



**INFORMATION SHEET 3**

**LIMITS ON CONTRIBUTIONS**  
**BY**  
**CORPORATIONS AND TRADE UNIONS**

**(Revised April 8, 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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## LIMITS ON CONTRIBUTIONS BY CORPORATIONS AND TRADE UNIONS

### Eligibility

1. Insofar as corporations and trade unions are not “individuals” they are prohibited by subsection 404(1) of the *Canada Elections Act* from making contributions to registered parties, registered associations, leadership and nomination contestants and candidates except to the limited extent permitted under section 404.1.
2. That exception created by section 404.1 to the prohibition against corporate and union contributions will not apply to some corporations and trade unions.
3. Crown corporations<sup>1</sup> and corporations that receive 50% or more of their funding<sup>2</sup> from the federal government will not be able to make any contributions.<sup>3</sup>

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<sup>1</sup> As defined in section 2 of the *Financial Administration Act* (s. 404.1(3)(c)).

Under the *Financial Administration Act* a Crown corporation is a corporation that is wholly owned directly by the Crown (other than a departmental corporation) and any other corporation that is wholly owned by one or more of such Crown corporations directly or indirectly through any number of subsidiaries, each of which is wholly owned directly or indirectly by one or more Crown corporations. That Act also provides that a corporation is wholly owned directly by the Crown if

- (a) all of the issued and outstanding shares of the corporation, other than shares necessary to qualify persons as directors, are held, otherwise than by way of security only, by, on behalf of or in trust for the Crown; or
- (b) all the directors of the corporation, other than ex officio directors, are appointed by the Governor in Council or by a minister of the Crown with the approval of the Governor in Council.

Greater detail is provided for the determination of Crown corporations in s. 83(1) of the *Financial Administration Act*.

<sup>2</sup> “Funding” refers to the provision of funds in the nature of a gift, such as a grant, rather than as consideration for a commercial transaction. Similarly to s. 321 (prohibition against election advertising using a means of transmission of the Government of Canada) the exclusion of Crown corporations and corporations receiving 50% or more of their funding from the Government of Canada is intended to avoid the perception of government interference in the political process including the making of contributions to regulated political entities by governing parties from public funds through the instrumentality of corporations. Insofar as “contributions” under the *Canada Elections Act* does not include commercial transactions at commercial value “funding”, as used in s. 404.2(3) will not include payments made as consideration in the course of commercial transactions at commercial value.

<sup>3</sup> S. 404.1(3)(d), *Canada Elections Act*.

4. Neither will corporations and trade unions that do not carry on business or hold bargaining rights in Canada be able to make contributions.<sup>4</sup>

### **Meaning of Corporation**

5. Both for-profit and not-for-profit corporate entities are considered corporations.

### ***Controlled Corporations Considered to Be One***

6. For the purpose of determining the amount of contribution that can be given by a corporation under section 404.1, all corporations controlled by the same person, corporation or group of persons will be counted together as one corporation.<sup>5</sup>

### ***When Will Corporations Be Controlled?***

- 6.1 A corporation may be considered “controlled” if any arrangements are in place that allow one person, or group of persons, to effectively control, or supersede, the decisions of the corporation’s board of directors, or to appoint, replace, or otherwise direct the board of directors. If one person or corporation is committed by contract or other binding arrangement to vote his, her or its shares in compliance with the direction of another, this may also establish control by that second person or corporation. Commercial obligations of a corporation do not amount to control. (However, there may be occasions when such commercial obligations, if undertaken to avoid the application of the *Canada Elections Act*, may amount to a breach of the anti-avoidance provisions of the statute in s. 405.2.)
- 6.2 Whether one corporation is controlled by another or not will depend on the facts of the particular case. If there is uncertainty, a contributor should seek legal advice.

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<sup>4</sup> S. 404.1(3)(a) and (b), *Canada Elections Act*.

<sup>5</sup> S. 404.1(2), *Canada Elections Act*.

