

Election Finances Handbook for Administrative Penalties

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Introduction

This handbook describes the administrative penalties that may apply for failure to comply with the *Election Finances Act* (the Act).

The most recently published handbook for Administrative Penalties can be found online, by clicking this [link](#) or by scanning the quick response (QR) code below using the camera on a smartphone.



Disclaimer

To the extent that any conflict exists between this handbook and the *Election Finances Act*, the *Election Finances Act* prevails.

Further information

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Definitions

This section explains the types of elections, the election period, the nomination period, and the campaign period.

Fixed date general election

An election in all electoral districts, following the dissolution of the legislative assembly, where election day is scheduled by section 9.1 of the *Election Act*.

Non-fixed date general election

An election in all electoral districts, following the dissolution of the legislative assembly, where election day is not scheduled by section 9.1 of the *Election Act*.

By-election

An election in an electoral district, between general elections.

Non-election period

This only applies to fixed date general elections, and, for political parties, represents the six-month period preceding the date the writs are issued. For third parties, the non-election period represents the 12-month period preceding the date the writs are issued.

Election period

The election period is the period commencing at 12:01 AM on the day the writ is issued and ends on polling day.

Nomination period

The nomination period begins when the writ of election is issued and ends at 2 p.m. of the day stated as the day of the close of nominations in the writ.

Campaign period

The campaign period begins when the writ of election is issued and ends three months after polling day.

Administrative Penalties

This section describes the administrative monetary penalties introduced under section 45.1(1) of the *Election Finances Act* (the Act), on April 19, 2021.

Where the Chief Electoral Officer believes on reasonable grounds that a person or entity has contravened certain provisions of the Act, the Chief Electoral Officer may make an order requiring the person or entity to pay an administrative penalty. The provisions of the Act to which administrative penalties apply are listed in the following table.

The Chief Electoral Officer is obligated by s. 2(1)(g) of the *Election Finances Act* to report to the Attorney General any apparent contravention of that Act. Payment of an administrative penalty by an entity or individual does not release the Chief Electoral Officer from this reporting obligation, and the default giving rise to the administrative penalty may be considered by the Ministry of the Attorney General for prosecution should the default continue.

Table of administrative penalties

This section contains a table listing the provisions of the *Election Finances Act* (EFA) to which administrative penalties apply.

Individual/Entity	Infraction	Maximum penalty
Contributor	Exceeding contribution limit (s.18 EFA)	An amount equal to twice the amount that was contributed in contravention of that section, plus \$1,500, in the case of an individual, and plus \$5,000, in the case of a corporation or other entity
Broadcaster or Publisher of political advertising	Failure to include authorization in advertisement (s.22(9) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Publication of Election survey results that have not previously been made available to the public (s.36.1(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity

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Individual/Entity	Infraction	Maximum penalty
Broadcaster or Publisher of political advertising (Continued)	Violation of blackout period (s.37(3) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
Political Party	Failure to include authorization in advertisement (s.22(9) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Publication of Election survey results that have not previously been made available to the public (s.36.1(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Violation of blackout period (s.37(2) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Exceeding campaign expense limit (s.38(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Exceeding advertising expense limit (s.38.1 EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Failing to report name of appointed candidate to Elections Ontario (s.41.1 EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
Leadership Contestant	Acceptance of contributions by or for unregistered Leadership Contestant (s.14(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Unauthorized acceptance of contributions (s.32 EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity

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Individual/Entity	Infraction	Maximum penalty
Constituency Association	Failure to include authorization in advertisement (s.22(9) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Publication of Election survey results that have not previously been made available to the public (s.36.1(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Violation of blackout period (s.37(2) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Exceeding campaign expense limit (s.38(3) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Failure to disclose financial statements to the registered party (s.41.2 EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
Nomination Contestant	Acceptance of contributions by or for unregistered Nomination Contestant (s.12.1(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
Candidate	Failure to include authorization in advertisement (s.22(9) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Unauthorized acceptance of contributions (s.32 EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity

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Individual/Entity	Infraction	Maximum penalty
Candidate (Continued)	Publication of Election survey results that have not previously been made available to the public (s.36.1(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Violation of blackout period (s.37(2) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Exceeding campaign expense limit (s.38(3) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
Third Party	Failure to include authorization in advertisement (s.22(9) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Publication of Election survey results that have not previously been made available to the public (s.36.1(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Violation of blackout period (s.37(2) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Failure to register (s. 37.5(1) EFA)	\$10,000
	Failure to include resolution passed by the governing body in application to register (s.37.5(5) EFA)	\$10,000

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Individual/Entity	Infraction	Maximum penalty
Third Party (Continued)	Exceeding advertising spending limit in the election period (s. 37.10.1(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Exceeding advertising spending limit in the non-election period (s. 37.10.1(2) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Failure to file interim report (s. 37.10.2(1) EFA)	\$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity
	Failure to file third party political advertising report (s. 37.12(1) EFA)	\$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity
	Failure to submit certification regarding no coordination (s. 37.12(8) EFA)	\$10,000

Further information on Administrative Penalties

This section describes the purpose of administrative penalties, as well as the time limit for issuing penalties and what happens to the money received as a result of penalties.

