

Information Sheet XX

Fundraising Activities

(Date)

DISCLAIMER

These information sheets set out Elections Canada's interpretation of the *Canada Elections Act* and are issued to assist political entities in understanding the Act. The views expressed in the 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.

Should you have any questions or comments with regard to this particular information sheet, please send us an e-mail at@elections.ca.

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Introduction

- 1. The purpose of this information sheet is to communicate the rules contained in the *Canada Elections Act* respecting the expenses for fundraising activities and the contributions received as a result of those activities.
- 2. Some expenses related to fundraising activities constitute election expenses and are subject to spending limits and reimbursement rules. Other fundraising expenses are not. This information sheet explains when fundraising expenses are election expenses. That part of the information sheet is of particular relevance to parties and candidates as entities that incur election expenses and are subject to election expenses limits. The information sheet also provides explanations regarding the treatment of contributions received in the context of certain fundraising activities, namely ticketed events, auctions or draws, which may be of interest to all political entities governed by the Act.
- 3. Political entities must be careful in designing their fundraising activities not to circumvent or attempt to circumvent any of the rules governing eligibility, contribution and spending limits, or act in collusion with another person or entity for that purpose.

Legislative Context

Contributions

4. Contributions can be monetary or non-monetary in nature. The Act defines a monetary contribution as "an amount of money provided that is not repayable." It defines a non-monetary contribution as "the commercial value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their commercial value." I

¹ S. 2. The definition of commercial value is also found in s. 2. It reads as follows: "commercial value",, in relation to property or a service, means the lowest amount charged at the time that it was provided for the same kind and quantity of property or service or for the same usage of property or money, by (a) the person who provided it, if the person is in the business of providing that property or service; or (b) another person who provides that property or service on a commercial basis in the area where it was provided, if the person who provided the property or service is not in that business.

Expenses

- 5. The *Canada Elections Act* provides that the electoral campaign expenses of a candidate are expenses reasonably incurred as an incidence of an election. They include election expenses, personal expenses, the auditors' fees of candidates and costs incurred for a recount of votes that have not been reimbursed by the Receiver General.
- 6. The Act regulates the election expenses of both registered parties and candidates. It imposes limits on election expenses but it also provides for their partial reimbursement.
- 7. An "election expense" is the cost² of obtaining any property or service used during the election period (i.e. the period between the issue of the writ and polling day), if the use of the property or service directly promotes (or opposes) either a candidate or a party, as the case may be.³
- 8. The expression "directly promotes" refers not only to expenses incurred to expressly urge voters to vote for or against a particular candidate or party (i.e. advertising). It has a much broader meaning that encompasses all expenses that will directly assist in getting a candidate or party elected, as the case may be.⁴

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² If the property or service was not purchased or was purchased at less than commercial value, the election expense will be the commercial value of that property or service.

³ There is a third important component to that definition dealing with the person or entity incurring the expense. This component of the definition is not, however, the subject of this information sheet.

⁴ If it were otherwise, the only election expenses that could be reimbursed would be those related to advertising. This is not in accordance with the overall scheme of the Act as it relates to election expenses.

- 9. All expenses incurred for fundraising activities during the election period are election expenses because they directly assist a candidate (or party as the case may be) in getting elected. They would be treated as such in their entirety were it not for an exception found in subsection 407(2) of the Act.
- 10. The first part of this information sheet deals with expenses for fundraising activities held in the context of an election. The second part deals with other issues that arise in the context of fundraising activities, whether or not they take place during an election.

A "Fundraising Activity"

11. A fundraising activity is any activity undertaken to solicit and raise funds. Fundraising activities may include activities such as hosting social events like dinners or cocktail parties, or soliciting funds by mail, telephone or other means.

Fundraising Activities Held During an Election Period

12. Fundraising during an election period that requests the individual being solicited for funds to support the candidate in an electoral district by providing funds for the candidate's campaign is an activity that directly promotes a candidate. The same reasoning applies to fundraising in support of a particular party. As such, expenses incurred for that purpose meet the definition of election expenses.

The Exception: Fundraising Expenses That Are Not Election Expenses

13. However, subsection 407(2) of the Act states that some expenses for a fundraising activity are excluded from election expenses.⁵

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⁵ Ss. 407(2) and 407(3)(*a*).