## Meaning of Trade Union

7. “Trade union” is defined in section 404.1 as meaning “any organization of employees – the purposes of which include the regulation of relations between employers and employees – together with all of its branches or locals.”
8. In order to be considered a trade union the organization must have as one of its purposes the regulation of relations between employers and employees – although it may or may not have bargaining rights.<sup>6</sup>

### *Trade Union Will Include All of Its Branches or Locals*

9. A trade union will include all of its branches and locals.<sup>7</sup>
10. In order to determine if an organization is a branch or local of a trade union one first must determine whether the body of which it may be a branch or local is, in fact, a trade union – that is, does it have as one of its purposes the regulation of relations between employers and employees.
11. Any body which forms part of that trade union will be considered to be included in the trade union for the purposes of section 404.1. In order to be considered a branch or a local of a trade union it is not sufficient simply that another body has some relationship with the union. The trade union must be the larger whole of which the other body must be a part.
12. Whether a related body is part of the trade union will be determined by the constitution and governing instruments of each body or by legislation. If any or all of those instruments either:

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<sup>6</sup> An organization may have as one of its purposes the regulation of relations between employers and employees without having been granted bargaining rights under a labour law regime.

Parliament expressly referred to the concept of bargaining rights in s. 404.1(3) in delineating organizations which are not eligible to make a contribution. Parliament expressly refers to a trade union that does not hold bargaining rights in Canada indicating a distinction between the concept of regulating relations between employers and employees and holding bargaining rights. This indicates that Parliament was aware that having as one’s purpose the regulation of relations between employers and employees was not identical to having bargaining rights.

<sup>7</sup> S. 404.1(2), *Canada Elections Act*.

- declare the related body to be part of the union, whatever specific words are used to express that status (branch, local, component, division or other similar words); or
- grant the union the power to direct, dispense or supercede decisions of governing body of the related body

then the related body will be considered to be part of the trade union for the purposes of the *Canada Elections Act*.

13. The fact an organization which is itself not a trade union (i.e. it does not have as one of its purposes the regulation of relations between employers and employees) may have a trade union as one if **its** branches, locals, affiliates, or other like term, does not make the organization a trade union for the purposes of section 404.1 of the Act. “Trade union” is defined in subsection 404.1(2) as a body together with all of **its** branches or locals. It is not defined as a body, part of which is a trade union.
14. The expanded definition of a trade union found in subsection 404.1(2) applies only in respect of that term as it is used in section 404.1. Branches or locals of trade unions which operate under their internal rules as unions in their own right will be considered to be trade unions for the purposes of the third-party election advertising provisions of the Act.<sup>8</sup>

### **Cannot Make Contributions to a Registered Party or Leadership Contestant**

15. Corporations and trade unions are not permitted to make contributions to a registered party or any leadership contestant of a registered party.<sup>9</sup>

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<sup>8</sup> In s. 349 “third party” is defined as “a person or a group, other than a candidate, registered party or electoral district association of a registered party” and “group” is defined as “an unincorporated trade union, trade association or other group of persons acting together by mutual consent for a common purpose”.

<sup>9</sup> S. 404(1), *Canada Elections Act*.

## **Permissible Contributions to a Candidate Not Representing a Registered Party**

16. Corporations and trade unions may make limited contributions that do not exceed \$1,000\* **per election** to a candidate who is not a candidate of a registered party.<sup>10</sup>
17. Unlike contributions to a registered party grouping, the cap on contributions to candidates who are not candidates of a registered party applies to all contributions given to a candidate for an election. Thus, in calculating how much has been given to a candidate, one includes all the contributions given to that candidate over a number of years, if they were for a specific election.
18. Corporations and unions that wish to support more than one candidate who is not a candidate of a registered party may give a maximum of \$1,000\* per election to each candidate.
19. So long as fraud is not being attempted, any contribution made to a person who states that he or she seeks to be a candidate and is not endorsed by a registered party is treated as a contribution to that person as a candidate who is not of a registered party.<sup>11</sup>
20. A contribution given to a candidate who is not a candidate of a registered party is treated as a contribution for the **first** election in which the candidate runs after the contribution is given. Once an election is called, all contributions given to that candidate up to the time when all the statutory duties of that candidate arising out of that election have been completed and the candidate's campaign account has been closed will be treated as being for that election.<sup>12</sup>

## **Permissible Contributions to the Local Level of a Registered Party**

21. Corporations and trade unions may also make a limited contribution of an aggregate amount of \$1,000\* **per calendar year** to the registered electoral district associations, candidates and nomination contestants of any particular registered party.<sup>13</sup>

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<sup>10</sup> S. 404.1(1)(b), *Canada Elections Act*.

