



# Political Financing in Canada: Achieving a Balance

International Conference  
Law and Society in the 21st Century

Humboldt University, Berlin, Germany  
July 25 -28, 2007



**IFES White Paper Series • November 2007**

Diane Davidson  
Deputy Chief Electoral Officer and Chief Legal Counsel,  
Elections Canada.

IFES White Paper Series • November 2007

---

# Political Financing in Canada: Achieving a Balance

International Conference  
Law and Society in the 21st Century

Humboldt University, Berlin, Germany  
July 25 -28, 2007

Diane Davidson  
Deputy Chief Electoral Officer and Chief Legal Counsel,  
Elections Canada.



# **Political Financing in Canada: Achieving a Balance**

## Acknowledgments

---

IFES wishes to extend its gratitude to Diane Davidson, of Elections Canada, for allowing IFES to use her paper in its White Paper series. As an international nonpartisan organization, IFES continues in its dedication to bringing intellectual thought and discussion to the forefront with this insightful paper, *Political Financing in Canada: Achieving a Balance*, presented at the 2007 International Conference of Law and Society in the 21<sup>st</sup> Century in Berlin.

# Political Financing in Canada: Achieving a Balance

## Table of Contents

---

Introduction .....	1
1.1 Electoral democracy and the inherent tension between liberty and equality .....	2
1.2 The regulation of political financing as a major component of electoral democracy .....	4
2.1 Evolution of the Canadian model: from “libertarianism” to “egalitarianism” .....	5
2.2 The current Canadian regulatory regime: five key components .....	9
<i>i. Registration</i> .....	9
<i>ii. Reporting and publication of information</i> .....	10
<i>iii. Limits on election expenses and contributions</i> .....	11
<i>iv. Public funding</i> .....	11
<i>v. Compliance and enforcement mechanisms</i> .....	12
3.1 Reflections on lessons learned and potential challenges for the near future.....	13
Conclusion.....	15

# Political Financing in Canada: Achieving a Balance

Diane R. Davidson<sup>1</sup>

Paper presented at the  
Annual Meeting of the Law and Society Association:  
“Law and Society in the 21<sup>st</sup> Century: Transformations, Resistances, and Futures”

Humbolt University, Berlin, Germany, July 25-28, 2007

*“This regime, which is called democracy (demokratia), because it is administered with a view to the interest of the many, not of the few, has not merely made Athens great. It has also rendered its citizens equal before the law in their private disputes, and equally free to compete for public honours by personal merit and exertion, or to seek to lead the city, irrespective of their own wealth or social background.”<sup>2</sup> Thucydides*

## Introduction

Money plays a central and indispensable role in modern electoral democracy. One’s desire to win or remain in power will need significant planning and organisation and extensive resources. “Money can buy goods, skills and services”<sup>3</sup> which, in turn, are necessary to wage effective modern election campaigns. Scholars, on the subject of money in politics, largely agree that money serves “as a highly significant medium.”<sup>4</sup> Political parties thus need considerable amounts of funds to wage competitive election campaigns and to finance their ongoing activities, and candidates must similarly have adequate funding that enables them to organise and campaign for voters’ support.

At the same time, while money is essential to parties and candidates to compete in elections, history has revealed that unchecked or unregulated money in politics will have perverse effects on democracy and public trust in its *raison d’être*. Using the Canadian experience as a case study, this paper proposes to discuss the regulation of money in elections and what principles underlie the choice of rules for political financing. The basic assumption of this paper is that electoral rules influence the behaviour of political actors and the electorate, and that the reverse is also true.<sup>5</sup> In this sense, an efficient political finance regime is important, as it will maintain and strengthen participation and trust in the electoral process. It should also be well balanced as

---

<sup>1</sup> Diane Davidson is Deputy Chief Electoral Officer and Chief Legal Counsel at Elections Canada. The author thanks Alexandre Michaud, Senior Analyst, International Research and Cooperation, for his significant contribution to this paper.

<sup>2</sup> Reported in Dunn, John, *Democracy: A History*, Toronto: Penguin Group, 2005, p. 26.

<sup>3</sup> Herbert E. Alexander quoted in Nassmacher, Karl-Heinz (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance*, Baden-Baden: Nomos Verlagsgesellschaft, 2001, p. 9.

<sup>4</sup> Institute for Democracy and Electoral Assistance (International IDEA), *Funding of Political Parties and Election Campaigns*, Handbook Series, Sweden, 2003, p. 5.

<sup>5</sup> Norris, Pippa, *Electoral Engineering: Voting Rules and Political Behaviour*, Cambridge: Cambridge University Press, 2004, p. 264.

regulation needs to be considered from a broad perspective so that it does not itself become a barrier to entry to the electoral process. That said, each society is unique; an efficient regulatory system may take a myriad of forms depending on the history, culture and values system of a given society.

