



P 04 401

(2015-09-01)

Leadership Contestants and Nomination Contestants

Political Financing Manual

June 30, 2017:

Please note that this document is currently being revised to reflect significant changes to the *Political Process Financing Act*. These amendments came into force on May 5, 2017.

We expect the revised version of this document to be available on August 11, 2017. Meanwhile, please refer to the online version of the *Political Process Financing Act*, consolidated to June 1, 2017, for the current wording of the legislation as it applies to leadership contestants and nomination contestants.

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1 Executive Summary

Effective June 5, 2015, amendments to the *Elections Act* and the *Political Process Financing Act* require public disclosure of the financial supporters of leadership contestants of a registered political party and nomination contestants in provincial electoral districts and require that contribution limits are respected by these supporters and the contestants.

Once an individual makes the decision to become a leadership or nomination contestant, an official representative must be designated. This may occur well in advance of the contest date and well in advance of registering with the Chief Electoral Officer. Thus, contributions may be solicited, financing may be secured, and expenditures may be incurred by an official representative prior to registration. In the early stages of a contest or for the sake of simplicity, leadership or nomination contestants may wish to fill the role of official representative themselves.

Each leadership and nomination contestant must be accepted as a contestant by their particular registered political party. On being accepted, the individual is compelled to register as soon as possible. Upon receipt of the duly-completed application form, the Chief Electoral Officer will register the individual and his or her official representative. The registries will be posted on the website of Elections New Brunswick.

There are no limits on how much contestants may spend on their campaigns, but contributions and financing in any form provided by an eligible contributor to a leadership or nomination contestant is subject to a limit of \$6,000. This limit applies equally to the contestant. Loans in excess of \$6,000 may be provided by recognized financial or commercial-lending institutions; however, the full amount of each loan must be secured by guarantors who are all individually compliant with the \$6,000 limit.

Unlike contributions made to registered political parties, contributions made to leadership and nomination contestants are not eligible for the province's political contributions tax credit.

After the leadership or nomination convention, the official representative must file a financial return with Elections New Brunswick, who will publish the return on its website. When the sum of contributions and financing totals \$2,000 or less, a simple declaration to this effect – without any financial details – will be reported. When the sum of contributions and financing totals more than \$2,000, detailed lists of contributors and other financing, the total only of expenditures made (without details of these expenditures), and a calculation of any deficit or remaining surplus funds must be reported. The names of individuals who have contributed \$100 or less to the contestant will not be made available to the public.

If any liabilities or any surplus remain outstanding on the financial return, supplementary financial returns will be required every six months following the filing of the initial return until all liabilities are paid and surplus funds distributed. Up to three supplementary financial returns may be filed. As a result, the official representative has up to 18 months after filing the initial financial return within which to collect additional contributions and pay off any outstanding liabilities. After the 18 months have passed, the contestant should have repaid all liabilities; otherwise, the contestant may be subject to prosecution for a category E offense. Conviction of a first such offence would result in a fine ranging from \$240 to \$5,200.

2 To whom these rules apply

2.1 Background

Bill 26, *An Act Respecting Leadership Contestants and Nomination Contestants*, received Royal Assent on June 5, 2015, amending the *Elections Act* and the *Political Process Financing Act* (“the PFFA” or “the Act”) to require public disclosure of the financial supporters of leadership contestants of a registered political party and nomination contestants in provincial electoral districts and to require that contribution limits are respected by these supporters and the contestants. These rules were designed to be as consistent as possible with political financing rules that are already familiar to registered political parties in New Brunswick.

2.2 Individuals seeking the leadership or nomination

(*Elections Act*, s. 2)

The financial rules are based on two important definitions:

“leadership contestant” means an individual who is seeking the leadership of a registered political party;

“nomination contestant” means an individual who is seeking the nomination as a candidate of a registered political party in an electoral district;

The key words are “is seeking”. The exact point in time at which an individual moves from an exploratory phase to actually seeking the leadership or nomination will depend upon the facts in each case. Once this decision to seek the leadership or nomination is made, however, the financial rules immediately come into effect.

2.3 Acclaimed or appointed candidates

(*Elections Act*, s. 2)

In the case of a leadership or nomination contestant who is accepted by their registered political party to enter the contest but who is ultimately not contested by another individual, the contestant is considered to be elected by acclamation, or is said to be “acclaimed”. The financial rules would apply to this contestant because there actually was a contest, even though there was only one contestant in the end.

A registered political party may alternatively decide to appoint an individual as its candidate in an electoral district. This happens frequently with smaller political parties. In this case, there was no contest organized by the party and, in the eyes of the law, the individual never became a nomination contestant. Accordingly, the financial rules would not apply to the appointed candidate and no entry would be made in the Registry of Nomination Contestants in relation to the appointed candidate.

Although it would seem highly unlikely, it is possible that the same appointment process could occur for the leader of a registered political party. If this were the case, the financial rules would not apply to the individual appointed as leader.

3 Becoming a registered leadership or nomination contestant

3.1 Exploring the feasibility; making the decision

(Elections Act, s. 2)

An individual may wish to explore the feasibility of letting their name stand as a contestant for the leadership of a political party or as one of its candidates. The exact point in time at which an individual moves from this exploratory phase to actually seeking the leadership or nomination will depend upon the facts in each case.

Any financial expenditure from the individual's own resources during the exploratory phase is not captured by these rules; however, once the decision is made to seek the leadership or nomination, the financial rules immediately come into effect.

3.2 Appointing an official representative

(Elections Act, s. 137, s. 146; PPFA, s. 28, ss. 41(1.1), ss. 49(1))

Once an individual makes the decision to become a leadership or nomination contestant, an official representative must be designated. Depending on the circumstances and timeframe of a particular contest, this may occur well in advance of the contest date and well in advance of registering with the Chief Electoral Officer. Thus, contributions may be solicited, financing may be secured, and expenditures may be incurred by an official representative prior to registration.

In the early stages of a contest or for the sake of simplicity, a leadership or nomination contestant may wish to fill the role of official representative themselves. Whether it is the contestant or another individual, only one official representative is permitted at any one time for each leadership or nomination contestant, thus ensuring legal responsibility for financial matters rests in the hands of one identified person.

