



**ELECTIONS BC**

A non-partisan Office of the Legislature

**GUIDE FOR PROPONENT  
AND OPPONENT GROUP  
FINANCIAL AGENTS FOR  
THE 2009 REFERENDUM  
ON ELECTORAL REFORM**



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## General

This guide is intended to assist proponent and opponent groups to understand the rules related to the use of public money and the financial reporting requirements for the 2009 Referendum on Electoral Reform. This guide is only a summary of the rules, and does not take precedence over the *Election Act*, the *Recall and Initiative Act*, the *Electoral Reform Referendum 2009 Act* or its Regulation.

Where possible, section references of the legislation are noted. All sections of the relevant legislation should be read in conjunction with this guide.

The *Election Act*, the *Recall and Initiative Act*, the *Electoral Reform Referendum 2009 Act* and its Regulation are available on the Elections BC website ([www.elections.bc.ca](http://www.elections.bc.ca)), or can be purchased from Crown Publications ([www.crownpub.bc.ca](http://www.crownpub.bc.ca)).

## Definitions

The following are definitions for key terms used in this guide:

<b>Capital expense</b>	An expenditure to purchase assets, or increase the value of existing assets, that a reasonable person would consider to have a useful life of more than one year. Capital expenses do not include expenses for daily operations, such as inventory, office supplies or advertising.
<b>Financial agent</b>	An eligible individual who is appointed by the opponent or proponent group to administer their finances in accordance with the <i>Election Act</i> , the <i>Recall and Initiative Act</i> , the <i>Electoral Reform Referendum 2009 Act</i> and its Regulation.
<b>Fundraising function</b>	Includes a social function held for the purpose of raising funds for the organization by whom or on whose behalf the function is held.
<b>Disqualified person</b>	An individual or organization identified in section 4 of the Electoral Reform Referendum 2009 Act Regulation that would prohibit the group from being registered as an opponent or proponent group, e.g. a political party, candidate, or election official.
<b>Market value</b>	In relation to property or services, the lowest price charged for an equivalent amount of equivalent property or services in the market area at the relevant time.
<b>Public money</b>	Money paid to the selected opponent and proponent groups by the Chief Electoral Officer to be used solely for the purposes of opposing or supporting the single transferable vote (BC-STV) electoral system. Includes any interest earned on public money.
<b>Referendum advertising</b>	Advertising used during the referendum campaign period to promote or oppose, directly or indirectly, a specific response in voting in the referendum. For more information about referendum advertising, please refer to the <a href="#"><u>Guide for Referendum Advertising for the 2009 Referendum on Electoral Reform</u></a> .
<b>Referendum campaign period</b>	In relation to the referendum, the period beginning on February 1, 2009 and ending at the close of general voting for the referendum (8 p.m. Pacific standard time on May 12, 2009).

<b>Referendum contribution</b>	Generally, an amount of money or the value of any property or services provided without compensation by way of donation, advance, deposit, discount or otherwise to a proponent or opponent group during the referendum campaign period and in relation to the referendum.
<b>Referendum expense</b>	Generally, the value of property or services used during the referendum campaign period to promote or oppose, directly or indirectly, BC-STV.

## Public Funding

Electoral Reform Referendum 2009 Act Regulation [section 13, 15]

Payments are made by the Chief Electoral Officer to the appointed financial agents for the selected opponent and proponent groups after the start of the referendum campaign period. All public money must be deposited by the financial agent into an account held at a savings institution, separate from the account where income from other sources is deposited. The money must be maintained in this separate account until it is used for referendum purposes, or repaid to the Chief Electoral Officer.

The funds provided are to be used solely for the purposes of opposing or supporting the single transferable vote (BC-STV) electoral system. An opponent or proponent group must only use public money to:

- produce, sponsor or make available to the public, information or advertising in print or electronic media of any kind or materials that include printed information or advertising
- hold or sponsor referendum related events that any member of the public may attend

All information or events must be provided to the public without charge. Opponent and proponent groups may use the public money provided to fund or recover administrative expenses incurred in relation to the above activities.