First, this paper briefly discusses the underlying values of equality and liberty that shape electoral democracy and the balance that must be articulated between these two core values in the political finance regulatory framework for a given society. Rules concerning money should enable freedom of expression for all citizens while providing a level playing field compatible with democratic principles. Furthermore, they should embody the principles of transparency, accountability, accessibility and fairness in order to promote citizens' participation and trust in electoral democracy.

Secondly, this paper traces the evolution of the main aspects of the Canadian political finance regime and the context in which they originated. It also summarizes the current regime, including the latest reforms to finance regulations and enforcement mechanisms. At the founding of modern Canada in 1867, rules on political financing in federal elections were limited. Now, 140 years later, as a result of evolving public expectations, political scandals and court challenges, Canadian legislation on political financing has become one of the most comprehensive regimes in established democracies, resulting in an egalitarian model.

Thirdly, this paper draws on lessons learned and potential challenges for the near future. The Canadian Parliament has recently enacted a series of reforms, mainly targeting the inflow of money to regulated political entities. These new financial rules have a significant impact on the functioning of political entities and calling for a need to evaluate their effectiveness and fairness, particularly with respect to contribution limits and public funding. In addition, this paper suggests that when legislators reform one specific aspect of political financing, they should do so from a broad perspective, taking into account the overall regime and the dynamics between its various components, in order to ensure that the underlying principles of transparency, accountability, accessibility and fairness are preserved in the application of the legal framework.

## **1.1 Electoral democracy and the inherent tension between liberty and equality**

Democracy is an ideal and a form of government that provides for the legitimization of public administration. At the heart of democracy, as a form of government, lies the participation of citizens in public affairs as well as their trust in the political system. The Universal Declaration of Human Rights (Article 21) states:

“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

Modern electoral democracy embodies the protection and enhancement of human rights, in particular the freedoms of expression, association and assembly for election debate and competition for public office. Central to these rights and freedoms is the principle of the fundamental equality of citizens, who are to be treated equally in the exercise of their democratic right to vote and their right to be a candidate for election.

While liberty and equality are not necessarily antithetical values<sup>6</sup>, it may be essential in some cases to limit freedoms in order to promote citizens' participation and to maintain public trust in the electoral process. Citizens' participation in the electoral process can take several forms, including voting, running for office and conducting other political activities using peaceful means (e.g. political contributions, volunteer work for a party or candidate, advertising or demonstrating on a specific issue such as the environment).

Electoral participation is possible to the extent that there are reasonable opportunities for citizens, particularly candidates and parties, to present their opinions to other voters. Freedoms of expression, association and assembly in this respect are crucial to the realization of the fundamental objectives of electoral democracy. Concretely this translates into the right of citizens to express their political opinions freely to other voters and to join political parties or other political organisations to advance their views; as well as the right of political parties and candidates to campaign and promote their platforms. Liberty (e.g. freedom of expression, association and assembly) in this sense is both a democratic right in itself and a means to the realization of other democratic rights. Democratic elections are only possible when citizens are free.<sup>7</sup>

At the same time, electoral democracy embodies the fundamental value that all citizens are equal, that they have equal political rights and therefore should have equal opportunities to exercise their freedom to participate in the electoral process. The principle of "one person—one vote" and the application of relatively equal electoral districts in terms of population constitute evidence that the principle of equality among voters is paramount to democracy. For the principle of equality to be realized in the electoral process, rules embodying the principle of fairness should be adopted with a view to limiting certain freedoms of the wealthy, which in turn preserve citizens' equal opportunities to participate meaningfully. In other words, in order to promote equality in the exercise of freedoms in elections, limits on the use of wealth may be required.<sup>8</sup>

Thus, there is a relative tension between absolute liberty to do as one wishes to advance his or her ideas and opinions in the electoral debate, and the right of others to do the same. How and where a society draws the line between one citizen's freedom of expression vis-à-vis another citizen's equal right to freedom of expression is determined by its history, its culture and its value system. Striking a balance between freedom and equality is all-important and must result from a social consensus – itself arrived at through public dialogue. How this balance is translated into rules and put into practice is the responsibility of state actors, in particular the legislators. Also

---

<sup>6</sup> Dworkin, Ronald, *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge: Harvard University Press, 2000.

<sup>7</sup> Canada, Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, Ottawa: The Commission, 1991, volume 1, p. 324.

<sup>8</sup> John Rawls quoted in Feasby, Colin, "Libman v. Quebec A.G." and the Administration of the Process of Democracy under the Charter: *The Emerging Egalitarian Model*, Montreal: 44 McGill Law Journal, 1999, p. 9.

playing an important role in this regard are elections regulators such as Elections Canada, the institution responsible for administering federal elections in Canada.

## **1.2 The regulation of political financing as a major component of electoral democracy**

In addition to the respect for fundamental rights, citizens' participation and trust in electoral democracy can be preserved and enhanced by an electoral regulatory framework that embodies the principles of transparency, accountability, accessibility and fairness.

