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LEGISLATIVE SUMMARY



Bill C-50: An Act to amend the Canada Elections Act (political financing)

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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-50
(Legislative Summary)

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CONTENTS

1	BACKGROUND.....	1
2	DESCRIPTION AND ANALYSIS	2
2.1	Regulated Fundraising Events (Clause 2)	2
2.1.1	Definition of “Regulated Fundraising Event”.....	2
2.1.2	Obligation to Publicize a Regulated Fundraising Event	3
2.1.3	Obligation to Report to the Chief Electoral Officer	4
2.1.3.1	Regulated Fundraising Events That Take Place Outside an Election Period	4
2.1.3.2	Regulated Fundraising Events That Take Place During an Election Period	5
2.1.4	Return of Contributions.....	5
2.1.5	Corrections, Revisions, and Extended Reporting Periods	5
2.2	Nomination Campaign Expenses and Nomination Contest Expenses (Clause 1 and Clauses 3 to 6)	6
2.3	Leadership Campaign Expenses and Leadership Contest Expenses (Clauses 1, 7 and 8).....	8
2.4	Offences (Clauses 9 to 11)	9
2.4.1	New Offences Under Part 18, Division 1.1 (Regulated Fundraising Events).....	9
2.5	Transitional Provisions (Clauses 12 to 14)	10
2.6	Coming Into Force (Clause 15).....	10

LEGISLATIVE SUMMARY OF BILL C-50: AN ACT TO AMEND THE CANADA ELECTIONS ACT (POLITICAL FINANCING)

1 BACKGROUND

Bill C-50, An Act to amend the Canada Elections Act (political financing), was introduced in the House of Commons by the Minister of Democratic Institutions on 31 May 2017. The bill received second reading and was referred to the House of Commons Standing Committee on Procedure and House Affairs on 15 June 2017.¹

Currently, the *Canada Elections Act* (CEA)² regulates spending by, and contributions to, political parties, candidates, electoral district associations, nomination contestants (people seeking the endorsement of a registered party as its candidate in an electoral district) and leadership contestants (people seeking to be selected as the leader of a registered party). However, it does not generally prescribe rules on how these entities raise money.

Bill C-50 focuses on political fundraising, requiring political parties to publicly advertise fundraising events attended by ministers, party leaders or leadership candidates where a contribution of more than \$200 is required to attend, and enacting a reporting regime regarding such events.

In addition, Bill C-50 addresses another issue that was raised by the Chief Electoral Officer (CEO) in an interpretation note published in August 2015³ and reiterated a year later in his report containing recommendations arising out of the 42nd General Election.⁴ The current definitions of “leadership campaign expenses” and “nomination campaign expenses” under the CEA do not capture certain expenses related to the campaign. Indeed, an expense is included only if it was incurred *during* the leadership or nomination contest as an incidence of the contest. Expenses incurred before the start of a contest or after the end of one are not regulated, even though they may relate to the contest. As noted by the CEO:

This is different from candidate campaigns, where two types of expenses are regulated: those for goods and services that are *used during* the campaign to promote the candidate and, more broadly, all of those *incurred as an incidence* of the campaign. In either case, it does not matter when the expense was incurred.⁵

According to the CEO, the candidate regime works well, whereas the leadership and nomination regimes do not, because they allow “many relevant expenses and contributions never to be reported,” thus failing to “achieve the Act’s goal of transparency.”⁶

In his report following the 42nd General Election, the CEO recommended that the relevant definitions be amended to enable a more coherent regulation of leadership and nomination campaigns:

The definitions of leadership and nomination campaign expenses should be amended to mirror the candidate electoral campaign expense definition found in the Act. This will allow all expenses incurred as an incidence of the contest to be regulated in the same way that all expenses incurred as an incidence of an election campaign are regulated. Consequently, all contributions to a leadership or nomination campaign will also be reported and subject to the limits in the Act.⁷

The Standing Committee on Procedure and House Affairs, in its report presented to the House of Commons on 6 March 2017, agreed with the CEO's recommendation regarding leadership and nomination campaign expenses.⁸ Bill C-50 amends the definitions to implement the CEO's recommendations.

In particular, Bill C-50:

- creates a new division 1.1 within Part 18 (“Financial Administration”) of the CEA for regulated fundraising events;
- defines the term “regulated fundraising event”;
- regulates fundraising events held in conjunction with a convention of a registered political party, including a leadership convention or a leadership contestant's debate;
- requires the posting and filing of reports of regulated fundraising events;
- defines more precisely a “nomination campaign expense” and defines a “nomination contest expense”; and
- defines more precisely a “leadership campaign expense” and defines a “leadership contest expense.”

