

P 04 301

(2018-03-09)



Information for Candidates at a Provincial Election

Name of Returning Officer _____

Telephone # for Returning Office _____

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General

Elections New Brunswick has prepared the following information for potential candidates and their campaign officials, as a general guide to election events. It is not a substitute for the *Elections Act* or *Political Process Financing Act*, which sets out procedures and requirements in more detail. Section references here are to the main sections in the Acts dealing with a particular matter, but there may be other relevant provisions. If you have questions not answered here, contact either the Returning Officer for your electoral district, or Elections New Brunswick in Fredericton, at 1-888-858-VOTE (8683), or visit <http://www.electionsnb.ca>.

1. Qualification of Candidates

(*Elections Act*, s.43, 47, 48.1, and 48.2)

General Requirements

To be a candidate as a member of the Legislative Assembly (MLA) one must be qualified to vote in the Province. To vote, a person must be:

- 18 years of age on or before election day;
- a Canadian citizen;
- ordinarily resident in the Province for at least 40 days immediately preceding the date of the election; and
- ordinarily resident in an electoral district on the date of the election (but not necessarily the electoral district for which one is a candidate).

A mayor or councillor of a municipality may be a candidate, but if elected, must resign the municipal office before becoming a member of the Assembly.

People Who Cannot Be Candidates

The following persons may not be a candidate in an election:

- Judges of the Court of Appeal, the Court of Queen's Bench, or under the *Provincial Court Act*;
- Persons who are disqualified from voting under any law relating to the disqualification of electors for corrupt or illegal practices; and
- Election officers.

People Whose Conditions of Employment May Restrict Them From Being Candidates

Some public sector employees are restricted from engaging in political activity, even at a local level, or may need prior approval from their employer before filing nomination papers. If you work in the federal or provincial public service, check with your employer before filing nomination papers. It is the responsibility of a candidate to obtain any approval required by his or her employer. The Returning Officer will not require or confirm such approval in processing nomination papers.

Federal Public Service Employees

This information was provided by the Public Service Commission of Canada, August 22, 2014:

Before seeking nomination as, or being, a candidate in a federal, provincial or municipal election, federal public servants subject to the political activities provisions (Part 7) of the *Public Service Employment Act* are required to obtain permission from the Public Service Commission and, if applicable, a leave of absence without pay during the election period.

To find out more about your legal rights and responsibilities regarding political activities visit <http://www.psc-cfp.gc.ca/plac-acpl/index-eng.htm>.

New Brunswick Public Service Employees

This information is extracted from Policy AD-2912, Political Activity of Public Servants:

This policy applies to personnel employed in those organizations in Part I of the Public Service who are *not* covered by the *Civil Service Act*. The policy does *not* apply to civil servants employed in Part I of the Public Service covered by the *Civil Service Act*. See section 27 of the *Civil Service Act*.

The government of New Brunswick is committed to preserving the public trust which the population has vested in its government. It is imperative that public servants be impartial in the exercise of their powers in the development and implementation of public policy. Members of the public must be assured their political affiliation is not a consideration in any dealings they may have with public servants.

A "politically restricted employee" means an employee:

- who holds a position having deputy head status;
- who occupies a position that is classified in the senior executive group;
- whose duties and responsibilities include providing advice, opinions, proposals, recommendations, analyses, policy options, or legal services to other employees.

No "politically restricted employee" may work for, on behalf of or against a candidate for election as a member of the House of Commons of Canada or a member of the Legislative Assembly, or a registered political party, or be a candidate for election as a member, as above.

Employees who are not "politically restricted employees" who intend to run as a candidate in a federal or provincial election shall apply to the employee's Chief Executive Officer for, and obtain, a leave of absence without pay before publicly announcing an intention to run, and before filing nomination papers with the Returning Officer.

Employees and managers may contact Human Resources staff in your department.

2. Nomination as a candidate for a registered political party

(Elections Act, s.136, and Political Process Financing Act, s.62.1)

The first step in becoming a candidate in a provincial election is to seek the nomination of a registered political party in the electoral district where you intend to run.

If you intend to be an independent candidate, this step does not apply.

