

**BILL S-6: AN ACT TO AMEND THE CANADA
ELECTIONS ACT (ACCOUNTABILITY WITH
RESPECT TO POLITICAL LOANS)**

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13 May 2009



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LEGISLATIVE HISTORY OF BILL S-6

HOUSE OF COMMONS

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading: 28 April 2009

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

This bill did not become law before the 2nd Session of the 40th Parliament ended on 30 December 2009.

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

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PUBLIÉ EN FRANÇAIS

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BILL S-6: AN ACT TO AMEND THE CANADA ELECTIONS ACT
(ACCOUNTABILITY WITH RESPECT TO POLITICAL LOANS)*

BACKGROUND

On 28 April 2009, Bill S-6, An Act to amend the Canada Elections Act (accountability with respect to political loans), was introduced and received first reading in the Senate.

Bill S-6 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.

Bill S-6 amends the *Canada Elections Act* with regard to loans, guarantees and suretyships⁽¹⁾ to registered parties, registered associations, election candidates, leadership contestants and nomination contestants (hereinafter collectively called “political entities”).

Bill S-6 is based, in part, on the *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* (2007). This report concluded, “The loans

* 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.

(1) “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, Mr. Marc Chénier, Counsel, Legislation and House Planning, 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, p. 7.

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.”⁽²⁾ 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.⁽³⁾

Building on these recommendations, Bill S-6 proposes 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.

(2) 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, http://www.elections.ca/gen/rep/oth/jan2007/jan2007_e.pdf.

(3) *Ibid.*, p. 37.

- Tighter rules would be instituted for the treatment of unpaid loans to ensure that election candidates cannot walk away from those loans.⁽⁴⁾

DESCRIPTION AND ANALYSIS

Bill S-6 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 3, 5, 6, 9, 12, 16, 19, 26 and 30); A Person or Persons Who May Borrow on Behalf of a Political Entity (Clauses 1, 7, 11, 18, 25); Payment of Irregular or Late Claims, (Clauses 2, 3, 8, 9, 13 to 15, 19 to 23 and 27 to 30); Financial Reporting (Clauses 4, 10, 14, 24 and 31); Offences (Clause 32); and Transitional Provisions and Coming into Force (Clauses 33 and 34).

A. Loans, Guarantees and Suretyships:

A New Regime (Clauses 3, 5, 6, 9, 12, 16, 19, 26 and 30)

Clause 6 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)).

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.

(4) See Government of Canada, Office of the Minister of State for Democratic Reform, “Government of Canada Introduces Legislation to Strengthen Accountability for Political Loans,” News release, 28 April 2009; and Government of Canada, Office of the Minister of State for Democratic Reform, “Amendments to the *Canada Elections Act (Accountability with Respect to Political Loans)*,” Backgrounder, 28 April 2009.

Section 405.5(3) authorizes financial institutions, as defined in section 2 of the *Bank Act*,⁽⁵⁾ 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), currently set at \$1,100. 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 5). 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

(5) *Bank Act*, S.C. 1991, c. 46, section 2:

“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.

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 S-6, 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 12(1)). Loans to candidates must be repaid within three years after polling day (section 445(1.1), clause 19(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 26).

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 S-6, 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 (clause 6, adding section 405.6(1)(d)), registered associations (clause 3, adding section 403.34(1)(b)) and registered parties (clause 9, adding section 423.1(1)(b)); on polling day in the case of candidates (clause 6, adding section 405.6(a); and clause 23, adding section 450(1)(b)); on the selection date in the case of nomination contestants (clause 6, adding section 405.6(1)(c); and clause 30, adding section 478.22(b)); and at the end of the leadership contest for leadership contestants (clause 6, adding section 405.6(b); and clause 16, amending section 435.29(1)).

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.⁽⁶⁾ 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.⁽⁷⁾ 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.

**B. A Person or Persons Who May Borrow on
Behalf of a Political Entity (Clauses 1, 7, 11, 18, 25)**

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 S-6 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 1, section 403.28(3)).

(6) 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).

