



## INFORMATION SHEET 9

### ANTI-AVOIDANCE PROVISIONS IN RELATION TO CONTRIBUTIONS

#### 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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## Purpose of Anti-avoidance Provisions

1. The anti-avoidance provisions in the recent amendments to the *Canada Elections Act* are aimed at preventing schemes or arrangements that, although not expressly prohibited, are intended to avoid contribution or disclosure rules or will have that effect.<sup>1</sup>

## Avoidance of Contribution Rules

2. A person or entity is prohibited by s. 405.2(1)(a) from circumventing or attempting to circumvent:
  - 2.1 the prohibition in s. 404(1) (contributions only by individuals)
  - 2.2 a limit set in s. 404.1(1) (contributions by corporations and trade unions)
  - 2.3 a limit set in s. 405(1) (amounts of contributions by individuals)
  - 2.4 a limit set in s. 405.3(2)(b) (contributions by unincorporated associations made up of amounts given to the association by individuals for that purpose)<sup>2</sup>
3. Thus, a person or entity must not arrange his, her or its affairs, or act in any way that is not prohibited by the Act but that will nonetheless result in making a contribution that is contrary to ss. 404(1), 404.1(1), 405(1) or 405.3(2)(b).<sup>3</sup>

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<sup>1</sup> There are also provisions in the *Canada Elections Act* that prohibit avoidance of other aspects of the law, such as spending limits. See, for example, s. 351, dealing with third-party spending limits, and s. 478.15(2), dealing with spending limits for nomination contestants. This paper deals only with provisions aimed at avoidance of the rules relating to contributions.

<sup>2</sup> The text of the legislative provisions is found at the end of this information sheet.

<sup>3</sup> See the dictionary definitions of “circumvent”.

*The Canadian Oxford Dictionary*: Circumvent: ...1 a. evade (a difficulty); find a way around. b. baffle, outwit. 2 entrap (an enemy) by surrounding

*The Consolidated Webster Encyclopedic Dictionary*: Circumvent: To gain advantage over by artfulness, stratagem or deception; to defeat or get the better of by cunning; to outwit; to overreach

The degree of intent required for the offence of circumventing or attempting to circumvent is dealt with in ss. 497(1)(i.4) and 497(3)(f.14).

### **Avoidance of Disclosure Rules**

4. S. 405.2(2) prohibits a person or entity from concealing or attempting to conceal the identity of the source of a contribution governed by the *Canada Elections Act*.
5. Avoidance of the provisions of s. 405.3 (fundraising) will be caught by the concealment prohibition in s. 405.2(2), insofar as s. 405.3 is directed at avoidance of the disclosure provisions of the Act. (See the information sheet 10 entitled *Making Contributions Using Money, Property or Services Given to One by Others for That Purpose*.)

### **Collusion to Avoid**

6. Acting in collusion with another person or entity for the purpose of circumventing a limit or prohibition, or concealing the source of a contribution, is prohibited by ss. 405.2(1)(b) and (2)(b).<sup>4</sup>

### **Entering into a Scheme to Artificially Enhance Contributions**

7. S. 405.2(4) prohibits persons and entities from entering into agreements to pay for goods or services provided to a registered party or candidate, if a term of the payment agreement is that any person will make a contribution, directly or indirectly, to a registered party, a registered association, a candidate, a leadership contestant, or a nomination contestant.

### **Standard of Care to Avoid Committing an Act of Avoidance**

#### ***Avoidance of Contribution or Disclosure Rules***

8. It will be an offence to knowingly breach the anti-avoidance provisions in subsections 405(1) and (2) (circumvention of contribution rules, concealment of contribution) or to be reckless at that possibility. But it will also be an offence to simply fail to take

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<sup>4</sup> To “collude” means to enter into an agreement for some unlawful purpose or to accomplish some legitimate purpose by unlawful means. As it is used in the *Canada Elections Act*, to “collude” means to make an agreement aimed at accomplishing a purpose that is specified in the statute as the prohibited goal of the collusion.

reasonable care to avoid circumventing or attempting to circumvent the rules.<sup>5</sup>

### ***Artificial Enhancement of Contribution***

9. Persons or entities violate the prohibition against artificially enhancing a contribution when they do so knowingly or are reckless as to that possibility.<sup>6</sup>
10. The difference between failing to take reasonable care and acting knowingly (which includes acting recklessly) is reflected in the potential punishment.
  - 10.1 An offence without the requirement of acting knowingly (i.e. a strict liability offence) has a maximum penalty of a fine of not more than \$1,000 or imprisonment for a term of not more than three months or both.<sup>7</sup>
  - 10.2 An offence with the requirement of acting knowingly is punishable:
    - 10.2.1 on summary conviction by a fine of not more than \$2,000 or by imprisonment for a term of not more than one year, or both
    - 10.2.2 on conviction by indictment by a fine of not more than \$5,000 or by imprisonment for a term of not more than five years, or both<sup>8</sup>

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<sup>5</sup> Ss. 497(1)(i.4) and (i.5) create strict liability offences for breaches of ss. 405.2(1) and (2). Ss. 497(3)(f.14) and (f.15) create offences for acting “knowingly” in breaching those sections.

<sup>6</sup> S. 497(3)(f.161).

<sup>7</sup> S. 500(1).

<sup>8</sup> S. 500(5).