



Information Sheet 27

Loans

(Revised June 30, 2010)

DISCLAIMER

These information sheets set out Elections Canada's interpretation of the *Canada Elections Act* and are issued to assist political entities in understanding the Act. The views expressed in the 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 regard to this particular information sheet, please contact us.

Introduction

1. Loans are an accepted method of financing political entities under the *Canada Elections Act*. The Act imposes no restrictions on the source of a loan or the amount of a loan that may be given. However, loans must be reported and repaid in accordance with the rules of the Act.
2. This information sheet summarizes the obligations of the various political entities regulated under Part 18 of the Act and of third parties, with respect to reporting and repaying loans.
3. The first section of this information sheet deals with the campaigns of event-based entities, for which the rules respecting the reporting and payment of loans are in substantial part the same; namely, these are the campaigns of candidates, leadership contestants and nomination contestants.
4. The second section discusses ongoing entities, for which the rules are substantially the same respecting the reporting and payment of loans: registered parties and registered associations.
5. The final section deals with third parties.

Event-Based Entities: Candidates, Leadership Contestants and Nomination Contestants

6. Candidates, leadership contestants and nomination contestants are required to report the details of all loans received for the purposes of their campaigns.
7. Loans must be repaid in accordance with the time frames and other procedures set out in the Act for the repayment of unpaid expense claims. Failure to do so may constitute an offence.
8. The portion of a loan that remains unpaid beyond a prescribed deadline will also be added to a list of unpaid claims deemed to be contributions, unless it falls within one of the exceptions provided for in the Act.

Report on Loans

9. A report on loans received for a campaign must be included in the return of the candidate or the leadership or nomination contestant.¹ The report must be in the form prescribed by the Chief Electoral Officer and must include:
 - the name and address of the lender
 - the name of the guarantor of the loan, if any
 - the interest rate charged
 - the principal of the loan
10. A repayment schedule and any conditions on the loan must also be included with the return.
11. If a campaign has used overdraft protection or a line of credit, the return must include the name and address of the financial institution, the interest rate charged, the maximum amount drawn on the overdraft protection or line of credit, and any conditions attached.
12. If a candidate or contestant receives a loan at less than commercial value (for example, with an interest rate that is less than the market rate of interest), the difference between the amount of interest charged and other charges for the loan and the commercial value constitutes a non-monetary contribution from the lender to the candidate or contestant, and should be reported as such.²

Payment of Loans

13. The *Canada Elections Act* requires all claims owed by a candidate's or contestant's campaign to be paid according to a specified procedure, including within a specified period of time after the election or contest. Loans are a form of unpaid claim to which these rules and time periods apply. The relevant time periods are as follows:

¹ Ss. 451(2) and (3) (candidate), ss. 435.3(2) and (5) (leadership contestants) and ss. 478.23(2) and (5) (nomination contestants).

² See s. 2(1) of the Act, definitions of "non-monetary contribution" and "commercial value".

- for a candidate, within four months of polling day³
 - for a leadership contestant, within 18 months of the end of a leadership contest⁴
 - for a nomination contestant, within four months of the selection date or, if the selection date falls within the election period or 30 days before the election period, within four months of polling day⁵
14. Failure to repay a loan in its entirety within the relevant period, including possible extensions, is an offence under the Act.⁶
15. A candidate or contestant can repay a loan after the period provided in the Act if he or she obtains authorization to do so from the Chief Electoral Officer.⁷ In granting authorization, the Chief Electoral Officer may set any terms and conditions on the repayment that he considers appropriate.⁸
16. If a candidate or contestant submits, with his or her return, a loan repayment schedule that goes beyond the statutory period for repayment, the Chief Electoral Officer will treat that repayment schedule as an application to repay the loan outside that period.
- If the Chief Electoral Officer is satisfied with the repayment schedule provided, he may authorize the repayment of the loan according to that schedule as a condition of authorizing the payment outside the statutory time period.

³ S. 445. In a case where a writ is withdrawn, within four months of publication in the *Canada Gazette* of the withdrawal or deemed withdrawal of the writ. There are some exceptions to the obligation to repay within the four-month period set out in s. 445(2). It should be noted that s. 444 provides the period within which a claim must be sent to the candidate.

⁴ S. 435.24. There are some exceptions to the obligation to repay within the 18-month period set out in s. 435.24(2). It should be noted that s. 435.23 provides the period within which a claim must be sent to the contestant.

⁵ S. 478.17. There are some exceptions to the obligation to repay within the four-month period set out in s. 478.17(2). It should be noted that s. 478.16 provides the period within which a claim must be sent to the contestant.

⁶ Ss. 497(1)(t) (candidate), 497(1)(q.09) (leadership contestant) and 497(1)(z.27) (nomination contestant).