The criteria for disqualification from serving as an official representative of a leadership or nomination contestant mirror that of other political entities:

137(8) No person shall be an official representative ... of any ... registered leadership contestant or registered nomination contestant if

- (a) he is not of the full age of nineteen years;*
- (b) he is not a Canadian citizen;*
- (c) he is not resident in the Province;*
- (d) he is disqualified from voting under the Elections Act; or*
- (e) he is a candidate or an election officer.*

As with other registered political entities, the registration of an official representative shall be cancelled by the Chief Electoral Officer upon written application by a leadership or nomination contestant.

As with other registered political entities, an official representative who ceases to serve in that capacity must be replaced without delay by the leadership or nomination contestant.

3.3 Applying for registration with Elections New Brunswick

(Elections Act, s. 136.1, s. 136.2, s. 137, s. 139, s. 148)

Leadership contestants and nomination contestants will be registered with the Chief Electoral Officer in a manner similar to that of political parties, district associations, and independent candidates.

Each leadership and nomination contestant must be accepted as a contestant by their particular registered political party. Each party will have its own process by which it will vet the individual's candidacy and grant its acceptance.

On being accepted as a leadership contestant or a nomination contestant by a registered political party, the individual (who may already be a self-declared contestant) is compelled to register as soon as possible.

The Chief Electoral Officer has provided a registration form for the leadership or nomination contestant on the Elections New Brunswick website. The contestant must complete the first portions of the form, providing:

- the contestant's name and address;
- the name of the registered political party;
- the name and address of his or her official representative;
- the address to be used for communication and where books, records, and accounts will be maintained; and
- the contestant's signature.

The contestant must then forward the registration form to his or her political party. The next portion of the form provides space for a statement that the contestant is accepted by the party. An authorized officer will sign the form and forward it to the Chief Electoral Officer for registration. (The term "authorized officer" is intentionally generic to offer a sufficient degree of flexibility to the political party. There will likely be, for example, a "green light" committee that vets each contestant's application. A member of this committee could be authorized to sign on behalf of the political party to document the acceptance of the contestant.)

Upon receipt of the duly-completed application form, the Chief Electoral Officer will register the individual in the Registry of Leadership Contestants or the Registry of Nomination Contestants and his or her official representative in the Registry of Official Representatives. Registration is deemed to occur upon entry in the registry maintained by the Chief Electoral Officer.

The registries will be posted on the website of Elections New Brunswick.

As with other registered political entities, leadership and nomination contestants shall, without delay, provide the Chief Electoral Officer with information as needed to update the various registries.

4 Financial rules

4.1 Assembling necessary documents and records

(PPFA, s. 46.1)

Immediately after an individual decides to seek the leadership or nomination of a registered political party, the official representative of the leadership or nomination contestant should assemble the necessary documents in which to record the financial transactions of that contestant. These would include:

1. Contestant receipt book: “contestant receipts” may be simple commercial receipts in duplicate, available at any office supplies store.
2. Bank account: opening a new bank account for the purposes of the campaign of the leadership or nomination contestant is not a requirement under the Act; however, it may be desirable since contributions to the contestant must be deposited into a bank account. While a pre-existing account of the contestant or of the official representative may be used, they may not wish to mingle contest-related transactions with personal banking transactions.
3. Transaction journal: each financial transaction should be recorded in a transaction journal or spreadsheet to assist the official representative in managing the financial affairs of the contestant. Along with the date, source, and description, each transaction should be appropriately classified as a contribution, financing, or expenditure in order to facilitate financial reporting after the leadership or nomination convention is held. A sample transaction journal has been provided in Appendix A.
4. Filing system for expenditures: All invoices and receipts for expenditures should be maintained and readily accessible in one location.

4.2 Soliciting financial support

(PPFA, s. 1)

A leadership or nomination contestant, through his or her official representative, may choose to solicit financial support to pay for the expenditures related to the leadership or nomination contest. This financial support may be in a variety of forms and may come from a variety of sources, including from the contestant.

The Act defines “contribution” as follows:

“contribution” means, subject to section 2, services, money or other property donated to a political party, an association, a leadership contestant, a nomination contestant or a person to support the political purposes of a political party, association, leadership contestant, nomination contestant or candidate;

As found in this definition, a contribution may be one of money (“monetary”) or of property or other services (commonly referred to as a “contributions-in-kind”). Both types of contributions must be recorded and reported in the financial return for the contestant.

In addition to contributions, a leadership or nomination contestant may obtain credit in various forms to finance the needed expenditures of the contest. Financing may take the form of a loan from a supporter, a commercial loan, guarantees of a commercial loan, extension of commercial credit or trade accounts payable, or access to any personal line of credit. The Act defines “financing” as follows:

“financing”, with respect to a leadership contestant or nomination contestant, means loans or other credit or guarantees of loans or other credit provided by an individual, corporation or trade union for the political purposes of a leadership contestant or nomination contestant.

Such financing must be repaid from eligible contributions solicited for the contest, including contributions made by the contestant themselves.

Contributions and financing to a leadership or nomination contestant are subject to financial rules similar to those already provided in the *PPFA* for registered political parties and registered district associations; however, there are some important differences, too. For this reason, the relevant provisions of the Act for a leadership or nomination contestant are provided below, with an explanation where necessary.

4.2.1 Eligible contributors

(PPFA, s. 1, s. 37)

37(1) Only individuals, corporations and trade unions may make a contribution.

The Act does not impose any residency requirements on individuals who wish to contribute.

In the case of corporations, any corporation incorporated under the laws of the Province of New Brunswick and any corporation having its head or other office or doing business or any part thereof in the Province is eligible to make a contribution.

Finally, in the case of trade unions, any trade union as defined by the provincial *Industrial Relations Act* or the federal *Canada Labour Code* that holds bargaining rights for employees in the Province to whom those Acts apply is eligible to make a contribution. In contrast, provincial public sector unions are not eligible to make contributions.

4.2.2 Eligible recipients of contributions

(PPFA, s. 37)

37(2) Contributions may only be made to a registered political party, registered district association, registered independent candidate, leadership contestant or nomination contestant.

As discussed further in section 4.2.11, contributions must be made only to the official representative of a leadership or nomination contestant or to a person authorized in writing by the official representative.

4.2.3 Contributions made only from own property and without condition

(PPFA, s. 38)

38(1) An individual, corporation or trade union may make a contribution only out of his or its own property.

