

P 10 001

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Transparency in Election Commitments Manual

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1 Introduction

This manual is intended to be the primary reference document for official representatives and chief agents of registered political parties in New Brunswick who have responsibilities for complying with the *Transparency in Election Commitments Act* (the “TECA”, or the “Act”) in the months leading up to, and during the election period of, a provincial scheduled general election.

This manual is based on provisions of the Act as consolidated to May 16, 2018, and the *General Regulation – Transparency in Election Commitments Act*, New Brunswick Regulation 2018-53 (the “Regulation”).

In the event of conflict or uncertainty between the information contained in this manual and the Act or Regulation, the Act and the Regulation shall prevail.

2 Overview

In this chapter, the following topics are discussed:

1. Purposes of the Act
2. Unique definitions in this Act
3. Application of the Act;
4. Nature of election commitments;
5. Types of disclosure statements;
6. Research support from the Legislative Library;
7. Responsibilities of the official representative of a registered political party;
8. Responsibilities of the Supervisor of Political Financing;
9. Communications with Elections New Brunswick; and
10. Public examination of disclosure statements.

Where needed, the relevant provision of the legislation will be included in *italics*, followed by further explanation.

2.1 Purposes of the Act

(TECA, s.1)

1 The purposes of this Act are the following:

(a) to increase transparency with respect to election commitments and hold registered political parties accountable for election commitments they make;

(b) to ensure that electors obtain information on the financial implications of the election commitments; and

(c) to promote an atmosphere in which the public does not expect the fulfilment of election commitments for which the cost is not disclosed in accordance with this Act.

2.2 Unique definitions in this Act

(TECA, s.2)

The following definitions are unique to this Act:

“cost estimate” means a disclosure statement ... [concerning an election commitment that consists of an estimate of its cost or financial implications].

“disclosure statement” means a document produced by a registered political party that relates to the cost of an election commitment of the registered political party and that is required to be filed with the Supervisor and published by the registered political party.

“election commitment” means a statement by a registered political party that, due to the nature of the statement, leads electors to reasonably expect that if the party forms the government, it will implement the policy, program, service or initiative referred to in the statement.

“financial implications” means an increase or a reduction in expenses or revenue.

“leader commitment” means an election commitment made by the leader of a registered political party that

(a) is recorded and is published by him or her or any other person, and

(b) if implemented, will have financial implications.

“maximum cost statement” means a disclosure statement ... [concerning an election commitment that consists of, if the election commitment relates to a new or expanded program or service, a statement of the maximum cost to which the registered political party commits if it forms the next government].

“party commitment” means an election commitment

(a) that is included in the election platform of a registered political party, or

(b) that is published by a registered political party.

“publish” means to make public by or through any media, including a press release, a post on a website or any other public information media.

“revenue” means the revenue of the Province as reported in the most recent Public Accounts related to that fiscal year.

2.3 Application of the Act

(TECA, s.3)

3 This Act applies to any political party that registers under the Elections Act and remains registered until the day before the advance polling day and that makes an election commitment which is a party commitment or a leader commitment

(a) in the 90-day period preceding the ordinary polling day of a scheduled general election, or

(b) before the ninetieth day before the ordinary polling day if the registered political party restates or renews that election commitment on or after the ninetieth day before the ordinary polling day.

2.4 Nature of election commitments

(TECA, s.4(1))

4(1) A registered political party shall file with the Supervisor and publish a disclosure statement concerning each election commitment that it makes to implement

(a) a new or expanded program or service,

(b) an expenditure reduction measure,

(c) a new or expanded revenue program, or

(d) a revenue reduction measure.

2.5 Types of disclosure statements

(TECA, s.4(2) and (3))

4(2) The disclosure statement referred to in subsection (1) concerning an election commitment may consist of

(a) an estimate of its cost or financial implications [a cost estimate],

(b) ... if the election commitment relates to a new or expanded program or service, a statement of the maximum cost to which the registered political party commits if it forms the next government [a maximum cost statement], or

(c) a statement that an estimate of the financial implications of the election commitment has not been prepared.

For greater clarity, a cost estimate may be prepared for any election commitment. A maximum cost statement, however, is an option only when the election commitment relates to a new or expanded program or service.

4(3) If a registered political party indicates that an election commitment for which a maximum cost statement has been prepared will also increase or reduce revenue, the registered political party shall also file and publish one of the following:

(a) a cost estimate with respect to the increase or reduction in revenue; or

(b) a disclosure statement described in paragraph (2)(c).

