



## **INFORMATION SHEET 5**

### **TRANSFERS BETWEEN AFFILIATED POLITICAL ENTITIES**

#### **DISCLAIMER**

These information sheets set out Elections Canada's current interpretation of the *Canada Elections Act* and are issued to assist the public 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. Elections Canada reserves the right to reconsider any interpretations expressed in information sheets, either generally or in light of the actual circumstances of any case, and in accordance with continuing legislative and judicial developments.

## **What Is a Transfer?**

1. Under the *Canada Elections Act*, the transfer of funds, goods or services between certain entities is not considered to be a contribution, and thus the rules for contributions do not apply.<sup>1</sup> Technically, the Act talks of money being “transferred” and goods and services being “provided”. But in this document the term “transfer” is used for transfers of funds and provisions of goods or services unless specified otherwise.
2. Provision of resources from one political entity to another, which is not specifically provided for under the Act as a transfer, constitutes a contribution and is governed by the eligibility rules for making contributions and any relevant contribution limit.

## **Why Is There a Distinction Between Contributions and Transfers?**

3. Transfers allow specified political entities of the same political affiliation to move resources among themselves. Treating all provisions of resources as contributions would either subject these transfers to contribution caps or prohibit them altogether as being made by ineligible contributors.<sup>2</sup>

## **Which Political Entities May Make or Receive Transfers?**

### ***Not Every Political Entity May Make or Receive Transfers***

4. Not all political entities may make or receive transfers. The Act specifies which entities may make transfers and to whom, and which entities may receive transfers and from whom.

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<sup>1</sup> Ss. 404.2(2) and (3), *Canada Elections Act*.

<sup>2</sup> For example, a registered party is not an individual. Thus, unless the Act allowed transfers between a registered party and its candidates, a candidate would not be able to receive any resources from his or her party.

5. If the Act does not provide for resources to be transferred between two particular entities, those two entities may still move resources to each other. However, such movement of resources is not treated as a transfer and the rules for contributions apply.
6. Some entities may transfer resources between themselves with no limits or restrictions. Other entities are restricted in the type of transfers which may be made or received.

### ***Must Be Same Political Affiliation***

7. Transfers are only permitted between regulated political entities (registered party, registered electoral district association, candidate, leadership and nomination contestants) of the same political affiliation.<sup>3</sup>

### ***Transfers from Registered Parties***

8. Registered parties may make transfers of money and goods and services to any of their electoral district associations (whether registered or not),<sup>4</sup> and any candidate endorsed by the party.<sup>5</sup>
9. Registered parties may provide goods or services to leadership or nomination contestants, but only if such goods and services are offered equally to all contestants.<sup>6</sup>
10. However, registered parties may not transfer *funds* to nomination contestants or, in most cases, to leadership contestants.<sup>7</sup>
11. There is a limited exception whereby registered parties may transfer all or part of a “directed contribution” to leadership contestants.<sup>8</sup>

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<sup>3</sup> See ss. 404.2(2), (3) and (4), *Canada Elections Act*, to determine which political entities may make, or receive, transfers.

<sup>4</sup> S. 404.2(2)(a), *Canada Elections Act*.

<sup>5</sup> S. 404.2(2)(a), *Canada Elections Act*.

<sup>6</sup> S. 404.3(1), *Canada Elections Act*.

<sup>7</sup> S. 404.3(1), *Canada Elections Act*.

<sup>8</sup> Ss. 404.2(3)(c) and 404.3(3), *Canada Elections Act*.

12. A “directed contribution” is a contribution to a registered party, all or part of which the contributor has requested in writing be transferred to a particular leadership contestant.<sup>9</sup>
13. A transfer made by a registered party based on this exception may only be made to the leadership contestant designated by the original contributor and may not exceed the amount of the directed contribution.<sup>10</sup>

### ***Receipt of Transfers by Registered Parties***

14. Registered parties may receive transfers from their registered electoral district associations<sup>11</sup> and candidates endorsed by the party.<sup>12</sup>
15. Registered parties may also receive transfers of funds only (i.e. not goods or services) from the party’s leadership<sup>13</sup> and nomination contestants.<sup>14</sup>
16. However, contributions originally given to a registered association, candidate or nomination contestant by corporations, trade unions or unincorporated associations cannot be transferred to the registered party<sup>15</sup> except as part of a disposal of surplus required by the Act.

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<sup>9</sup> S. 404.3(2), *Canada Elections Act*.