38(2) No individual, corporation or trade union shall solicit or accept services, money or other property from any source

(a) as consideration or reward for having made a contribution, or

(b) on the condition, agreement or understanding, express or implied, that he or it will, as a result, make a contribution.

4.2.4 Contribution timelines

(PPFA, s. 39)

39(1.3) Subject to subsection (1.4), an individual, corporation or trade union may make a contribution or provide financing to a leadership contestant or a nomination contestant until the official representative files his or her final financial return under section 62.1.

An eligible contributor may make a contribution or provide financing to any contestant from the moment an individual decides to become a leadership or nomination contestant until the official representative files the final financial return with the Supervisor. Thus, contributions may be made after the date of the leadership or nomination convention.

4.2.5 Contribution and financing limit

(PPFA, s. 39)

39(1.4) No individual, corporation or trade union shall make a contribution or provide financing under subsection (1.3) that, taken together, is in excess of \$6,000.

Contributions and financing in any form, provided by an eligible contributor to a leadership or nomination contestant, is subject to a limit of \$6,000. This limit applies equally to the leadership or nomination contestant. For example, a monetary contribution of \$2,000, a contribution-in-kind from an expenditure of \$1,000 for brochures, and a loan or a loan guarantee of \$3,000 would be permissible.

Corporations deemed to be “associated” with one another under section 256 of the *Income Tax Act* (Canada) are considered to be one corporation for the purpose of applying the contribution limit. Generally speaking, associated corporations are those controlled by the same person or group of persons.

Similar financial support could be given by the same eligible contributor to any other contestant, with the \$6,000 limit applying in each case.

The limit of \$6,000 applies to the entire campaign of that contestant, thus applying to financial support received both prior to and subsequent to the date of the contest. Unlike the rules for contributions made to registered political parties, this limit is not based on the calendar year.

The goal of these restrictions is to maintain a “level playing field” for all contestants, thus helping to ensure that the wealthy cannot predominate in any contest.

4.2.6 Commercial loans

(PPFA, s. 39)

39(1.5) Despite subsection (1.4), a chartered bank, trust company, credit union or other commercial lending institution may provide financing in excess of \$6,000 if the full amount of the financing is secured by guarantors.

A loan in excess of \$6,000 may be provided by a recognized financial or commercial-lending institution; however, in order to ensure that the contestant or the official representative personally remain compliant with the \$6,000 limit on financial support, the full amount of the loan must be secured by guarantors who are all individually compliant with the \$6,000 limit.

4.2.7 Guarantors of commercial loans

(PPFA, s. 39)

39(1.6) Guarantors referred to in subsection (1.5) shall comply with subsection (1.4).

Guarantors of loans must remain compliant with the limit on financial support of \$6,000, remembering that the limit applies to contributions and any other form of financing added together.

4.2.8 Financing should be repaid

(PPFA, s. 39)

39(1.7) Despite subsection (1.4), on the expiry of the period referred to in subsection (1.3), no registered leadership contestant or registered nomination contestant shall, without reasonable excuse, have outstanding liabilities incurred for the purposes of the leadership contest or nomination contest where the sum of the liabilities and any contributions the contestant has made to himself or herself exceeds \$6,000.

This is a very important provision to understand. Ideally, with repayment being made from contributions received prior to and after the convention, all liabilities arising from the contest should be paid in full prior to the official representative filing his or her final financial return with the Supervisor. The final financial return may be filed up to 18 months following the initial return, as discussed in section 6.6 of this manual.

If liabilities remain outstanding at the time of filing the final financial return, the sum of the liabilities and any contributions the contestant has made to his or her own contest must not exceed \$6,000. If the sum exceeds \$6,000 and unless there is a reasonable excuse, the contestant has committed an offence of category E and is subject to prosecution. Under the *Provincial Offences Procedure Act*, a successful prosecution in court for a first offence would result in a fine ranging from \$240 to \$5,200 (as of June 2015). The provision for a reasonable excuse, however, allows for a suitable defense by the contestant against what would otherwise be an absolute liability in a court of law.

4.2.9 Valuation of contributions-in-kind

(PPFA, s. 39)

39(3) For the purposes of this Act, contributions other than contributions of money shall be valued as follows:

(a) in the case of property and services contributed by a trader in such property and services, at the lowest price at which he offers such property and services to the public at the time when it was contributed;

(b) in the case of property and services contributed by a nontrader in such property and services, at the retail price for such property and services prevailing in the area in which and at the time when the contribution is made.

In addition to contributions of money, contributors may make contributions of property and services to a leadership or nomination contestant. Also, when a contestant personally purchases property or services for the contest and is not reimbursed for the purchases by his or her official representative, such purchases constitute contributions made by the contestant.

4.2.10 Prohibition on accepting contravening contributions

(PPFA, s. 39)

39(5) No leadership contestant or nomination contestant, and no person on his or her behalf, shall knowingly accept any contribution or financing made in contravention of this Act.

This is a similar provision to that of subsection 39(4) which applies to a registered political party, a registered district association, or a registered independent candidate.

4.2.11 Authority to solicit and receive contributions or obtain financing

(PPFA, s. 41, s. 42.1)

41(1.1) Contributions or financing shall be solicited only under the direction of the official representative of a leadership contestant or nomination contestant or by persons authorized in writing by the official representative.

This is a similar provision to that of subsection 41(1) which applies to a registered political party, registered district association, or a registered independent candidate. For leadership and nomination contestants, however, the provision above covers both contributions and financing.

41(2) Every person authorized to solicit contributions or financing by an official representative shall, on request, exhibit a certificate signed by the official representative evidencing his authority.

This provision applies to both contributions and financing obtained under the authority of an official representative.

42.1 No contribution or financing shall be made except to the official representative of the leadership contestant or nomination contestant for whom it is intended, or to a person authorized in writing by the official representative.

Contributions and financing must be made to the official representative or a duly-authorized representative of the official representative. As discussed in section 3.2 of this manual, a contestant may choose to act as their own official representative.

4.2.12 Source and form of tender of contributions of money

(PPFA, s. 43.1, s. 44)

43.1 Subject to subsection 44(1), contributions of money may be made by cash or by cheque, 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.

44(1) Every contribution of money of more than one hundred dollars shall be made by cheque, 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.

44(2) A contribution of money made by cheque, credit card, debit card or other order of payment shall be made payable to the order of the ... leadership contestant or nomination contestant, as the case may be.