2.6 Research support from the Legislative Library

(TECA, ss.18, 19, 20, and 21)

18(1) During the six-month period before the ordinary polling day for a scheduled general election, the Legislative Library shall provide research services to registered political parties in order to assist them in meeting their obligations under this Act.

18(2) When providing information to registered political parties, the Director [of the Legislative Library] is not restricted to providing only information that is accessed in accordance with this Act and shall take reasonable steps to access relevant information from other available sources.

19(1) The Director is entitled to request and receive from a government department any records in the custody or under the control of that department that the Director requires to assist a registered political party in meeting its obligations under this Act.

20(2) When the Director provides information that the Director has received in accordance with section 19 to a registered political party, with respect to the source of the information, the Director may disclose only that it was received from a department and may not identify the department or any other information with respect to the source.

21(1) When a request under section 19 is received by a departmental official more than 60 days before the ordinary polling day, he or she shall respond in writing to the request within seven days after receiving the request.

21(2) When a request under section 19 is received by a departmental official no more than 60 days before the ordinary polling day, he or she shall respond in writing to the request within three business days after receiving the request.

2.7 Responsibilities of the official representative of a registered political party

(TECA, s.4(5))

4(5) The official representative shall ensure that a disclosure statement is filed and published on behalf of the registered political party, and may designate, in writing, the chief agent to fulfil his or her obligations under this subsection.

Overview

The official representative must also file the form *Communication on Matters Related to Election Commitments* (P 10 003) with the Supervisor no later than when the first disclosure statement is filed by the party.

2.8 Responsibilities of the Supervisor of Political Financing

(TECA, ss.7, 9, and 16)

The Act places the following responsibilities upon the Supervisor of Political Financing:

1. To review disclosure statements for compliance with the Act and Regulation;
2. To receive and, where warranted, investigate complaints from registered political parties for failure of other registered political parties to file disclosure statements with the Supervisor; and
3. To withhold annual allowance payments from any registered political party for which a judge has issued a declaration that the party violated or failed to comply with the Act.

2.9 Communications with Elections New Brunswick

(TECA, s.23)

All communication with the Supervisor must be transmitted using electronic mail. All notices given by the Supervisor under this Act will be transmitted in portable document format (PDF) using electronic mail.

Any document required to be filed with the Supervisor under this Act must be transmitted in portable document format (PDF) to the email address of the Assistant Supervisor of Political Financing: nathan.phillips@electionsnb.ca.

The electronic filing of a document with the Supervisor or electronic communication with the Supervisor satisfies any requirement of the Act or the Regulation if the filing or communication is made in accordance with the *Electronic Transactions Act*. The *Electronic Transactions Act* provides for the following with respect to signatures:

1 “electronic signature” means electronic information that a person has created or adopted in order to sign a document and that is in, attached to, or associated with the document.

11(1) A legal requirement for the signature of a person is satisfied by an electronic signature.

11(2) Without limiting the definition “electronic signature” in section 1, an electronic signature may be

(a) an electronic representation of the manual signature of the person signing the document, or

(b) electronic information by which the person signing the document

(i) provides his or her name, and

(ii) indicates clearly that the name is being provided as his or her signature to the document.

2.10 Public examination of disclosure statements

(TECA, s.7(2)(b))

The Supervisor is required to make disclosure statements available for public inspection by publishing them on the Elections New Brunswick website.

A separate web page has been created for this purpose. It will include a drop-down list for each registered political party that will include all relevant documents related to election commitments made by the party. Within each party's drop-down list, the following documents will be posted in this order:

1. Notices of Administrative Penalty;
2. Summary of Election Commitments; and
3. Certificates of Compliance and Disclosure Statements in descending order by consecutive number.

More information on these documents is found later in this manual.

3 Process for filing, publishing, and reviewing a disclosure statement

3.1 Filing with the Supervisor

There are three important elements to filing disclosure statements:

1. Completing the disclosure statement concerning an election commitment;
2. Completing the summary of election commitments; and
3. Meeting the deadlines for filing and publishing disclosure statements.

3.1.1 Completing the disclosure statement concerning an election commitment

A registered political party must file with the Supervisor and publish a disclosure statement concerning each election commitment that the party or its leader makes. The Supervisor has provided the form *Disclosure Statement Concerning an Election Commitment* (P 10 005) for this purpose. When completing this form, take note that:

1. A consecutive number – beginning with “1” for the first commitment – must be assigned by the party to each election commitment so that each commitment and its corresponding disclosure statement can be easily tracked.
2. A short title must be assigned to each election commitment.
3. If one exists, a reference must be provided to the location in the party’s election platform document where the election commitment is found.