<sup>10</sup> Any amount actually transferred by the party to the leadership contestant is deemed a contribution made by the contributor to the contestant (s. 404.3(4)) and counts towards that person’s contribution limit for leadership contestants. Amounts transferred to the leadership contestant are reported by the contestant as a contribution from the original donor. Thus, transfers to leadership contestants are not conceptually the same as other transfers that do not count towards the original contributor’s limits. Any part of the original contribution that the party does not transfer to the leadership contestant is counted towards the contributor’s limit for contributions to the party.

<sup>11</sup> S. 404.2(2)(b), *Canada Elections Act*.

<sup>12</sup> S. 404.2(2)(c), *Canada Elections Act*.

<sup>13</sup> S. 404.2(3)(a), *Canada Elections Act*.

<sup>14</sup> S. 404.2(3)(b), *Canada Elections Act*.

<sup>15</sup> S. 404.2(4), *Canada Elections Act*.

17. If a leadership contestant or nomination contestant wanted to provide goods or services to a registered party, he or she could do so either as part of a commercial transaction, or as a non-monetary contribution. Such contributions are subject to contribution limits and reporting requirements.

### ***Transfers by Registered Associations***

18. A registered association may make unlimited transfers to its registered party, another registered association of that party, or to any candidate who is endorsed by the party.<sup>16</sup>
19. All electoral district associations (whether registered or not) may provide goods or services to leadership or nomination contestants, but only if such goods and services are offered equally to all contestants.<sup>17</sup>
20. No provision in the Act permits a registered association to make a transfer to an unregistered electoral district association of the same political affiliation.
21. A registered electoral district association's ability to make transfers to its party is subject to the express limitation that the association cannot transfer to its party any amount that it has received from a corporation or trade union or from an unincorporated association.<sup>18</sup>
22. This is to support the prohibition in the Act on contributions from corporations, trade unions and unincorporated associations to registered parties.<sup>19</sup>

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<sup>16</sup> S. 404.2(2)(b), *Canada Elections Act*.

<sup>17</sup> S. 404.3(1), *Canada Elections Act*.

<sup>18</sup> S. 404.2(4), *Canada Elections Act*.

<sup>19</sup> The prohibition arises from the combined effect of ss. 404(1), 404.1 and 405.3(2). S. 404(1) prohibits contributions from any entity other than an individual. Ss. 404.1 and 405.3(2) set out limited exceptions for corporations, trade unions and unincorporated associations to make contributions, but these exceptions do not extend to contributions to registered parties or their leadership contestants.

### ***Receipt of Transfers by Registered Associations***

23. All electoral district associations (whether registered or not) may receive transfers from their registered party.<sup>20</sup>
24. Registered associations may receive transfers from other registered associations of the same registered party,<sup>21</sup> and from candidates endorsed by that party.<sup>22</sup>
25. Registered associations may receive transfers of funds only (not goods or services) from leadership contestants of the same party<sup>23</sup> and nomination contestants, if the association has held the nomination contest.<sup>24</sup>

### ***Special Provision for EBRA Deregistrations***

26. Special provision is made in s. 403.22 for transfers by a registered association that has been deregistered after a change in the boundaries of its electoral district under the *Electoral Boundaries Readjustment Act*.
27. Even though the association is deregistered, it is permitted for six months following deregistration to transfer goods or funds (but not services) to the registered party with which it is affiliated or to any of that party's other registered associations.
28. This will allow transfers to be made by the old associations to successor associations under the new EBRA boundaries.

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<sup>20</sup> S. 404.2(2)(a), *Canada Elections Act*.

<sup>21</sup> S. 404.2(2)(b), *Canada Elections Act*.

<sup>22</sup> S. 404.2(2)(c), *Canada Elections Act*.

<sup>23</sup> S. 404.2(3)(a), *Canada Elections Act*.

<sup>24</sup> S. 404.2(3)(b), *Canada Elections Act*.

### ***Transfers by a Candidate***

29. A candidate endorsed by a registered party may make transfers to that registered party<sup>25</sup> or to any registered association of that party (whether or not of the same electoral district as the candidate).<sup>26</sup>
30. However, the Act contains no provision allowing a candidate of a registered party to make transfers to other candidates of the same registered party.
31. Thus, if a candidate of a registered party moves resources to another candidate, whether of the same party or not, that is a contribution and is governed by the rules for contributions.
32. A candidate is also permitted under s. 404.2(2)(d) to make a transfer to himself or herself in his or her capacity as a nomination contestant in the same election.
33. A candidate who is not of a registered party may not make any transfers.
34. Provisions of goods or services or transfers of funds by a candidate who is not of a registered party to any other political entity is a contribution and is governed by the rules for contributions.

