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LEGISLATIVE SUMMARY



***Bill C-21:
An Act to amend the Canada Elections Act (accountability
with respect to political loans)***

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Legislative Summary of Bill C-21

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-21: AN ACT TO AMEND THE CANADA ELECTIONS ACT (ACCOUNTABILITY WITH RESPECT TO POLITICAL LOANS)

1 BACKGROUND

On 2 November 2011, Bill C-21, An Act to amend the Canada Elections Act (accountability with respect to political loans) (short title: Political Loans Accountability Act), was introduced and received first reading in the House of Commons.

Bill C-21 had originally been introduced in the House of Commons in the 1st Session of the 39th Parliament as Bill C-54, An Act to amend the Canada Elections Act (accountability with respect to loans), and had been reported back to the House by the Standing Committee on Procedure and House Affairs, with amendments. The House had not yet concurred with the report of the Committee when Parliament was prorogued. The bill was reintroduced in the 2nd Session of the 39th Parliament as Bill C-29 on 22 November 2008. At the dissolution of the 39th Parliament, Bill C-29 had been passed by the House of Commons, and was awaiting second reading in the Senate. Reintroduced again in the 2nd Session of the 40th Parliament as Bill S-6, it died on the *Order Paper* when Parliament was prorogued on 30 December 2009. Introduced for a fourth time in the 3rd Session of the 40th Parliament, it died on the *Order Paper* when Parliament was dissolved on 26 March 2011.

Bill C-21 amends the *Canada Elections Act*¹ with regard to loans, guarantees and suretyships² to registered parties, registered associations, election candidates, leadership contestants and nomination contestants (hereinafter collectively called “political entities”).

Bill C-21 is based, in part, on *Recommendations of the Chief Electoral Officer of Canada to the House of Commons Standing Committee on Procedure and House Affairs Respecting Specific Issues of Political Financing*, submitted in 2007. This report concluded, “The loans granted by lenders – who are not in the business of lending, who lend money at non-commercial rates, with terms that are not available to others, or in cases where there is little prospect of reimbursement – may be perceived as a means to influence the political entity to which the funds are provided.”³ The Chief Electoral Officer thus invited Parliament to consider reviewing rules governing loans to:

- provide that registered parties, registered associations, candidates, leadership contestants and nomination contestants might borrow money in excess of the contribution limits only from financial institutions;
- establish a limit on loans made by individuals that is equal to their contribution limit; an exception may be considered for an initial loan by a candidate to his or her campaign;

- provide that all loans (and lines of credit) authorized by lending institutions be at commercial rates; and
- develop a separate regime in the Act for the treatment and reporting of loans in the Act, with the addition of a requirement that more complete and consistent information – including interest rates, repayment schedules and the name of the lender – be provided for loans (and lines of credit) contracted by all entities.⁴

Bill C-21 builds on the 2007 Chief Electoral Officer's report by proposing the following changes to the *Canada Elections Act*:

- All loans to political entities, including mandatory disclosure of terms, and the identity of all lenders and loan guarantors, must be transparent.
- Unions and corporations are prohibited from making loans to political parties, associations, and election candidates.
- The amount of loans and loan guarantees that individuals can make are limited within the framework of the permitted individual annual contribution.
- The ability to make loans beyond the annual contribution limit for individuals would be restricted to financial institutions and political entities, and could be provided at commercial rates of interest only.
- Tighter rules would be instituted for the treatment of unpaid loans to ensure that election candidates cannot walk away from those loans.⁵

In addition, Bill C-21 adjusts the contribution limits for leadership contestants to make them consistent with the contribution limits for other political entities.

In another report, tabled in the House of Commons in June 2010 following the 40th general election, the Chief Electoral Officer also recommended several amendments desirable for the better administration of the *Canada Elections Act*, including that the rules governing unpaid claims (including loans) be simplified and made more consistent.⁶ This report was, however, submitted before the first incarnations of Bill C-21 were introduced in the House of Commons, and the legislative proposal was not modified following the release of the report.