2 DESCRIPTION AND ANALYSIS

2.1 REGULATED FUNDRAISING EVENTS (CLAUSE 2)

Clause 2 of Bill C-50 creates new Division 1.1, “Regulated Fundraising Events,” within Part 18 of the CEA, setting out provisions that govern a new regulated event – the regulated fundraising event.⁹

2.1.1 DEFINITION OF “REGULATED FUNDRAISING EVENT”

New section 384.1(1) of the CEA defines a “regulated fundraising event” as an event that is:

- organized for the financial benefit of:
 - a political party registered under the CEA and represented in the House of Commons, or
 - a registered electoral district association, nomination contestant, candidate, or leadership contestant of a registered political party represented in the House of Commons; and
- attended by:

- a leader, interim leader, or leadership contestant of a registered party represented in the House of Commons, a minister of the Crown, or a minister of state, and
- at least one person who is required to make a contribution of more than \$200 or pay more than \$200 to a political party or any of its entities to attend the event, or a guest of that person, in order to attend the event.

Excluded from the definition of a “regulated fundraising event” is a party convention, including a leadership convention (new section 384.1(2)), unless that convention includes a fundraising event as defined in new section 384.1(3). That is, if an event that is organized as part of a party convention is for the financial benefit of the registered party and it is attended by at least one person who is required to contribute or pay at least \$200 to attend the event, then the event qualifies as a “regulated fundraising event.”

Also excluded from the definition of “regulated fundraising event” are events that are held as part of a convention and whose sole purpose is to “express appreciation for” individuals who have made a contribution to a registered party or its entities (new section 384.1(4)).

2.1.2 OBLIGATION TO PUBLICIZE A REGULATED FUNDRAISING EVENT

New section 384.2(1) mandates that when a political party organizes a regulated fundraising event for its own financial benefit or that of any of its associated entities, it must publish prescribed information about the event in a prominent location on its Internet site at least five days before the event takes place. The information to be published is the following (new section 384.2(2)):

- the date, time and location of the regulated fundraising event;
- the name of each political entity (party, candidate, electoral district association, nomination contestant or leadership contestant) for whose financial benefit the event is organized;
- the names of the party leaders, interim leaders, leadership candidates or Cabinet ministers attending the event;
- the amount of the contributions persons will be required to make or the amount persons will be required to pay to attend the event; and
- the contact information of the person who may be contacted in order to obtain further information.

If a regulated fundraising event is not organized by a registered party, but rather is entirely organized by another entity, that entity must provide the information set out in new section 384.2(2) to the relevant registered party (new section 384.2(3)). The registered party must then publish the information about the event in a prominent location on its Internet site at least five days before the event takes place (new section 384.2(4)).

When changes occur regarding a regulated fundraising event (for example a change in venue, time or attendance), a registered party must update the information on its

Internet site as soon as feasible after becoming aware of the changes (new section 384.2(5)). Should a regulated event be organized by another entity, and it becomes aware of changes, then that entity must inform the relevant registered party so that it can update its Internet site (new sections 384.2(6) and 384.2(7)).

As an exception, new section 384.2(8) specifies that regulated fundraising events that take place during the election period of a general election are not subject to the requirement to post the information noted above.

2.1.3 OBLIGATION TO REPORT TO THE CHIEF ELECTORAL OFFICER

In addition to publicly posting the required information on its Internet site before a regulated fundraising event takes place, a registered party must also provide a report about the event to the CEO, who then must publish it (new sections 384.3(1) to 384.3(13)). The content of the report and deadline for submission to the CEO vary, depending on whether the event took place outside or within an election period.

2.1.3.1 REGULATED FUNDRAISING EVENTS THAT TAKE PLACE OUTSIDE AN ELECTION PERIOD

If a regulated fundraising event takes place outside an election period, a registered party must submit a report to the CEO about that event within 30 days of its occurrence (new section 384.3(1)). The report must include the following information (new section 384.3(2)):

- the date, time and location of the regulated fundraising event;
- the name of each political entity (party, candidate, electoral district association, nomination contestant or leadership contestant) for whose financial benefit the event is organized;
- the name of the party leaders, interim leaders, leadership candidates or Cabinet ministers who attended the event;
- the names of all other persons who attended the event, the municipality and province in which they reside, and their postal code;
- the amount of the contributions persons were required to make or the amount persons were required to pay to attend the event; and
- the name of each person or entity that organized the event.

However, the names, municipalities and provinces of residence and postal codes of the following persons present at the event are *not* to be included in the report to the CEO (new section 384.3(3)):

- persons under the age of 18;
- persons who attended the event solely because they were employed in the organization of the event;
- the following persons who attended the event solely in the course of their employment:

- representatives of a media organization or freelance journalists, and
- support staff, including security staff; and
- persons who attended the event solely to provide volunteer labour.