### ***Receipt of Transfers by Candidates***

35. A candidate who is endorsed by a registered party may receive transfers from the endorsing party<sup>27</sup> and from that party's registered associations.
36. The candidate may also receive transfers of funds (but not goods or services) from nomination contestants in the electoral district where the candidate is endorsed.<sup>28</sup>

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<sup>25</sup> S. 404.2(2)(c), *Canada Elections Act*.

<sup>26</sup> S. 404.2(2)(c), *Canada Elections Act*.

<sup>27</sup> S. 404.2(2)(a), *Canada Elections Act*.

<sup>28</sup> Timing is a concern when nomination contestants make transfers to endorsed candidates in the same electoral district. Practically speaking, this can only happen when a candidate is endorsed before the time the nomination contestant is required to transfer his or her surplus under s. 478.41.

37. A candidate who is not of a registered party may not receive any transfers.
38. Any goods, services or funds that a candidate who is not of a registered party receives are governed by the rules for contributions.

### ***Transfers by Leadership Contestants***

39. A leadership contestant of a registered party may make transfers of funds (but not goods or services) to his or her party or to any registered association of that party.<sup>29</sup>
40. This includes the transfer of the leadership contestant's surplus made under s. 435.46.
41. If a leadership contestant wishes to give goods or services at less than commercial value to another regulated political entity, these are governed by the rules for contributions.

### ***Receipt of Transfers by Leadership Contestants***

42. A leadership contestant of a registered party may receive limited transfers of "directed contributions" from his or her registered party.<sup>30</sup>
43. Leadership contestants may also receive transfers of goods or services (but not funds) from their registered party, or an electoral district association of their registered party (whether registered or not), if such transfers are offered equally to all contestants.<sup>31</sup>
44. These are the only provisions that allow leadership contestants to receive transfers.
45. Thus, any other provision of goods or services, or transfer of funds to a leadership contestant is a contribution and governed by the rules for contributions.

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<sup>29</sup> S. 404.2(3)(a), *Canada Elections Act*.

<sup>30</sup> Ss. 404.2(3)(c) and 404.3(3), *Canada Elections Act*. See the discussion above for transfers from a registered party to its leadership contestants.

<sup>31</sup> S. 404.3(1), *Canada Elections Act*.



### ***Transfers by Nomination Contestants***

46. A nomination contestant of a registered party may transfer funds (but not goods or services) to his or her registered party and to the registered association of the electoral district that held the nomination contest (but not to other registered associations of the party).<sup>32</sup>
47. The contestant may also transfer funds (but not goods or services) during an election to the candidate endorsed by the party in the electoral district in which the nomination contest was held.<sup>33</sup> The recipient candidate must have been endorsed by the party.
48. These transfers include the transfer of surplus required by s. 478.41(2).
49. If a nomination contestant wishes to give goods or services at less than commercial value to another regulated political entity, these are governed by the rules for contributions.

### ***Receipt of Transfers by Nomination Contestants***

50. Nomination contestants may receive transfers from themselves in their capacity as a candidate in the same election.<sup>34</sup>
51. Nomination contestants may also receive transfers of goods or services (but not funds) from their registered party, or an electoral district association of their registered party (whether or not registered), if such transfers are offered equally to all contestants.<sup>35</sup>
52. Other than these narrow exceptions, there is no provision in the Act permitting a nomination contestant to receive transfers.
53. Thus, any other provision of goods or services, or transfer of funds to a nomination contestant is a contribution and governed by the rules for contributions.

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<sup>32</sup> S. 404.2(3)(b), *Canada Elections Act*.

<sup>33</sup> S. 404.2(3)(b), *Canada Elections Act*.

<sup>34</sup> S. 404.2(2)(d), *Canada Elections Act*.

<sup>35</sup> S. 404.3(1), *Canada Elections Act*.

***Transfers Received by Parties That Are Not Registered and Their Electoral District Associations***

54. There are no rules in the Act covering contributions to a party that is not registered or its associations. Anyone may make any contribution they wish to a party that is not registered or to one of its associations, and it will not be governed by the *Canada Elections Act*.