(7) Section 405.6(4) refers to an "electoral district association," whereas this political entity is referred to as a "registered association" throughout Bill S-6.

- A registered agent of a registered party will be permitted to borrow money on behalf of the party (clause 7, section 416(3)).
- A leadership campaign agent of a leadership contestant will be allowed to borrow money on behalf of the contestant (clause 11, amending subsection 435.22(1)).
- An official agent of an election candidate will be allowed to borrow money on behalf of the candidate (clause 18, section 438(2)).
- A financial agent of a nomination contestant will be allowed to borrow money on behalf of the contestant (clause 25, section 478.13(1)).

C. Payment of Irregular or Late Claims

(Clauses 2, 3, 8, 9, 13 to 15, 19 to 23 and 27 to 30)

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)).

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 S-6, treats loans and other expenses distinctively, and deadlines for their repayment and their being deemed contributions are also dealt with differently.⁽⁸⁾ The deemed contribution provision for claims relating to a leadership contest is modified so that it becomes effective three years after the end of the leadership contest instead of 18 months after it (clause 16, amending section 435.29(1)).

Bill S-6 also 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.⁽⁹⁾ 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 S-6 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.⁽¹⁰⁾ 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.

D. Financial Reporting (Clauses 4, 10, 14, 24 and 31)

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 S-6 amends the Act by providing that loans are

(8) Consequential amendments to the Act are made in this respect: clause 3, adding section 403.34(1)(a) (registered association); clause 9, adding section 423.1(1)(a) (registered party); clause 23, adding section 450(1)(a) (candidate); and clause 30, adding section 478.22(a) (nomination contestant). Clauses 2 and 8 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.

(9) See clause 13, amending section 435.26(1), clause 14(1), amending section 435.27(a), and clause 14(2), adding section 435.27(2), for leadership contestants; clause 19(2), amending section 445(2), clause 20, amending section 447(1), and clause 21, amending section 448, for election candidates; and clause 27, amending section 478.19(1), and clause 28, amending section 478.2, for nomination contestants.

(10) See clause 15, amending section 435.28(1) (leadership contestants); clause 22, amending section 449(1) (candidates); and clause 29, amending section 478.21(1) (nomination contestants).

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.⁽¹¹⁾ 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.⁽¹²⁾ 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 4(3), adding section 403.35(2.1) [registered associations]; clause 10(3), adding section 424(2.1) [registered parties]; clause 17(3) adding section 435.3(4) [leadership contestants]; clause 24(2), adding section 451(2.3) [candidates]; and clause 31(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 4(3), amending section 403.35(3) [registered associations]; clause 10(3),

(11) See clause 4(1), amending section 403.35(2)(e)(ii) (registered associations); clause 10(1), amending section 424(2)(f)(ii) (registered parties); clause 17(1), amending paragraph 435.3(2)(c) (leadership contestants); clause 24(1), amending section 451(2)(e) (election candidates); and clause 31(1), amending section 478.23(c) (nomination contestants).

(12) See clause 4(2), amending section 403.35(2)(e)(i) (registered associations); clause 10(2), amending section 424(2)(j) (registered parties); clause 17(2), amending section 435.3(2)(d.1) (leadership contestants); clause 24(1), adding section 451(2)(e.1) (candidates); and clause 31(1), adding section 478.23(c.1) (nomination contestants).

amending section 424(3) [registered parties]; clause 17(3), amending section 435.5(5) [leadership contestants]; clause 24(2), amending section 451(3) [candidates]; and clause 31(2), amending section 478.23(5) [nomination contestants]).

E. Offences (Clause 32)

Clause 32(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 S-6 for the violation of these sections (clause 32(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 32(1), (3), (4), (5) and (6)). Similar adjustments to the related offences requiring intent are also made (clause 32(7), (9), (10), (11) and (12)).

Clause 32(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.

F. Transitional Provisions and Coming Into Force (Clauses 33 and 34)

Clause 33 provides that loans and the guarantees of such loans made prior to the coming into force of Bill S-6 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 S-6.

Bill S-6 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 34).