4.2.13 Deemed date of contribution

(PPFA, s. 44.1)

44.1(1) A contribution of money shall be deemed to have been made on the date when the cash, payment by cheque, credit card, debit card or other order of payment is received by the official representative of the ... leadership contestant or nomination contestant for whom it is intended.

44.1(2) Notwithstanding subsection (1), in the case of a contribution of money delivered by mail, the contribution shall be deemed to have been made on the date of the postmark on the envelope in which it was mailed.

44.1(3) A contribution other than a contribution of money shall be deemed to have been made on the date when the property or service was made available to the ... leadership contestant or nomination contestant.

4.2.14 Depositing contributions of money

(PPFA, s. 45)

45 All contributions of money shall be deposited with a chartered bank, trust company or credit union having a place of business in the Province.

A leadership or nomination contestant's official representative may use an existing bank account to deposit contributions of money or may open a separate bank account for the purposes of the contest.

4.2.15 Contestant receipts

(PPFA, s. 46.1)

46.1(1) Every contribution to a leadership contestant or nomination contestant shall be acknowledged by a contestant receipt issued to the contributor and signed by the official representative of the contestant for whom the contribution was intended.

46.1(2) Every contestant receipt shall accurately record the following information:

- (a) the name and address of the contributor;*
- (b) whether the contribution is one of money or otherwise;*
- (c) whether the contributor is an individual, a corporation or a trade union;*
- (d) the amount or value of the contribution;*
- (e) the date the contribution is made; and*
- (f) any other information prescribed by the Supervisor.*

46.1(3) A contestant receipt shall not be issued for any purpose except to acknowledge a contribution.

46.1(4) Subject to subsection (5) and any guidelines issued by the Supervisor, an official representative shall retain signed duplicates of all contestant receipts issued by him or her.

46.1(5) If a person resigns or otherwise ceases to hold the position of official representative, he or she shall immediately deliver all unissued contestant receipts and duplicates of all issued contestant receipts in his or her possession

- (a) to his or her replacement, if any, or*
- (b) to the leadership contestant or nomination contestant, as the case may be.*

This section distinguishes “contestant receipts” from “receipts” issued to acknowledge contributions made to registered political parties, registered district associations, and registered independent candidates.

4.2.16 Contributions not eligible for provincial income tax credit

(New Brunswick Income Tax Act, s. 61)

Contributions made to leadership and nomination contestants are not eligible for the Province's political contributions tax credit. Under the *New Brunswick Income Tax Act*, only a contribution of money made by a taxpayer to a registered political party, a registered district association, or a registered independent candidate is eligible for the tax credit.

4.2.17 Distribution of contravening and anonymous contributions

(PPFA, s. 47)

47(1) A ... leadership contestant or nomination contestant or ... his or her official representative, if any, that received a benefit of a contribution contrary to this Act shall return or remit an amount equal to the value of that contribution

- (a) to the contributor, if the identity of the contributor is known, or*
- (b) to the Supervisor, if the identity of the contributor is not known.*

47(2) The official representative of a ... leadership contestant or nomination contestant who received an anonymous contribution shall return the value of that anonymous contribution

- (a) to the contributor, if the identity of the contributor can be established, or*
- (b) to the Supervisor, if the identity of the contributor cannot be established.*

47(3) All amounts paid to the Supervisor pursuant to subsections (1) or (2) shall be remitted to the Minister of Finance and paid into the Consolidated Fund.

4.2.18 Distribution of surplus funds

(PPFA, s. 47)

47(2.1) The surplus, if any, of the contributions less the expenditures reported to the Supervisor by an official representative of a registered leadership contestant or registered nomination contestant shall be distributed, within a time limit prescribed by the Supervisor,

(a) to the persons who made the contributions, or

(b) to any other person for any purpose approved by the Supervisor.

The time limit prescribed by the Supervisor under subsection 47(2.1) for the distribution of surpluses is 60 days.

4.2.19 Free broadcasting time or advertising

(PPFA, s. 48)

48(1) Every broadcasting undertaking and every publisher of a newspaper, periodical or other printed matter may, free of charge, make broadcasting time on radio or television or advertising space in a newspaper, periodical or other printed matter, available to ... leadership contestants or nomination contestants, if such a service is offered on an equitable basis, qualitatively and quantitatively, to all such ... leadership contestants or nomination contestants.

48(2) For the purposes of this Act, free broadcasting time and free advertising space made available in accordance with subsection (1) does not constitute a contribution.

“Broadcasting undertaking” refers to radio and television broadcasts.

4.3 Incurring expenditures

(PPFA, s. 1)

Expenditures are incurred to advance the political objectives of the leadership or nomination contestant. Note that the Act does not impose a spending limit on leadership or nomination contestants.

The Act defines “expenditure” as follows:

“expenditure” means any expense incurred by a political party, an association, a leadership contestant, a nomination contestant or any person for the political purposes of a political party, association, leadership contestant, nomination contestant or candidate;

Additional provisions related to expenditures are described below.

4.3.1 Authority to incur expenditures

(PPFA, s. 2, s. 49, s. 49.1)

49(1) Expenditures ... of ... leadership contestants or nomination contestants shall be incurred only under the direction of the official representative by persons authorized by the official representative.

49(2) Every person authorized to make expenditures by an official representative shall, on demand, exhibit a certificate signed by the official representative evidencing his authority.

49.1(1) A registered leadership contestant or registered nomination contestant shall submit to his or her official representative as soon as possible after the convention all expenditures incurred personally by him or her pursuant to subsection 49(1).

An official representative may authorize the leadership or nomination contestant to personally incur expenditures. These must be reported by the contestant to the official representative as soon as possible after the convention.

49.1(2) A registered leadership contestant or registered nomination contestant who, out of his or her own money, incurs expenditures that are not reimbursed to him or her by his or her official representative shall be deemed to have made a contribution to the official representative of that contestant equal in value to the amount of the expenditures.

If the contestant is not reimbursed for personally-incurred expenditures, then the contestant is deemed to have made a contribution of property and services to the official representative. This must be reported by the official representative in the financial return submitted on behalf of the contestant.

Take special note, however, that the donation by any individual – including the contestant – of his or her personal services, talents, or expertise, or the use of his or her vehicle and the product of that donation, where it is given freely and not as part of his or her work in the service of an employer, is not considered a contribution under the *Political Process Financing Act* and would be excluded from the reporting of both contributions and expenditures.