Further, if a regulated fundraising event is entirely organized by an entity other than a registered party and takes place outside an election period, that entity must provide the information set out in new section 384.3(2) to the relevant registered party and exclude the information set out in new section 384.3(3), so that the registered party can report on the event to the CEO within 30 days (new sections 384.3(4) to 384.3(6)).

2.1.3.2 REGULATED FUNDRAISING EVENTS THAT TAKE PLACE DURING AN ELECTION PERIOD

New section 384.3(7) specifies that if regulated fundraising events organized by a registered party or associated entity take place during an election period, there is no obligation to report in the manner described above. Rather, the registered party must provide the CEO, within 60 days following polling day, with a single report of all the regulated fundraising events undertaken during the election period by the political party (new section 384.3(8)). That report must contain the information as prescribed above in new section 384.3(2) (while excluding the information set out in new section 384.3(3)).

If a regulated fundraising event is entirely organized by an entity other than a registered party and takes place during an election period, that entity must provide the information set out in new section 384.3(2) to the relevant registered party and exclude the information set out in new section 384.3(3), so that the registered party can report on the event(s) to the CEO within 60 days after polling day (new sections 384.3(9) to 384.3(12)).

2.1.4 RETURN OF CONTRIBUTIONS

New section 384.4 provides that a political party or its associated entities must return to a contributor any contribution to a regulated fundraising event if the party or its entities failed to comply with the reporting obligations in new section 384.2(1) (obligation to post information on the party's Internet site) or 384.3(1) (obligation to provide a report to the CEO). If that is not possible, the amount of the contribution shall be paid to the CEO, who will forward the amount to the Receiver General.

2.1.5 CORRECTIONS, REVISIONS, AND EXTENDED REPORTING PERIODS

The CEO may make minor corrections to a report on a regulated fundraising event submitted by a political party, insofar as the corrections do not materially affect the substance of the report (new section 384.5).

The CEO shall grant an extension to a registered political party to file a report (either outside or within an electoral period), if the application is made in writing by the registered party's chief agent or leader, unless the CEO believes that the failure to

report in time was deliberate or was the result of the chief agent's failure to exercise due diligence (new section 385.6(1)). The application for an extension can be made within the period for submitting a report, or within two weeks after the end of that period (new section 385.6(2)).

New section 384.7 sets out the process for the CEO to authorize the registered party to make corrections or revisions to a report so that it complies with the requirements of the CEA. Applicants must apply to make corrections as soon as they become aware of the need for correction. As well, new deadlines apply to submit corrections or revisions.

New section 384.8(1) specifies that a registered party's chief agent or leader (where the agent is absent or unable to perform his or her duties) can apply to a judge for an order authorizing an extension under section 384.6(1) or a correction or revision pursuant to section 384.7(1). This avenue is possible in certain circumstances when an application is filed late or when the CEO has rejected an application for extension (new section 384.8(2)). The applicant must notify the CEO of the application to the judge. New sections 384.8(2) through 384.8(5) set out the deadlines for an application to a judge; grounds for extensions, corrections and revisions; and what a judge can include in an order granting an extension, correction or revision.

2.2 NOMINATION CAMPAIGN EXPENSES AND NOMINATION CONTEST EXPENSES (CLAUSE 1 AND CLAUSES 3 TO 6)

Currently, section 2(1) of the CEA defines a "nomination campaign expense" as

an expense reasonably incurred by or on behalf of a nomination contestant during a nomination contest as an incidence of the contest, including a personal expense as defined in section 476.

A "nomination contest" is defined in the same section as "a competition for the selection of a person to be proposed to a registered party for its endorsement as its candidate in an electoral district." However, there is no definition for the term "nomination contest expense" in the Act. As noted in the "Background" section of this Legislative Summary, the current definition of a "nomination campaign expense" only includes expenses incurred *during* a contest, which leaves funds raised or expenses incurred outside the contest period unregulated. This is inconsistent with the regime applicable to campaign expenses generally. Furthermore, the CEO has suggested that the current definition of "nomination campaign expense" lacks transparency.

Clause 1 of Bill C-50 repeals the current definition of a "nomination campaign expense," and clause 3 replaces it with the following definition (new section 476.01):

A nomination campaign expense of a nomination contestant is an expense reasonably incurred as an incidence of the nomination contest, including

- (a) a nomination contest expense;
- (b) a personal expense; and
- (c) a fee of any auditor appointed under subsection 476.77(1).