<sup>11</sup> S. 405(3), *Canada Elections Act*.

<sup>12</sup> Based on the definition of "candidate" in s. 2, *Canada Elections Act*.

<sup>13</sup> S. 404.1(1)(a), *Canada Elections Act*.

## **Exceptional Circumstances in Which Additional Contributions May Be Made to the Local Level of a Registered Party**

22. Corporations and trade unions may make contributions to the registered associations, nomination contestants and candidates of a registered party in excess of the above \$1,000\* cap in two limited circumstances.
23. These exceptions operate independently of each other.

### ***Two Elections in One Year***

- 23.1 If two elections are held in the same electoral district in the same calendar year, a corporation or a trade union that has made a lawful contribution to the registered association, nomination contestant or candidate of a registered party in that electoral district before polling day of the first election will be able to make additional contributions, not exceeding \$1,000\* in total, to the registered association, the nomination contestant or the candidate of the same registered party in that district during the second election period.<sup>14</sup>
- 23.2 A corporation or union may take advantage of this exception only once per registered party in any calendar year.<sup>15</sup>

### ***Nomination Contestant Not Endorsed by Registered Party***

- 23.3 If a corporation or trade union made a lawful contribution to an individual who is a nomination contestant in an electoral district but who ultimately is not endorsed by the registered party as its candidate, the corporation or trade union may make additional contributions to whichever candidate is endorsed by the registered party, after the candidate is endorsed, provided that those contributions are made in the same calendar year as the original contribution to the nomination contestant.<sup>16</sup>

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<sup>14</sup> S. 404.1(1.1), *Canada Elections Act*.

<sup>15</sup> S. 401.1(1.2), *Canada Elections Act*.

<sup>16</sup> S. 404.1(1.3), *Canada Elections Act*.



23.4 A corporation or union may take advantage of this exception only once per registered party per election and only once per calendar year.<sup>17</sup>

### **No Transfers to Registered Party**

24. A registered electoral district association, candidate, or nomination contestant of a registered party who receives a contribution from a corporation or trade union may not subsequently transfer that contribution to the registered party.<sup>18</sup>

24.1 However, registered associations, candidates or nomination contestants may transfer funds obtained in other ways (for example, contributions from individuals) to the related registered party.<sup>19</sup>

25. It is an offence to wilfully breach the prohibition against transferring corporate or union contributions to a party.<sup>20</sup>

26. This prohibition does not apply to disposals of a surplus as required by the Act.<sup>21</sup>

### **Inflation Adjustment**

27. All contribution caps will be indexed for inflation. The Chief Electoral Officer will publish the contribution caps each year in the *Canada Gazette*.<sup>22</sup>

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<sup>17</sup> S. 401.1(1.4), *Canada Elections Act*.

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

<sup>19</sup> Ss. 404.2(2)(b) and (c) and (3)(b), *Canada Elections Act*.

<sup>20</sup> S. 126, *Criminal Code*.

<sup>21</sup> S. 473 (candidate), s. 478.41 (nomination contestant), *Canada Elections Act*. The surplus is required to be disposed of to the relevant registered party or, in the case of a candidate, the party's registered electoral district association in the candidate's district, or, in the case of a nomination contestant, the registered electoral district association which held the nomination contest. The Act does not require that there be registered electoral district associations and there may be instances where there exists no registered electoral district association to whom the surplus may be disposed. Parliament cannot have intended the prohibition on the transfer of corporate/union/association contributions set out in s. 404.2(4) to extend to the disposition of surplus as, in those cases where there was no registered electoral district association, the existence of corporate/union/association funds in the surplus would operate to put the candidate or nomination contestant automatically in breach of the Act. If he or she held back disposing the corporate/union/association funds to the registered party the obligation to dispose of the surplus would be breached. If he or she disposed of the entire surplus to the registered party the prohibition against corporate/union/association transfers would be breached.

<sup>22</sup> S. 405.1, *Canada Elections Act*.