2 DESCRIPTION AND ANALYSIS

Bill C-21 adds a new set of rules to the general financial provisions of the *Canada Elections Act*, and amends the existing provisions of the Act dealing with, among other things, requirements regarding the reporting and payment of claims. In order to present them in a coherent manner, the amendments found in the bill will be grouped as follows:

- Loans, Guarantees and Suretyships: A New Regime (Clauses 4, 6, 7, 10, 13, 17, 20, 27 and 31);
- A Person or Persons Who May Borrow on Behalf of a Political Entity (Clauses 2, 8, 12, 19, 26);

- Payment of Irregular or Late Claims, (Clauses 3, 4, 9, 10, 14 to 16, 20 to 24 and 28 to 31);
- Financial Reporting (Clauses 5, 11, 15, 25 and 32);
- Offences (Clause 33);
- Contribution Limits for Leadership Contestants (Clause 6); and
- Transitional Provisions and Coming into Force (Clauses 34 and 35).

2.1 LOANS, GUARANTEES AND SURETYSHIPS: A NEW REGIME (CLAUSES 4, 6, 7, 10, 13, 17, 20, 27 AND 31)

Clause 7 adds sections 405.5 and 405.6 to the *Canada Elections Act*, introducing a new set of provisions that deal explicitly with loans to political entities and guarantees of such loans. Section 405.5(1) establishes the general rule that loans and guarantees of such loans for the benefit of political entities are prohibited unless otherwise permitted by the Act. Chief agents, financial agents and official agents are expressly prohibited from borrowing money in contravention of this rule (section 405.5(2)).

2.1.1 RESTRICTIONS ON LOANS AND GUARANTEES

Three types of loans are exempted from the rule prohibiting loans to political entities and guarantees of such loans: loans made by a financial institution, loans and guarantees made by individuals, and loans and guarantees between political entities.

Section 405.5(3) authorizes financial institutions, as defined in section 2 of the *Bank Act*,⁷ to make loans to political entities provided that all loans are in writing and are made at fair market rates of interest. The *Canada Elections Act* does not impose a limit on the amount that can be borrowed from financial institutions. Since financial institutions are not expressly permitted by the Act, they are prohibited from guaranteeing loans.

Section 405.5(4) exempts individuals, Canadian citizens and permanent residents from the general rule prohibiting the provision of loans and guarantees of such loans to political entities. The total amount that an individual may loan or for which he or she may guarantee a loan, together with the individual's contribution under section 405(1), cannot, however, exceed the contribution limits established by section 405(1). For example, any combination of contribution, loan or loan guarantee by an individual to a particular registered political party cannot exceed in a calendar year the contribution limits established by section 405(1), \$1,100 in 2011.⁸ Section 405(1) is amended to specify that contribution limits for an individual are contingent upon the amount that he or she has already loaned or guaranteed (clause 6). Loans that are repaid within the calendar year or guarantees for which an individual is no longer liable in the calendar year will not be taken into consideration for an individual's contribution, loan and guarantee limit (sections 405.5(4)(b) and (c)).

Sections 405.5(5)(a) and 405.5(6) allow registered political parties to make a loan in writing or guarantee such a loan in writing to their registered associations and

endorsed candidates. In addition, registered associations are permitted to make a loan in writing and guarantee such a loan in writing to their registered political party, another registered association of their party or a candidate endorsed by the party (sections 405.5(5)(b) and 405.5(6)).

Aside from the deemed contribution provisions that will be analyzed in the next section, there is no timeline set for the repayment of loans to registered associations and registered political parties. Bill C-21, however, provides that loans to leadership contestants must be repaid within three years after the end of the leadership contest (section 435.24(1), clause 13(1)).⁹ Loans to candidates must be repaid within three years after polling day (section 445(1.1), clause 20(1)), and loans to nomination contestants must be repaid within four months of the selection date or, in some circumstances, of the polling day (section 478.17(1), clause 27).

