbursement of election expenses from the treasurer of the municipality (s. 478).
- Is responsible for incurring expenses other than election expenses (s. 443).
- Is responsible for signing and producing the financial report and the reports on political activities (s. 479).
- Must sign a declaration prescribed by the Chief Electoral Officer to accompany the financial report (s. 481.1).
- May act, where necessary, as the official agent of the party (s. 382).

The official agent:

- Must open a **separate account** (election fund) from that of the official representative (s. 457).
- Must take mandatory training within 10 days of his appointment (s. 387.1).

- May, with the approval of the party leader, appoint a sufficient number of deputies and authorize each of them to incur or authorize election expenses up to the amount fixed in their deed of appointment (s. 385).
- Must deposit in the account only the sums placed at his disposal by the official representative (s. 458).
- Must manage the election fund at his disposal and account for its use.
- Must keep a cash-disbursements journal.
- Administers the petty cash.
- Incurs or authorizes election expenses (s. 460).
- May authorize an advertising agency (s. 456).
- Must ensure that any payment of election expenses is supported by an invoice and is paid at the regular price (s. 461 and 466).
- Must ensure that any publicity is identified in accordance with the Act (s. 463).
- Must ensure that the expense limit for each candidate is respected (s. 465).
- Must ensure compliance with the provisions of the Act governing expenses claimed (s. 467).
- Must ensure compliance with the provisions of the Act governing contested claims (s. 471).
- Must account for personal expenses paid by candidates and for which they were reimbursed (s. 454).
- Must pay all uncontested election expenses before filing the return of election expenses (s. 468).
- Must produce the return of election expenses and sign the declaration of the official agent in the return (s. 492).

The auditor of the party

The auditor must have 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 that collects over \$5,000 in receipts¹ audits the party's financial report and submits the auditor's report to the official representative no later than the fifth day preceding April 1 of each year, in accordance with the directive from the Chief Electoral Officer.

This report must be addressed to the party's leadership. It may also contain comments or observations on any departure from generally accepted accounting practices, the Act and or the Chief Electoral Officer directives (D-M-9).

1. The receipts collected comprise money from operating activities (e.g. contributions), related operations (e.g. reimbursement of election expenses, auditing expenses and interest) and non-operating activities (e.g. loans).

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 for municipalities with a population of 5,000 or more (s. 367).

the Chief Electoral Officer must basically:

- 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 reports and returns that are submitted (s. 368).
- Keep a register of authorized entities (authorized parties and independent candidates (s. 424)).
- Process withdrawals of authorization (s. 403 to 407).
- Publish the notice of authorization or of withdrawal 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, the candidates and the general public (s. 90.6).

In addition, the Chief Electoral Officer may:

- Train official representatives and official agents (s. 90.6(5)).
- Make inquiries into the application of Chapter XIII and institute proceedings (s. 90.1 and 647).
- Conduct studies of political financing and election expenses (s. 367).

The returning officer

The returning officer must ensure that the election is conducted properly and, for that purpose, provides training for election officers and directs their work. With regard to political financing, the returning officer must also:

- Under the authority of the Chief Electoral Officer, grant authorization to independent candidates who request it, and submit the appropriate forms (s. 375).
- Send to the treasurer and to the Chief Electoral Officer, without delay, every nomination paper that he or she has accepted.
- Send the original of any authorization to the Chief Electoral Officer, and send a copy to the treasurer.
- Refer authorized independent candidates to the treasurer to submit certain documents.

- Send the number of electors entered on electoral lists to the treasurer and to the Chief Electoral Officer
- Send the official poll results to the treasurer and to the Chief Electoral Officer.
- 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. Among other things, the treasurer 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 parties, the list of authorized independent candidates and, where applicable, the list of deputies of official agents of parties (s. 394).
- Calculate the preliminary and final limits on election expenses and send a copy of them to all official agents.
- Receive, every three months, the treasurers' copies and Chief Electoral Officer's copies of the contribution receipts issued by the official representative of an authorized political party during the period (s. 483)
- Send the copies of the contribution receipts to the Chief Electoral Officer every three months.
- Pay an allowance to the official representative of an authorized party upon presentation of vouchers (for municipalities with populations of 20,000 or more) (s. 449.2).
- Calculate and pay the matching amounts (for municipalities with 20,000 or more inhabitants).
- Receive the annual financial reports of political parties and the reports of their political activities.
- Where the financial report must be audited, reimburse part of the cost of the audit to the party, out of the municipality's general fund (s. 490).
- Receive and audit the returns of election expenses of political parties and authorized independent candidates.
- In accordance with the Act, reimburse the election expenses of parties and independent candidates who are entitled to reimbursements (s. 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 report or return within the stipulated deadlines to those concerned (s. 64 and 502 to 504).

