

Guide to the Registration of a New Political Party and Independent Candidates in New Brunswick



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Registration of a New Political Party in New Brunswick

Details of the process to register a new political party are detailed in the *Elections Act*, in sections 130 to 153. This document outlines the process in order to provide clarification.

Prerequisites to Register a New Party

Under paragraph 131(d) of the *Elections Act*, to register a new political party, the following requirements must first be met:

1. The new party must have district associations in at least ten electoral districts;
2. The new party must undertake to present official candidates in at least ten electoral districts at the next general election; and
3. The new party must have its leader be elected by a convention.

Information concerning each of these requirements will be expanded upon below.

Have District Associations in at least 10 electoral districts:

Under the *Elections Act*, a “district association” is defined as an association of persons supporting a political party in an electoral district.

To complete the registration of the new party, there is no requirement to register these district associations. However, registration permits a district association to solicit contributions and incur non-election expenditures and requires it to report all financial activities to the Supervisor. The process to register a district association is described later in this document.

Undertake to present official candidates in at least ten electoral districts at the next general election:

“Undertaking” to present 10 official party candidates in the next general election means that the party intends to run 10 candidates, although it may not yet have the names at the time of registration. The deadline to present 10 official candidates is the close of nominations in the general election, which occurs at 2 p.m. on the Tuesday twenty days before ordinary polling day.

Elect the party leader by a convention:

This requirement is straightforward although there is no definition of what constitutes a “convention”. This would be a matter of the new party’s constitution.

Process to Register a New Party

Once the prerequisites to register a new party have been met under section 131(d) of the *Elections Act*, the process to actually register the new party is as follows:

Application

As detailed in section 133 of the *Elections Act*, the new party must submit an application for registration, signed by the new party's leader. The application must set out:

1. The full name of the party in one or both official languages (which must not be so close to the name of an existing party as to be confusing);
2. the party name or abbreviation to be used on election documents or official records;
3. the name and address of the party leader;
4. the address where communications to the party should be sent, and where the books and records are maintained; and
5. the name and address of officers of the party.

Proof and affidavits

In addition to the application for registration, the new party must:

1. furnish, to the satisfaction of the Chief Electoral Officer, proof of the existence of its district associations;
2. establish, by a statement supported by an affidavit of the new party's leader, the amount of money and other property at its disposal; and
3. establish, by a statement supported by an affidavit of the new party's leader, that it has complied with section 47 of the *Political Process Financing Act*.

The application for registration, proof and affidavits can be put into one document, with one supporting affidavit from the party leader. It is best to have a lawyer prepare these documents. As a minimum, the affidavits will need to be sworn before a lawyer or another commissioner of oaths.

Information concerning each of these requirements will be expanded upon below:

Furnish proof of the existence of the party's district associations:

The Chief Electoral Officer will be satisfied of the existence of a new party's district associations by having the party submit the information that would otherwise be required to register a district association. To this end, the following information must be furnished, as detailed in section 135 of the *Elections Act*:

1. the full name of the district association;
2. the district association name or the abbreviation, if any, to be shown in any election documents;
3. the address to which communications intended for the district association may be addressed; and

4. the names and addresses of the officers of the district association.

Establish the amount of money and other property at the new party's disposal:

The new party's leader must submit an affidavit stating the amount of money and other property at the new party's disposal. No details of the amounts donated to, or the expenses incurred by, the new party during its formation are required - simply the net amount of funds and other property at its disposal. The affidavit must include the money and other property of the new party's district associations.

Establish the new party has complied with section 47 of the Political Process Financing Act:

While the new party is being formed, donations may be received by the new party. While these donations do not qualify as contributions under the *Political Process Financing Act*, in order to become a registered party the rules of contributions must be applied to these donations *as if they were contributions*.

The rules of contributions include:

1. An individual, corporation or trade union may, during a calendar year, may make a contribution not in excess of six thousand dollars to each political party.
2. A contributor may make a contribution only out his own property.
3. Contributions must be made (to use the common expression) "without any strings attached" from any source.
4. Contributions may be made by cash (if \$100 or less), credit card, debit card, or other order of payment drawn by the contributor on a chartered bank, trust company or credit union on an account in the name of the contributor.
5. No anonymous contributions may be accepted.
6. A political party shall not knowingly accept any contribution made in contravention of the Act.

Section 47 of the *Political Process Financing Act* requires that the value of every contribution made contrary to the Act must be returned to the contributor or, if the identity of the contributor is not known, remitted to the Supervisor of Political Financing. Any such funds remitted to the Supervisor are then remitted to the Minister of Finance and paid into the Province's "Consolidated Fund".