2.1.2 DEEMED CONTRIBUTIONS OF UNPAID LOANS

Loans to political entities from financial institutions and individuals which remain unpaid for three years will be deemed contributions as of the day on which they were made. The first reading version of former Bill C-54 provided that unpaid loans were deemed contributions 18 months after a certain date. However, an amendment was passed at the House of Commons committee stage to lengthen the repayment period to three years. As proposed under section 405.6(1) of Bill C-21, the three-year period provided for repayment begins at the end of the fiscal period during which the loan was made in the case of registered associations and registered political parties;¹⁰ on polling day in the case of candidates;¹¹ on the selection date in the case of nomination contestants;¹² and at the end of the leadership contest for leadership contestants.¹³

Section 405.6(2) provides that the deemed contribution rule does not apply if, at the end of the three-year period, the loan:

- is the subject of a binding agreement to pay;
- is the subject of a legal proceeding to secure its payment;
- is the subject of a dispute as to the amount that remains unpaid; or
- has been written off by the lender in accordance with the lender's normal accounting practices.

Section 405.6(2) largely mirrors the rules already set out in the *Canada Elections Act* with respect to the conditions under which unpaid claims are not deemed contributions.¹⁴ Section 405.6(3) further requires that political entities must notify the Chief Electoral Officer in instances where an unpaid claim is subject to one of the conditions delineated in the Act.

Registered associations, registered political parties and lenders will have the opportunity, pursuant to section 405.6(4), to make representations to the Chief Electoral Officer before he or she rules on the application of any of these exceptions.¹⁵ Section 405.6(4) was added at committee stage in the House of Commons during the study of former Bill C-54 as a matter of procedural fairness,

because section 405.6(6) leaves registered associations, and in the absence of an association, registered parties, liable for candidates' unpaid loans. Under section 405.6(5), the Chief Electoral Officer shall determine without delay if any of the exceptions listed in section 405.6(2) applies and must then inform the appropriate political entity of his or her decision.

Section 405.6(7) provides that the Chief Electoral Officer publish a notice of any unpaid loans deemed to be a contribution and any unpaid loans not deemed to be a contribution pursuant to one of the four exceptions.

2.2 A PERSON OR PERSONS WHO MAY BORROW ON BEHALF OF A POLITICAL ENTITY (CLAUSES 2, 8, 12, 19, 26)

The *Canada Elections Act* contains no specific provisions regulating who may incur a loan for the benefit of a political entity. Loans are treated in the same manner as other contracts and those individuals entitled to contract on behalf of a political entity can enter into loan agreements. Bill C-21 amends the Act by specifying who may borrow on behalf of every political entity. They are as follows:

- An electoral district agent of a registered association will be allowed to borrow money on behalf of the association (clause 2, section 403.28(3)).
- A registered agent of a registered party will be allowed to borrow money on behalf of the party (clause 8, section 416(3)).
- A leadership campaign agent of a leadership contestant will be allowed to borrow money on behalf of the contestant (clause 12, amending subsection 435.22(1)).
- An official agent of an election candidate will be allowed to borrow money on behalf of the candidate (clause 19, section 438(2)).
- A financial agent of a nomination contestant will be allowed to borrow money on behalf of the contestant (clause 26, section 478.13(1)).

The persons who are allowed to borrow money on behalf of political entities are the same persons who are authorized to accept contributions on their behalf.