- Send copies of all financial reports and activity reports to the Chief Electoral Officer and, upon request, copies of all returns of election expenses received (s. 500).
- Where applicable, produce and file with the municipal council, not later than April 1 of each year, a report of his activities for the previous fiscal year, as outlined in Chapter XIII of the Act, and send a copy of the report to the Chief Electoral Officer (s. 513).

The clerk or secretary-treasurer

The clerk or secretary-treasurer must, for any elector who undertakes to run as an independent candidate and who wishes to be authorized from January 1 of the year preceding the year in which the general election will be held in the municipality, or from the day on which the seat becomes vacant in the case of a by-election:

- Distribute relevant forms and authorize any elector following the delegation of power by the Chief Electoral Officer (s. 375).
- Inform the Chief Electoral Officer of the date of on which a seat becomes vacant and, subsequently, of the notice of election for the by-election.
- Immediately send the original of any authorization to the Chief Electoral Officer, and send a copy to the treasurer.

Private intervenor

A private intervenor may incur publicity expenses up to a maximum amount of \$300 on a subject of a public nature (for example: the environment, protection of a park, etc.) but cannot, in any way, directly promote or oppose a candidate or a party. A private intervenor must obtain authorization from the returning officer and submit a report to the treasurer of the municipality.

Only an elector or a group that does not have legal personality and that is made up of natural persons, the majority of whom are qualified electors, may apply for authorization as a private intervenor. An authorized political party that does not present candidates in a general election or a by-election and that wishes to intervene as a private intervenor must notify the municipality's returning officer. It is deemed to be authorized by the returning officer as a private intervenor from the date on which the notice is received and the returning officer assigns it an authorization number.

Sections 512.7, 512.8 and 512.12 to 512.20, adapted as required, apply to the party in these circumstances. For the purpose of these sections, the leader of the party is deemed to be the elector representing the private intervenor referred to in the last paragraph of section 512.3.

An authorized political party that availed itself of the provisions of section 455 during an election period cannot obtain private intervenor status for this 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

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 funds, the full address of the place at which the funds are held and the account number of the financial institution, if any.

Eventual 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 (s. 449 and 458).

Complementary information to the financial report

The annual financial report of a political party, to be filed by the official representative, must include a detailed follow-up statement for the funds held on the date the authorization is granted, along with the revenues generated by the funds since that time. The statement is required for as long as the funds exist. The funds are used on a first in, first out basis.

Register of authorized political parties

The Chief Electoral Officer keeps a register of political parties and independent candidates that he has authorized in each municipality (s. 424). The register of parties must contain the following information:

- The name of party.
- The address to which communications intended for the party must be sent.
- The address at which the party keeps the books and accounts pertaining to its funds, the expenses it incurs and the loans it contracts.

- The name, domiciliary address and telephone number of the party leader.
- The name, address and telephone number of at least two of the party's officers other than the leader.
- The name, address and telephone number of the official representative and his delegates if any, the official agent and his deputies if any, and a note of whether these people have or have not taken the mandatory training on political financing rules and control of election expenses.
- The name of the party's auditor.
- The address of the party's permanent office, if any.

Every authorized political party must provide the Chief Electoral Officer with the deeds of appointment of the official representative and his delegates if any, and the official agent and his deputy if any, and the auditor. The Chief Electoral Officer must also be notified of the resignation of any of these officers. In addition, political parties must provide the Chief Electoral Officer with the information required to update the register (s. 392 and 425).

Application for withdrawal of authorization

The Chief Electoral Officer may withdraw a political party's authorization upon a written request from its leader (s. 403). A political party that requests withdrawal of its authorization must send the following documents to the Chief Electoral Officer:

- A copy of the resolution made in compliance with the party's by-laws and certified as being true by at least two of the party's officers.
- A closing financial report (covering the period from January 1 of the current year to the date on which withdrawal of authorization is requested).
- Every previous financial report that was not filed with the treasurer of the municipality.
- **A list of the amounts and assets held by the party.**
- A list of creditors, stating their names and addresses and the amounts owing to each.
- All unused contribution receipts, along with a reconciliation report.
- All books, accounts and documents relating to the party's financial affairs, if the Chief Electoral Officer requests them.
- The bank statements for the current year and proof that the account has been closed.

