Background Paper **BP-437E**

THE CANADIAN ELECTORAL SYSTEM

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Revised May 2004

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TABLE OF CONTENTS

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INTRODUCTION

This paper briefly reviews the nature and operation of the Canadian electoral system. Obviously, it is possible in a paper such as this only to highlight the principal features of the Canadian electoral system.(1) Electoral law is an extraordinarily complex area, and one that is being constantly changed and fine-tuned. This paper focuses on the existing electoral system and laws.

The federal nature of Canada underlies the country's electoral system as it does so many other aspects of political life. Each province has its own electoral system, and there is a national electoral system for the federal Parliament. Different systems have many similarities, but also significant differences. The focus of this paper will be on the federal or national electoral system.

The main body of Canadian election law is contained in the *Canada Elections Act*, but many other statutes – such as the *Electoral Boundaries Readjustment Act*, the *Broadcasting Act*, the *Income Tax Act*, and the *Criminal Code* – also contain provisions regarding the Canadian electoral process.

BACKGROUND

Canada's current electoral system is the result of cumulative changes which have been taking place since the formation of Canada in 1867. In the early years following Confederation, the administration of elections was a haphazard and highly politicized process. At the time of Confederation, the right to vote was severely limited: only white men could vote,

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(1) For more detailed information on the Canadian electoral system, please see Library of Parliament, "Elections in Canada, 1980-1988," Bibliography No. 178; J. Patrick Boyer, *Election Law in Canada: The Law and Procedure of Federal, Provincial and Territorial Elections*, Butterworths, Toronto, 1987; J. Patrick Boyer, *Money and Message: The Law Governing Election Financing, Broadcasting and Campaigning in Canada*, Butterworths, Toronto, 1983. See also Parliamentary Research Branch, Library of Parliament, *Electoral Rights: Charter of Rights and Freedoms* (CIR 90-5).

and even then they had to satisfy certain property qualifications. Elections were held at different times across the country, and there was no such thing as a secret ballot. As the right to vote was extended and virtually all adult men and later women were enfranchised, public opinion became less tolerant of the previous tradition of electoral partisanship and frequent occurrences of electoral fraud and manipulation. Reform became necessary in order for the system to gain and retain public support and legitimacy.

Since Confederation, in addition to the extension of the franchise or the right to vote, there have been two fundamental developments in the Canadian electoral process: first, the creation of a non-partisan electoral system governed by highly specific procedures; and, second, the regulation of party campaigning as it takes place within the system. The latter is a comparatively recent development.

The Canadian electoral system has been the subject of several studies and reports. In 1992, the four-volume report of the Royal Commission on Electoral Reform and Party Financing (often referred to as the "Lortie Commission," after its chairman, Pierre Lortie) was published. The Chief Electoral Officer also presents reports to Parliament on a regular basis, including recommendations for legislative changes. In 1997-1998, the House of Commons Standing Committee on Procedure and House Affairs conducted a thorough review of the issues and proposals for electoral reform.

In May 2000, Parliament enacted a new *Canada Elections Act*[(2)] which constituted the first full-scale overhaul of federal electoral legislation in almost 30 years. The new legislation was not so much a major departure from the previous law as a fine-tuning and updating of it. In addition, the new Act was an attempt to respond to a number of electoral matters that have been the subject of court decisions in recent years. This new Act has already been amended on several occasions, most notably in 2003 when new electoral finance provisions were introduced.

An electoral system should never be considered as rigid or static; it must continually evolve to meet new circumstances and challenges. Patrick Boyer, a former Member of Parliament, said in a 1989 article, "Over the years this body of law has evolved constantly, with periodic reforms of a major nature, and frequent tinkering amendments to fine-tune some aspect of conducting elections. The big changes come when fresh problems emerge, and after debate a consensus developed about new laws needed to ensure the purity of elections."[(3)]

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(2) See James R. Robertson, *Bill C-2: The Canada Elections Act*, Parliamentary Research Branch, Library of Parliament, Legislative Summary LS-343, March 2000.