2.3 PAYMENT OF IRREGULAR OR LATE CLAIMS (CLAUSES 3, 4, 9, 10, 14 TO 16, 20 TO 24 AND 28 TO 31)

The *Canada Elections Act* provides a set of rules which regulate the processing of expense claims incurred by a registered association (section 403.29 and succeeding sections), a registered political party (section 417 and succeeding sections), a leadership contestant (section 435.23 and succeeding sections), a candidate (section 444 and succeeding sections), and a nomination contestant (section 478.16 and succeeding sections). To make a claim against a political entity, one must send an invoice showing the expense within three months of its incurrence. The time frame for repayment of an expense claim then depends on the specific deadlines provided for each political entity – six months for registered associations and registered political parties (sections 403.3 and 418), 18 months for leadership contestants (section 435.24(1)), and four months for candidates and nomination

contestants (sections 445(1) and 478.17(1)). Such unpaid claims, which are not related to loans, are deemed to be contributions 18 months after the end of the fiscal period during which they were incurred in the case of registered associations and registered parties (sections 403.34(1) and 423.1(1)), 18 months after the end of the leadership contest in the case of leadership contestants (section 435.29(1)), 18 months after polling day, in the case of candidates (section 450(1)), and 18 months after the selection date (or after polling day in some circumstances) in the case of nomination contestants (section 478.22(1)). Bill C-21 extends the timeline for the payment of claims related to leadership contests to three years (clause 17, amending section 435.29(1)).

An expense claim may also be paid outside of the timelines established by the *Canada Elections Act* in cases authorized by the Chief Electoral Officer or, if the authorization is denied or payment has not been made in accordance with the Chief Electoral Officer's authorization, by a judge.

As noted earlier, the *Canada Elections Act*, as amended by Bill C-21, treats loans and other expenses distinctively, and deadlines for their repayment and their being deemed contributions are also dealt with differently.¹⁶

Bill C-21 amends the process for making an application to the Chief Electoral Officer or a judge regarding the repayment of irregular or late claims as a result of the distinction between loans and other expenses.¹⁷ In the case of loans, the transmission of an invoice to the political entity is no longer a prerequisite for the Chief Electoral Officer to grant the authorization for a repayment schedule outside of the standard timeline. The *Canada Elections Act* is further amended by Bill C-21 to provide that legal proceedings can be instituted against leadership contestants, candidates and nomination contestants for the repayment of a loan after the expiration of the repayment deadline or any extension to it granted by the Chief Electoral Officer or a judge.¹⁸ There is no equivalent provision for loans to registered associations and registered political parties since the repayment of loans to those two political entities is governed by the terms of the loan.

2.4 FINANCIAL REPORTING (CLAUSES 5, 11, 15, 25 AND 32)

Under the *Canada Elections Act*, loans are treated as contributions for the purpose of financial reporting (section 403.35(3) [registered associations], section 424(3) [registered political parties], section 435.3(5) [leadership contestants], section 451(3) [candidates], and section 478.23(5) [nomination contestants]). Bill C-21 amends the Act by providing that loans are no longer to be grouped with contributions for the purpose of financial reporting and enacts specific rules with regard to loans. All political entities are required to disclose on their financial returns loans that remain unpaid in whole or in part.¹⁹ A statement setting out the following information for each loan must also be filed with the returns:

- amount of the loan;
- interest rate;
- lender's name and address;

- dates and amounts of repayments of principal and payments of interest; and
- guarantor's name and address and the amount guaranteed (if there is a guarantor).

In addition, the statement must explicitly disclose the unpaid principal for each loan remaining at the end of each calendar year for leadership contestants, candidates, and nomination contestants.²⁰ These changes to the *Canada Elections Act* are intended to make the disclosure requirements for loans and guarantees for all political entities more coherent. In addition to the report on loans to be filed with their financial returns, political entities must notify the Chief Electoral Officer, in a report, of any amendment to the terms and conditions of a loan, including the giving of a guarantee or suretyship (clause 5(3), adding section 403.35(2.1) [registered associations]; clause 11(3), adding section 424(2.1) [registered parties]; clause 18(3) adding section 435.3(4.1) [leadership contestants]; clause 25(2), adding section 451(2.3) [candidates]; and clause 32(2), adding section 478.23(4.1) [nomination contestants]).

