



## **INFORMATION SHEET 10**

### **MAKING CONTRIBUTIONS USING MONEY, PROPERTY OR SERVICES GIVEN TO ONE BY OTHERS FOR THAT PURPOSE**

**(Revised February 9, 2004)**

#### **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.

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## **MAKING CONTRIBUTIONS USING MONEY, PROPERTY OR SERVICES GIVEN TO ONE BY OTHERS FOR THAT PURPOSE**

### **Section 405.3, *Canada Elections Act***

#### **General Prohibition of Attempts to Avoid Controls**

1. Attempts to avoid contribution eligibility rules or contribution caps in the *Canada Elections Act*, or to hide the identity of a contributor, are prohibited by s. 405.2 of the Act. This prohibition is broad enough to catch attempts to funnel contributions through others.

#### **Express Prohibition Against Making Contributions Using Resources Given to One by Another for That Purpose**

2. Section 405.3 of the Act expressly prohibits making contributions to a registered party, its registered electoral district associations, leadership or nomination contestants, or to any candidate, that come from money, property or the services of another person or entity and were provided to the contributing person or entity for the purpose of making contributions. This information sheet discusses this latter prohibition.
3. It is not the fact that other people's money, property or services may be used to make a contribution that triggers the prohibition in s. 405.3. To be caught by the prohibition in s. 405.3, the other person or entity must have given one the money, property or services *for the purpose of making contributions*.
4. It is an offence to breach the prohibition against making contributions using other people's resources.<sup>1</sup>

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<sup>1</sup> Ss. 497(1)(i.6) and 497(3)(f.17), *Canada Elections Act*.

## **When Are Resources Given for the Purpose of Making Contributions?**

### ***Resources Given Expressly or by Implication to Make Contributions***

5. Money, property or services given to a contributor with the express or implied intention that those resources will be included in a contribution made by that contributor in the contributor's own name are considered to be property given for the purpose of making a contribution. This will be so, even if the title of the property is given to the contributor absolutely. The test is whether or not the property was given to the contributor with the intention by the giver that the contributor use the property to make contributions.

### ***Resources Given for Multiple Purposes, Including the Purpose of Making Contributions***

6. Resources given to a contributor for many purposes, or for broad purposes (e.g. advancing the career of candidate X), which expressly or by implication include the making of contributions are also considered to be given for the purpose of making contributions and are caught by the prohibition in s. 405.3. This is to prevent attempts to avoid the prohibition by combining purposes.

## **Delivery of Contributions on Behalf of Contributor**

### ***Property Given For Delivery***

7. An intermediary may forward a contribution from another to a specific intended political recipient at the direction of the original contributor. Where the intermediary acts as a means of delivery the contribution will not be attributed to the intermediary. The contribution must be made in the name of the original contributor whose name and address must be delivered along with the contribution. The contribution will be considered to be made on the date of receipt by the political recipient and will count towards the contribution cap of the contributor. A receipt must be provided to the original contributor for all contributions over \$25.00.
8. Where a person or entity delivers a contribution to a political entity absent any indication to the contrary the presumption is that the contribution is from that person or entity. Thus, in order to avoid

being considered the contributor an intermediary should deliver evidence to the political recipient that is reasonably capable of establishing the true source of the contribution and the status of the intermediary as a means of delivery.

9. A cheque drawn on the account of the contributor made payable to the intended political recipient will serve as such evidence.
10. Where cash is being delivered, or a cheque which does not adequately identify the source of the contribution, the intermediary should secure written instructions from the person or entity requesting the delivery of the cash. Those instructions should include the name and address of the contributor, the voluntary nature of the contribution, the amount of contribution being given to deliver, the political recipient to whom the contribution is to be delivered and directions to deliver the cash to the specific political entity within a reasonable time. The directions should be signed and dated by the contributor. Those instructions should be provided to the intended political recipient along with the contribution.
11. A political entity which receives a contribution through an intermediary should require evidence of the delivery status of that person (through the provision of identifying cheques, written instructions as noted above, or other similar means). Otherwise, the political entity will not be able to rely on the reasonableness of its conduct respecting any breach of the Act which may result from the failure of the political entity to verify the true source of the contribution.
12. Multiple contributions of cash given to an intermediary for delivery to the same specific political entity may be combined and delivered in a single financial instrument or collection of cash. Each of the individual contributors must have voluntarily wished to make the contribution. The intermediary must deliver the contributions within a reasonable time and provide the political recipient with sufficient information (which may be found in the written delivery instructions noted above) to identify the name and address of each contributor and the amount of contribution attributable to each.
13. It will be an avoidance and contrary to section 405.2 of the *Canada Elections Act* for one or more persons or entities to require another person or entity, either by duress or by way of contractual obligation, to make a contribution other than voluntarily. The use of duress or