Thus, the new definition of a “nomination campaign expense” no longer requires the expense to be incurred *during* the nomination contest.

New section 476.02(1) then defines a “nomination contest expense” as any of the following if they were used to directly promote or oppose a registered party, its leader, a nomination contestant or a candidate during a nomination contest:

- costs incurred (meaning an expense that is incurred by a nomination contestant whether it is paid or unpaid, as set out in new section 476.02(3));
- non-monetary contributions received; and
- the acceptance, in accordance with section 364(2)(c), by the nomination contestant of goods and services from the registered party or registered association to which the nomination contestant belongs.¹⁰

New section 476.02(2) breaks down the types of costs incurred or non-monetary contributions that qualify as nomination contest expenses. These are:

- the production of advertising or promotional materials;
- the distribution, broadcast or publication of these materials in any media or by any other means during a nomination contest, including the use of a capital asset;
- the remuneration or payment of persons for their services as a financial agent (each nomination contestant is required to have a financial agent to manage the finances of the campaign);
- the securing of meeting space and the provision of light refreshments at meetings;
- the products or services provided by a government, a Crown corporation or other public agency; and
- the conduct of surveys or research during a nomination contest.

Clause 4 amends the opening paragraph of current section 476.67 (limits on expenses) by replacing the term “nomination campaign expenses” with “nomination contest expenses.” The new definition of “nomination campaign expenses” is broader than that of “nomination contest expenses,” which focuses on the contest period itself. Clause 5 does the same to section 476.68(1) (expenses exceeding limits).

Currently, section 476.75(2) of the CEA sets out the items that are to be included in a nomination campaign return. Specifically, section 476.75(2)(a) provides that a return must include a statement of nomination campaign expenses. Clause 6 amends this section of the Act by replacing the term “nomination campaign expenses” with the term “nomination contest expenses.” New section 476.75(2)(a.1) requires the return to also include a statement of nomination campaign expenses other than nomination contest expenses (i.e., personal expenses and auditor fees).

2.3 LEADERSHIP CAMPAIGN EXPENSES AND LEADERSHIP CONTEST EXPENSES (CLAUSES 1, 7 AND 8)

Currently, section 2(1) of the CEA defines a “leadership campaign expense” as

an expense reasonably incurred by or on behalf of a leadership contestant during a leadership contest as an incidence of the contest, including a personal expense as defined in section 478.

A “leadership contest” is defined in the same section as “a competition for the selection of the leader of a registered party.” However, like the case of “nomination contest expense” as detailed above, there is no definition for a “leadership contest expense” in the Act. The current definition of a “leadership campaign expense” only includes expenses incurred *during* a contest, which leaves funds raised or expenses incurred outside the contest period unregulated (as discussed in the “Background” section of this Legislative Summary). This is inconsistent with the regime applicable to campaign expenses generally. For his part, the CEO has suggested that the current definition of “leadership campaign expense” lacks transparency.

Clause 1 of Bill C-50 repeals the current definition of a “leadership campaign expense” and clause 7 replaces it with the following definition (new section 478.01):

A leadership campaign expense of a leadership contestant is an expense reasonably incurred as an incidence of the leadership contest, including

- (a) a leadership contest expense;
- (b) a personal expense; and
- (c) a fee of any auditor appointed under this Division.

Thus, the new definition of a “leadership campaign expense” no longer requires the expense to be incurred *during* the leadership contest.

New section 478.02(1) then defines a “leadership contest expense” as any of the following if they were used to directly promote or oppose a registered party, its leader, or a leadership contestant during a leadership contest:

- costs incurred (meaning an expense that is incurred by a leadership contestant whether it is paid or unpaid, as set out in new section 478.02(3));
- non-monetary contributions received; and
- goods and services transferred in accordance with section 364(2)(c) by other political entities of a party to which the leadership contestant belongs.

As with the comparable sections of the bill defining “nomination contest expenses,” Bill C-50 also defines more precisely the costs incurred or non-monetary contributions that qualify as leadership contest expenses (new section 478.02(2)). These are identical to the new provisions for nomination contest expenses, that is:

- the production of advertising or promotional materials;

- the distribution, broadcast or publication of these materials in any media or by any other means during a leadership contest, including the use of a capital asset;
- the remuneration or payment of persons for their services as a financial agent (each leadership contestant is required to have a financial agent to manage the finances of the campaign);
- the securing of meeting space and the provision of light refreshments at meetings;
- the products or services provided by a government, a Crown corporation or other public agency; and
- the conduct of surveys or research during a leadership contest.