⁷ Ss. 445(2)(b) (candidates), 435.24(2)(b) (leadership contestants) and 478.17(2)(b) (nomination contestants).

⁸ Ss. 447(2) (candidates), 435.26(2) (leadership contestants) and 478.19(2) (nomination contestants).

- If the Chief Electoral Officer is not satisfied with the schedule that has been provided, he may make the repayment of the loan according to a different schedule a condition of authorizing the payment outside the statutory time period.
17. In the case of a demand loan, a line of credit or other loan that is not repaid by the statutory deadline, an application should be made to the Chief Electoral Officer to pay the loan outside the statutory period.
- As in all cases where an entity wishes to repay a loan or other claim after the statutory repayment period has elapsed, it is preferable to make the application with sufficient time remaining for the Chief Electoral Officer to issue a decision before the payment deadline expires, in order to avoid any period of time during which there is an unpaid claim for which no exception applies to the requirement to pay claims within the prescribed time frame. Such a period would result in an offence having been committed for failing to pay one's claims within the prescribed time period (including any authorized extensions).
 - As a general practice, the Chief Electoral Officer will impose, as a condition of allowing such a payment, the requirement that a loan be repaid within a set period of time, according to a repayment schedule or on a specified date. Provided that the conditions are being complied with, the offence of having unpaid claims after the deadline for paying claims would not arise until the end of this extended period, should an unpaid amount still exist and should a further extension not have been obtained from a judge.
18. If the Chief Electoral Officer refuses the candidate's or contestant's request for authorization, or if the candidate or contestant is unable to comply with the terms and conditions imposed by the Chief Electoral Officer, the candidate or contestant, the relevant agent or the lender may apply to a judge of a superior court for authorization to pay the amount. The Chief Electoral Officer must be notified of any such application.⁹

⁹ Ss. 448 (candidate), 435.27 (leadership contestants) and 478.2 (nomination contestants).

Deeming a Loan to Be a Contribution

19. If a loan is not repaid, in whole or in part, within 18 months of polling day, the end of a leadership contest or, in the case of a loan to a nomination contestant, the selection day or polling day if the selection day fell within the election period or the 30 days before the election period, the unpaid amount may be deemed to be a contribution made as of the day the loan was incurred.¹⁰
20. A loan will not be deemed to be a contribution if, on the day that it would otherwise be so deemed (i.e. the date on which the 18-month period elapses), one of the following applies:
 - there is a binding agreement to pay the loan
 - the loan is the subject of a legal proceeding to secure its payment
 - the loan is the subject of a dispute, or
 - the loan has been written off by the lender as an uncollectible debt in accordance with the lender's normal accounting practices¹¹
21. Before the date on which the 18-month period elapses and the claim would be deemed a contribution, the contestant or candidate, or the official agent or financial agent, must inform the Chief Electoral Officer if one of the above conditions applies.¹²
22. The Act also prohibits any person or entity from circumventing or attempting to circumvent the contribution limits or eligibility rules, or acting in collusion with another person or entity for such a purpose.¹³ Violating this prohibition is an offence. See **Information Sheet 9**.
23. A transaction reported as a loan that is, in fact, an attempt to circumvent the restrictions on contributions in the Act violates this provision and constitutes an offence.

¹⁰ Ss. 450(1) (candidate), 435.29(1) (leadership contestant) and 478.22(1) (nomination contestant).

¹¹ Ss. 450(2), 435.29(2) and 478.22(2).

¹² Ss. 450(3), 435.29(3) and 478.22(3).

¹³ S. 405.2(1).

Ongoing Entities: Registered Parties and Registered Electoral District Associations

Report on Loans

24. A registered party's and registered association's annual financial transactions return must include a report on loans received by the party or association during the year.¹⁴ That report must be in the form prescribed by the Chief Electoral Officer and must include:
 - the name and address of the lender
 - the name of the guarantor of the loan, if any
 - the interest rate charged
 - the principal of the loan
25. A repayment schedule and any conditions on the loan must also be included with the return.
26. In the case of overdraft protection or a line of credit, the party or association must record the name and address of the financial institution, the interest rate and the maximum amount drawn on the overdraft protection or line of credit, as well as any associated conditions.
27. If a loan remains unpaid, in whole or in part, after the year in which it was incurred, the party or association must continue to report the loan information in its annual financial statements. This is a requirement of generally accepted accounting principles.
28. If a party or association receives a loan at less than commercial value (for example, with an interest rate that is less than the market rate of interest), the difference between the amount of interest charged and other charges for the loan and the commercial value constitutes a non-monetary contribution from the lender to the party or association, and should be reported as such.¹⁵

¹⁴ Ss. 424(2) and (3) (registered party) and 403.35(2) and (3) (registered association).