If the party obtains a withdrawal with debts, this will be taken into consideration if a new application for authorization is received from the same leader or the same official representative.

Main penalties

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

A leader who loses the right to attend the municipal council's sittings also loses the right to attend, as a member, the sittings of the councils, boards, committees, commissions and bodies referred to in section 504 (s. 509).

However, a candidate may withdraw from the party by submitting a letter of resignation to the treasurer of the municipality within three months of the deadline for filing a report. A copy of the letter must also be sent to the Chief Electoral Officer (s. 502).

The leader of a party whose financial report or return of election expenses has not been filed is ineligible to run as a candidate in an election. Where the party no longer exists or if the position of leader is vacant, the person who is ineligible is the last person to hold the office of party leader (s. 64).

When the leader of a party, another of its officers, its official representative or his delegate, or its official agent or his deputy, commits, permits or tolerates a violation of the *Act respecting elections and referendums in municipalities*, the political party is presumed to have committed the same violation (s. 638).

Application for permission to sit and additional time to file a report

A judge may, by order, on a motion made before the person loses the right to attend the council's sittings, allow the person to continue to sit for an additional period of not more than 30 days (s. 505).

The application must be addressed to a judge of the Court of Québec in the judicial district in which all or part of the municipality's territory is situated (s. 508).

It is recommended that the application should contain the following elements:

- The applicant's identity: surname and first name, full address, telephone number and capacity of the applicant.
- Identification of third parties: surname, first name, full address, office held (i.e. treasurer of the municipality, candidates for the office concerned during the election or leaders of authorized parties).
- The facts: type of report or return (financial or election expenses), surname, first name and address of the applicant's official representative or official agent, deadline for producing the report as required by the Act.

- Motives:
 - Allow the applicant to continue to attend municipal council sittings for an additional period not exceeding 30 days.
 - Provide evidence that failure to file the report within prescribed time is due to the absence, death, sickness or misconduct of the official representative or the official agent, or to any other reasonable cause.
- The objective, purpose and conclusion of the application: obtain an order to allow an elected member to continue to sit on the municipal council for an additional period of 30 days, plus an additional period to file the report.
- A statement under oath: support the application with a statement under oath attesting to the truthfulness of the alleged facts.
- Notice: no application can be heard unless the applicant has given notice of at least three clear days to the treasurer, to every candidate for the office concerned or to the leader of every authorized party in the municipality.

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

Volunteer work²

According to sections 428(1) and 461, a person may provide personal services without remuneration, provided this is done freely and not as part of the person's work for an employer. Volunteer work is therefore work done by an individual, **personally and voluntarily, and the fruit** of that work, without consideration.

Personally: work done by a natural person, who may be a qualified elector or not.

Voluntarily: work done freely, without being forced.

Without consideration: work for which no remuneration or monetary or tangible benefit is received.

The work and the fruit or value of the work are not considered to be contributions or election expenses under the Act.

2. For additional information, see chapter XIII of the AERM and the *Guide for official representatives of authorized political parties* or the *Guide for official agents of authorized political parties*.

Personal expenses of a candidate (s. 454)

Within the context of an election, the characteristics of a **personal expense** are as follows:

- An expense related to the candidate personally or to a member of his immediate family (spouse, father, mother and children).
- An expense related to transportation, food, clothing, child care, hairdressing, etc.
- **An expense that does not include any publicity.**
- An expense that may only be incurred and paid by the official agent or by the candidate personally.

For a candidate's personal expense to be considered as **an election expense**, it is important that:

- It is incurred in order to promote the candidate's election, directly or indirectly.
- It is personal in nature for the candidate or a member of his immediate family.
- It is reimbursed by the official agent in the form of a cheque drawn on the election fund.

If a candidate's personal expense is considered to be an election expense, it must be recorded in the return of election expenses.

Lastly, the candidate must provide the official agent with invoices or other vouchers, as well as proof of payment, and the official agent attaches these documents to his report.

The official agent is not required to reimburse a personal expense incurred by a candidate, especially if he or she has already incurred or authorized election expenses up to the permitted limit.

It is therefore strongly recommended that candidates should reach an understanding with their official agent at the beginning of the election period, in order to stipulate an amount for the reimbursement of personal expenses.