(3) J. Patrick Boyer, "The Case for Election Law Reform," *Parliamentary Government*, Vol. 8, Summer 1989, pp. 13-16 (p. 13).

The Canadian electoral system has many positive attributes, and is often used as a model by other countries; yet, there are numerous areas where reform and changes have been urged. In introducing reforms to the electoral system, however, care must be taken. A 1983 article cautioned: "The parliamentary system, despite its long tradition, is a fragile thing. A change in any of its components, such as the electoral system, may transform the whole in an unforeseen manner. This should not exclude a search for better ways to adapt it to a changing society. Parliament must, to a certain degree, remain open to change and deal with it."(4)

THE CHIEF ELECTORAL OFFICER

As noted above, one of the most significant developments in the history of the Canadian political system is that the organizational procedures and procedural rules have been progressively removed from partisan political control and intervention. The system is now administered by a neutral, impartial and independent set of officials, although the laws continue to be passed by politicians.

It is now accepted that election officials must not be seen by the public as closely associated with the government of the day, or as working toward the re-election of the incumbents. In order to establish the system's independence and neutrality, politicians have foregone their previous prerogative of administering or interfering with the electoral machinery to their own advantage. This has reinforced the legitimacy and efficiency of the electoral system.

The *Dominion Elections Act* of 1920 first created the position of Chief Electoral Officer. In 1927, the law was amended so that this individual would be appointed by resolution of the House of Commons, rather than by the government of the day. It was thus recognized that the office needed to have the confidence of all political parties represented in the House of Commons. The Chief Electoral Officer is responsible to Parliament, rather than to the government. Once appointed, the Chief Electoral Officer – who holds office until he or she attains the age of 65 – can only be removed for cause by the Governor General upon a joint address of the House of Commons and the Senate. The procedure is designed to prevent arbitrary removal, and reduce the influence of the government. The salary of the Chief Electoral

(4) Marie Lavoie and Vincent Lemieux, "The Evaluation of Electoral Systems," *Canadian Parliamentary Review*, Winter 1983-84, pp. 2-5 (p. 3).

Officer is also protected, in that it is equal to that of a Federal Court judge and cannot be raised or reduced without legislation. The fact that since 1920 there have been only five chief electoral officers has contributed to continuity and professionalism.

The Office of the Chief Electoral Officer, also known as Elections Canada, is responsible for exercising general direction and supervision over the preparation, administration, and reporting aspects of federal elections and the election expenses provisions of the *Canada Elections Act*. The Office also has responsibility to "enforce, on the part of all election officers, fairness, impartiality and compliance with the provisions of [the] Act." In addition to the overall responsibility for the administration of the electoral process set out under the *Canada Elections Act*, the Chief Electoral Officer has discretionary powers to adapt the process in the light of unusual circumstances.

Obviously, Elections Canada is most busy during election periods. Usually, federal general elections are held approximately every four years, although they can be called at any time. This is particularly true when there is a minority government, i.e., when no single party has a majority in the House of Commons. This can be compared to an electoral system such as that in the United States where elections are held at fixed times. Moreover, a great deal of planning and preparation must be done between elections. Elections Canada also administers by-elections, which are held whenever a vacancy in the House of Commons needs to be filled.

Responsibility for actually conducting an election resides primarily within each constituency, where it is exercised by a hierarchy of officials. These officials swear oaths of impartial conduct upon assuming office and are governed by the detailed provisions and procedures set out in the *Canada Elections Act*. Final responsibility for the administration of an election within each constituency rests with the returning officer. The government appoints a returning officer for each constituency, who holds office as long as he or she is under the age of 65 and meets the requirements of residency within the constituency, competence, and absence of political partisanship, or until the electoral boundaries of the district are altered.

The returning officer in turn appoints an election clerk, who holds office at pleasure and may be authorized to perform certain of the returning officer's duties, as set out in the *Canada Elections Act*. After the election process formally begins, the returning officer appoints a deputy returning officer and poll clerk for each polling station. The appointments are made from lists submitted by the parties who came first and second in the previous election, unless such lists are not available by the deadline or the returning officer refuses on other grounds. Deputy returning officers hold office at the pleasure of the returning officer for the duration of the election.