There are serious consequences for the misuse of public money. Opponent and proponent groups must not use funds:

- to conduct election advertising that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate
- to make political contributions
- in a manner that a reasonable person would consider is primarily for the benefit of a disqualified person, including use of their name, face or voice, slogan, logo or another thing associated with a disqualified person
- to incur a capital expense

If the financial agent has reason to believe public money was misused by the group, the financial agent must report this to the Chief Electoral Officer within 15 days of becoming aware of the misuse.

If the Chief Electoral Officer has reason to believe that public money was, or was likely, misused by an opponent or proponent group or a member of such a group, the Chief Electoral Officer may request additional information from the financial agent, and require the financial agent to repay all or part of the amount that was misused.

## Financial Agent Responsibilities

Electoral Reform Referendum 2009 Act Regulation [sections 9, 11, 14 and 15]

*Recall and Initiative Act* [section 34]

Opponent and proponent groups are required to appoint an eligible financial agent. The responsibilities of a financial agent include, but are not limited to, the following:

- ensuring all referendum contributions, referendum expenses, and other income and expenses in relation to the referendum are properly recorded to facilitate compliance with the reporting requirements
- ensuring all money received in relation to the referendum is deposited in an account at a savings institution
- ensuring all public money received is deposited in a separate account from income received from other sources, and maintained in that account until the public funds are used for referendum purposes or repaid in accordance with the Regulation
- repaying all unused money to the Chief Electoral Officer in accordance with the Regulation
- ensuring that all financial records are kept in British Columbia for at least five years from the date of filing any report in relation to them
- reporting any suspected misuse of public money to the Chief Electoral Officer within 15 days of becoming aware of the misuse
- filing a financing disclosure report with the Chief Electoral Officer within 90 days after the end of the referendum campaign period (by August 10, 2009)
- if the financing disclosure report filed with the Chief Electoral Officer does not completely and accurately disclose the information required, filing a supplementary report within 14 days of becoming aware of the discrepancy

If the designation of the financial agent is rescinded, or the Chief Electoral Officer receives notice from the appointed financial agent that the individual is unable or unwilling to continue acting as financial agent, a new financial agent must be appointed.

If no individual is designated as financial agent, all the duties and responsibilities continue to apply to the former financial agent. An appointed assistant financial agent may perform some duties during the transition period between financial agents. If another individual is designated as financial agent, the former financial agent must immediately transfer to the new designated financial agent all public money, other money and records required to be maintained under the Regulation.

If an individual ceases to be the financial agent, regardless of whether another individual is designated as the new financial agent or not, the responsibility for repayment of unused public money and misused public money continue to apply to the former financial agent in respect to the period when that individual was acting as financial agent for the group.

## Assistant Financial Agents

Electoral Reform Referendum 2009 Act Regulation [sections 6 and 10]

*Recall and Initiative Act* [section 35]

A financial agent may authorize one or more assistant financial agents to accept referendum contributions and incur referendum expenses on behalf of the opponent or proponent group. In order to be appointed as an assistant financial agent, the individual must be eligible under section 6 of the Electoral Reform Referendum 2009 Act Regulation. An individual is eligible unless any of the following circumstances apply:

- they are a candidate in the general election, including an individual who intends to be a candidate
- they are an election official, voter registration official or employed by Elections BC
- they have been convicted or disqualified, on or after May 12, 2002, of an offence under the *Election Act*, the *Recall and Initiative Act*, the *Electoral Reform Referendum 2009 Act*, or a regulation under any of those Acts or of an offence involving fraud
- they are an undischarged bankrupt

- they have not been a resident of B.C. for at least six months immediately before May 12, 2009
- they do not have full capacity to enter into contracts
- they are not a Canadian citizen or will not be at least 18 years old on May 12, 2009

An assistant financial agent has the same duties and responsibilities as the financial agent in relation to accepting referendum contributions and incurring referendum expenses. Under the Electoral Reform Referendum 2009 Act Regulation, the following duties must not be delegated to an assistant financial agent:

- repayment of unused public money [section 14]
- misused public money [section 15]
- repayment of surplus referendum contributions [section 17(3)]
- financial agent debt owed to government [section 17(4)]

To appoint an assistant financial agent, a form must be filed with the Chief Electoral Officer. The form to appoint an assistant financial agent is available from Elections BC.