49.1(3) All expenditures incurred by a registered leadership contestant or registered nomination contestant and submitted to his or her official representative in accordance with subsection (1) are, for the purposes of this Act, deemed to have been incurred or authorized by the official representative of the registered leadership contestant or registered nomination contestant.

The official representative is deemed to have incurred the expenditures incurred personally by the contestant and, thus, must include them in the financial return submitted on behalf of the contestant.

4.3.2 Advertising relating to leadership or nomination contests

(PPFA, s. 50.1)

50.1(1) Every printed advertisement, placard, poster, pamphlet, handbill or circular relating to a leadership contest or nomination contest and ordered by an official representative or a person authorized by an official representative shall bear the name and address of its printer and the name of the leadership contestant or nomination contestant on whose behalf it was ordered.

50.1(2) Every advertisement relating to a leadership contest or nomination contest published in a newspaper, periodical or other publication and ordered by an official representative or a person

authorized by an official representative shall bear the name of the leadership contestant or nomination contestant on whose behalf it was ordered.

50.1(3) Every broadcast of a sponsored radio or television advertisement relating to a leadership contest or nomination contest and ordered by an official representative shall mention at the beginning or the end of the broadcast the name of the leadership contestant or nomination contestant on whose behalf it was ordered.

50.1(4) Any type of advertisement described in subsection (1), (2) or (3) and not ordered by an official representative or a person authorized by an official representative shall

(a) in the case of an advertisement described in subsection (1), bear the name and address of its printer and the name of the person who ordered its publication,

(b) in the case of an advertisement described in subsection (2), bear the name of the person who ordered its publication, and

(c) in the case of an advertisement described in subsection (3), mention at the beginning or at the end of the broadcast the name of the person who ordered the broadcast.

These provisions were modeled on previously-existing provisions in the Act for candidates in provincial elections. These provisions ensure that all advertising relating to leadership or nomination contests sufficiently identifies the contestant.

5 Certificate of leadership or nomination convention

(Elections Act, ss. 136.1(3), ss. 136.2(3), ss. 139(5), ss. 139(6))

Once a leadership or nomination convention is held and the leader or candidate has been elected, a certificate of leadership or nomination convention must be filed with the Chief Electoral Officer by an authorized officer of the registered political party. This will ensure the registry of leadership contestants is complete and accurate.

The certificate will detail the leadership or nomination convention, including the contestants who stood for election, the individual elected, and any individuals who withdrew as contestants prior to the contest. Any contestant who withdrew prior to the contest and who applied in writing to the Chief Electoral Officer to have their registration cancelled would not be required to submit a financial return. Contestants who were elected by acclamation, however, would have to submit a financial return.

6 Financial reporting

The provisions of the Act that deal with the financial reporting requirements of leadership and nomination contestants are explained below. As discussed in section 5 above, note that only those leadership and nomination contestants who remained registered at the time of the contest must submit a financial return.

6.1 Deadlines for filing financial returns

(Elections Act, s. 2; PPFA, s. 61, s. 62.1)

The official representative of a registered leadership contestant must submit to the Supervisor of Political Financing a financial return within 60 days after the leadership convention.

The official representative of a registered nomination contestant must submit to the Supervisor of Political Financing a financial return within 30 days after the nomination convention.

If the final date for submitting either of these financial returns falls during an election period¹, the date shall be extended to 90 days after the polling day of the election.

6.2 Financial reporting period

(PPFA, ss. 62.1(1))

The period of time covered by a financial return of a leadership or nomination contestant is flexible. It begins whenever the first expenditure, contribution, or financing is transacted and ends when the financial return is submitted. This provides flexibility for the official representative of a contestant to wrap up all financial matters, including resolving any liabilities and distributing any surplus, prior to filing the financial return.

6.3 Simplified reporting for \$2,000 or less in financial support

(PPFA, par. 62.1(2)(a))

On the website of Elections New Brunswick, the Supervisor has provided a financial return for use by leadership and nomination contestants. For those contestants whose total value of contributions and financing is \$2,000 or less, the return provides for a sworn declaration of this fact. Only the first page of the financial return must be submitted by the official representative since no disclosure is required of financial support received or expenditures authorized by the official representative.

6.4 Detailed reporting for more than \$2,000 in financial support

(PPFA, par. 62.1(2)(b), s. 62.1(2.1))

For leadership and nomination contestants whose total value of contributions and financing exceeds \$2,000, the same financial return referred to in the previous section will be completed. In these cases, however, the return provides for an alternate declaration that financial support exceeded \$2,000. Detailed financial information is then required to be submitted on supplementary schedules, including the details of all contributions received, all financing obtained, and the total only of expenditures incurred. The return shall be prepared in accordance with any relevant guidelines that may be issued by the Supervisor.

Maintaining the records discussed in section 4.1 should allow for an easy completion of the financial return by the official representative.

¹ The *Elections Act* defines “election period” as the period commencing with the issue of a writ for an election and ending when the candidate or candidates have been returned as elected. The candidates are returned as elected within 11 days of the polling day of the election.

6.5 Publication on website of Elections New Brunswick

(PPFA, s. 63(2.1))

For financial returns reporting more than \$2,000 in financial support, contributors whose contributions totaled \$100 or less are reported on a separate supplementary schedule to the financial return of the leadership or nomination contestant. This schedule will not be made available for public inspection. Except for this schedule, however, the financial return will be published on the website of Elections New Brunswick not later than 30 days after receipt of the financial return by the Supervisor.

6.6 Supplementary financial returns

(PPFA, ss. 47(2.1), ss. 62.1(3))

If any liabilities or any surplus remain outstanding on a financial return, supplementary financial returns will be required every six months following the filing of the initial return. (If the initial return is filed late, the Supervisor has determined that the initial due date would become the relevant date for determining when supplementary returns would, in turn, be due.) These returns will be an extension of the previously-filed return; thus, the latest return will always show a complete picture of the contestant's contest finances as of that filing date.

Up to three supplementary financial returns may be filed after the initial financial return. As a result, the official representative has up to 18 months after filing the initial financial return within which to collect additional contributions and pay off any outstanding liabilities.

After the 18 months have passed, the contestant should have repaid all liabilities and distributed all surplus funds. If any liabilities still exist, the contestant may have committed an offence. Please refer to section 4.2.8 of this manual for further details on repaying all financing and section 4.2.18 for distributing any surplus funds.

