



INFORMATION SHEET 12

TRANSITIONAL PROVISIONS: MOVING TO THE NEW REGIME

SUMMARY OUTLINE

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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Introduction

1. Transitional provisions in legislation explain how the various affected entities are to move from the “old” rules to the new. The date that the bulk of the C-24 amendments come into force is January 1, 2004. The transitional provisions in sections 65 to 72 of what is now cited as *S.C. 2003, c. 19* (formerly Bill C-24), are technically not part of the *Canada Elections Act*. They are part of the legislation that effected changes to that Act and tell the reader how to apply it during the transitional period. To distinguish changes to the CEA itself from supporting transitional provisions, the latter will be referred to in this document by the above *Statutes of Canada* citation.

Calculating Contributions for the Purpose of Contribution Limits

Contribution Caps: Contributions Made Before January 1, 2004

2. Contributions made by individuals, corporations or trade unions before January 1, 2004, do not count towards contribution limits. For the purposes of contribution limits, all contributors start at zero when the amendments come into force on January 1, 2004.¹
3. Neither will contributions made by unincorporated associations prior to January 1, 2004, be taken into account in determining compliance with the exception in s. 405.3(2).²
4. All contributions made by unincorporated associations after January 1, 2004, will be governed by the prohibition in s. 405.3(1) (and must fall into the exception set out in s. 405.3(2) to be lawful), even though the money, property or goods that may form the subject of the contribution came to the unincorporated association before January 1, 2004.

¹ S. 65, *S.C. 2003, c. 19*.

² This is implicit in the direction found in ss. 405.3(2)(c) and 405(6), *Canada Elections Act*. Unincorporated associations wishing to take advantage of the \$1,000 exception to the prohibition in s. 405.3(1) must provide a statement identifying the original donor and the amount of money given by him or her. Subsection 405.3(6) directs that this money will count towards the cap of the original donor. There are no caps applicable to a donor prior to January 1, 2004.

5. Although contributions made before January 1, 2004, do not count in the calculation of limits, they remain contributions and must be reported as such in the return of the political recipient.

Contribution Caps: Elections and Leadership Contests Underway on January 1, 2004

6. Contribution limits do not apply to any contributions made during an election or leadership contest that is underway at the time the new Act comes into force.³

Contribution Caps: Nomination Contests Underway on January 1, 2004

7. Please refer to Information Sheet 19, *Transitional Provisions Respecting Nomination Contests*.

General Approach to Reporting Contributions Received Before January 1, 2004

8. The general rule throughout the transitional provisions is that, *except for the campaign returns of candidates for elections completed or underway on January 1, 2004, and a registered party's election expenses return that is filed after that date for an election that was completed or was underway on January 1, 2004:*
- 8.1 all returns not filed before January 1, 2004, will be made under the terms of the amended *Canada Elections Act*;
 - 8.2 contributions collected before January 1, 2004, will be reported under the terms of the old Act respecting the reporting of classes, the number of contributors in each class and the names and addresses of contributors who donated more than \$200 (with contributions received through an electoral district association or a trust established for the election of a candidate endorsed by a registered party being reported under the name of the association or trust, and no requirement to report the names and addresses of the original contributors to the association or trust).⁴

³ S. 66, *S.C. 2003, c. 19* (elections), s. 67, *S.C. 2003, c. 19* (leadership contest).

⁴ S. 69, *S.C. 2003, c. 19*.