The Chief Electoral Officer must publish, in a manner he or she considers appropriate, any report on loans that he or she is provided with, and any amendment to these reports (clause 5(3), amending section 403.35(3) [registered associations]; clause 11(3), amending section 424(3) [registered parties]; clause 18(3), amending section 435.5(5) [leadership contestants]; clause 25(2), amending section 451(3) [candidates]; and clause 32(2), amending section 478.23(5) [nomination contestants]).

2.5 OFFENCES (CLAUSE 33)

Clause 33(2) adds section 497(1)(i.8), creating a new strict liability offence for any person or entity making a loan, guaranteeing a loan or borrowing money in contravention of sections 405.5(1) or (2). A new offence requiring intent is also created by Bill C-21 for the violation of these sections (clause 33(8), section 497(3)(f.2)). Consequential amendments are made to the provisions in respect of the failure to provide a political entity's returns and related documents. These strict liability offences now specifically refer to statements in respect of loans and amendments to such statements (clause 33(1), (3), (4), (5) and (6)). Similar adjustments to the related offences requiring intent are also made (clause 33(7), (9), (10), (11) and (12)).

Clause 33(5) amends section 497(1)(t), adding a new strict liability offence for the official agent of a candidate who, in contravention of section 445(1.1), fails to pay a loan in a timely manner.

2.6 CONTRIBUTION LIMITS FOR LEADERSHIP CONTESTANTS (CLAUSE 6)

The *Canada Elections Act* prescribes contribution limits to political entities. Currently, these limits are set at \$1,100 per calendar year for individual contributions to registered parties, and at a total of \$1,100 per calendar year for contributions to the registered associations, nomination contestants and candidates of a particular

registered party. A limit on individual contributions to leadership contestants also exists: \$1,100 per leadership contest, regardless of the duration of the contest and the existence of any outstanding claims after the contest is held. All of these contribution limits will be adjusted to \$1,200 on 1 January 2012. Bill C-21 would replace the “per contest” contribution limit with an annual contribution limit (clause 6(2), amending section 405(1)(c)).²¹ An individual will therefore be entitled to contribute more than \$1,100 (\$1,200 starting on 1 January 2012) if the leadership contest lasts longer than one calendar year.

2.7 TRANSITIONAL PROVISIONS AND COMING INTO FORCE (CLAUSES 34 AND 35)

Clause 34 provides that loans and the guarantees of such loans made prior to the coming into force of Bill C-21 are not subject to the provisions of the bill and continue to be subject to the *Canada Elections Act* as it read before the coming into force of Bill C-21.

Bill C-21 comes into force six months after Royal Assent, unless the Chief Electoral Officer publishes a notice in the *Canada Gazette* indicating that the necessary preparations have been made to put the new requirements of the bill into effect, in which case the bill comes into force on the day said notice is published (clause 35).

NOTES

1. [Canada Elections Act](#), S.C. 2000, c. 9.
2. “Loans, guarantees and suretyships” is translated in French by “prêts et cautionnements.” During the clause by clause study of Bill C-54 by the House of Commons Standing Committee on Procedure and House Affairs, officials from the Privy Council Office, explained:

It’s official government policy to have bilingual drafting in law, so the French and English versions both have to represent the common law and the civil law concepts. In the case of the English version, “guarantee” does not have the same meaning in the civil law, so that’s why “suretyship” is needed.”

See House of Commons, Standing Committee on Procedure and House Affairs, [Evidence](#), 1st Session, 39th Parliament, 18 June 2007, 1140.
3. Elections Canada, [Recommendations of the Chief Electoral Officer of Canada to the House of Commons Standing Committee on Procedure and House Affairs Respecting Specific Issues of Political Financing](#), 26 January 2007, p. 35.
4. *Ibid.*, p. 37.
5. See Government of Canada, Office of the Minister of State for Democratic Reform, [“Harper Government is Committed to Closing Political Financing Loophole,”](#) News release, 2 November 2011; and Government of Canada, Office of the Minister of State for Democratic Reform, [“Political Loans Accountability Act,”](#) Backgrounder, 2 November 2011.
6. Elections Canada, [Responding to Changing Needs: Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election](#), June 2010, pp. 51–58.
7. [Bank Act](#), S.C. 1991, c. 46, section 2:

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“financial institution” means

- (a) a bank or an authorized foreign bank;
- (b) a body corporate to which the *Trust and Loan Companies Act* applies;
- (c) an association to which the *Cooperative Credit Associations Act* applies or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act;
- (d) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act*;
- (e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province;
- (f) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province;
- (g) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province and that is primarily engaged in dealing in securities, including portfolio management and investment counselling; and
- (h) a foreign institution.

- 8. The contribution limits will be adjusted to \$1,200 on 1 January 2012.
- 9. A related consequential amendment is made to section 435.24(2) by clause 13(2).
- 10. Clause 7, adding section 405.6(1)(d); see also, for registered associations, clause 4, adding section 403.34(1)(b)), and for registered parties, clause 10, adding section 423.1(1)(b).
- 11. Clause 7, adding section 405.6(1)(a); and clause 24, adding section 450(1)(b).
- 12. Clause 7, adding section 405.6(1)(c); and clause 31, adding section 478.22(b).
- 13. Clause 7, adding section 405.6(1)(b); and clause 17, amending section 435.29(1).
- 14. See sections 403.34(2) (registered associations), 423.1(2) (registered parties), 435.29(2) (leadership contestants), 450(2) (candidates), and 478.22(2) (nomination contestants).
- 15. Section 405.6(4) refers to an “electoral district association,” whereas this political entity is referred to as a “registered association” throughout Bill C-21.
- 16. Consequential amendments to the Act are made in this respect: clause 4, adding section 403.34(1)(a) (registered association); clause 10, adding section 423.1(1)(a) (registered party); clause 24, adding section 450(1)(a) (candidate); and clause 31, adding section 478.22(a) (nomination contestant). Clauses 3 and 9 also amend, in this vein, sections 403.31(1)(b) and 419(1)(b) so that the irregular claims or payments rules for registered associations and registered political parties refer to the timeline that applies only to claims which are not loans.
- 17. See clause 14, amending section 435.26(1), clause 15(1), amending section 435.27(a), and clause 15(2), adding section 435.27(2), for leadership contestants; clause 20(2), amending section 445(2), clause 21, amending section 447(1), and clause 22, amending section 448, for election candidates; and clause 28, amending section 478.19(1), and clause 29, amending section 478.2, for nomination contestants.
- 18. See clause 16, amending section 435.28(1) (leadership contestants); clause 23, amending section 449(1) (candidates); and clause 30, amending section 478.21(1) (nomination contestants).
- 19. See clause 5(1), amending section 403.35(2)(e)(ii) (registered associations); clause 11(1), amending section 424(2)(f)(ii) (registered parties); clause 18(1), amending paragraph 435.3(2)(c) (leadership contestants); clause 25(1), amending section 451(2)(e) (election candidates); and clause 32(1), amending section 478.23(c) (nomination contestants).

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20. See clause 5(2), amending section 403.35(2)(i) (registered associations); clause 11(2), amending section 424(2)(j) (registered parties); clause 18(2), amending section 435.3(2)(d.1) (leadership contestants); clause 25(1), adding section 451(2)(e.1) (candidates); and clause 32(1), adding section 478.23(c.1) (nomination contestants).
21. This particular amendment to the *Canada Elections Act* was not part of the original bill (Bill C-54) as introduced in the 1st Session of the 39th Parliament. The House of Commons Standing Committee on Procedure and House Affairs added this amendment to Bill C-54. See House of Commons, Standing Committee on Procedure and House Affairs, [Fifty-Sixth Report](#), 39th Parliament, 1st Session. In his statutory report following the 40th general election the Chief Electoral Officer also recommended that such an amendment be made to the *Canada Elections Act*. See Elections Canada (2010), pp. 63–64.