The purpose of the penalties

The purpose of an administrative penalty is to promote compliance with the Act.

The time limit for the issuance of a penalty

The Act requires that the Chief Electoral Officer shall not make an order requiring the payment of an administrative penalty more than two years after the date on which the Chief Electoral Officer became aware of the contravention to which the penalty applies.

What happens to the money received as a result of a penalty?

An administrative penalty shall be paid into the Consolidated Revenue Fund, and shall be in an amount determined by the Chief Electoral Officer in accordance with the maximum amounts set out in the Act.

What are the maximum amounts?

The Act requires that the maximum amount of an administrative penalty shall be determined as follows:

1. For a contravention of section 18, an amount equal to twice the amount that was contributed in contravention of that section, plus \$1,500, in the case of an individual, and plus \$5,000, in the case of a corporation or other entity.
2. For a contravention of subsection 22 (9), 37 (2) or 37.10.2 (1), \$10,000 in the case of an individual, and \$100,000 in the case of a corporation or other entity.
3. For a contravention of subsection 37.5 (1), 37.5 (5) or 37.12 (8), \$10,000.
4. In all other cases, \$1,500, in the case of an individual, and \$5,000 in the case of a corporation or other entity.

Procedure for Administrative Penalties

This section describes the criteria the Chief Electoral Officer must consider when considering the issuance of a penalty, the procedure for the issuance and service of the order to pay the penalty, the process by which the recipient may appeal the penalty, the time limit for the payment of the penalty, and what happens if the recipient fails to pay the penalty.

The Chief Electoral Officer is obligated by s. 2(1)(g) of the *Election Finances Act* to report to the Attorney General any apparent contravention of that Act. Payment of an administrative penalty by an entity or individual does not release the Chief Electoral Officer from this reporting obligation, and the default giving rise to the administrative penalty may be considered by the Ministry of the Attorney General for prosecution should the default continue.

The criteria the Chief Electoral Officer must consider

The amount of an administrative penalty is to be determined taking into account,

- a) the degree of intention or negligence on the part of the person or entity that committed the contravention;
- b) the harm done by the contravention;
- c) whether the person or entity derived any advantage from the contravention;
- d) whether the person or entity made reasonable efforts to mitigate or reverse the contravention's effects;
- e) whether the person or entity has taken steps to avoid committing the contravention in the future;
- f) whether the person or entity has provided all reasonable assistance to the Chief Electoral Officer with respect to the contravention, including reporting it and providing any relevant information;
- g) the person's or entity's history of compliance with the provisions of this Act;
- h) the person's or entity's ability to pay the penalty;
- i) any aggravating and mitigating circumstances; and
- j) any other factor that, in the opinion of the Chief Electoral Officer, is relevant.

The procedure for the issuance and service of an order to pay an administrative penalty

An order requiring a person or entity to pay an administrative penalty shall be served on the person or entity and shall,

- a) contain a description of the contravention to which the order relates, including the date of the contravention;
- b) specify the amount of the penalty, and warn about the increasing amounts for subsequent contraventions;
- c) give particulars respecting the time for paying the penalty and the manner of payment; and
- d) provide details of the person or entity's right of appeal.

If the Chief Electoral Officer decides to issue a penalty, the order to pay the penalty will be served upon the recipient by email and registered mail to their last known address. The order will be accompanied by a notice, which will provide reasons for the issuance of the order and provide the recipient with an opportunity to respond. The notice will also provide details of the right to appeal the order.

The appeal process

A person or entity who is served with an order to pay an administrative penalty may appeal the Chief Electoral Officer's decision by filing an application with the Superior Court of Justice within 30 days from the date the order was served, and the following applies to such an appeal:

1. The application must be accompanied with a copy of the order and state the reasons for the appeal.
2. A copy of the application must be served on the Chief Electoral Officer not less than 30 days before the appeal is to be heard.
3. The Superior Court of Justice may, on application, extend the 30-day period for making an appeal, if it considers it appropriate to do so.
4. On hearing the appeal, the Superior Court of Justice may confirm, rescind or vary the amount of the administrative penalty.

Time limit for the payment of the penalty

Penalties must be paid within 30 days of service. This may be extended at the Chief Electoral Officer's discretion.

Failure to pay a penalty

If a person or entity who is required to pay an administrative penalty fails to comply with the requirement, the Chief Electoral Officer may file the order that requires payment with a local registrar of the Superior Court of Justice and the order may be enforced as if it were an order of the court.