## Referendum Contributions

Electoral Reform Referendum 2009 Act Regulation [section 17]

*Recall and Initiative Act* [Part 4]

For the purposes of opposing or supporting the single transferable vote (BC-STV) electoral system, groups may receive referendum contributions, through their appointed financial agents, in addition to public money.

A referendum contribution is an amount of money or the value of any property or services provided without compensation by way of donation, advance, deposit, discount or otherwise to an opponent or proponent group during the referendum campaign period and in relation to the referendum.

If any property or services are provided to an opponent or proponent group at less than fair market value, the difference between the market value of the property or service at the time provided and the amount charged is a referendum contribution.

The following are not referendum contributions:

- services provided by a volunteer
- property of a volunteer, if it is provided or used in relation to the services of the individual as a volunteer
- property or services provided by an election official, voter registration official, or other member of Elections BC's staff in relation to their official duties
- publishing without charge news, an editorial, an interview, a column, a letter or a commentary in a bona fide periodical publication or a radio or television program
- broadcasting time provided, without charge, as part of a bona fide public affairs program
- producing, promoting or distributing a publication for no less than its market value, if the publication was planned to be sold regardless of the referendum

All referendum contributions must be made to the financial agent or assistant financial agent. For each contribution, the following information must be recorded:

- the value of the contribution
- the date the contribution was made
- the full name and address of the contributor
- the class of the contributor
- if the contributor is a numbered corporation or a class 3, 4, 5 or 6 contributor, the full names and addresses of at least two individuals who are directors of the organization. If there are no individual directors, the financial agent must record the full names and addresses of two principal officers or principal members of the organization.

The classes of contributors are:

1. individuals
2. corporations
3. unincorporated organizations engaged in business or commercial activity ( e.g., partnerships and sole proprietorships)
4. trade unions (identify specific local number)
5. non-profit organizations
6. other contributors

If the financial agent or assistant financial agent has reason to believe that a contribution has been made in contravention of the rules contained in Part 4 of the *Recall and Initiative Act*, they must return the referendum contribution to the contributor, or remit the amount to the Chief Electoral Officer within 14 days.

This information must also be disclosed in the financing disclosure report. If there are insufficient funds to return the contribution, the members of the group are jointly and separately liable to provide the necessary funds to meet the deficiency.

## **Fundraising Functions**

Groups are permitted to hold fundraising functions in order to raise funds for the purposes of supporting or opposing the single transferable vote (BC-STV) electoral system. For all fundraising functions, the financial agent must record:

- a description of the function
- the date of the function
- the cost, gross income and net income or loss arising from the function

There are special rules for fundraising functions that define what is and what is not a contribution with respect to fundraising events. Depending on these rules, a donation at a fundraiser may or may not be considered a contribution, and the recording requirements and rules regarding how to properly recognize the donation differ.

**Rules for dinners, etc.**

- If an organization buys a ticket to a fundraising function held during the referendum campaign period, the price paid is a referendum contribution.
- If an organization buys fundraising function tickets during the referendum campaign period and provides those tickets to other individuals to attend the fundraising function, the organization is still the contributor.
- If an individual buys a ticket to a fundraising function held during the referendum campaign period and the ticket price is more than \$50, the individual is making a referendum contribution equal to the price of the ticket.
- If the price is \$50 or less, the price paid by an individual is not a contribution unless the individual buys more than \$250 worth of tickets. If they do buy more than \$250 worth of tickets, the price paid is a contribution.

**Examples:**

1. Sally Jones buys five tickets to a \$50 fundraising dinner held during the referendum campaign period for herself and to treat four of her friends.

5 tickets x \$50 per ticket = \$250

Has Sally made a contribution?

