



## **INFORMATION SHEET 21**

### **CONTRIBUTIONS: MEMBERSHIP FEES IN AN ELECTORAL DISTRICT ASSOCIATION**

**(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.

## **Membership Fees Are “Contributions”**

1. Fees for membership in an electoral district association constitute “contributions” for the purpose of the *Canada Elections Act*. The concept of “membership fees” constituting contributions is implicit in subsection 404.2(6) of the Act (respecting registered parties) as well as from the construction of the Act as a whole.
  - 1.1 Subsection 404.2(6) provides that the payment by an individual during a year of fees of not more than \$25 per year in relation to a period of not more than five years for membership in a registered party is not a contribution.
  - 1.2 The limitations placed on the exception set out in subsection 404.2(6) indicate that membership fees which fall outside of the criteria of that provision are to be considered contributions.
  - 1.3 Aside from the implication in subsection 404.2(6) it is evident that the exclusion of membership fees from the concept of contributions would permit registered parties and registered electoral district associations to easily avoid the contribution caps established in paragraph 405(1)(a) through the implementation of classes of membership fees designed for that purpose. The controls on eligibility to make contributions could similarly be avoided.
2. Thus, the *Canada Elections Act* does not treat the fee paid for a membership in a registered electoral district association as the purchase of an asset. The payment is treated as a contribution.
3. Because a membership fee is a contribution the payment of that fee will be subject to all of the rules in the *Canada Elections Act* respecting contributions – including those rules respecting eligibility, caps and disclosure.

## **No Exception for Memberships of \$25.00 or Less**

4. All membership fees to a registered electoral district association constitute contributions to the association. There is no exception for membership fees of \$25 or less as there is for membership fees in a registered party (which can be found in subsection 404.2(6)).

### **Electoral District Association Must Be Registered**

5. An electoral district association must be registered before it can charge a membership fee. This is because section 403.01 of the *Canada Elections Act* prohibits an unregistered electoral district association of a registered party from accepting contributions. As a membership fee is a contribution, the electoral district association must be registered before it can accept such fees.

**403.01** No electoral district association of a registered party shall, unless it is registered,

- (a) accept contributions;
- (b) provide goods or services or transfer funds to a candidate endorsed by a registered party;
- (c) provide goods or services or transfer funds to a registered party or a registered association; or
- (d) accept surplus electoral funds of a candidate, surplus leadership campaign funds of a leadership contestant or surplus nomination campaign funds of a nomination contestant.

### **Paying the Fee for the Membership of Another**

6. Because the payment of membership fees constitutes making a contribution, the payment of one person's membership fee by another, including the payment of membership fees in bulk, is subject to the provisions of the *Canada Elections Act* respecting the making of contributions.
7. If the payment of the fee for membership in a registered electoral district association breaches any of the rules respecting contributions that payment is prohibited under the Act.

### ***Prohibition Against Indirect Contributions***

8. Subsection 405.3(1) of the Act prohibits the making of indirect contributions. It provides that:

“No person or entity shall make a contribution to a registered party, a registered association, a candidate or a leadership contestant or a nomination contestant that comes from money, property or the services of another person or entity that was provided to that person for that purpose.”

9. Subsection 405.3(1) prohibits the making of a contribution using another’s money that was given to the contributor for that purpose. As a consequence, subsection 405.3(1) operates to prohibit an individual from either:

- purchasing a party membership directly using money that was given to the individual by another for that purpose; or
- permitting another person or entity to purchase a membership in the individual’s name using the other person’s or entity’s money<sup>1</sup>

where the person in whose name the membership is purchased is reported as the contributor.

10. Any person or entity who contrives to provide the money for the purpose of paying for the memberships of others in the registered electoral district association without being reported as the actual contributor can also be included as a party in any prosecution of the person who permitted his or her membership to be paid by another contrary to subsection 405.3(1) (section 21 *Criminal Code*).
11. Where any person or entity uses his, her or its own funds to pay the fee for the membership of another in a registered electoral district association, the person or entity paying the fee is the contributor.

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<sup>1</sup> If an electoral district association permitted unincorporated associations to be members in the association, subsection 405.3(2) of the Act would permit the unincorporated association to purchase a membership for itself using money given to it by an individual for that purpose. Subsection 405.3(2) provides a limited exception to the prohibition found in section 405.3 against making a contribution using resources that were given to one for that purpose. Subsection 405.3(2) provides that an unincorporated association can make contributions (subject to a \$1,000 cap as set out in subsection 405.3(2)) using money given to the unincorporated association by individuals for that purpose. This sets out an exception which allows the making of indirect contributions through an unincorporated association – but that exception does not permit contributions to be made to a registered party and will not be applicable to the question of the purchase of party memberships in a registered party.

That person must be eligible to make contributions to the registered party, he or she must be reported as the contributor, and the payment will count towards that person's contribution cap.

### ***Statutory Anti-Avoidance Prohibitions***

12. Payment of the fee for the membership of another in a registered electoral district association without disclosing oneself as the contributor of the money can also amount to a breach of the anti-avoidance provisions of the Act found in section 405.2 both by the person providing the money and the person for whom the membership fee is being paid. For more information respecting anti-avoidance see information sheet 9, *Anti-avoidance Provisions in Relation to Contributions*.

### ***Eligibility***

13. The person who provides the money for the payment of the fee for someone's membership in a registered electoral district association (who must be reported as the contributor) must be eligible to make contributions under the *Canada Elections Act*.

### ***Penalties for Breach***

14. Penalties under the *Canada Elections Act* for breach of the rules respecting contributions run from a fine of up to \$1,000 or up to 3 months imprisonment (or both) to a fine of up to \$5,000 or imprisonment of up to 5 years (or both). Where the offender is a corporation the court may impose a fine in lieu of imprisonment of up to \$25,000 in the case of summary proceedings or any amount the court feels appropriate in the case of proceedings by indictment.

## **Treatment Afforded the Legal Payment of Membership Fees by Persons Other than the Member**

### ***If the Payment Is Made by a Third Party***

15. Where a third party legally pays the fees for the membership of another in a registered electoral district association the payment will be a contribution by the third party and will be subject to his or her contribution caps and the other rules respecting contributions including those relating to eligibility and disclosure.

### ***If the Payment Is Made Through a Nomination Campaign Account***

16. Because the payment of a membership fee is a contribution, and not the purchase of an asset, the payment of those fees through the nomination campaign account will not constitute a nomination campaign expense. Rather, as paragraph 404.2(3)(b) of the Act provides that the provision of funds from a nomination contestant to a registered electoral district association that held the contest is not a contribution but is a transfer, the payment of those membership fees in the registered electoral district association through the nomination campaign account will be treated as a transfer from the nomination contestant to the registered electoral district association and will not be subject to any monetary limits. The transfer must be reported as such in the relevant returns of both the nomination contestant (s. 478(2)(h)) and the registered electoral district association (s. 403.35(2)(h.2)).