This is especially true in the context of money in politics. Speaking broadly, it should be noted that regulating political finance involves mechanisms that are beyond the scope of the electoral regulatory framework *per se*. Rather, they are part of the overall democratic governance structure. As such, political finance regulations should include the various regulations of the use of State resources, government contracting rules, ethics and lobbying rules, and mechanisms that allow public scrutiny of the administrative framework. While this paper recognizes the importance of the broader context of governance regulation, the focus is exclusively on the electoral regulatory framework.

One central concern regarding money in elections is that those who provide financial aid could expect reciprocity<sup>9</sup> and exert undue influence on recipients (i.e. parties and candidates) who, once elected, may return the "favour" by overlooking the rules of public administration and granting direct material benefits to those contributors using public resources. This "financial pressure" on elected officials may be conducive to illegal and corrupt practices. Political finance regulations can address this concern by including provisions controlling expenses and contributions, allowing for their public disclosure, and providing for public funding of electoral political activities. These measures embody the principles of transparency and accountability which, in turn, contribute to strengthening public trust. Transparency provides for the electorate's right to know where the money comes from and where it goes, and accountability responds to political actors' public responsibility to be answerable to the electorate and the law for their actions.

Another central concern that has emerged in the last decades along with the rising cost of electoral campaigns, is that those who have access to significant amounts of money may dominate the election discourse simply because they can afford to buy more media time, thus preventing others from participating in the electoral process. The capacities to communicate often, to use different forms of media and to develop expert-based advertising messages are significant factors when competing for votes. Because one's wealth directly affects his or her ability to communicate effectively to voters in modern electoral campaigns, unrestricted spending may allow the communications of some to overwhelm the communications of others, thereby creating an unfair advantage in the electoral system.<sup>10</sup> Again, political finance regulations can address this concern by including provisions limiting spending on election expenses and allocating airtime on the basis of the accessibility and fairness principles. In the electoral context, accessibility is understood in terms of removing barriers to entry to electoral competition, and fairness is understood as the achievement of a level playing field for political actors and reducing the possibility of unfair advantage for one over another by reason of wealth.

---

<sup>9</sup>Williams, Robert (ed.), *Party Finance and Political Corruption*, New York: St. Martin's Press, 2000, p. 9

<sup>10</sup> The Royal Commission's report, p. 326, see note 7.

The concerns about money in elections are serious ones that may damage electoral democracy as a whole, if not addressed by state actors. On the other hand, an efficient political finance regime embodying the principles of transparency, accountability, accessibility and fairness strengthen participation and trust in the electoral process.

The manner by which money is regulated in a given society must accord with that society's own norms and values. The way in which we interpret the fundamental principle of democracy shapes the choices we make as societies in addressing the need for both equality and liberty, and in how we wish to reconcile these ideals with the practicalities of running a society. In the Canadian political finance regulatory framework, respecting the primacy of individual rights, promoting equal opportunity for all in the political process, and fostering full public dialogue have meant limiting some freedoms. Interestingly, along the continuum between libertarianism and egalitarianism, the Canadian model evolved from a laissez-faire model in the 19<sup>th</sup> century to become what is today: an egalitarian model that seeks to create a level playing field for those who wish to engage in the electoral discourse, enabling electors to be better informed and encouraging public confidence in the process. In today's model, Canadians' trust rests in no small part on ensuring a level playing field among key players, including political parties, candidates and other political entities, as well as any individual or group that wishes to participate in the electoral process. As has been the case elsewhere in the world, political scandals, evolving public expectations and values, and court challenges have been important factors in driving reforms of the Canadian political finance regime.

## **2.1 Evolution of the Canadian model: from “libertarianism” to “egalitarianism”**

It is important to note at the outset that Canada is a federation composed of one federal state, ten provinces and three territories. Each of them has its own electoral system and rules, with its own history and evolution, and significant differences can be observed from one jurisdiction to another. For instance, corporate and union political contributions are permitted in the province of Ontario, while they are subject to a complete ban since 1976 in the neighbouring province of Quebec, and since 2006 at the federal level. This paper, however, limits its discussions to the main reforms and elements of federal electoral legislation.

The roots of the Canadian regulatory framework can be traced back to 1873, six years after the Canadian Confederation of 1867. At the time, the Canadian Pacific Railway Scandal, commonly called “The Pacific Scandal,” concerned a national railway company that sought to land major government contracts. Opponents of then Prime Minister Sir John A. Macdonald got hold of a telegram the latter had sent to the person seeking contracts, in which money was requested. When the telegram was made public, the reaction was one of outrage, and likely contributed to the electoral defeat of the Conservative Party the following year. Despite the absence of a regulatory regime at that time, electors were not willing to accept that money could buy the influence of elected officials. The following year, legislation was enacted that required candidates to appoint an official agent and report on their election expenses. Political parties were not yet recognized under the legislation. Interestingly, this Act was based on Britain's

*Corrupt Practices Act* of 1854, which was later amended in 1883 to introduce statutory spending limits for candidates in Britain.<sup>11</sup>

A few decades later, Parliament enacted legislation (1908) banning corporate contributions to political parties, which was extended to unions in 1920. This early ban is said to have been the result of the 1906 and 1907 federal parliamentary sessions, which were “the most scandal-ridden on record,”<sup>12</sup> as well as a reaction to a scandal from the United States concerning secret donations by an insurance company to the 1904 Republican presidential campaign. However, since there were neither enforcement mechanisms nor disclosure requirements for parties in the legislation, the prohibition remained ineffective and it was eventually repealed in 1930.