The form is provided in Microsoft Word format for ease of completion by the party. After completion and signature by the official representative or chief agent, however, the form must be saved in portable document format (PDF) for filing with the Supervisor.

The Supervisor requires that the disclosure statement be filed electronically with the Assistant Supervisor of Political Financing at the following email address: nathan.phillips@electionsnb.ca.

More than one disclosure statement may be attached to such an email message; however, take care not to exceed the 10 megabyte limitation of the provincial government’s email system. Also, a *Summary of Election Commitments* (P 10 023) must be attached with the email message, as detailed in the following section.

As mentioned in section 2.7, the official representative must also file the form *Communication on Matters Related to Election Commitments* (P 10 003) with the Supervisor no later than when the first disclosure statement is filed by the party.

3.1.2 Completing the summary of election commitments

(TECA, s.5)

The Supervisor has provided a template in Microsoft Excel format entitled *Summary of Election Commitments* (P 10 023). This spreadsheet must be used to accumulate the estimated financial implications of all election commitments on the operating and capital budgets of the Province.

Process for filing, publishing, and reviewing a disclosure statement

Only one *Summary of Election Commitments* needs to be attached to each email used to file disclosure statements. Since it is a cumulative spreadsheet, it will include the financial implications of all of the previously-filed disclosure statements and the financial implications of each disclosure statement filed with that email.

The summary must be submitted in both Microsoft Excel format (for efficient review by the Supervisor) and in portable document format (PDF) (for posting on the Elections New Brunswick website.)

3.1.3 Meeting the deadlines for filing and publishing disclosure statements

(TECA, s.6)

The Act provides for strict deadlines by which disclosure statements must be filed with the Supervisor.

The following table presents these deadlines:

Date	Tuesday, June 26, 2018		Monday, August 20, 2018	Tuesday, August 21, 2018	Wednesday, August 22, 2018	Thursday, August 23, 2018		Tuesday, September 11, 2018	Wednesday, September 12, 2018	Thursday, September 13, 2018	Friday, September 14, 2018	Saturday, September 15, 2018		Monday, September 24, 2018
Description	90 days preceding ordinary polling day					Issue of writs of election						First advance polling day		Ordinary polling day
Party Commitments	6(1)(a) For party commitments made during this period, disclosure statements must be filed no later than Thursday, August 23					6(1)(b) A disclosure statement must be filed the day on which a party commitment is made								
Leader Commitments	6(1)(a) For leader commitments made during this period, disclosure statements must be filed no later than Thursday, August 23					6(1)(c) For leader commitments made during this period, disclosure statements must be filed no later than the third day following the day on which the commitment is made				6(1)(d) A disclosure statement must be filed the day on which a leader commitment is made				

The Act specifically states that, before the first advance polling day, a registered party must file with the Supervisor the summary and the disclosure statements related to all electoral commitments, including leader commitments, that have been made up to that point in time.

Process for filing, publishing, and reviewing a disclosure statement

3.2 Publishing disclosure statements

(TECA, ss.4, 5, and 6)

Note that, in addition to filing a disclosure statement with the Supervisor, the party must also publish the disclosure statement by making it public by or through any media, including a press release, a post on a website, or any other public information media.

The party must publish the *Summary of Election Commitments* in a similar fashion.

The timing requirements described in the previous section also apply to publishing the disclosure statements and the summary.

3.3 Reviewing for compliance

(TECA, s.7)

Within two business days of receiving a disclosure statement, the Supervisor must review the disclosure statement to determine if it has been prepared in accordance with the Act and the Regulation and whether it includes the information or documents prescribed by regulation. A computational, clerical or typographical error or any error of a similar nature in a disclosure statement does not constitute a violation of or a failure to comply with the Act.

If the official representative receives a *Notice of Non-Compliance for a Disclosure Statement Concerning an Electoral Commitment* (P 10 011) from the Supervisor, the party must correct any document that does not comply with the Act or the Regulation and resubmit the disclosure statement under the same number within 24 hours of the Supervisor issuing the notice. Staff at Elections New Brunswick will telephone the official representative each time such a notice is issued to advise him or her that the notice has been issued by electronic mail.