Registered Party Fiscal Returns

Party's Fiscal Return for Year Completed, but Not Yet Reported, as of January 1, 2004

9. A registered party will make its fiscal return for any fiscal period completed prior to, but reported after, January 1, 2004, under the terms of the *Canada Elections Act* (specifically sections 424 to 428) as it read prior to January 1, 2004.⁵

Party's Fiscal Year Underway on January 1, 2004

10. If on January 1, 2004, a registered party is in the midst of its fiscal year, the fiscal return for that year will be made under the terms of the amended *Canada Elections Act*.
11. But contributions collected before January 1, 2004, will be reported under the terms of the old Act respecting the reporting of classes, the number of contributors in each class and the names and addresses of contributors who donated more than \$200 (with contributions received through an electoral district association or a trust established for the election of a candidate endorsed by the registered party being reported under the name of the association or trust and no requirement to report the names and addresses of the original contributors to the association or trust).⁶

Elections

General Rule

12. Elections that are underway on January 1, 2004, will be governed by the terms of the Act as it read *before* that date – including the right to any election expenses reimbursement.⁷

⁵ S. 69(2), *S.C. 2003, c. 19*.

⁶ S. 69(1), *S.C. 2003, c. 19*.

⁷ S. 66, *S.C. 2003, c. 19*.

Registered Parties: Reporting Contributions Received During an Election Underway, or Completed but Not Yet Reported, on January 1, 2004

13. Contributions to registered parties are reported in the fiscal returns of a registered party. See above respecting the making of fiscal returns.

Candidates: Election Returns for Elections Held Before but Not Yet Reported, or Still Underway on January 1, 2004

14. Candidates' election returns for elections completed (but not yet reported) or underway on January 1, 2004, will be reported under the terms of the *Canada Elections Act* as it was worded prior to that date.⁸

Candidates: Election Returns for Elections Held After January 1, 2004

15. A candidate's election return for an election held after the amendments come into force will be governed by the amended *Canada Elections Act*.⁹
16. But contributions accepted by the candidate before January 1, 2004, will be reported in that return under the terms of s. 451 of the old Act respecting the reporting of classes, the number of contributors in each class and the names and addresses of contributors who donated more than \$200 (with contributions received through an electoral district association or a trust established for the election of a candidate endorsed by a registered party being reported under the name of the association or trust and no requirement to report the names and addresses of the original contributors to the association or trust).¹⁰

⁸ S. 66, *S.C. 2003, c. 19*. Unlike subsection 69(1), which deals with the fiscal returns of parties, section 70, which deals with campaign returns of a candidate filed after the amendments come into force, does not apply "despite section 66". Thus, reading ss. 66 and 70 as a harmonious whole requires that s. 70 be read as applying only to campaign returns for elections held entirely (the whole election period) after January 1, 2004.

⁹ Section 70, *S.C. 2003, c. 19*. Unlike subsection 69(1) which deals with the fiscal returns of parties, section 70, which purports to deal with campaign returns of a candidate filed after the coming into force does not apply "despite section 66". Thus, reading ss. 66 and 70 as a harmonious whole will require that s. 70 be read as applying only to campaign returns respecting elections held entirely (the whole election period occurs) after January 1, 2004.

¹⁰ S. 70(b), *S.C. 2003, c. 19*.

Leadership Contests

Leadership Contests Underway on January 1, 2004

17. The amendments will not apply to leadership contests that are underway at the time they come into force.¹¹ Those contests will not have to be reported nor will the contribution limits apply to them.

Leadership Campaign Contributions Collected Before January 1, 2004, for a Leadership Contest Held After That Date

18. The new Act will apply to leadership contests formally commenced after January 1, 2004.
19. If a registered party notifies the Chief Electoral Officer after January 1, 2004, of a leadership contest under s. 435.04 of the Act, a contestant who collected contributions to campaign for that leadership before January 1, 2004, must register with the Chief Electoral Officer.¹²
20. Once a contestant registers with the Chief Electoral Officer for a leadership contest, he or she is deemed to have been a leadership contestant from the later of either January 1, 2004, or the date he or she first accepted a contribution for the campaign or incurred a campaign expense.¹³
21. The obligations in the Act respecting the financial aspects of the leadership contest (financial agent, bank account, etc.) apply to a leadership contestant as of the day that he or she is deemed to have become a leadership contestant.¹⁴
22. All contributions to a leadership campaign, whenever received, must be reported in the financial return of the leadership contestant under s. 435.31.