As required by the *Elections Act*, individuals seeking the nomination as a candidate of a registered political party in a provincial electoral district must register with Elections New Brunswick as soon as possible after being accepted as a "nomination contestant" by their party.

The exact process to become a nomination contestant varies by party, but the registration process is not complete until an authorized officer of the registered political party accepts the individual and files an "Application for Registration as a Leadership Contestant or Nomination Contestant" (Form P 04 843) with Elections New Brunswick.

An individual who is elected by acclamation in an electoral district is still considered a nomination contestant and must complete the registration process.

An individual who is appointed as a candidate of a registered political party without holding a nomination contest, however, is not considered to be a nomination contestant and, therefore, is not required to register.

As required by the *Elections Act* and the *Political Process Financing Act*, each nomination contestant must have an official representative to record all contributions, financing, and expenditures for his or her campaign. A nomination contestant may act as his or her own official representative.

The official representative of a registered nomination contestant is required to file one or more financial returns disclosing the details of all contributions and other financing received in support of the nomination contestant. In the case of a nomination contestant who received \$2,000 or less in financial support, simplified financial reporting is provided.

3. Candidate Nomination Procedures

(*Elections Act*, para.13 (2)(c), s.51 and 52, and ss.63(5))

A nomination paper (Form P 04 001) may be completed and returned to the office of the Returning Officer for the appropriate electoral district any time between the date of the proclamation and 2:00 p.m. on Nomination Day:

- In a scheduled general election, Nomination Day is a Tuesday, the twentieth day before the date of the election; and
- In all other elections and by-elections, Nomination Day is a Friday, the seventeenth day before the date of the election.

Do not leave filing to the last minute, in case corrections or additions are needed in your nomination papers. Under subsection 5(5) of the *Elections Act*, no nomination papers can be accepted after the deadline under any circumstances.

Fill out the nomination paper carefully and completely. Each nomination paper must include the following:

- the candidate's name, civic address, and occupation;
- the indication of his or her political party, or that he or she is an independent candidate;
- the designation of an official agent who shall authorize election expenses for the candidate and file an electoral financial return after the election;
- the designation of an agent to whom copies of the lists of electors are to be provided and who may appoint scrutineers;
- the consent of the candidate;
- a completed affidavit of the witness to the consent of the candidate. Affidavits may be sworn before a Commissioner Of Oaths at any Service New Brunswick location;
- the signatures of at least twenty-five (25) nominators who are qualified electors in the electoral district in which the candidate is running; and
- one or more completed affidavits of the witness or witnesses who obtain the nominators' signatures, sworn or affirmed before a Commissioner Of Oaths (who, under subsection 124(4) of the *Elections Act*, may not charge a fee for such an oath). Affidavits may be sworn before a Commissioner of Oaths at any Service New Brunswick location.

Nominators may only sign the nomination paper of one candidate. A witness may be one of the nominators if there is a second witness to give the affidavit with respect to his or her nomination signature. Relatives of a candidate may be nominators if they are qualified electors in the electoral district.

The candidate's name will appear on the ballot exactly the way it appears on the nomination paper, exclusive of any professional, academic or honorary title or its abbreviation. A nickname

is permitted, in brackets, if it is printed on the nomination paper as the candidate wishes it to appear on the ballot.

A candidate, and a spouse or dependant of the candidate who lives with him or her and who is qualified as an elector, are entitled to:

- have their names entered on the Lists of Electors for the following places:
 - the place where the candidate is ordinarily resident;
 - the place where the candidate is temporarily resident during the election, if it is in the electoral district in which he or she is a candidate;
 - any place where an office of the Returning Officer is located for the electoral district in which he or she is a candidate; or
 - if the candidate was a member on the day before the dissolution of the Legislative Assembly immediately preceding the election, the place in Fredericton or the area surrounding Fredericton where the former member resided for the purpose of carrying out his or her duties as a member;
- and to vote in any one of those places as each of them may elect.

If a candidate, a spouse or dependant of a candidate wishes to have their name entered at an address other than the address where they are ordinarily resident, they must ensure that the Returning Officer is made aware of the decision, so that the Lists of Electors can be updated.