- 14. The following are examples of costs associated with fundraising activities held during an election period that are excluded from election expenses:
 - the commercial value of renting a room and purchasing food and drink for a fundraising social activity such as a dinner or cocktail reception
 - the commercial value of goods purchased or contributed to be sold or auctioned at a fundraising event
 - the commercial value of hiring a master of ceremonies or servers to work at a fundraising event

The Exception to the Exception: Advertising and Promotional Material

- 15. The exclusionary rule set out in subsection 407(2) is not absolute. Some expenses related to a fundraising activity remain election expenses.
- 16. The commercial value associated with the production and distribution of advertising and promotional materials related to a fundraising activity is counted as an election expense, to the extent that the advertising and promotional materials are used during the election period.⁶
- 17. Such amounts, therefore, count toward the candidate's or party's election expenses limits and are eligible for reimbursement. ⁷
- 18. This means that for some types of fundraising activities, where the only costs are those for producing and distributing advertising and promotional material related to the fundraising activity, the entire cost of the activity will be an election expense, and will not be subject to the exclusionary rule in subsection 407(2).

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⁶ S. 407(2), referring to s. 407(3)(*a*). Inasmuch as s. 407(3)(a) is an exception to the general principle enunciated in s. 407(2), it should be interpreted restrictively.

⁷ Ss. 422, 441, 435(1) and 465(2).

- 19. The following are examples of fundraising expenses that are election expenses because they are related to producing and distributing advertising and promotional materials for an activity held during the election period:
 - the commercial value of producing and distributing invitations sent out to a ticketed social event, such as a fundraising dinner or cocktail reception
 - the commercial value of producing and mailing a letter or pamphlet that solicits funds
 - the commercial value of preparing a script for use in soliciting funds by telephone, and any costs incurred, such as installation of phone lines, long distance charges and payments to telephone canvassers, for conducting the telephone solicitation
- 20. As well, these are election expenses even if the solicitation refers solely to the fundraising activity and its content does not refer to the merits of a candidate or party.
- 21. It should also be noted that the geographic location of a fundraising activity held during an election period does not affect whether the cost of the activity is an election expense. Thus, if a candidate in that election conducts a fundraising activity outside his or her electoral district, that fundraising activity is still subject to the above rules for expenses, as it directly promotes the election of the candidate. This is because the fundraising activity will generate funds to assist the candidate to be elected in his or her electoral district.

Treatment of Expenses for Fundraising Activities That Are Not Counted as Election Expenses

22. Candidates and registered parties must still disclose the costs of fundraising activities that are not counted as election expenses.

- 23. In the case of a candidate, such expenses are included in the candidate's electoral campaign expenses, and must be reported as such.⁸ The official agent must include documentary evidence of all electoral campaign expenses when filing the electoral campaign return.⁹
- 24. A registered party must include a report of all of its fundraising expenses that are not counted as election expenses in its annual financial transactions return. 10

Treatment of Contributions Received During Fundraising Activities

- 25. Amounts raised through fundraising activities are subject to the rules for contributions in the *Canada Elections Act*.
- 26. These rules include the following:
 - Only individuals who are citizens or permanent residents of Canada may make contributions. 11
 - Individuals are limited in the dollar amount they can contribute. 12
 - No one may make a cash contribution of more than \$20. 13
 - A receipt must be provided for all contributions of more than \$20.14
- 27. If funds are solicited by mail or by telephone, the amount of the contribution is the entire amount paid by the contributor.

⁸ Ss. 406 and 451(2)(*b*).

⁹ S. 451(2.1).

¹⁰ S. 424(2)(*g*).

¹¹ S. 404.

¹² S. 405.

¹³ S. 405.31.

¹⁴ S. 404.4(1).

Some Specific Fundraising Activities

Ticketed Fundraising Activities

- 28. If tickets to an event are sold to raise funds, the amount of the contribution is the difference between the price of the ticket and the fair market value of what the ticket entitles the bearer to obtain.¹⁵
- 29. The fair market value of what the ticket entitles the bearer to obtain should be based on a reasonable estimate of the cost of purchasing similar tangible benefits in the marketplace. The official agent of the candidate or chief agent of the party, as the case may be, should be prepared to justify the estimate.
- 30. The official agent of the candidate or a registered agent of the party must determine the fair market value of what the ticket entitles the buyer to obtain before the ticket is sold. This is necessary so that the contributor can be aware of the amount of the contribution he or she is making at the time he or she gives the funds. The amount of the contribution cannot be changed later for example, based on the number of people who actually attend the event.
- 31. For example, if tickets to a dinner, which is held to raise funds for a regulated political entity, are sold for \$100, and the ticket entitles the ticket holder to food and drink with a fair market value of \$40, an individual who purchases one ticket will have made a contribution of \$60. At the time of his or her purchase, the individual must therefore receive a contribution receipt for \$60. 16

Auctions

32. Political entities sometimes choose to raise funds through auctions at which goods or services are offered for sale to the highest bidder. These goods or services may constitute contributions from the perspective of both the provider and the person who makes the highest and winning bid for the goods or services.

