

POLITICAL CONTRIBUTIONS IN ONTARIO — COMPLYING WITH THE *ELECTION FINANCES ACT* (ONTARIO)

WALIED SOLIMAN

With an Ontario provincial election well under way, political parties, constituency associations and candidates are in full campaign mode – including full fundraising mode. Political contributions in Ontario to provincial political parties, constituency associations, constituency candidates, and leadership candidates are regulated by the *Election Finances Act* (Ontario) (the “EFA”). A corporation or trade union that knowingly contravenes any portion of the EFA is guilty of an offence and on conviction is liable to a fine of up to \$50,000. An individual who knowingly contravenes a provision of the EFA is liable to a fine of not more than \$5,000.

ELIGIBLE CONTRIBUTIONS

Political contributions in Ontario may only be made by a person individually, a corporation that is not a registered charity, a trade union, or an affiliated political organization (“eligible contributors”). Group contributions (except for trade unions) by unincorporated entities, such as partnerships, are prohibited. Such contributions will be recorded as contributions of the individuals who make up such group. Subject to limited exceptions, political contributions may only be made with funds of the actual contributor and cannot be made anonymously. Contributions cannot be accepted from any person normally resident outside of Ontario, a corporation that does not carry on business in Ontario, or from a trade union that does not fit within the definition of “trade union” in the EFA.

LIMITS AND CREDITS

Contributions by a corporation or trade union over \$25 must be made by cheque or money order, which must clearly identify the contributor. An individual may make a contribution by a credit card upon which the name of the individual is embossed. Under the EFA, eligible contributors may, in a calendar year, contribute (a) \$7,500 per party, (b) \$1,000 to a constituency association, up to a maximum of \$5,000 per party (i.e., five constituency associations of a party x \$1,000) and (c) \$1,000, to a constituency candidate up to a maximum of \$5,000 per party (i.e., five constituency candidates of a party x \$1,000). Further, during a campaign period, an additional \$7,500 can be contributed to a registered party. In total, in a campaign year, an eligible contributor can contribute up to an aggregate amount of \$25,000 per registered party, its constituency associations and candidates. Other than volunteer labour work, the provision of goods or services to a party, constituency association, constituency candidate, or leadership candidate is a contribution. The provision of such goods or services at a discount may result in the difference between the lowest amount normally charged for such good or service and the actual amount charged, being deemed a contribution. In addition, no person or entity other than a bank and certain affiliated political entities may make a loan to a party, constituency association, constituency candidate or leadership candidate.

Every eligible contributor is entitled to a receipt for their contribution. Individuals are eligible for certain tax credits for their contributions and corporations may deduct a certain amount of their contributions from the Ontario portion of their taxable income.

ACCESS TO CONTRIBUTION INFORMATION

In respect of each campaign period, an eligible contributor’s name and contributions will be published by the Chief Election Officer in The Ontario Gazette and on the Internet. The names and contributions made by eligible contributors, dating back to 1995, can be found on the Elections Ontario website at www.electionsontario.on.ca.

HIGHLIGHTS

- Higher Provincial Political Contribution Limits in Election Year
- New Federal Political Contribution Rules Significantly Limit Corporate Contributions
- Federal and Provincial Contributions Subject to Public Disclosure

FEDERAL POLITICAL CONTRIBUTIONS— RULES OF THE NEW GAME

ERICA YOUNG AND JOHN TUZYK

In the next two months, Ontarians will elect new provincial and municipal governments. It is widely expected that a third visit to the polls, this time to elect a new federal government, will not be far behind. If the federal election is called after December 31, 2003, all parties involved will be playing by “new rules”, notably by new rules on political contributions.¹

NEW CONTRIBUTION LIMITS

As of January 1, 2004, contributions made to a registered party and its candidates, registered electoral district associations, leadership contestants and nomination contestants are limited to the following amounts per calendar year:

- \$5,000 in total for citizens and permanent residents of Canada; and
- \$1,000 in total for corporations that carry on business in Canada, trade unions that hold bargaining rights for employees in Canada, and unincorporated associations (or up to \$2,000 in total where more than one election is held in a calendar year).

In addition, individuals will be permitted to contribute up to \$5,000 in total per calendar year to leadership contestants in a particular leadership contest.

It is important to note that “corporation” is defined broadly to include a corporation together with (a) any other corporation controlled, directly or indirectly in any manner whatever, by the corporation; and (b) any other corporation that is controlled by the same person or group of persons that controls the corporation, directly or indirectly in any manner whatever. Accordingly, contributions made by an affiliated group of corporations are restricted to the \$1,000 total across the corporate group. Similarly, the \$1,000 limit for trade unions includes the trade union together with all of its branches and locals.