Candidates of a Recognized Party

A candidate of a recognized party must deliver, at the same time as the Nomination Paper, a certificate signed by the party leader before two witnesses, declaring that he is an official candidate of the party. A *Leader's Certificate (P 04 002)* may be used, or a certificate containing the same information may be created by the party.

Deposits

A one hundred dollar (\$100) deposit, in cash or by certified cheque or money order made payable to "The Minister of Finance", must accompany each nomination paper.

The deposit by a candidate will be returned to the candidate by the Minister of Finance when the candidate's official agent submits his or her Electoral Financial Return in accordance with section 81 of the *Political Process Financing Act*.

The nomination of a candidate is complete when the Returning Officer issues a receipt for the deposit.

The Returning Officer will give a candidate the following information:

- Information for Potential Candidates for Provincial Elections and By-elections (P 04 301);
- Supplemental Information for Potential Candidates (P 04 301-S);

- Provincial Political Financing Manual (P 04 941);
- Election expense limits and potential reimbursements;
- A copy of the Election Schedule, setting out dates relevant to the pending election or by-election;
- Information for Scrutineers / Candidate Representatives (P 04 305);
- Procedure for filling out the Statement of the Electors Who Voted on Polling Day (C 07 732)
- Declaration Regarding Candidate's, MLA's and Registered Parties' use of the Lists of Electors (P 04 101);
- Declaration Regarding the Authorized Use of the Lists of Electors (P 04 103); and
- A machine readable copy of the list for each polling division in the electoral district.

For Independent Candidates:

- Application for Registration as an Independent Candidate (P 04 841.1) (as required);
- Notice of Official Representative for a Registered Independent Candidate (P 04 841.2);
- Notice of Official Agent for an Independent Candidate (P 04 841.3).

4. Independent Candidates - Additional Information

(Elections Act, s.136, s.137, s.138, Political Process Financing Act ss.69(3))

An independent candidate means a candidate who is not a candidate of a recognized party.

Decision to Remain Unregistered or to Register

If a person wishing to run as an independent candidate in a provincial election:

- will not be accepting any contributions;
- will not be spending any money outside of an election period to promote or oppose, directly or indirectly, the election of any candidate; and
- will not personally incur election expenses in excess of \$2,000 during an election period, will incur these expenses out of his or her personal funds, and will not be reimbursed by his official agent,

the person may choose not to register with the Chief Electoral Officer and is referred to as an "unregistered independent candidate". He or she must still appoint an official agent upon filing a nomination paper with the returning officer.

If a person wishing to run as an independent candidate in a provincial election:

- will be accepting contributions from any individual;
- will be spending money outside of an election period to promote or oppose, directly or indirectly, the election of any candidate, or
- will be incurring election expenses in excess of \$2,000 during an election period,

the person must register with the Chief Electoral Officer and is referred to as a “registered independent candidate”. He or she must appoint both an official representative and an official agent, as described below.

Each independent candidate must confirm or appoint an official agent upon filing his or her nomination paper with the applicable returning officer, and each independent candidate must otherwise comply with all relevant provisions of the *Elections Act* and *Political Process Financing Act*, including his or her official agent submitting an electoral financial return following the election.

Registration Process

An independent candidate wishing to register must file an *Application for Registration as an Independent Candidate* (P 04 841.1) in writing signed by the individual and setting out:

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

Appointment of Official Representative by a Registered Independent Candidate

The official representative is the person responsible for raising sufficient funds to finance the election campaign.

Subsection 137(4) of the *Elections Act* requires that each registered independent candidate must, within twenty (20) 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. This notice is done using the *Notice of Official Representative for a Registered Independent Candidate* (P 04 841.2).

Subsection 137(8) of the *Elections Act* requires that an official representative of a registered independent candidate must:

- be the full age of nineteen years;
- be a Canadian citizen;
- be resident in the Province;
- not be disqualified from voting under the *Elections Act*; and
- not be a candidate or an election officer.

Appointment of Official Agent by an Independent Candidate

An official agent is the person responsible for authorizing the election expenses for an election campaign and submitting an electoral financial return following the election.