CALLING ELECTIONS

Constitutionally, elections must be held every five years, although, by tradition, they are usually held at approximately four-year intervals. The process is set in motion when the Prime Minister requests the Governor General, who represents the Queen as the head of state, to dissolve Parliament and to request the issue of writs by the Chief Electoral Officer for an election. The *Canada Elections Act* stipulates that the writ shall not be issued or dated later than the 36th day before polling day, making the minimum length of a federal election 36 days. Until 1997, the minimum election period was 47 days, largely because of the requirement for a door-to-door enumeration to be conducted during the campaign. It was argued that this was too lengthy a period, particularly in view of modern communications and technology, and contributed to the expense of federal elections. Although the minimum period has been shortened, it is unlikely that it could be shortened further. Other countries, such as the United Kingdom, have shorter minimum election periods; however, Canada's size probably necessitates a reasonably long campaign to give party leaders an opportunity to visit different regions and constituencies.

It should also be noted that in the United States, where elections are fixed under the Constitution and no campaign period is specified, candidates for the presidency or other major offices can spend a year or more pursuing election. Suggestions have been made in recent years that federal elections be held at fixed intervals, or on fixed dates, to facilitate planning, ensure predictability and remove the discretion and advantage of the governing party. Others argue, however, that such a system would be inconsistent with a parliamentary system and the confidence convention, whereby the government must retain the confidence of a majority of the House of Commons or tender its resignation. Some provinces are experimenting with, or considering, fixed election dates.

The Chief Electoral Officer initiates the election process by sending a Writ of Election to each returning officer. At that point, returning officers must issue a proclamation containing information such as the nomination dates and the polling date. Once the election is called, the *Canada Elections Act* sets out detailed procedures and provisions by:

- determining the dates on which major milestone events in the election are to take place;
- specifying the procedures to be followed with respect to each event; and
- identifying the officials responsible for the necessary actions.

THE RIGHT TO VOTE

The importance of the right to vote cannot be over-estimated. One text expresses it as follows:

> The franchise – the right to vote for one's representative – is the fundamental political right. It produces the most direct verdict by citizens on the performance of those who govern them. It is … "the key stone in the arch of the modern system of political rights in this country."(5)

This is recognized by the constitutionally entrenched right to vote in section 3 of the *Canadian Charter of Rights and Freedoms,* which states that "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

The *Canada Elections Act* sets out the qualifications and disqualifications for voting in federal elections; these combine to establish a virtually universal adult franchise. It is important to appreciate that this is a relatively recent phenomenon and the product of a gradual evolution, including two major changes.

- First, the franchise – after having initially been defined by provincial legislation because of the absence of federal legislation (except during the period 1885 to 1898) – was uniformly defined by federal legislation by 1920.

- Second, a variety of restrictions on the right to vote which were present in the years immediately following Confederation have been loosened or entirely removed. Women, for instance, were given the right to vote in federal elections only in 1918, and Aboriginal Canadians living on reserves in 1960.

Until 1970, the minimum voting age was 21. When it was proposed to lower the voting age to 18 years, concern was expressed in some quarters as to whether 18-year-olds were sufficiently informed or personally mature to vote responsibly. The minimum age at which Canadians may vote is 18 years, a qualification possessed by anyone who becomes 18 on or before the day on which the election is held. (Members of the Canadian Armed Forces who have seen actual service, and are otherwise qualified, need not meet this qualification.)

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(5) J. Patrick Boyer, *Political Rights: The Legal Framework of Elections in Canada,* Butterworths, Toronto, 1981, p. 121.

Only those who hold Canadian citizenship may vote in federal elections. Because of the historical relationship with Great Britain, British subjects were allowed to vote in Canadian elections until the mid-1970s.