6.7 Audits

(PPFA, s. 64)

64 The Supervisor may require that the financial return of any ... registered leadership contestant or registered nomination contestant be audited by an accountant appointed by the Supervisor.

Normally, financial returns for leadership and nomination contestants will not require auditing. An audit would only be called for by the Supervisor in extraordinary circumstances.

7 Offences and penalties

(PPFA, s. 88, s. 88.1, s.89)

A person who violates or fails to comply with specific provisions of the *Political Process Financing Act* commits an offence. All of the provisions in the Act that include such offences, and their related category of offence under the *Provincial Offences Procedure Act*, are listed in Appendix B.

The categories of offences applicable to leadership and nomination contestants, and their range of fines for a first conviction, are summarized below:

Category of Offence	Range of fines for a first conviction (as of June 2015)
C	\$140 to \$1,100
E	\$240 to \$5,200
F	\$240 to \$10,200
H	\$500 to \$20,500

8 Claims contested by official representatives

(PPFA, s. 91)

91(2) Where an official representative of a ... leadership contestant or nomination contestant contests any claim for expenditures ... allegedly incurred by him or by a person authorized by him the claim shall be deemed to be a contested claim and the claimant may, in accordance with subsection (3), bring an action to recover the claim.

91(3) An action in respect of a contested claim may be brought in any court of competent jurisdiction and

[...]

(c.1) in respect of a claim for expenditures against a leadership contestant or nomination contestant, shall be brought in the name of the official representative of that contestant at the date the subject matter of the claim arose;

[...]

91(6.1) Any property that by virtue of his or her office is within the control of, or from time to time comes within the control of, the official representative of a leadership contestant or nomination contestant shall be deemed to be available to satisfy a judgment in favour of a claimant who brings an action under subsection (3) in the name of an official representative of that contestant.

The Act permits official representatives to dispute claims made by a supplier for expenditures allegedly incurred by the official representative or a duly-authorized person. Such disputed claims are deemed to be a contested claim.

The claimant may bring an action in respect of such contested claims in any court of competent jurisdiction in the name of the official representative of the leadership or nomination contestant. Any property that was under the control of the official representative is deemed to be available to satisfy a judgment in favour of such a claimant.

Appendix B: All PPFA provisions that include offences

Reference	Provision	Category of Offence
18(4)	Any person who obstructs the work of a person exercising the powers invested in the person by an order issued pursuant to this section commits an offence.	H
38(2)(a)	No individual, corporation or trade union shall solicit or accept services, money or other property from any source (a) as consideration or reward for having made a contribution;	F
38(2)(b)	No individual, corporation or trade union shall solicit or accept services, money or other property from any source (b) on the condition, agreement or understanding, express or implied, that he or it will, as a result, make a contribution.	F
39(1.2)	<p>39(1) An individual, corporation or trade union may, during a calendar year, make a contribution not in excess of six thousand dollars to</p> <ul style="list-style-type: none"> (a) each registered political party or to a registered district association of that registered political party in accordance with subsection (1.1), and (b) one registered independent candidate. <p>39(1.1) For the purposes of subsection (1), a contribution not in excess of six thousand dollars may be made under paragraph (1)(a)</p> <ul style="list-style-type: none"> (a) either to a registered political party or to a registered district association of that registered political party, (b) so that a portion is given to a registered political party and a portion is given to one or more registered district associations of that registered political party, or (c) so that portions are given to more than one registered district association of a registered political party. <p>39(1.2) No individual, corporation or trade union shall make a contribution in violation of subsection (1).</p>	E
39(1.4)	<p>39(1.3) Subject to subsection (1.4), an individual, corporation or trade union may make a contribution or provide financing to a leadership contestant or a nomination contestant until the date on which the official representative files his or her final financial return under section 62.1.</p> <p>39(1.4) No individual, corporation or trade union shall make a contribution or provide financing under subsection (1.3) that, taken together, is in excess of \$6,000.</p>	E
39(1.7)	Despite subsection (1.4), on the expiry of the period referred to in subsection (1.3), no registered leadership contestant or registered nomination contestant shall, without reasonable excuse, have outstanding liabilities incurred for the purposes of the leadership contest or nomination contest if the sum of the liabilities and any contributions the contestant has made to himself or herself exceeds \$6,000.	E
39(4)	No registered political party, registered district association or registered independent candidate and no person on its or his behalf, shall knowingly accept any contribution made in contravention of this Act.	H
39(5)	No leadership contestant or nomination contestant, and no person on his or her behalf, shall knowingly accept any contribution or financing made in contravention of this Act.	H
41(2)	Every person authorized to solicit contributions by an official representative shall, on request, exhibit a certificate signed by the official representative evidencing his	C

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Reference	Provision	Category of Offence
	authority.	
46(1)	Every contribution to a registered political party, registered district association or registered independent candidate shall be acknowledged by a receipt issued to the contributor and signed by the official representative of the party, association or independent candidate for whom the contribution was intended.	C
46(4)	Subject to subsection (5) and any guidelines issued by the Supervisor, an official representative shall retain signed duplicates of all receipts issued by him.	C
46(5)	When a person resigns or otherwise ceases to hold the position of official representative, he shall forthwith deliver all unissued receipt forms and duplicates of all issued receipts in his possession (a) to his replacement, if any, and notify the Supervisor of the number of unissued receipts so delivered, or (b) to the Supervisor, if there is no replacement.	C
46.1(1)	Every contribution to a leadership contestant or nomination contestant shall be acknowledged by a contestant receipt issued to the contributor and signed by the official representative of the contestant for whom the contribution was intended.	C
46.1(4)	Subject to subsection (5) and any guidelines issued by the Supervisor, an official representative shall retain signed duplicates of all contestant receipts issued by him or her.	C
46.1(5)	If a person resigns or otherwise ceases to hold the position of official representative, he or she shall immediately deliver all unissued contestant receipts and duplicates of all issued contestant receipts in his or her possession (a) to his or her replacement, if any, or (b) to the leadership contestant or nomination contestant, as the case may be.	C
49(2)	Every person authorized to make expenditures by an official representative shall, on demand, exhibit a certificate signed by the official representative evidencing his authority.	C
50(1)	Expenditures other than election expenses incurred by registered political parties, registered district associations or registered independent candidates for advertising on broadcasting undertakings or in newspapers, periodicals or other printed matter shall be limited so as not to exceed: (a) in the case of registered political parties, thirty-five thousand dollars in each calendar year; and (b) in the case of registered district associations, and registered independent candidates, two thousand dollars in each calendar year.	C
51	The official representative of each registered political party shall, within sixty days of the party being registered under the <i>Elections Act</i> , appoint an accountant practising in the Province to serve as the auditor of that party.	C
52	The official representative shall give written notice to the Supervisor of the name and address of each auditor appointed under section 51 within thirty days of such appointment.	C
53	The Supervisor, members of the Legislative Assembly, persons ineligible to vote under the <i>Elections Act</i> , candidates, official representatives, chief agents and official agents shall not hold the position of auditor of a registered political party.	F
58(1)	The official representative of every registered political party shall submit to the Supervisor a financial return prepared in accordance with guidelines issued by the Supervisor, setting out, for the period covered by the return (a) the financial institutions where the contributions in money received by the party are deposited and the account numbers used,	C