legal authority to require another to make a contribution that will permit the controlling person or entity to effectively avoid that person's or entity's contribution limit through the use of another person's or entity's contribution limit or status will amount to an act of avoidance contrary to subsection 405.2(1). Such actions will also allow the controlling person or entity to avoid being disclosed as the true source of the contribution contrary to subsection 405.2(2). It may also amount to an avoidance of the eligibility provisions of the Act and be contrary to subsection 405.2(1), where the controlling person or entity is not eligible to make contributions. See also information sheet 9, *Anti-avoidance Provisions in Relation to Contributions*.

14. The prohibition in section 403.01 from providing services to a registered party, a registered association, or a candidate endorsed by a registered party also prohibits an unregistered electoral district association from organizing or otherwise coordinating the collection of contributions for delivery by its members or by others.

#### *Contributions Received by Financial Agent*

15. The financial agent for one of the political entities regulated under the Act may receive contributions for that entity.<sup>2</sup>

#### **Making Contributions Through Unincorporated Associations**

16. It is possible to make limited contributions of money to a registered party, a registered electoral district association, a leadership or nomination contestant of a registered party, or to any candidate, through an unincorporated association. Contributions delivered through an intermediary in which the delivery person is required to deliver the contribution to a specific recipient within a reasonable time on behalf of the contributor are attributed to the original

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<sup>2</sup> Those financial agents would be:

- for registered parties – registered agents, including the chief agent
- for registered associations – electoral district agents, including the financial agent
- for candidates – the official agent
- for leadership contestants – the leadership campaign agents, including the financial agent
- for nomination contestants – the financial agent

The receipt of contributions by such agents is governed by other provisions of the law.

contributor. An unincorporated association, however, may receive money from individuals for the purpose of making contributions generally at the discretion of the unincorporated association. The unincorporated association may make contributions to registered associations, nomination contestants and candidates as it wishes subject to the caps set out in section 405.3. Such contributions are given in the name of the unincorporated association as the contributor and are reported as such. The unincorporated association must provide the political recipient with a statement containing the information set out in subsection 405.3(2) identifying the source of the money given. That money will also be attributed back to the contribution caps of the original donors (s. 405.3(6)). For more information, see information sheet 4, *Contributions by Unincorporated Associations Under the Canada Elections Act*.

17. Contributions passed on to a registered association, a candidate, or a nomination contestant through an unincorporated association are counted as contributions of the unincorporated association,<sup>3</sup> but the money contained therein that was originally given to the association by an individual for the purpose of making a contribution will also count against the contribution cap of that individual at the time the donation is made.<sup>4</sup>
18. An individual who, knowing that an unincorporated association has passed along money he or she gave it for a contribution, wilfully exceeds his or her contribution limit by failing to take that money into account in making other contributions has committed an offence.<sup>5</sup> An individual who inadvertently exceeds his or her limit because he or she is not aware that an unincorporated association passed along money given to it for that purpose has not wilfully exceeded his or her contribution limit.

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<sup>3</sup> The *Canada Elections Act* refers to such donations from unincorporated associations as constituting the contribution of the association – see section 405.3(2) – and to the association as being the contributor. See ss. 403.35(2)(b.1), 451(2)(g.1), and 478.23(2)(e.1).

<sup>4</sup> S. 405.3(6), *Canada Elections Act*.

<sup>5</sup> S. 497(3)(f.13), *Canada Elections Act*.