The first major reform of the political finance regime in Canadian federal elections took place in 1974 with the adoption of the *Election Expenses Act*. Observers pointed to a number of factors to explain the conditions that led to the adoption of the first major piece of legislation to control money in elections and to lay the basis of the Canadian egalitarian model. Notably, the rising cost of electoral campaigns is said to have stimulated the debate as early as in the 1930s.<sup>13</sup> The increased spending on television advertising, the use of professional advertising agencies by national parties and the consequent need for ever-increasing amounts of money created widespread concerns among political actors. In addition, from 1972 to 1974, when the Bill on election spending limits was considered and passed by Parliament, the Liberal government was in a minority in the House of Commons and was dependent on the New Democratic Party to adopt laws. Finally, the Watergate revelations in the United States contributed to Canadians being concerned about political financing in elections.<sup>14</sup>

The highlights of the 1974 legislation, which are still in effect today, included election expense limits for candidates and registered parties, as well as the requirement for both parties and candidates to disclose their expenditures and revenues. The Act also introduced the first components of public financing through tax credits and the partial reimbursement of certain election expenses.<sup>15</sup> The legislation further included rules for allocating broadcasting time to political parties for advertising purposes. In addition, the 1974 legislation provided for the appointment of an independent commissioner responsible for ensuring the enforcement of election financing rules. In 1977, the Commissioner’s responsibilities were extended to cover all the provisions of the *Canada Elections Act*, under the title of Commissioner of Canada Elections, an independent officer. The Commissioner is appointed, and may be removed, by the Chief Electoral Officer (i.e. head of Elections Canada), an independent officer of Parliament who is responsible for administering federal elections.

---

<sup>11</sup> Leslie Seidle reported in the Royal Commission’s report, p. 329, see note 7.

<sup>12</sup> The Barbeau Committee on Election Expenses (Canada), 1966, quoted in the Royal Commission’s report, p. 445, see note 7.

<sup>13</sup> The Royal Commission’s report, p. 329, see note 7.

<sup>14</sup> Griner, Steven and Zovatto, Daniel (eds.), *The Delicate Balance Between Political Equity and Freedom of Expression: Political Party and Campaign Financing in Canada and the United States*, Organization of American States (OAS) and International IDEA: Washington D.C. and Stockholm, Sweden, 2005, p. 66.

<sup>15</sup> In an article of 2000, Dima Amr and Rainer Lisowski argue that without the introduction of tax credits and reimbursements, Canadian parties would have hardly been able to face rising costs of political publicity: p. 71 in Nassmacher, Karl-Heinz (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance*, see note 2.

The need for the reforms was expressed quite clearly at the time by Mr. David Lewis, then leader of the New Democratic Party, which supported the Liberal minority government in the House of Commons: “Elections ought not to be the property of those who can get the largest amount of money ... at election time.” In 1992, the Royal Commission on Electoral Reform and Party Financing completed its work and endorsed all the provisions of the 1974 legislation. The *Election Expenses Act* was described in these terms: “Although not without shortcomings in promoting fairness, this framework placed Canada at the leading edge of western democratic political systems in securing the rights and freedoms of Canadians as they applied to electoral democracy.”<sup>16</sup> The Commission’s findings revealed that electoral spending limits constitute a significant instrument for promoting accessibility and fairness in the electoral process and that Canadians were strongly in favour of retaining those limits. The Commission even recommended extending coverage of the *Canada Elections Act* to the nomination and leadership contestants of a political party, as well as to its electoral district associations (i.e. the local constituencies of the parties).<sup>17</sup> This legislation – and the principles of transparency, accountability, accessibility and fairness on which it is based – has remained central to the political finance regime in Canada.

That said, the legal framework regulating elections has continued to evolve since 1974. In 1982, the *Canadian Charter of Rights and Freedoms* was adopted and enshrined the right to vote and to be a candidate, as well as the right to freedoms of expression, association and assembly. Since its inception, the Charter has had a major impact on electoral legislation, most notably through various court decisions that have either questioned certain key aspects of the election financing provisions or have rendered them inoperative. Some of these aspects include benefits associated with being a candidate, party registration, the allocation of broadcasting time to parties and regulations for advertising by third parties.

The Charter provides opportunities for interest groups and individuals to launch legal challenge against the provisions of Canadian electoral legislation. While a number of cases have already been decided by the Supreme Court of Canada, two cases are noteworthy with regard to the political financing regime: the former because it triggered legislative changes that increased the accessibility of the electoral system; and the latter because it validated in clear terms the egalitarian model and its underlying principles.