Reference	Provision	Category of Offence
	<p>(b) the total value of property and services, other than money, constituting contributions made to the party,</p> <p>(c) the total sum of contributions of money of one hundred dollars or less received by the party,</p> <p>(d) the total sum of amounts of not more than twenty-five dollars paid by persons to the party as dues for membership in the party;</p> <p>(e) the total sum of amounts of not more than twenty-five dollars in each case paid by persons to the party as registration fees at political conventions together with the place and date of each such convention where such fees were paid;</p> <p>(f) the total sum of amounts of not more than ten dollars in each case paid to the party as an entrance fee to an activity or demonstration of a political nature together with the nature, place and date of any such activity or demonstration where such fees were paid;</p> <p>(g) the total sum of contributions of money of more than one hundred dollars received by the party;</p> <p>(h) the name of each corporation and trade union that has made a contribution to the party and the total amount of contributions to the party from each such source;</p> <p>(i) the name and full address of each individual who has made contributions totalling more than one hundred dollars to the party and the total amount of his contributions to the party;</p> <p>(j) the name and full address of each individual, if any, who became surety or guarantor on behalf of the party and the amount for which he became surety or guarantor;</p> <p>(k) the particulars and the value of each transfer of funds, other property or services from or to the party pursuant to subsection 2(2);</p> <p>(l) the total sum of the amounts borrowed on behalf of the party for political purposes together with the name and full address of the lender and the rate of interest charged or paid;</p> <p>(m) all expenditures other than election expenses incurred by the party;</p> <p>(n) any income earned by the party; and</p> <p>(o) the information required to be submitted under section 66.</p>	
58(2)	The financial return shall be accompanied by copies of all receipts issued for the contributions received together with such invoices and other vouchers, or certified copies thereof, evidencing the expenditures of the party as the Supervisor may require of that party from time to time.	C
62.1(1)	<p>The official representative of a registered leadership contestant or registered nomination contestant shall submit to the Supervisor a financial return within the period referred to below covering the period beginning when that contestant's first expenditure was made, first contribution was received or first financing was provided, whichever occurs first, and ending when the financial return is submitted:</p> <p>(a) with respect to the official representative of a leadership contestant, within 60 days after the leadership convention, and</p> <p>(b) with respect to the official representative of a nomination contestant, within 30 days after the nomination convention.</p>	C
62.1(2)	A financial return submitted by the official representative of a registered leadership candidate or registered nomination contestant shall	C

Reference	Provision	Category of Offence
	<p>(a) if the total value of all contributions and financing is \$2,000 or less, be prepared in accordance with guidelines issued by the Supervisor, be in the form provided by the Supervisor and include a sworn declaration to that effect, and</p> <p>(b) if the total value of all contributions and financing is more than \$2,000, be prepared in accordance with guidelines issued by the Supervisor, be in the form provided by the Supervisor and set out, for the period covered by the return, the following:</p> <ul style="list-style-type: none"> (i) the financial institutions where the contributions in money received by the leadership contestant or nomination contestant are deposited and the account numbers used; (ii) the total sum of amounts of not more than \$10 in each case paid to the leadership contestant or nomination contestant as an entrance fee to an activity or demonstration of a political nature together with the nature, place and date of the activity or demonstration where the fees were paid; (iii) the details of contributions received from the contributors set out in the groups listed below, including the amount or value of each contribution and whether the contribution is one of money or otherwise, the name and full address of the contributor, the total amount of a contributor's contributions to the leadership contestant or nomination contestant, and the total amount of contributions received from each of those groups: <ul style="list-style-type: none"> (A) individuals who have each made contributions totalling \$100 or less; (B) individuals who have each made contributions totalling more than \$100; (C) corporations; and (D) trade unions; (iv) the name and full address of each individual, corporation or trade union, if any, that became surety or guarantor on behalf of the leadership contestant or nomination contestant and the amount for which the individual, corporation or trade union became surety or guarantor; (v) the details of financing provided to a leadership contestant or nomination contestant, including: <ul style="list-style-type: none"> (A) the name and address of the lender; (B) the amount borrowed; (C) the rate of interest charged or paid; and (D) the terms of repayment; (vi) the total sum of the expenditures incurred; (vii) any other income earned by the leadership contestant or nomination contestant; and (viii) a sworn statement that the return is complete, true and accurate. 	
62.1(3)	<p>If any liabilities or any surplus are shown to be outstanding on a financial return submitted under subsection (1), the official representative of a registered leadership contestant or registered nomination contestant shall submit a supplementary financial return within six months after the submission of the initial financial return and every six months after that until the liabilities have been repaid or the surplus has been distributed, to a maximum of 18 months.</p>	C
68	<p>A registered political party intending to incur election expenses shall have a chief agent.</p>	C