¹⁵ See s. 2(1) of the Act, definitions of "non-monetary contribution" and "commercial value".

Payment of Loans

29. A registered party or registered association must pay all properly submitted claims within six months of their coming due.¹⁶
30. A loan is a claim that must be repaid in accordance with this requirement. The loan document is evidence of the claim.
 - Therefore, for the purposes of the Act, the loan payment must be made within six months of its being due.
 - Similarly, in the case of a demand loan, for the purposes of the Act, the payment must be made within six months of the lender demanding payment.
31. A party can make a payment beyond the six-month period if it obtains authorization from the Chief Electoral Officer.¹⁷
32. If he grants authorization, the Chief Electoral Officer may set any terms and conditions on a repayment that he considers appropriate.¹⁸
 - As a general practice, the Chief Electoral Officer will impose, as a condition of an extended repayment schedule, the requirement that a payment be made within a set period of time, according to a written schedule or on a specified date.
33. If the Chief Electoral Officer refuses the party's or association's request for authorization, or if the party or association is unable to comply with the terms and conditions he imposes, the lender or a registered agent of the party, or the electoral district agent of an association, may apply to a judge of a superior court for authorization to pay the amount.¹⁹ The Chief Electoral Officer must be notified of any such application.

¹⁶ Ss. 418 (registered party) and 403.3 (registered association). Note that s. 417 provides that all claims must be sent to the party within three months of the expense being incurred.

¹⁷ Ss. 419 (registered parties) and 403.31 (registered associations).

¹⁸ Ss. 419(2) (registered party) and 403.31(2) (registered association).

¹⁹ Ss. 420 (registered party) and 403.32 (registered association).

Deeming a Loan to Be a Contribution

34. A loan that is not repaid, in whole or in part, within 18 months of the end of the fiscal year in which it was incurred may be deemed to be a contribution of the unpaid amount, made as of the day the loan was incurred,²⁰ in accordance with the transparency objective that underlies this provision.
35. A loan will not be deemed to be a contribution if, on the day it would otherwise be so deemed, one of the following applies:
- there is a binding agreement to pay the loan
 - the loan is the subject of a legal proceeding to secure its payment
 - the loan is the subject of a dispute, or
 - the loan has been written off by the lender as an uncollectible debt in accordance with the lender's normal accounting practices²¹
36. Before the date on which the 18-month period elapses and the claim would be deemed a contribution, the party or association, or its chief agent or financial agent, must inform the Chief Electoral Officer if one of the above conditions applies.²²
37. The *Canada Elections Act* also prohibits any person or entity from circumventing or attempting to circumvent the contribution limits or eligibility rules, or acting in collusion with another person or entity for such a purpose.²³ Violating this provision constitutes an offence. See [Information Sheet 9](#).
38. A transaction reported as a loan that is, in fact, an attempt to circumvent the restrictions on contributions in the Act thereby violates this provision and constitutes an offence.

²⁰ Ss. 423.1(1) (registered party) and 403.34(1) (registered association).

²¹ Ss. 423.1(2) (registered party) and 403.34(2) (registered association).

²² Ss. 423.1(3) (registered party) and 403.34(3) (registered association).

²³ S. 405.2(1).

Third Parties

39. A registered third party is required to include in its election advertising report a statement of all loans given for election advertising in the period between six months before the issue of the writ and polling day. This is because, for the purposes of the Act, the third party's reporting requirements for contributions apply also to loans.²⁴
40. In the case of such loans for an amount of more than \$200, the third party must report the name and address of the lender; the class of the lender, whether an individual, business, commercial organization, government, trade union, corporation without share capital or other unincorporated body or association; the principal amount of the loan; the amount repaid; and the balance owing.²⁵
41. There are no provisions in the Act requiring a loan to a third party to be repaid within any particular time frame or for deeming such loans to be contributions.

June 30, 2010, modifications

The part of the text pertaining to deemed contributions was changed in order to remove the statement that an unpaid portion of a claim that is deemed to have been a contribution is subject to the rules on contributions adopted in 2003 (including limits and restrictions on sources). In that regard, it should be noted that the statutory presumption in question is a rebuttable presumption – a claim that was deemed to be a contribution can subsequently be paid by the campaign, either voluntarily (with the prior authorization of the Chief Electoral Officer or a judge) or in relation to legal proceedings by the lender to recover payment. It should also be noted that the offence of making a contribution that exceeds the authorized limits (paragraph 497(3)(f.13)) requires an element of intent.

²⁴ Ss. 359(4)(a) and 359(5).

²⁵ Ss. 359(4), (5) and (6).