*Figueroa v. Canada (Attorney General)*<sup>18</sup> concerned a challenge to the registration requirements of parties under the *Canada Elections Act* and the benefits associated with registration status, including the right of candidates endorsed by a registered party to issue tax receipts for donations. In June 2003, the Supreme Court of Canada ruled that provisions in the legislation requiring a party to nominate at least 50 candidates in a general election in order to register or to maintain registration status infringed section 3 of the Charter and could not be justified under section 1 as a reasonable limit in a free and democratic society. Parliament responded with new legislation which rendered the electoral process more accessible to small parties. These new rules include a definition of what constitutes a “political party” for the purpose of federal elections, and reduce the registration requirements for parties, most notably by providing that a political

---

<sup>16</sup> The Royal Commission’s report, p. 326, see note 7.

<sup>17</sup> The Royal Commission’s report, pp. 252 and 285, see note 7.

<sup>18</sup> [2003] 1 S.C.R. 912.

party needs to endorse only one candidate in order to be eligible for registration. The new legislation is subject to a provision requiring a mandatory review by Parliament before May 2008.

*Harper v. Canada (Attorney General)*<sup>19</sup> concerned election advertising spending limits by electoral participants other than candidates and parties. In 2000, the electoral legislation was amended to provide for the registration of “third parties” (i.e. individuals or groups other than parties or candidates) participating in the electoral process, and to limit the amount of money that such groups may spend on election advertising. While some lower courts<sup>20</sup> had ruled against these types of limitations on the basis that they infringed on freedom of expression, the Supreme Court of Canada ruled in 2004 that such spending restrictions passed the test of reasonableness in a free and democratic society, as set out in the Charter.

In both cases, the Supreme Court of Canada took a broad and purposive approach to the democratic rights of the Charter and validated the underlying principles of the electoral legislation. In *Figueroa*, the Court determined that the rights in section 3 (i.e. to vote and to run for office) extend to the right of citizens to meaningfully participate in the electoral process and the right of citizens to exercise their votes in an informed manner. In *Harper*, the Court reaffirmed the reasoning in *Figueroa* and validated in clear terms the constitutionality of the Canadian egalitarian model:

“62. The Court’s conception of electoral fairness as reflected in the foregoing principles is consistent with the egalitarian model of elections adopted by Parliament as an essential component of our democratic society. This model is premised on the notion that individuals should have an equal opportunity to participate in the electoral process. Under this model, wealth is the main obstacle to equal participation.

Thus, the egalitarian model promotes an electoral process that requires the wealthy to be prevented from controlling the electoral process to the detriment of others with less economic power. The state can equalize participation in the electoral process in two ways; [...]. First, the State can provide a voice to those who might otherwise not be heard. The Act does so by reimbursing candidates and political parties and by providing broadcast time to political parties. Second, the State can restrict the voices which dominate the political discourse so that others may be heard as well. In Canada, electoral regulation has focussed on the latter by regulating electoral spending through comprehensive election finance provisions. These provisions seek to create a level playing field for those who wish to engage in the electoral discourse. This, in turn, enables voters to be better informed; no one voice is overwhelmed by another. In contrast, the libertarian model of elections favours an electoral process subject to as few restrictions as possible. [...]

63. [...] The regime is clearly structured on the egalitarian model of elections. The overarching objective of the regime is to promote electoral fairness by creating equality in the political discourse. The regime promotes the equal dissemination of points of

---

<sup>19</sup> [2004] S.C.C. 33.

<sup>20</sup> For instance, see decision on the same case by the Alberta Court of Appeal (2002), 223 D.L.R. (4<sup>th</sup>) 275.

view by limiting the election advertising of third parties who, as this Court has recognized, are important and influential participants in the electoral process. The advancement of equality and fairness in elections ultimately encourages public confidence in the electoral system. Thus, broadly speaking, the third party election advertising regime is consistent with an egalitarian conception of elections.”<sup>21</sup>

In 2004 and 2006, two other major sets of reforms were introduced to control political contributions. These reforms were mainly driven by the so-called sponsorship scandal or “Adscam” which was made public to Canadians in a series of reports in 2002, 2004 and 2006. The operation of the advertising program, which was originally established as an effort to raise the profile of the Canadian government in the province of Quebec following the 1995 provincial referendum on independence, was later found to have been used for illegal and corrupt activities involving the use of public funds to finance the Liberal Party of Canada (Quebec).<sup>22</sup>

The series of new provisions that came into force, first in 2004 under a Liberal government and then in 2006 under a Conservative government, include some important amendments such as: limits on contributions to political entities; a complete ban on contributions from corporations and unions; quarterly allowances to eligible parties based on parties’ electoral success in the previous election; and the requirement for parties to file quarterly reports with Elections Canada. Registration and reporting requirements were extended to electoral district associations, nomination contestants and leadership contestants, and a limit was imposed on the campaign expenses of nomination contestants.