This requirement implies that the new party must keep detailed records of any donations received during its formation so that any donations received in contravention of the "contributions" provisions of to the Act may be returned to the original donor.

Because the new party is not yet a registered political party under the *Elections Act*, any donations made to the new party during its formation will not be eligible for an income-tax receipt. Receipts may only be issued for contributions made after the party is registered.

Registration

Once the application for registration, proof and affidavits are received and accepted by the Chief Electoral Officer, he shall register the new party forthwith in the *Registry of Political Parties*. The date the entry occurs is the date the party is officially registered.

Refusal of registration

Under subsection 143(1), where the Chief Electoral Officer proposes to refuse to register a political party, he shall give such party notice of that proposal, along with the written reasons for it and he shall provide a reasonable opportunity to be heard before he makes his final decision.

In the event the new party's registration is refused, any funds donated to the party must be returned to the donors. Following the refusal, the new party would just be a group of persons. Such a group does not qualify to make contributions under section 37(1) of the *Political Process Financing Act*. Contributions may only be made by individuals, corporations, and trade unions; therefore, the refused party could not, for example, transfer funds to one of the persons who intended to run as a candidate of the new party. Any of these persons who still wished to run as a candidate would have to register as an independent candidate. Registration of independent candidates is addressed later in this document.

Under subsection 146.1(1) of the *Elections Act*, a political party whose application for registration has been refused may re-apply for registration after a period of sixty days from the time the previous application was refused.

Registration of a Party's Official Representative

Subsection 137(2) of the *Elections Act* requires that each registered political party must, within ten days after the party becomes registered, file with the Chief Electoral Officer a notice signed by the leader of the party setting out the name and address of its official representative. This information may be sent in with the new party's application for registration if the official representative is known at that time.

Subsection 137(8) of the *Elections Act* requires that a registered party's Official Representative must:

1. be fully nineteen years of age;
2. be a Canadian citizen;
3. be a resident in the Province;
4. not be disqualified from voting under the Elections Act; or
5. not be a candidate or an election officer.

Registration of a Party's Chief Agent and Electoral District Agents

Section 138 of the *Elections Act* requires that each registered political party must, within ten days after the party becomes registered, file with the Chief Electoral Officer a notice signed by the leader of the party setting out the name and address of the party's chief agent. This may be the same person as the party's official representative but separate notices must be filed for the two positions.

The chief agent of a registered political party may, on the written authorization of the leader of that party, appoint at any time not more than one electoral district agent for that party for each electoral district. Under subsection 69(2) of the *Political Process Financing Act*, an electoral district agent shall be the official agent of the official candidate of that party in that district. The candidate may, during an election, dismiss his official agent and appoint another by a writing signed by him and filed with the Chief Electoral Officer.

The chief agent must file the names and addresses of such appointments with the Chief Electoral Officer. An electoral district agent of a registered political party may be the same person as the official representative of a registered district association of that party; however, separate notices must be filed for the two positions.

Sections 138(9) and 137(8) of the *Elections Act* require that a registered political party's chief agent or an electoral district agent must:

1. be fully nineteen years of age;
2. be a Canadian citizen;
3. be a resident in the Province;
4. not be disqualified from voting under the *Elections Act*; or
5. not be a candidate or an election officer.

Appointment of Auditor

The official representative of each registered political party shall, within sixty days of the party being registered under the *Elections Act*, appoint an accountant practicing in the Province to serve as the auditor of that party. The official representative shall give written notice to the Supervisor of the name and address of the auditor within thirty days of such appointment.

Process to Register a District Association

Once the registration of a political party is complete, this allows that party's district associations to be registered. Note that there is no requirement to register district associations; however, registration permits a district association to solicit contributions and incur non-election expenditures and requires it to report all financial activities to the Supervisor. The process to register a district association is as follows:

Application

As detailed in section 135 of the *Elections Act*, the district association must submit an application for registration, signed by the leader of the registered political party associated with that association. The application must set out:

1. the full name of the district association;
2. the district association name or the abbreviation, if any, of the district association name to be shown in any election documents or other official materials;

3. the address to which communications intended for the district association may be addressed and where its books, records and accounts, including those pertaining to contributions to and expenditures by the district association, are maintained; and
4. the names and addresses of the officers of the district association.

This application may detail the information for more than one district association at the same time.

Registration

Once the application for registration of a district association is received, the Chief Electoral Officer shall register the district association forthwith in the *Registry of District Associations*.

Registration of a District Association's Official Representative

Section 137(3) of the *Elections Act* requires that each registered district association must, within twenty days after the association becomes registered, file with the Chief Electoral Officer a notice signed by the leader of the associated party setting out the name and address of the registered district association's official representative.