**Answer:** No, Sally has not made a contribution because the ticket price is \$50 or less and the total cost of the tickets (\$250) is not more than \$250. This means that the money Sally paid is not recorded or disclosed as a contribution but it still must be recorded and reported as fundraising income not reported as contributions.

2. Big Company buys two tickets for \$25 each to a luncheon held during the referendum campaign period.

2 tickets x \$25 per ticket = \$50

Has Big Company made a contribution?

**Answer:** Yes, Big Company has made a contribution of \$50 because all tickets to a fundraising function purchased by organizations are contributions regardless of the cost of the tickets.

### **Rules for auctions, garage sales, etc.**

Some income from goods and services sold at auctions and other sales is a contribution and some is not. The rules for determining which income is a contribution are as follows:

- if property or services are donated for sale at a fundraising function held during the referendum campaign period and have a total market value of \$250 or less, the property or services are not contributions if they are actually sold at the fundraising function
- if donated property or services are purchased at a fundraising event during the referendum campaign period at greater than market value, the difference between the price paid and the market value is a contribution

Fundraising function income earned outside the referendum campaign period is “other income”, not referendum contributions. It must still be reported in the financing disclosure report.

### **Anonymous Contributions**

Anonymous contributions can only be collected in response to a general solicitation of funds at a function, and must have a value of less than \$50. In relation to the referendum, the financial agent must not accept more than \$5,000 in anonymous contributions. For each function, the financial agent must record:

- a description of the function at which the contributions were collected
- the date of the function
- the number of people in attendance at the function
- the total amount of anonymous contributions accepted

## Loans as Contributions

A loan is not generally considered to be a contribution unless it is forgiven or written off during the referendum campaign period. However, if a loan is given with a preferential interest rate, the benefit derived from that preferential rate is a contribution. A preferential interest rate is a rate of interest that is less than the prime rate of the principal banker to the government at the time the rate of interest for the loan was fixed. Please refer to the Elections BC website for a listing of current and historical prime interest rates.

Any debt which remains unpaid for six months after it becomes due converts to other income and must be reported as such, unless the creditor has commenced legal proceedings to recover the debt.

## Referendum Expenses

Electoral Reform Referendum 2009 Act Regulation [section 17]

*Recall and Initiative Act* [Part 4]

A referendum expense is the value of property or services used during the referendum campaign period to promote or oppose, directly or indirectly, the single transferable vote (BC-STV) electoral system.

The value of the following is not a referendum expense:

- services provided by a volunteer
- property of a volunteer, if it is provided or used in relation to the services of the individual as a volunteer
- goods produced by an individual as a volunteer from the property of the individual
- property or services provided by an election official, voter registration official, or other member of Elections BC's staff in relation to their official duties
- publishing without charge news, an editorial, an interview, a column, a letter or a commentary in a bona fide periodical publication or a radio or television program
- broadcasting time provided, without charge, as part of a bona fide public affairs program
- producing, promoting or distributing a publication for no less than its market value, if the publication was planned to be sold regardless of the referendum

The value of any referendum expense is the greater of the price paid for the property or service, or the fair market value of the property or service provided.

The value of free advertising space in a periodical publication and free broadcasting time is nil if the space or time is made available on an equitable basis to both the proponent and opponent groups.

## Referendum Advertising

There are specific rules for proponent and opponent groups regarding referendum advertising. These include authorization statement requirements and restrictions on campaigning and advertising near voting places and on General Voting Day.

Please see the [Guide for Referendum Advertising for the 2009 Referendum on Electoral Reform](#) for more information.

## Repayment of Unused Money

Electoral Reform Referendum 2009 Act Regulation [sections 14 and 17]

For the purposes of repayment, excess money includes all interest earned, and money returned to the financial agent from any source. If a financial agent does not repay public money as required by the Regulation, the amount not repaid is a debt due to the government by the financial agent.