***Transfers by Parties That Are Not Registered and Their Electoral District Associations***

55. The Act does not provide any means for a party that is not registered, or one of its associations, to make transfers to one of its candidates.
56. To allow unlimited transfers between a party or association that is not registered and its candidates would undermine the rules for contributions to those candidates.
- 56.1 This is because unlimited contributions, perhaps by ineligible entities, could be made to the party, which could then transfer those contributions to its candidates.

**Reporting Transfers**

57. Almost all transfers permitted under the Act must be reported in the returns made by both the entity making the transfer and the entity receiving the transfer.
58. The only exceptions are those nomination contestants whose aggregate contributions or expenses do not trigger a reporting obligation of any sort.<sup>36</sup>

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<sup>36</sup> Nomination contestants whose aggregate contributions or expenses are under \$1,000: s. 478.23(1).

59. In each case, the transferring entity must provide with its return a statement of the commercial value<sup>37</sup> of goods or services provided and of funds transferred to the receiving political entity.<sup>38</sup>
60. A transfer is reported as a transfer coming from (or being made to) a political entity (e.g. the registered party). The details of the original contributor from whose contribution the transfer was made do not have to be reported. Those details will be reported instead in the return made by the first recipient of the original contribution.
61. The only exception to this principle is a transfer received by a leadership contestant from his or her registered party out of directed contributions received by the party.
62. Such transfers are not reported as transfers by the leadership contestant.

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<sup>37</sup> S. 2 of the Act defines “commercial value” as follows:

“commercial value”, in relation to property or a service, means the lowest amount charged at the time that it was provided for the same kind and quantity of property or service or for the same usage of property or money, by

(a) the person who provided it, if the person is in the business of providing that property or service; or

(b) another person who provides that property or service on a commercial basis in the area where it was provided, if the person who provided the property or service is not in that business.

In the case of transfers, in most cases paragraph (b) will be the relevant provision for valuation.

<sup>38</sup> For reporting by registered parties of the transfers made by them, see paragraph 424(2)(h) and (h.1). For transfers received by the party, see paragraph 424(2)(h.2).

For reporting by registered associations of transfers made by them, see paragraph 403.35(2)(g). For transfers received by the association, see paragraph 403.35(2)(h).

For reporting by candidates of transfers made by them, see paragraph 451(2)(i). For transfers received by the candidate, see paragraph 451(2)(j).

For reporting by leadership contestants of the transfers made by them, see paragraph 435.3(2)(g). For transfers received by the leadership contestant from his or her registered party out of directed contributions, see paragraph 435.3(2)(f).

For reporting by nomination contestants of transfers made by them, see paragraph 478.23(2)(h). For transfers received by the nomination contestant, see paragraph 478.23(2)(i).

63. They are reported by the leadership contestant as a contribution from the original contributor. The leadership contestant must report the name and address of each contributor who made a directed contribution of which the contestant received some part. The report must set out the total contribution made by the contributor, the amount that the contributor requested to be transferred to the contestant, the amount actually transferred, and the dates of receipt by the party of the contribution and transfer to the contestant.<sup>39</sup>

### **When Transfers Are Reported**

64. In the case of a registered party, the transfers must be reported with the party's fiscal return under section 424.
65. In the case of a registered association, the transfers must be reported with the association's annual return under section 403.35.
66. A candidate must report transfers in the candidate's election return under section 451.
67. A leadership contestant must report transfers in the leadership campaign return under section 435.3.
68. A nomination contestant must report transfers in the nomination campaign return under section 478.23.

### **Improper Use of Transfers**

69. Transfers that are used to avoid the controls on eligibility to make contributions under s. 404(1) or the limits on contributions by individuals under s. 405(1) or by corporations and trade unions under section 404.1 are prohibited by the anti-avoidance provision of the Act in paragraph 405.2(1)(a).

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<sup>39</sup> S. 435.3(2)(f), *Canada Elections Act*.

70. Use of transfers to conceal or attempt to conceal the source of a contribution required to be disclosed are similarly prohibited by paragraph 405.2(2)(a).
71. Collusions between persons or entities for those ends are also prohibited by paragraphs 405.2(1)(b) and 405.2(2)(b).
72. Breaches of the anti-avoidance provisions constitute offences under paragraphs 497(1)(i.4) and (i.5) and, if done knowingly, paragraphs 497(3)(f.14) and (f.15).