Subsection 138(4) of the *Elections Act* requires that each independent candidate must, within twenty days after he or she become registered, file with the Chief Electoral Officer a signed notice setting out the official agent's name and address. This notice is done using the *Notice of Official Agent for an Independent Candidate* (P 04 841.3).

Subsection 69(3) of the *Political Process Financing Act* requires that any candidate, including an independent candidate, who does not have an official agent registered with the Chief Electoral Officer on the date his or her nomination paper is filed, shall, within three (3) days of that date, appoint an official agent. This notice is done using the *Nomination Paper* (P 04 001).

Subsections 138(9) and 137(8) of the *Elections Act* require that an official agent of an independent candidate must:

- be the full age of nineteen years;
- be a Canadian citizen;
- be resident in the Province;
- not be disqualified from voting under the *Elections Act*; and
- not be a candidate or an election officer.

In most cases, the official agent of an independent candidate is usually the same person as the official representative of that candidate.

5. Special Circumstances

Withdrawal of a Candidate

(Elections Act, s.54)

A candidate may withdraw his or her nomination not later than forty-eight hours before the opening of the polls on Election Day (that is, by 10:00 a.m. the Saturday before the date of the election) by filing a written statement of withdrawal with the Returning Officer. The statement must be signed by the candidate and two witnesses who are qualified electors in the electoral district. Any votes cast for a candidate who has so withdrawn are null and void. The candidate's official agent must still submit an electoral financial return; however, the deposit of a candidate so withdrawing is forfeited.

Death of a Candidate

(Elections Act, s.55)

If a candidate dies after nominations close and before the closing of the polls on the date of the election, the Returning Officer with consent of the Chief Electoral Officer, will countermand the election for that electoral district, and fix new dates for nominations and a postponed election. The new nomination day will be not more than one month from the death of the candidate,

and the new election day seventeen days after that. Candidates already nominated need not resubmit nomination papers, but additional candidates may be nominated. The deceased candidate's official agent must still submit an electoral financial return. The deposit paid by the deceased candidate will be repaid to his or her estate.

Acclamations

(Elections Act, s.56)

If only one candidate is nominated in an electoral district, that candidate is elected by acclamation and no polls are held.

6. Lists of Electors

(Elections Act, ss.20(3) and 36(2), and s.112.1)

Forthwith after the issue of the writ, the Preliminary Lists of Electors will be prepared. The agent for each candidate will be given one machine readable copy of the Preliminary List of Electors for each polling division in the electoral district when the nomination paper is submitted. The Preliminary List of Electors will contain a consecutive number for each elector in each polling division, commonly referred to by parties as the "bingo" number. An elector's consecutive "bingo" number will remain the same in revised Lists of Electors as it was in the Preliminary List of Electors.

Electors are able to revise their information throughout the election. As a result, a revised List of Electors for each polling division in the electoral district will be provided to the agent for each candidate on the Friday before the first day of advance polls (10 days prior to the date of the election).

Electors may continue to revise their information until the Thursday, four days prior to the date of the election. As a result, a revised List of Electors for each polling division in the electoral district will again be provided to the agent for each candidate on the Friday before the date of the election (three days prior to the date of the election).

Lists of Electors are subject to the protection of privacy policies of the Province, and may be used only for election purposes. Any other use of a list, including any use of a list after the election is over, is an offence under the *Elections Act*, subject to a substantial fine.

7. Election Financing

(Political Process Financing Act)

Election campaign financing and spending is governed by the *Political Process Financing Act*.

Please refer to the *Provincial Political Financing Manual* (P 04 941) for more information.

8. Electoral Advertising and Campaigning

(Elections Act, s.88 and 117, and Political Process Financing Act, s.73)

Advertising relating to an election may be transmitted both prior to and during an election period; however there are specific rules as to who may authorize such advertising, how much may be spent, and how the advertisements must be identified, etc.

Please refer to the *Provincial Political Financing Manual* (P 04 941) for more information.