### Repayment at the Request of the Chief Electoral Officer

The Chief Electoral Officer may require a financial agent to repay all or part of the unused public money held by the group if there is reason to believe any of the following:

- the organization is not eligible to be an opponent or proponent group
- the financial agent is not eligible, or has contravened any provisions under the *Electoral Reform Referendum 2009 Act* or its Regulation
- the group or a member of it has contravened any provisions under the *Electoral Reform Referendum 2009 Act* or its Regulation

If repayment is required, the Chief Electoral Officer will deliver to the financial agent the terms including the reason, amount owed and deadline for repayment.

### **Excess Public Money**

If any public money is not used, the financial agent must repay the funds to the Chief Electoral Officer within 90 days after General Voting Day (by August 10, 2009). If there are debts outstanding or in dispute, the period may be extended at the discretion of the Chief Electoral Officer.

### **Surplus Referendum Contributions**

If any referendum contributions are unused, within 90 days after General Voting Day the financial agent must pay the excess to either:

- a registered charity within the meaning of the *Income Tax Act* (Canada)
- the Chief Electoral Officer for payment to the consolidated revenue fund

This includes all unused referendum contributions and unused interest earned on referendum contributions. If there are debts outstanding or in dispute, the period may be extended at the discretion of the Chief Electoral Officer.

### **Rebates or Refunds Received After Repayment of Excess Funds**

After excess funds have been repaid to the Chief Electoral Officer, if public money or referendum contributions are returned to the financial agent from any source, (e.g. a rebate or refund), the amount must be paid to the Chief Electoral Officer within 15 days of receipt.

## Referendum Financing Disclosure Report

Electoral Reform Referendum 2009 Act Regulation [section 9 (3)]

*Recall and Initiative Act* [section 50]

Within 90 days after the referendum, the financial agents for the opponent and proponent groups must file with the Chief Electoral Officer a financing report on behalf of the group. The report must be completed on forms provided by the Chief Electoral Officer, and include:

- all referendum expenses and other expenses incurred
- all referendum contributions accepted by the group
- any loans or guarantees received for referendum expenses
- details of any referendum fundraising functions held by, or on behalf of the group
- any income received and any expenditures made or incurred by the group in relation to the referendum, if these are not otherwise disclosed in the report
- details of any prohibited referendum contributions received and either returned or submitted to the Chief Electoral Officer

The Chief Electoral Officer has the authority to require that any financing report filed with him be audited at the expense of the proponent or opponent group. Although the auditor's report need not be filed by the August 10, 2009, financing report filing deadline, it is the intention of the Chief Electoral Officer to require auditor's reports from both the opponent and proponent groups.

If the financial agent becomes aware that a report did not completely and accurately disclose the information required, or the information disclosed in a report has changed, the financial agent must file a supplementary report with the Chief Electoral Officer within 14 days after the financial agent or group becomes aware of the change.

The referendum financing reports will be available for public inspection.

The referendum financing report forms are available from Elections BC.

## Deadlines and Penalties

*Electoral Reform Referendum 2009 Act* [section 6]

*Recall and Initiative Act* [Part 4]

### **Failure to File a Financing Disclosure Report**

If an opponent or proponent group does not file a financing disclosure report with the Chief Electoral Officer within 90 days after the end of the referendum campaign period (by August 10, 2009), the report may be filed within 30 days of the deadline if accompanied by a \$500 late filing fee.

If the report and \$500 late filing fee are not received by the Chief Electoral Officer by the late filing deadline of September 9, 2009, the group must pay \$100 for each day the report is unfiled. Members of the group are jointly and separately liable to pay this penalty.

### **Misuse of Public Funds**

If the financial agent has reason to believe public money was misused, the financial agent must report this to the Chief Electoral Officer within 15 days of becoming aware of the potential misuse.

If the Chief Electoral Officer has reason to believe that public money was, or was likely, misused, the Chief Electoral Officer may request additional information from the financial agent, or require the financial agent to repay all or part of the amount that was misused.

If an individual or organization is convicted of an offence related to the use or repayment of public money, they are liable to a fine of not more than \$50,000 or imprisonment for not more than two years, or both.

## Questions?

**For more information**

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or contact**

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