Further amendments are currently being considered by Parliament, including stricter rules on political loans. At the same time, these reforms address evolving public expectations. Whereas in the 1970s controlling election spending was the primary objective, today controlling political contributions is also a major concern. For instance, the 2000 Canadian Election Study found that 63% of Canadians believed there should be a limit on how much money people could give to candidates and parties. Of particular concern was the perception of undue influence that large political donations might bring to elected officials.

## **2.2 The current Canadian regulatory regime: five key components**

This paper now turns to the current political finance regime for federal elections in Canada. The Canadian model is based on five key components: registration; reporting and publication of information; limits on election expenses and contributions; public funding; and enforcement. Together, these five components respond to the objectives of fostering an informed vote, ensuring public confidence in the system, a level playing field and effective enforcement, and establishing controls over improper and undue influence.

### *i. Registration*

---

<sup>21</sup> Par. 62 and 63, see note 18.

<sup>22</sup> Canada. Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission), “Fact Finding Report.” *Who is Responsible?* (Vol. 1). Ottawa: The Commission, 2005.

The electoral legislation provides for the registration with Elections Canada of all political entities. The comprehensiveness of the registration system in Canada stems from the belief that if any player is left outside the regime, it can lead to gaps through which undisclosed and unaccountable money will flow and will find its way into the electoral process.

Political parties may voluntarily register with Elections Canada. By doing so, parties are entitled to various benefits, such as the right to have the party name printed on the ballot next to the name of their candidates. They also gain financial benefits such as the ability to provide tax receipts for contributions, partial reimbursement of election expenses (50%), and an entitlement to free and paid broadcasting time. Registered parties are eligible to receive quarterly public allowances when they obtain a certain threshold of votes, locally (5%) or nationally (2%). Registration also brings with it statutory responsibilities, such as the obligation to disclose contributions and expenses and to produce financial returns. Similar obligations apply to local district associations of registered parties.

Candidates entering the electoral competition must register locally with returning officers and have access to similar benefits and obligations as registered parties. These include the right to accept contributions and give tax receipts, and partial reimbursement (60%) of election expenses, including such expenses as auditing services for their financial reports.

To different degrees, registration requirements also apply to the nomination contestants and leadership contestants of parties, as well as to third parties who spend \$500 or more on election advertising.

*ii. Reporting and publication of information*

To ensure transparency and accountability, the reporting of expenses and contributions, including the detail, timing and frequency for submitting financial returns, is regulated in Canada, along with acceptable means of making these reports available to the public. The aim has been to ensure that reporting is ongoing or cyclical and easy, but also complete and detailed enough to provide sufficient information. All reports required by law are made available to the public. Reporting must be timely and allow for easy access by the media, political entities, members of the academic community and the public. To this end, technology has become a significant tool, allowing for electronic filing and reporting on the Web. Information extracted from the political entities' financial reports since 1993, in particular parties and candidates, are made available on the Web by Elections Canada for public scrutiny.

In order to prevent the manipulation of financial information, and to ensure that the reports are intelligible to the public, standards and formats have been set by which political entities must abide. It is also required that reporting be audited or performed by an official or financial agent, in accordance with recognized accounting standards and in compliance with legislation. This is an important control feature. It also provides for a segregation of duties and ensures an independent review of a political entity's books and records.

*iii. Limits on election expenses and contributions*

To ensure accessibility and fairness through an effective level playing field and to address the problem of undue influence, whether real or apparent, limits have been established on expenses and contributions. The limits are set out in the Act and are meant to be reasonable in the sense that sufficient money can be spent so as not to prevent political entities from competing at the national and the electoral district levels.<sup>23</sup> A definition of what is considered to be an election expense is included in the Act. The formula chosen addresses the need for political parties to compete and inform voters, and to create an effective level playing field. Limits on election expenses are based on the number of registered electors.

As mentioned earlier, limits on expenses incurred by third parties for advertising during an election are also imposed.<sup>24</sup>

Since 2006, only individuals who are Canadian citizens or permanent residents may make contributions to registered parties, their registered electoral district associations, leadership and nomination contestants, or to any candidate. Limits on contributions to regulate the flow of money have also been established to a level that ensures that no one can buy influence.<sup>25</sup> Contributions can be monetary or non-monetary, the latter capped at the commercial value of the service or good provided to a political entity.

*iv. Public funding*

Providing public funding to support the activities of parties and candidates may respond to various needs: to sustain and protect the functioning of the party system in electoral democracy despite the ever-rising costs of electoral campaigns; to ensure transparency and accountability by limiting the influence of private money and thereby preventing illegal and corrupt practices; and to promote accessibility and fairness by supporting electoral participation initiatives and activities.