If the party fails to comply with the notice of non-compliance, the Supervisor will issue a *Notice of Administrative Penalty* (P 10 021) detailing that: (a) the party will be subject to a \$500 administrative penalty; and (b) the party will be prohibited from advertising for the remainder of the election period. The official representative who receives a notice of administrative penalty must pay the penalty within 15 days after being served with the notice. The Province may sue for and recover an administrative penalty in an action in any court as if the amount were a debt.

The notice of non-compliance and the disclosure statement will be posted by the Supervisor on the Elections New Brunswick website. The Supervisor will also post the *Notice of Administrative Penalty* on the Elections New Brunswick website.

If the disclosure statement is found to be in compliance with the Act and the Regulation, the Supervisor will prepare a *Certificate of Compliance for a Disclosure Statement Concerning an Electoral Commitment* (P 10 009). The Supervisor will publish the certificate of compliance, the disclosure statement, and the party's *Summary of Election Commitments* on the Elections New Brunswick website.

4 Process for making and investigating a complaint of non-compliance

4.1 Making a complaint to the Supervisor

(TECA, s.8)

8(1) Through its official representative, a registered political party may make a complaint to the Supervisor against another registered political party, alleging that it has failed to file a disclosure statement with the Supervisor.

The Supervisor has provided the form *Complaint of Failure to File a Disclosure Statement Concerning an Election Commitment* (P 10 013) for this purpose. The form is provided in Microsoft Word format for ease of completion by the party.

After completion and signature by the official representative, the form must be saved in portable document format (PDF) for filing with the Supervisor. The Supervisor requires that the disclosure statement be filed electronically with the Assistant Supervisor of Political Financing at the following email address: nathan.phillips@electionsnb.ca.

4.2 Investigation by the Supervisor

(TECA, ss.9-12)

For each complaint of non-compliance received, the Supervisor must perform the following:

- 1) Inform the official representative that a complaint has been made against the registered political party and provide him or her with a copy of the complaint.
- 2) Review the complaint and
 - i) refuse to conduct an investigation when he or she considers that the complaint is frivolous, vexatious or made in bad faith or that an investigation is not necessary under the circumstances; or
 - ii) conduct an investigation when he or she believes on reasonable grounds that there is a basis for the complaint.
- 3) If the Supervisor refuses to conduct an investigation of the complaint, the Supervisor must notify the complainant and the party subject to the complaint using the form *Notice of Refusal to Conduct an Investigation into a Complaint of Failure to File a Disclosure Statement* (P 10 015).
- 4) If the Supervisor chooses to investigate a complaint, the Supervisor will follow the protocol laid out in the form *Conduct of an Investigation into a Complaint of Failure to File a Disclosure Statement* (P 10 017) and may
 - i) order a person to produce to the Supervisor, or provide the Supervisor with access to, any relevant document or media in the person's possession or control,

Process for making and investigating a complaint of non-compliance

- ii) issue a summons to witness to compel the attendance of witnesses,
 - iii) administer oaths and affirmations, and
 - iv) require evidence to be given under oath or affirmation.
- 5) If a person fails to comply with a summons issued or an order made by the Supervisor, the Supervisor may apply to a judge of The Court of King's Bench of New Brunswick for one or both of the following orders:
- i) an order directing the person to comply with the summons or order; and
 - ii) an order finding the person in contempt of the Supervisor and imposing punishment in the same manner as if the person had been found in contempt of court.
- 6) Within 72 hours after receiving a complaint and subject to investigation, the Supervisor will
- i) dismiss the complaint, or
 - ii) make a finding that the registered political party has failed to file a disclosure statement.
- 7) If the Supervisor has found that a registered political party has failed to file a disclosure statement, the Supervisor must give notice using the form *Notice of Failure to File a Disclosure Statement Concerning an Election Commitment* (P 10 013) to the registered political party through its official representative.

The notice given by the Supervisor will inform the registered political party that

- i) following an investigation, the Supervisor has found that the party has failed to file a disclosure statement, and
- ii) the party is required to file a disclosure statement within 24 hours of the Supervisor issuing the notice.

Staff at Elections New Brunswick will telephone the official representative each time such a notice is issued to advise him or her that the notice has been issued by electronic mail.