¹⁶ S. 408.

¹⁵ S. 408.

- 33. If the goods or services are donated, then the rules governing contribution eligibility, limits and disclosure apply. The individual who gives a good or service to the political entity for it to be sold at an auction makes a contribution for the commercial value of the good or service. ¹⁷
- 34. A corporation could not donate goods or services to be auctioned off. That would constitute an illegal contribution to the party of an amount equivalent to the commercial value of the goods or services offered for auction.
- 35. If the good or service was obtained by the political entity at commercial value, the cost of the good or service will be reported as an expense of the entity. If, however, the good or service was donated or obtained by the entity at less than its commercial value, the difference between the commercial value and the amount paid for the good or service will constitute a contribution.
- 36. Similarly, the person who is the winning bidder on a good or service sold at an auction makes a contribution to the political entity that is equal to the difference between the amount paid by the bidder for the good or service and its commercial value.
- 37. Using the example discussed above, the contribution made by the winning bidder on the good sold to the political entity would be the difference between the amount bid and the commercial value of the good.
- 38. If the commercial value of the good or service cannot be established because the person who provides the good or service is not in the business of providing that good or service and there is no other person who provides that type of good or service on a commercial basis, then the total amount bid for the good or service will be a contribution by the person or entity that purchases that type of good or service ¹⁸.

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¹⁷ Note that the Act provides (at s.2(2)) that the commercial value of property or a service is deemed to be nil if (a) it is provided by a person who is not in the business of providing that property or those services; and (b) the amount charged for it is \$200 or less.

¹⁸ Subject of course to the \$200 threshold discussed in note 16

- 39. For example, if a movie star accepts to spend an hour conversing with the winning bidder in an auction to raise funds for a political entity, the totality of the amount offered by that bidder for the one-hour conversation will constitute a contribution. That is because there is no commercial value for that hour's conversation.
- 40. However, if a golf pro accepts to give a one-hour golf lesson to the winning bidder, the value of the contribution made by the golf pro will be the commercial value of a one-hour golf lesson by that pro. On the other hand, the bidder will have made a contribution equal to the difference between the price at which the golf lesson was auctioned and the commercial value of that lesson.
- 41. As a best practice, as the difference between the commercial value of a good or service auctioned and the amount paid by the winning bidder constitutes a contribution, the commercial value of the good or service to be auctioned should be disclosed before the start of the bidding to ensure that each bidder can evaluate beforehand how much he or she may bid before making an illegal contribution.

Draws

- 42. The *Criminal Code* imposes constraints regarding draws and other lotteries for these to be permitted under the law, more particularly the need to obtain a licence from the province prior to organizing that type of fundraising activity. ¹⁹
- 43. Assuming the *Criminal Code* conditions have been met, the following treatment would apply under the *Canada Elections Act*:
 - Political entities may obtain a good or service that will be given to the winners of a draw at a political event. If the good or service was obtained at commercial value, the cost of the good or service will be reported as an expense of the entity. However, if the good or service was given or obtained at less than commercial value, the cost of the good or service will be reported as an expense of the entity and the difference between its commercial value and the amount paid will constitute a non-monetary contribution to the entity.

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¹⁹ S. 206 and s. 207 Criminal Code

- The individuals who purchase tickets at a set price for a chance to win the good or service that is the subject of the draw make a contribution equal to the price they pay for the ticket. There is no commercial value attached to the hope of having purchased the winning ticket.
- In that case, particular attention must be paid to the need to issue a receipt for each contribution over \$20²⁰ and to the prohibition against cash contributions in excess of \$20.²¹ As well, political entities must be careful in designing their draw not to circumvent or attempt to circumvent any of the rules governing eligibility and contribution limits including the limit on cash contributions, or act in collusion with another person or entity for that purpose.²²

²⁰ S. 404.4(1). Each transaction constitutes a contribution. If an individual purchases a \$5 ticket, the transaction does not require the issuance of a receipt. However, if that same individual purchases 5 tickets for \$25 in one transaction, then a receipt would have to be issued.

²¹ S. 405.31.

²² S. 405.2(1).