Canadians accepted the idea of public subsidies for political activities, and the balance between private and public funding has greatly evolved over the years. Shifting from a system largely based on private funding from large corporations<sup>26</sup>, the first measures of public funding were introduced in the form of tax credits and partial election expense reimbursements.<sup>27</sup> The law remained unchanged until 2004, the most recent reform of the political finance regime. That year, Bill C-24 introduced the first limits on contributions along with a scheme of allowances to registered political parties. The levels of public funds through tax credits and the reimbursement of election expenses were also raised at the same time. The amount of public funding takes into account limits on contributions and election expenses, and is also based on matching funding from private sources.

---

<sup>23</sup> For instance, a party who had presented candidates in all 308 electoral districts at the 2006 general election could have spent up to \$18, 278, 278.64.

<sup>24</sup> The inflation-indexed limits for the 2006 general election were \$3,441 per electoral district and no more than \$172,050 nationally.

<sup>25</sup> For instance, the inflation-indexed limit for 2007 is \$1,100 per party and its entities.

<sup>26</sup> Dima Amr and Rainer Lisowski, p. 60, in Nassmacher, Karl-Heinz (ed.), see note 2.

<sup>27</sup> see above *Election Expenses Act* of 1974.

Public funding is direct, in the form of reimbursements of election expenses and allocation of ongoing allowances or subsidies. It is also indirect, through monetary incentives such as tax credits to donors and non-monetary incentives to political entities through the allocation of free broadcasting time and access to electoral products provided by Elections Canada such as electoral maps and lists of electors.

v. *Compliance and enforcement mechanisms*

No political finance regulation can be effective or even viable without enforcement, oversight and intervention measures to deal with non-compliance. Effective and coherent enforcement mechanisms have a deterrent effect on fraud and corruption, and play a significant role in self-compliance and in the efficiency of the entire regulatory regime.

Canada's approach in this respect is consistent with the "British/Anglo-Saxon tradition of legal prevention against 'corrupt and illegal practices' in the electoral process."<sup>28</sup> The federal model proposes a mixture of mechanisms, both to ensure enforcement of the law and to prevent offences from occurring.

The responsibility for enforcing the law lies mainly with the Commissioner of Canada Elections, who has the power to order an investigation into a complaint, either at his own initiative or, in certain circumstances, at the request of the Chief Electoral Officer – for example, if there is reason to believe that an election worker has committed an offence. The Commissioner of Canada Elections is appointed by the Chief Electoral Officer and, therefore, as part of Elections Canada, maintains his independence from the government.

The Commissioner has a range of tools at his disposal, including compliance agreements with offenders or potential offenders, power to seek an injunction from a court to force compliance and the use of "caution letters" where appropriate. Ultimately, he may refer a matter for prosecution to the Director of Public Prosecutions.

The enforcement provisions are clearly set out in the legislation itself. This is required for sound enforcement and may also have a deterrent impact. Knowing that a particular action is a violation and the awareness of the potential consequences can suffice to discourage many from committing that action. Another important aspect of an enforcement regime is the definition of a range of offences, from trivial to severe, and associated penalties. The *Canada Elections Act* defines 298 violations, of which 53 percent apply to political financing, 12 percent to advertising and broadcasting time during elections and 8 percent to political party registration.

In terms of preventing offences, Elections Canada can play a significant role. For certain administration-related acts or omissions, the Act enables the Chief Electoral Officer to apply incentives that encourage political entities to comply with the law. In addition, education and information programs about the rules are communicated to political entities. Training, software tools and legal and administrative support are offered where required, particularly when the rules are amended. Initiatives are also taken to remind political entities of important rules or to announce forthcoming deadlines, always with the objective of encouraging and facilitating self-compliance.

---

<sup>28</sup> Dima Amr and Rainer Lisowski, p. 70, in Nassmacher, Karl-Heinz (ed.), see note 2.

### 3.1 Reflections on lessons learned and potential challenges for the near future

Although Canada is a relatively young country, its electoral legislation has undergone many changes over time. As is the case with democracy itself, an electoral regulatory framework is a work in progress that we are continually striving to improve.

Electoral law must respond to public concerns, especially when trust in the electoral process is at stake. The responsibility to find an appropriate response to electoral law issues lies with State actors, mainly the government and the legislators. It may be that in certain circumstances the appropriate response is not to regulate, while in other circumstances an issue should be resolved by regulating. All these decisions – whether to regulate and if so, to what extent – should be made with the purpose of preserving and strengthening public confidence in the integrity of the electoral process and participation therein. In addition, it should be kept in mind that rules on political financing involve the creation of both benefits and obligations. The obligations should not be so stringent as to make participants opt out, or to prevent new actors from opting in. Obligations must be considered in light of the burdens they impose on any political entity.

The federal Parliament has recently enacted a series of reforms targeting mainly the inflow of money to regulated political entities. These new financial rules will undoubtedly have a significant impact on the functioning of political entities, and there will be a clear need to evaluate their effectiveness and fairness, in particular with regard to contribution limits and public funding. In this respect, Elections Canada has extensive data on party fundraising and expenditures that is available publicly and could be analyzed in greater depth. One concern that may be raised in the present context is the absence of comprehensive studies that would provide the full picture of how politics are financed in Canada, both from public and private sources. At the same time, when one element of the political financing regime is looked at in isolation from other rules regarding access to money, there may be a risk of adopting piecemeal reforms that can impact negatively on the dynamics of the overall regime. Such an approach may create unintended barriers to entry or prevent meaningful participation in the electoral process.