In light of the new rules, corporations will have to monitor the contributions made by themselves and their affiliates to avoid exceeding the \$1,000 limit. Many corporations may accordingly choose to eliminate any federal political contributions to avoid the administrative burden and possible breach of the *Canada Elections Act*.

TAX CREDIT INCREASES

Amendments made to the *Income Tax Act* increase each of the brackets of the political contribution credit for taxpayers by \$200 and increase the total amount of the credit to \$650. The new amounts are:

AVAILABLE TAX CREDIT	AMOUNT OF CONTRIBUTION
75%	First \$400
50%	Next \$350
33-1/3%	Over \$750

ACCESS TO CONTRIBUTION INFORMATION

Information on contributions made in elections and by-elections since the June 1997 election is publicly available on the Elections Canada website at www.elections.ca.

¹ *An Act to amend the Canada Elections Act and the Income Tax Act (political financing)* (“Bill C-24”) received Royal Assent on June 19, 2003. With a few exceptions, amendments will come into force on January 1, 2004.

POLITICAL CONTRIBUTIONS IN ONTARIO MUNICIPALITIES — REBATES AVAILABLE FOR SOME CITIES

TED BETTS

Municipal contributions in Ontario are governed by the *Municipal Elections Act, 1996* (the “MEA”). The MEA establishes a number of restrictions on permissible contributions similar to provincial and federal contribution restrictions, some of which are unique to municipalities. In addition, some municipalities may add to or vary these rules by passing municipal by-laws where permitted by the MEA relating, for example, to contribution limits and rebates.

ELIGIBLE CONTRIBUTORS

Only individuals who normally reside in Ontario, corporations that carry on business in Ontario, trade unions that hold bargaining rights for employees in Ontario and candidates and their spouses/same-sex partners may contribute to a municipal election candidate. Contributions can only be made to a candidate who is seeking election to an office on a municipal council or a local board and who has filed a nomination in the clerk’s office in the prescribed form.

TYPES OF CONTRIBUTIONS

Contributions are defined very broadly to mean money, goods and services which includes, among other things, amounts charged for admission to a fund-raising function, the amount by which goods (e.g., food, drinks, shirts, etc.) that are contributed to a candidate are contributed below market value, and the amount by which goods that are contributed to a candidate are sold by the candidate above market value. Contributions do not include, among other things, volunteer work, amounts under \$10.00 or free broadcast time provided in accordance with the *Broadcasting Act*.

LIMITATIONS ON CONTRIBUTIONS

Contributions to municipal candidates can only be made during that candidate’s election campaign period which runs from the date that nomination papers are submitted to the clerk’s office until December 31 for ordinary elections. Contributors may only contribute up to \$750.00 per candidate; however, the *City of Toronto Act, 1997* increases this amount for Toronto residents to \$2,500.00 per candidate. All contributions of money must be deposited into the campaign account and all expenses paid out of the campaign account. Contributions in excess of \$25.00 must be made by way of cheque, money order or credit card which must clearly identify the contributor since anonymous contributions are prohibited. A contributor may not make a contribution of money, goods or services to a candidate that does not belong to him or her.

REBATES

Unlike federal and provincial contributions, contributors in municipal elections are not entitled to a tax credit or rebate under the MEA or the *Income Tax Act*. The MEA, however, does permit each municipality to pass by-laws permitting rebates which are paid for by that municipality. Toronto residents, for example, pursuant to the Act and Toronto By-Law No. 10112002, are entitled to receive rebates of up to 75% of the contribution made to a candidate.

For Toronto residents, a rebate for political contributions will be paid by the City of Toronto after the November 10, 2003 elections, calculated as follows: (a) if the contribution is less than \$25.00, there is no rebate; (b) if the contribution is between \$25.00 and \$300.00, the rebate is 75% of the contribution; (c) if the contribution is more than \$300.00 but not more than \$1,000.00, the rebate is \$225 plus 50% of the difference between the contribution and \$300.00; and (d) if the contribution is more than \$1,000.00, up to the maximum of \$2,500.00, the rebate is the lesser of \$575.00 plus 33-1/3% between the contribution and \$1,000.00 or \$1,000.00. The rebate rules apply for each contribution made to each candidate up to the maximum of \$2,500.00 per candidate.

IF YOU HAVE ANY QUESTIONS about election finance legislation, please feel free to contact John Tuzyk at (416) 863.2918, Ted Betts at (416) 863.4198, Erica Young at (416) 863.3871, Walled Soliman at (416) 863.2274 or your partner contact in our Toronto office.

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