Subsection 137(8) of the *Elections Act* requires that a registered district association's Official Representative must:

1. be fully nineteen years of age;
2. be a Canadian citizen;
3. be a resident in the Province;
4. not be disqualified from voting under the *Elections Act*; or
5. not be a candidate or an election officer.

Cancellation of the registration of a political party

In the event that less than ten candidates are officially nominated for the general election by the newly-registered political party, section 140 of the *Elections Act* requires the Chief Electoral Officer to cancel the registration of the new party registered under subsection 131(d). Also, should the number of candidates fall below ten before ordinary polling day (as would be the case in the event of a withdrawal or death of such a party's candidate), the Chief Electoral Officer is, again, required to cancel the registration of the party.

There are significant implications for the political party, the district associations, and the candidates should a party's registration be cancelled:

Implications for Political Party

If a registered political party ceases to be registered under the *Elections Act*, subsection 30(1) of the *Political Process Financing Act* requires all assets still held by or on behalf of the party at the time of the cessation of registration to be remitted forthwith to the Supervisor. The political party would also be required to submit forthwith a financial return with the Supervisor of Political Financing.

Under section 146.1(1) of the *Elections Act*, a political party whose registration has been cancelled may re-apply for registration after a period of sixty days from the time of cancellation.

Implications for District Associations

Under subsection 139(3), where the registration of a political party is cancelled, the registration of all district associations associated with that party shall also be cancelled. This means that the district association must immediately cease soliciting contributions and incurring non-election expenditures and may no longer support the election of the candidate it was promoting. It would be required to submit forthwith a financial return to the Supervisor of Political Financing.

Implications for Candidates

Candidates of the cancelled political party whose nominations had been accepted, and who wished to continue to run in the election, would be required to immediately register as an independent candidate and appoint an official representative. The official agent already in place should be appointed official agent of the registered independent candidate. This would allow the candidate's team to campaign, solicit contributions, and incur election expenses. The financial accounts of the candidate would remain open and would include the financial activities subsequent to becoming a registered independent candidate. The election financial return of the candidate would be reported as that of a registered independent candidate.

Depending on the timing of the cancellation of the registration of the political party and the printing of the election ballots, the candidate may still be listed on the ballot as a candidate of the cancelled party. A notice would be posted in all applicable polling stations that the candidate is now considered to be an independent candidate.

Under subsection 54(1) of the *Elections Act*, any candidate may withdraw their name as a candidate from the election not later than 48 hours before the opening of polls on Election Day.

Independent Candidates

Persons may decide to run as an independent candidate. As detailed in section 136 of the *Elections Act*, independent candidates must register in writing with the Chief Electoral Officer as an independent candidate. Within 20 days of becoming registered, the independent candidate must appoint and register an Official Representative and an Official Agent. Only the Official Representative may accept contributions on behalf of the independent candidate, and only the Official Agent may incur election expenses on behalf of the independent candidate. The process to actually register an independent candidate is as follows:

Process to Register as an Independent Candidate

Application

The application must be signed by the candidate and set out:

1. the full name and address of the individual;
2. the name of the electoral district in which he or she intends to be an independent candidate; and
3. the address to which communications intended for him or her may be addressed and where his or her books, records and accounts pertaining to contributions to and expenditures by him or her are or will be maintained.

Registration

The Chief Electoral Officer shall register in the *Registry of Independent Candidates* the name of any individual completing the process above.

Registration of an Independent Candidate's Official Representative

Section 137(4) of the *Elections Act* requires that each registered independent candidate must, within twenty days after the he or she becomes registered, file with the Chief Electoral Officer a notice signed by him or her setting out the official representative's name and address.

Section 137(8) of the *Elections Act* requires that an independent candidate's Official Representative must:

1. be fully nineteen years of age;
2. be a Canadian citizen;
3. be a resident in the Province;
4. not be disqualified from voting under the Elections Act; or
5. not be a candidate or an election officer.

Registration of an Independent Candidate's Official Agent

Section 138(4) of the *Elections Act* requires that each registered independent candidate must, within twenty days after they become registered, file with the Chief Electoral Officer a signed notice setting out the official agent's name and address.

The official agent of a registered independent candidate may be the same person as the official representative of that candidate, but separate notices must be filed for the two positions.

Sections 138(9) and 137(8) of the *Elections Act* require that an independent candidate's Official Agent must:

1. be fully nineteen years of age;
2. be a Canadian citizen;
3. be a resident in the Province;
4. not be disqualified from voting under the Elections Act; or
5. not be a candidate or an election officer.