A Bill recently introduced in Parliament provides for stricter rules on political loans. The interaction of these new provisions on loans, should they become law, and other evolving rules such as a complete ban on corporate and union contributions and stricter contribution limits for individuals, as well as other financial rules, may have significant implications for candidates, parties, donors and lenders and their interrelated dynamics.<sup>29</sup> In order to enact regulations that can best enhance public confidence in the integrity of the electoral process while ensuring favourable conditions to electoral participation, it remains important that legislative reform which impacts on political financing consider the application of the financial regulatory framework from a broad perspective.

---

<sup>29</sup> A similar observation was made by the Chief Electoral Officer when he appeared before the Standing Committee on Procedure and House Affairs on May 31, 2007, to discuss Bill C-54, *An Act to Amend the Canada Elections Act (Accountability with respect to loans)*. For further details, see: <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=211509&Lang=1&PARLSES=391&JNT=0&COM=10465>.

A related area of concern may be the situation of economically marginalized groups vis-à-vis the political finance regime. The conventional wisdom is that the financial situation of certain groups and their lack of access to funding constitute a barrier to their seeking election. Unqualified rules limiting political contributions and loans may have a perverse effect on the electoral participation of some. This is an area where further research is necessary.

As mentioned earlier, the current electoral legislation provides financial benefits for registered parties and candidates through such mechanisms as reimbursement of election expenses, quarterly allowances and apportionment of broadcasting time. In general terms, such benefits are distributed based on past electoral success (i.e. the number of votes received after the minimum threshold has been reached) and current party representation in the House of Commons in terms of seats. These two criteria may raise concerns about potential infringement of section 3 of the Charter as interpreted by the Supreme Court of Canada in *Figueroa* and *Harper*. Notably, small parties successfully challenged in court the threshold requirement for votes received in order to be eligible for quarterly allowances. The government has appealed the lower court decision<sup>30</sup> which declared the requirement unconstitutional and the case is currently pending before the Ontario Court of Appeal. If the decision stands, the threshold will no longer be a requirement for registered parties to receive public allowances.

Another challenge to electoral reform may be the unique nature of political parties. Federal parties in Canada are private entities, each with its own set of internal rules and ways of operating. While it might reasonably be assumed that legislators would be aware of the internal workings of their own parties and would take them into account when developing legislative reforms, there can, at times, be a disconnect between those reforms and the realities of parties. At times, this may force parties to make unintended adjustments to their ways of operating. Such a consequence might have been avoided had the internal workings of parties been sufficiently factored in when reforms were being enacted. The electoral management body can play a valuable role in this regard by taking the initiative to conduct more research and involve parties – both small and established – in policy proposals prior to the introduction of legislative reforms. Also, once legislation is introduced, Parliamentary committees may seize the opportunity to seek the input of all parties before enacting changes.

Finally, the recent development of electronic means for political communication also constitutes an area that needs to be addressed by political financing regulations. Recent elections in established democracies have revealed that the Internet is increasingly consulted for political information (e.g. blogs, YouTube, other websites) and that parties and candidates are increasingly using it to reach out to voters. This new medium has an impact on the dissemination of electoral information and advertising, and the political financing regime should consequently adapt to ensure that the cyberworld also respects and applies the underlying principles of transparency, accountability, accessibility and fairness in the electoral process.

---

<sup>30</sup> *Longley v. Canada (Attorney General)*, 2006 CanLII 36358 (ON. S.C.).

## **Conclusion**

This paper is premised on the paramountcy of citizens' participation and public trust in modern electoral democracy. These two fundamental elements can be preserved and enhanced by a political finance regime which translates and puts into practice the expression of liberty and equality as determined by each society's unique history, culture and values system, and embodies the principles of transparency, accountability, accessibility and fairness.

Canada's federal electoral system has attained a certain degree of sophistication, especially with respect to rules governing political financing, so as to provide for a level playing field for all electoral participants. Furthermore, its egalitarian model has been validated and strengthened by the Supreme Court of Canada's rulings on the constitutionality of its underlying principles and objectives. In this sense, one may say that Canadian society has achieved a certain degree of maturity in balancing the fundamental values of liberty and equality in its electoral system.

Electoral democracy should never be taken for granted. Debates about reforms aimed at improving electoral participation and trust are desirable in order to ensure a vibrant democracy. There is no perfect system, no matter how well designed or resourced it is, and no system should ever be cast in stone. The political environment, public expectations and societal values are constantly evolving, and so should the legislative framework to reflect these changes. An effective and viable political finance regime is one that encourages participation and maintains the trust of the various actors involved, especially the electorate, by finding its own balance between liberty and equality.