- 8) If a party does not comply with a notice of failure to file a disclosure statement given to it by the Supervisor, the party is prohibited from advertising during the remainder of the election period and is subject to an administrative penalty of \$500. The form *Notice of Administrative Penalty* (P 10 021) must be issued by the Supervisor to the official representative of the party. The *Notice of Administrative Penalty* and the *Notice of Failure to File a Disclosure Statement Concerning an Election Commitment* will be posted together on the Elections New Brunswick website.
- 9) The Supervisor must serve a notice of administrative penalty on the official representative of the party in person or by registered mail. Service by registered mail is deemed to have been effected five days after the date the notice of administrative penalty is deposited in the mail. The official

Process for making and investigating a complaint of non-compliance

representative who receives a notice of administrative penalty must pay the penalty within 15 days after being served with the notice.

10) The Supervisor will advise the complainant regarding the resolution of its complaint.

Process to apply for declaration of non-compliance

5 Process to apply for declaration of non-compliance

An application to a judge for a declaration of non-compliance against a registered political party may be made regardless of whether a complaint of non-compliance was filed with the Supervisor as described in section 4 of this manual.

5.1 Application to Court of King's Bench for Declaration of Non-Compliance

(TECA, s.14)

Within 30 days after the day on which the writs are returnable, the official representative of a registered political party may apply under the Rules of Court by [Notice of Application \(Form 16D\)](#) to a judge of The Court of King's Bench of New Brunswick for a declaration that another registered political party has violated or failed to comply with section 4, 5, or 6 of the Act. Following the 2018 general election, the latest date to make such an application would be Monday, November 5, 2018.

The application must include the following information:

- (a) the name of the registered political party to which the declaration relates;
- (b) the name of its official representative; and
- (c) the election commitment that is the subject of an allegation of a violation or failure to comply with section 4, 5 or 6.

When a Notice of Application is issued, the applicant must deliver or send by registered mail to the Supervisor a copy of the notice.

To the extent that they are not inconsistent with this Act and the Regulation, the Rules of Court apply to the application.

5.2 Decision of the judge

(TECA, s.15)

15(1) On hearing an application under section 14, if a judge is satisfied that the registered political party has violated or failed to comply with section 4, 5 or 6, the judge shall issue a declaration to that effect.

15(2) When the judge renders his or her decision on an application, the clerk of the court shall forward to the Supervisor certified copies of the decision and of any declaration issued under subsection (1).

5.3 Supervisor's responsibilities regarding an application for declaration of non-compliance

(TECA, s.16)

The responsibilities of the Supervisor with respect to an application for declaration of non-compliance are to:

- 1) Receive a copy of the *Notice of Application* from the initiating registered political party;
- 2) Freeze the quarterly instalments of the party's annual allowance for the period commencing with the fiscal year following the fiscal year in which the violation or failure to comply occurred and ending with the fiscal year in which the next general election is held, inclusive of both fiscal years, until the judge has rendered his or her decision;
- 3) Receive a certified copy of the decision rendered by the judge;
- 4) If a declaration is made by the judge, withhold annual allowance payments to the registered political party for the four fiscal years described above; and
- 5) The failure of a registered political party to qualify for an annual allowance pursuant to a judge's declaration of non-compliance does not affect the determination of the amount of the annual allowance prescribed in section 32 of the *Political Process Financing Act*, which shall be determined as if the party had remained qualified to receive it.

6 Forms

The following forms have been prepared by the Supervisor for use in implementing this Act. They are available on the website of Elections New Brunswick.

Form Number	Title
P 10 003	<i>Communication on Matters Related to Election Commitments</i>
P 10 005	<i>Disclosure Statement Concerning an Election Commitment</i>
P 10 007	<i>Review by the Supervisor of a Disclosure Statement Concerning an Election Commitment</i>
P 10 009	<i>Certificate of Compliance for a Disclosure Statement Concerning an Election Commitment</i>
P 10 011	<i>Notice of Non-Compliance for a Disclosure Statement Concerning an Election Commitment</i>
P 10 013	<i>Complaint of Failure to File a Disclosure Statement Concerning an Election Commitment</i>
P 10 015	<i>Notice of Refusal to Conduct an Investigation into a Complaint of Failure to File a Disclosure Statement</i>
P 10 017	<i>Conduct of an Investigation into a Complaint of Failure to File a Disclosure Statement</i>
P 10 019	<i>Notice of Failure to File a Disclosure Statement Concerning an Election Commitment</i>
P 10 021	<i>Notice of Administrative Penalty</i>
P 10 023	<i>Summary of Election Commitments</i>