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Reference	Provision	Category of Offence
69(1)	Every candidate at an election shall have an official agent.	C
69(3)	Any candidate, including the official candidate of a registered political party, who does not have an official agent registered with the Chief Electoral Officer on the date his nomination paper is filed shall, within three days of that date, appoint an official agent by a writing signed by him and filed with the Chief Electoral Officer.	C
69(4)	Notwithstanding the <i>Elections Act</i> , if the chief agent of a registered political party or the official agent of a candidate dies, resigns or becomes unable to act during an election period the leader of the party or the candidate as the case may be, shall forthwith appoint a new chief agent or official agent by a writing signed by such leader or candidate, as the case may be, and filed with the Chief Electoral Officer.	C
70(1)	Except as provided by this Act during an election, no person other than the chief agent of a registered political party or the official agent of a candidate shall authorize election expenses for such party or candidate, and no election expenses shall be incurred except by a chief or official agent or a person authorized by such agent.	F
70(2)	No person during an election period shall accept or execute an order for election expenses in excess of one hundred dollars if such order is not given or authorized by a chief agent or official agent or in that agent's name by the designated publicity agency of the party or candidate.	F
71(2)	A candidate shall submit to his official agent not later than twenty days after polling day a detailed statement of all election expenses incurred by him pursuant to subsection (1).	E
72(1)	No person shall claim or receive for election expenses a price in excess of his regular price for similar work, merchandise or services outside the election period.	F
81(1)	The official agent of each candidate in an election, within sixty days following the date fixed by the <i>Elections Act</i> for the return of the writ of election, shall submit to the Supervisor a sworn statement of the election expenses of that candidate and all claims for election expenses of the candidate contested by the official agent, in the form prescribed by the Supervisor, together with any invoices, receipts and other vouchers that may be required by the Supervisor.	C
82(1)	Each chief agent of a registered political party, within the one hundred and twenty days following the date fixed for the return of the writs of an election, shall deliver to the Supervisor a sworn statement of the election expenses of the party and all claims for election expenses of the party contested by the chief agent in the form prescribed by the Supervisor, together with any invoices, receipts and other vouchers that may be required by the Supervisor.	C
83(3)	83(2) If on the application of a candidate or a leader of a registered political party it is established before a judge of The Court of Queen's Bench of New Brunswick that the unavoidable absence, death, illness or misconduct of an official agent or chief agent or any other reasonable cause prevents the preparation or submission of the statement or other documents prescribed by section 81 or 82, such judge may make any order he considers necessary and proper to enable the applicant to obtain all the information and invoices, receipts and other vouchers necessary to prepare the statement and grant by order such further time for the submission of the statement as the circumstances, in his opinion, may require. 83(3) A person who fails to comply with an order made under subsection (2) commits an offence.	H
84.2(1)	A third party shall identify itself in any election advertising that it places and shall	H

Reference	Provision	Category of Offence
	indicate that it has authorized the advertising.	
84.2(3)	No third party shall transmit to the public any election advertising that may lead the public to believe that the advertising originates with a registered political party, a registered district association or a candidate.	H
84.3(1)	A third party shall register in accordance with this section immediately after incurring election advertising expenses that exceed \$500 in total.	H
84.5(1)	A third party shall only accept election advertising contributions from the following: (a) individuals who are ordinarily resident in the Province; (b) trade unions; and (c) corporations.	H
84.5(2)	No third party shall accept an election advertising contribution from or on behalf of a registered political party, a registered district association, a candidate or a member of the Legislative Assembly.	H
84.5(3)	No third party shall accept an election advertising contribution if the third party does not know the name and address of the contributor.	H
84.8(1)	No third party shall circumvent or attempt to circumvent a limit set out in section 84.15 or the registration requirement set out in subsection 84.3(1) in any manner, including either of the following manners: (a) by splitting itself into 2 or more third parties; or (b) by acting in collusion with another third party so that their combined election advertising expenses exceed a prescribed limit.	H
84.8(2)	No third party shall collude with a registered political party, a registered district association or a candidate to circumvent or attempt to circumvent the provisions of this Act.	H
84.8(3)	No registered political party, registered district association or candidate shall collude with a third party to circumvent or attempt to circumvent the provisions of this Act.	H
85(1)(a)	A person commits an offence who (a) knowingly incurs or authorizes election expenses exceeding the maximum fixed by section 77.	H
85(1)(b)	A person commits an offence who (b) wilfully submits a false statement of election expenses under section 81 or 82,	H
85(1)(c)	A person commits an offence who (c) knowingly incurs or authorizes election advertising expenses exceeding the maximum fixed by subsection 84.15(1), (2) or (4),	H
85(1)(d)	A person commits an offence who (d) wilfully makes a false statement in a report filed under section 84.6.	H
85(2)	A candidate, whose official agent with the knowledge of the candidate commits an offence under subsection (1), also commits such offence.	H
85(4)	A third party as defined in section 84.1, whose chief financial officer with the knowledge of the third party commits an offence under subsection (1), commits the same offence.	H
85(5)	If a third party as defined in section 84.1 is a group, a member of the group commits the same offence under subsection (1) as an offence committed by the third party's chief financial officer, if the chief financial officer commits the offence with the knowledge of the member.	H
86	Any person who knowingly makes a false statement in any financial return, statement or other document filed with the Supervisor pursuant to this Act commits an offence.	H
86.1	Every person who makes or issues or participates in, assents to or acquiesces in the making or issuance of a false or deceptive receipt for a contribution or purported contribution commits an offence.	H

Reference	Provision	Category of Offence
87	Any person who knowingly withholds, conceals or destroys any books, papers, documents or other things relevant to the subject matter of an investigation or inquiry under this Act commits an offence.	H
88.1(1)	Every official representative who wilfully or through neglect fails to file a financial return with the Supervisor within the time required by section 59, 60, 62 or 62.1 commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category C offence.	C
88.1(2)	Notwithstanding subsection (1) the Supervisor may, either before or after the institution of proceedings against an official representative for failure to file a financial return as required by section 59, 60, 62 or 62.1, accept from the official representative alleged to have been guilty of such offence the payment of a sum equal to fifty dollars for each day the official representative is in default of filing such financial return.	N/A
88.1(2.1)	A chief financial officer who wilfully or through neglect fails to file a report under section 84.6 within the time required by subsection 84.6(1), (7) or (8) commits an offence punishable under Part II of the <i>Provincial Offences Procedure Act</i> as a category H offence.	H
88.1(2.2)	Despite subsection (2.1), the Supervisor may, either before or after the institution of proceedings against a chief financial officer for failure to file a report as required by section 84.6, accept from the chief financial officer alleged to have been guilty of the offence the payment of a sum equal to \$50 for each day the chief financial officer is in default of filing the report.	N/A
89	Every person who knowingly permits, tolerates, or participates in any way in the commission of an offence under this Act commits the same offence and is liable to the same penalties on conviction.	As applicable