Currently, section 478.8 of the CEA sets out the items that are to be included in a leadership campaign return. Specifically, section 478.8(2)(a) provides that a return must include a statement of leadership campaign expenses. Clause 8 amends this section of the Act by replacing the term “leadership campaign expenses” with the term “leadership contest expenses.” New section 478.8(2)(a.1) requires the return to also include a statement of leadership campaign expenses other than leadership contest expenses (i.e., personal expenses and auditor fees).

2.4 OFFENCES (CLAUSES 9 TO 11)

2.4.1 NEW OFFENCES UNDER PART 18, DIVISION 1.1 (REGULATED FUNDRAISING EVENTS)

Clause 9 of Bill C-50 adds new section 497.01 to the CEA. This new section sets out a series of strict liability offences punishable on summary conviction for a registered party, chief agent, person or entity (depending on the offence) who contravenes:

- sections 384.2(1) or 384.2(4) (failure to publish information about a regulated fundraising event);
- section 384.2(3) (failure to provide information about a regulated fundraising event);
- sections 384.2(5) or 384.2(7) (failure to replace old information about a regulated fundraising event on its Internet site);
- section 384.2(6) (failure to provide new information about a regulated fundraising event);
- sections 384.3(1) or 384.3(6) (failure to provide a report on a regulated fundraising event);
- section 384.3(3) (including a prohibited name or address in a report on a regulated fundraising event);
- sections 384.3(4) or 384.3(9) (failure to provide information about a regulated fundraising event);
- sections 384.3(5) or 384.3(10) (including a prohibited name or address in information about a regulated fundraising event);

- section 384.3(8) (failure to provide a report on all regulated fundraising events);
- section 384.3(12) (including a prohibited name or address in a report on all regulated fundraising events);
- section 384.4 (failure to return or pay the amount of a contribution); or
- section 384.7(3) (failure to provide a corrected or revised report within a 30-day period or any extension of that period).

Clause 10 amends sections 497.3(1)(f), 497.3(2)(g) and 497.3(2)(h), replacing terminology regarding “nomination campaign expenses” with “nomination contest expenses.” These amended sections set out offences for exceeding nomination contest expenses limits and circumventing nomination contest expenses limits.

Clause 11 adds new section 500(1.1) to the CEA, specifying that every person who is guilty of an offence under new section 497.01 of the CEA is liable on summary conviction to a maximum fine of \$1,000.

2.5 TRANSITIONAL PROVISIONS (CLAUSES 12 TO 14)

Clauses 12 to 14 of Bill C-50 contain transitional provisions. Clause 12 specifies that if clause 2 (new obligations for regulated fundraising events) comes into force during an election period, the CEA, as it read before the coming into force, applies with respect to any such fundraising events.

Clause 13 specifies that should clause 3 (nomination contests) come into force during a nomination contest, the CEA applies as it was before the coming into force of that clause. As well, any obligations and rights arising out of a nomination contest that took place prior to the coming into force of clause 3 are subject to the CEA as it read before the coming into force of clause 3.

Finally, clause 14 specifies the same with regard to the coming into force of clause 7 (leadership contests).

2.6 COMING INTO FORCE (CLAUSE 15)

Clause 15 of specifies that Bill C-50 will come into force six months after receiving Royal Assent.

NOTES

1. [Bill C-50, An Act to amend the Canada Elections Act \(political financing\)](#), 1st Session, 42nd Parliament.
2. [Canada Elections Act](#), S.C. 2000, c. 9.
3. Elections Canada, “[Definition of leadership campaign expenses and nomination campaign expenses.](#)” *Interpretation Note: 2014-01 (August 2015)*.

4. Office of the Chief Electoral Officer of Canada, [*An Electoral Framework for the 21st Century: Recommendations from the Chief Electoral Officer of Canada Following the 42nd General Election*](#), September 2016.
5. Ibid., p. 32.
6. Ibid.
7. Ibid.
8. House of Commons, Standing Committee on Procedure and House Affairs, [*An Interim Report in Response to the Chief Electoral Officer's Recommendations for Legislative Reforms Following the 42nd General Election*](#), Twenty-third Report, 1st Session, 42nd Parliament, 6 March 2017.
9. Part 18 of the CEA regulates the financial activities of the various political entities regulated by the legislation, including political parties, candidates, electoral district associations, nomination contestants and leadership contestants. Financial activities include spending and fundraising. The financial activities of third parties (any person or group that is not a party, candidate or other political entity) are regulated separately. Part 17 of the CEA regulates third party election advertising).
10. This provision enables the various entities associated with a political party to transfer goods, services and funds, with some conditions, without the transfers being treated as contributions. However, the ability to transfer funds is more limited than is the case for the other two categories of expenses.