9. Third-Party Election Advertising

(Political Process Financing Act, s. 84.1 – 84.9)

Third parties may transmit advertising relating to an election during an election period; however, there are specific rules as to who may authorize such advertising, how much may be spent, and how the advertising must be identified, etc.

Refer to the *Provincial Political Financing Manual* (P 04 941) for more information.

10. Media at the Polling Station

(Elections Act, s.72.1)

Media representatives of a *bona fide* news broadcaster or news publication may enter the polling station for the sole purpose of photographing or otherwise visually recording the casting of the ballot by a candidate of a recognized party provided that:

- permission has been obtained from the Returning Officer in advance using the *Permission For Entering Polling Station By Media* form (P 02 151), available from the returning office);
- the candidate has agreed;
- no interviews are conducted in the polling station; and
- the media representatives leave the polling station as soon as the candidate has cast his or her ballot.

11. Scrutineers

(*Elections Act*, ss.51(4); s.72, 73, and 74; and ss.75.01(4))

Appointment of Scrutineers

A candidate's agent may appoint a person (not necessarily an elector) to be a scrutineer:

- for the purpose of observing voting procedures and / or the counting of the ballots; and/or
- for the purpose of collecting copies of the *Statement of Electors Who Voted on Polling Day* forms throughout polling day.

Scrutineers are not paid by the province and are not "election officers".

A scrutineer must be appointed in writing, using the *Appointment of Candidate's Representative* (P 04 201). This form is provided to each candidate and is available on the Elections NB website at <http://www.electionsnb.ca> under Resources—Forms. It may be copied for as many scrutineers as is needed. Each scrutineer must keep their *Appointment of Candidate's Representative* form with them while working on advance or ordinary polling day.

Refer to the *Information for Scrutineers/Candidate Representatives* (P 04 305) for more information.

12. Declaration of Election

(*Elections Act*, s.91.2 and 92.1)

In an election where the Chief Electoral Officer has directed that tabulation machines will count ballots, all tabulation machines will be returned to the returning office. The Technical Support Officer will remove the security seals from the memory card slots and upload the results information as directed. The Returning Officer will verify the total votes and on the fourth day following the date of the election, the Returning Officer will declare the candidate with the most votes elected.

In an election where the Chief Electoral Officer has directed that a Ballot Counting Officer will count ballots by hand, the Ballot Counting Officer designated to handle the ballots and determine the votes cast will complete a *Statement of Votes Cast*, with the number of votes for each candidate contained in each ballot box, and will call in the results to the returning office. Results made available on the night of the election are unofficial. The Returning Officer receives all *Statement of Votes Cast* for his or her electoral district, and verifies the total votes. On the fourth day following the date of the election, the Returning Officer will declare the candidate with the most votes elected.

13. Judicial Recounts

(Elections Act, s.94)

Within four days after the Returning Officer has declared a candidate elected, any elector of the electoral district may apply for a recount to a judge of The Court of Queen's Bench of New Brunswick for the judicial district within which the electoral district is situated.

When an application is made on the grounds that there is a difference of not more than 25 votes between the number of votes for the elected candidate and another candidate, the judge will fix a time and a place for the recount, without requiring security for costs.

When an application is made on grounds other than the closeness of the vote, the judge shall fix a time and a place for the recount if:

- it is made to appear to the judge by the affidavit of a credible witness that one of the following has occurred:
 - an election officer or a vote tabulation machine failed to count, improperly counted or improperly rejected any ballots or made an incorrect statement of the number of votes cast for a candidate; or
 - the Returning Officer improperly added up the votes; and
- the applicant deposits with the clerk of the court \$200 as security for the costs of the candidate who was declared elected.

A recount will be held, within four days after the application is made to the judge. If applications for recounts in two or more electoral districts are made to the same judge, the judge shall proceed with the recounts in the electoral districts in the order that the applications were made to him or her.

14. Offences under the *Elections Act* or *Political Process Financing Act*

Non-compliance with various sections of the *Elections Act* or of the *Political Process Financing Act* constitutes offences. Schedule B of each Act sets out the categories of offences, for which the corresponding penalties are fines between \$140 and \$20,500 and/or imprisonment for up to 180 days.