¹¹ S. 67, *S.C. 2003, c. 19*.

¹² S. 435.05(1), *Canada Elections Act*.

¹³ S. 435.05(2), *Canada Elections Act*.

¹⁴ Parliament would not have intended that a person be retroactively obliged to have complied with the requirements for a financial agent, bank account, etc. at a time when there was no way to be aware of those requirements.

23. But contributions received before January 1, 2004, will not apply to the contribution limits for corporations and trade unions under section 404.1 or individuals under subsection 405(1).¹⁵

Nomination Contests

24. Nomination contests completed on or before December 31, 2003, will not be subject to the new Act.¹⁶

25. Nomination contests for which the selection date is on or after January 1, 2004, will have to be reported to the Chief Electoral Officer under section 478.02 of the Act by the registered electoral district association that held the contest or, if it was not held by a registered electoral district association, by the registered party.

26. Each contestant in a nomination contest for which the selection date is on or after January 1, 2004, will be deemed to have been a nomination contestant on January 1, 2004, or from the time he or she first accepted a contribution for the nomination campaign or incurred a nomination campaign expense, whichever is later.

27. The obligations in the Act respecting the financial aspects of the nomination contest (financial agent, bank account, etc.) apply to a nomination contestant as of the day that he or she is deemed to have become a nomination contestant.

28. Nomination campaign contributions received prior to that date must be transferred to the nomination bank account at that time.

29. All nomination contributions, whenever received, must be reported in the financial return of the nomination contestant under section 478.23.

30. But nomination contributions received before January 1, 2004, will not apply to the contribution limits for corporations and trade unions under section 404.1 or individuals under section 405(1).¹⁷

¹⁵ S. 65, *S.C. 2003, c. 19*.

¹⁶ The amendments to the *Canada Elections Act* will not have retroactive application to an event that occurred before they came into force.

¹⁷ S. 65, *S.C. 2003, c. 19*.

Quarterly Allowance to Registered Parties

Advance Payment in First Year of Act

31. The first year's quarterly allowances will be paid in advance, in 2004 only.¹⁸
32. At the time the first quarterly allowance would normally be paid in 2004, each registered party will receive instead all four quarterly payments to which it would be entitled in 2004.
33. Any general election held in 2004 might change a party's entitlement to an allowance for the balance of that year.
34. If a party's entitlement is reduced as a result of a general election in 2004, and it received a larger allowance for the year than it would now be entitled to, the party must without delay return to the Receiver General the amount of the excess for the balance of the year. The Receiver General is entitled to reduce any other amount payable to the party, such as an election expenses reimbursement, by the amount of the excess.¹⁹
35. If a party's entitlement increases as a result of the general election, in the quarter following that general election the amount of the advance already paid for the balance of that year will be reviewed to determine any extra allowance that may be payable for that quarter.²⁰

Election Reimbursement for Registered Parties

36. For the first general election only after January 1, 2004, a registered party may receive an election expenses reimbursement under section 435 of the Act of up to 60 percent of its election expenses, rather than 50 percent.

¹⁸ S. 71(2), *S.C. 2003, c. 19*.

¹⁹ S. 71(3), *S.C. 2003, c. 19*.

²⁰ S. 71(3), *S.C. 2003, c. 19*.

Registered Electoral District Associations

37. As the first fiscal year of a registered electoral district association will not commence until its date of registration,²¹ which cannot take place until after January 1, 2004, contributions received before that date will not have to be reported as contributions.
38. Nor will any such contributions be taken into account for the purpose of contribution limits.²²
39. However, the value of any contributions still retained by the association on registration will have to be included in the statement of assets that an electoral district association is required to file on registration under s. 403.05 of the Act.

²¹ S. 403.07, *Canada Elections Act*.

²² S. 65, *S.C. 2003, c. 19*. Alternatively, contributions to electoral district associations only become regulated as of January 1, 2004.