



Information Sheet 20

Contributions: Membership Fees in a Registered Party

(Revised December 1, 2008)

DISCLAIMER

These information sheets set out Elections Canada's current interpretation of the *Canada Elections Act* and are issued to assist political entities in understanding the Act. The views expressed in information sheets are not law and are not intended to replace the official text of the Act. How the Act applies to any particular case will depend on the individual circumstances of that case.

Should you have any questions or comments with regards to this particular information sheet, please contact us.

Membership Fees Are “Contributions”

1. Fees for membership in a registered party constitute “contributions” for the purpose of the *Canada Elections Act*. This is implicit in subsection 404.2(6) of the Act as well as from the construction of the Act as a whole.
 - 1.1 Subsection 404.2(6) provides that the payment by an individual during a year of fees of not more than \$25 per year in relation to a period of not more than five years for membership in a registered party is not a contribution.
 - 1.2 The limitations placed on the exception set out in subsection 404.2(6) indicate that membership fees which fall outside of the criteria of that provision are to be considered contributions.
 - 1.3 Aside from the implication in subsection 404.2(6) it is evident that the exclusion of membership fees from the concept of contributions would permit registered parties to easily avoid the contribution caps established in paragraph 405(1)(a) through the implementation of classes of membership fees designed for that purpose. The controls on eligibility to make contributions could similarly be avoided.
2. Thus, the *Canada Elections Act* does not treat the fee paid for a membership in a registered party as the purchase of an asset. The payment is treated as a contribution.

Payment of Membership Fees Must Comply with Statutory Requirements Respecting Contributions

3. Because the payment of membership fees constitutes making a contribution those payments must comply with the requirements of the Act respecting contributions – eligibility, caps and disclosure.

Limited Exception for Certain Memberships

4. Membership fees that meet the criteria specified in subsection 404.2(6) of the Act will not constitute contributions if they meet the criteria specified in that provision.

404.2 (6) The payment by an individual during a year of fees of not more than \$25 per year in relation to a period of not more than 5 years for membership in a registered party is not a contribution.

5. In order to fall within the exception set out in subsection 404.2(6) the following criteria must be met:
 - 5.1 The membership must be paid by an individual.
 - 5.2 The fee must be related to that individual's own membership.¹
 - 5.3 The individual must otherwise be eligible to make a contribution.²
 - 5.4 The fee must not amount to more than \$25 for a single year's membership.
 - 5.5 Memberships for a period of years can be purchased within a single year provided that the individual is not at any time a paid-up member for more than five years.

¹ The English version of subsection 404.2(6) refers to "The payment by an individual ... for membership ...". The French version is even more clear and refers to "le droit d'adhésion ... qu'un particulier paye ... pour être membre d'un parti enregistré."

² This is implicit in subsection 404.2(6). The purpose of subsection 404.2(6) was to permit an individual to buy a membership in a registered party without having that contribution count towards the person's contribution cap. It was not intended to provide the means to avoid the rules respecting eligibility rules relating to contributions.

5.6 The membership fee must be paid out of the individual's own resources.³

6. The payment of any fee for membership in a registered party which does not meet these criteria will be a contribution. It must comply with the requirements of the Act respecting contributions including those respecting eligibility, caps and disclosure.

Paying the Fee for the Membership of Another

7. Because the payment of membership fees constitutes making a contribution, the payment of one person's membership fee by another, including the payment of membership fees in bulk, is subject to the provisions of the *Canada Elections Act* respecting the making of contributions.
8. If the payment of the fee for membership in a registered party breaches any of the rules respecting contributions that payment is prohibited under the Act.

Prohibition Against Indirect Contributions

9. Section 405.3 of the Act prohibits the making of indirect contributions. It provides that:

“No individual shall make a contribution to a registered party, a registered association, a candidate or a leadership contestant or a nomination contestant that comes from money, property or the services of any person or entity that was provided to that individual for that purpose.”

³ This is implicit in subsection 404.2(6). Without such an implication, the exception in subsection 404.2(6) would provide a simple means whereby ineligible entities could avoid the eligibility restrictions by funding memberships. The contribution caps could be avoided through similar funding arrangements. Parliament expressly provided in section 405.3 that contributions cannot be made using money, property or resources of another given to one for that purpose. It would not have intended subsection 404.2(6) to operate as a broad exception to that principle.

10. Section 405.3 prohibits the making of a contribution using another's money that was given to the purchaser for that purpose. As a consequence, section 405.3 operates to prohibit an individual from either:
 - purchasing a party membership directly using money that was given to the individual by another for that purpose; or
 - permitting another person or entity to purchase a membership in the individual's name using the other person's or entity's money where the person in whose name the membership is purchased is reported as the contributor.
11. Any person or entity who contrives to provide the money for the purpose of paying for the memberships of others in the registered party without being reported as the actual contributor can also be included as a party in any prosecution of the person who permitted his or her membership to be paid by another contrary to section 405.3. (section 21 *Criminal Code*)
12. Where any person or entity uses his, her or its own funds to pay the fee for the membership of another in a registered party, the person or entity paying the fee is the contributor. That person must be eligible to make contributions to the registered party, he or she must be reported as the contributor, and the payment will count towards that person's contribution cap.

Statutory Anti-avoidance Prohibitions

13. Payment of the fee for the membership of another in a registered party without disclosing oneself as the contributor of the money can also amount to a breach of the anti-avoidance provisions of the Act found in section 405.2 both by the person providing the money and the person for whom the membership fee is being paid. For more information respecting anti-avoidance see Information Sheet 9, *Anti-avoidance Provisions in Relation to Contributions*.

Eligibility

14. The person who provides the money for the payment of the fee for someone's membership in a registered party (who must be reported as the contributor) must be eligible to make contributions to a registered party. Thus, the fees for membership in a registered party can only be paid by individuals who are citizens or permanent residents as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*.

Penalties for Breach

15. The *Canada Elections Act* prescribes a maximum fine of \$5,000 or imprisonment up to five years, or both, for the violation of the contribution rules.

Where the offender is a corporation the court may impose a fine in lieu of imprisonment of up to \$25,000 or, in certain circumstances, any amount the court feels appropriate.

Treatment Afforded the Legal Payment of Membership Fees by Persons Other than the Member

If the Payment Is Made by a Third Party

16. Where a third party legally pays the fees for the membership of another in a registered party the payment will be a contribution by the third party and will be subject to his or her contribution caps and the other rules respecting contributions including those relating to eligibility and disclosure.

If the Payment Is Made Through a Nomination Campaign Account or a Leadership Campaign Account

17. Because the payment of a membership fee is a contribution, and not the purchase of an asset, the payment of those fees through the nomination campaign account or the leadership campaign account will not constitute a nomination campaign expense or a leadership campaign expense. Rather, as paragraphs 404.2(3)(a) and (b) of the Act provide that the provision of funds from a leadership contestant or nomination contestant is not a contribution but is a transfer, the payment of membership fees in the registered party through the nomination campaign account or the leadership campaign account will be treated as a transfer from the nomination contestant or the leadership contestant to the registered party and will not be subject to any monetary limits. The transfer must be reported as such in the relevant returns of the nomination contestant (s. 478.23(2)(h)) or the leadership contestant (435.3(2)(g)), as the case may be, and the registered party (s. 424(2)(h.2)).

December 1, 2008, modifications

- Paragraph 15 is modified to clarify the penalties for the violation of the contribution rules.
- Paragraph 17 is modified to indicate that the payment of a membership fee constitutes a transfer of funds to the party if it is paid through the leadership campaign account of the leadership contestant just like it would be if it was paid through the nomination campaign account.