The right to vote is restricted to those who maintain normal year-round residency within a given polling division. Although residency normally means "place of … habitation," special provision is made for members of the Canadian Forces and public-service workers, together with their dependants, who may be absent from their place of residence for extended periods by virtue of their jobs. Special provision is also made for those who move during an election, employees or students temporarily residing in a location, transient residents, and Members of Parliament. Concerns have been expressed that groups such as the homeless and the poor may be effectively disenfranchised by the current rules for residency. A provision now permits persons having no other residence to be considered resident in such temporary quarters as shelters or hostels that provide food, lodging or other social services to the homeless.

Except for the removal of the right to vote from British citizens, the trend in Canada has been towards extending the franchise and the removal of voting restrictions. The passage of the *Canadian Charter of Rights and Freedoms* in 1982 encouraged this trend. As noted above, the Charter guarantees the right of every Canadian citizen to vote in federal elections, subject only "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

The *Canada Elections Act* also sets out categories of persons disqualified from voting. These include certain officials, such as the Chief Electoral Officer, the Assistant Chief Electoral Officer, and returning officers (except in the case of tie votes). Judges and mentally disabled persons were also barred from voting but, after a series of court decisions struck down such provisions, the law was amended in 1993 to remove these prohibitions. Prisoners also used to be prohibited from voting; in 1993, this prohibition was restricted to those inmates serving sentences of two years or more. The entire prohibition has since been struck down by the courts.

One of the other areas of concern about the right to vote involves people who are absent from their homes on the day of the election. The *Canada Elections Act* provides for advance polls to be held and mail-in ("special") ballots; this permits voting by persons involved in the election, or who are unable to vote on election day.

Since 1993, Canadian citizens who reside outside Canada have been permitted to vote in federal elections provided they have been absent for five years or less and plan to return

to Canada. This is in line with the practice in many other countries – including the United States, Germany, Australia, France and Great Britain – which make provision for non-resident citizens to vote in national elections. Previously in Canada, only certain non-resident citizens – such as armed forces personnel and public-service workers who are posted abroad – were permitted to vote in federal elections.

ENUMERATION

A permanent voters' list for federal elections has been in place since 1997. Previously, a door-to-door enumeration of voters was conducted within the first days after an election was called. Although this led to very accurate lists, it was very time-consuming, labour-intensive and expensive. A register of electors, on the other hand, is an automated data base of qualified voters, containing each voter's name, mailing address, municipal address, electoral district, and date of birth; the list is compiled and maintained on a permanent basis.

Canadians are very mobile, and about 20% of the information on the Register of Electors changes every year. The Register is updated with information from existing federal and provincial data bases. By complying with certain procedures and requirements, eligible voters are able to vote, even if they are not on the voters' lists.

The Register of Electors is used to produce the preliminary list of voters for federal elections, by-elections, and referendums. These lists are made available earlier than was possible previously, and include those voters whose names are on the international or Canadian Forces register. This system also allows electoral lists to be shared among federal, provincial, territorial, municipal, and school board jurisdictions, thereby minimizing duplication and increasing cost savings. Elections Canada has entered into agreements with various provincial authorities for the sharing of information.

POLITICAL PARTIES

Political parties are an integral part of the Canadian political process. Legally and theoretically in a parliamentary system, however, voters cast their ballots for individual candidates. They are not electing a particular government, party or leader; rather, they are voting for a person to represent their constituency in Parliament. The reality, though, is quite different: most serious candidates belong to political parties, and generally only representatives of the dominant parties are elected.

In Great Britain, the development of a party system began in the middle of the 18th century, and became fully developed in the period between 1832 and 1867. In Canada, similar party politics emerged in the 1840s. Originally, political parties were informal entities, and it is only relatively recently that they have acquired legal status.(6)

Until 1970, election ballots listed the names of candidates, their addresses and occupations. There was no provision for identifying their political affiliations, and, therefore, a voter had to know before entering the voting booth which candidate represented a particular party. There was great scope for voter confusion – both inadvertent and sometimes consciously planned by candidates; for instance, candidates with similar names sometimes ran in the same riding.

The law was changed in 1970 to allow the political affiliation of candidates to be shown on the ballots and to delete the address and occupation of candidates. Not only did these changes assist voters, but they accorded better with the reality of modern political campaigns. The changes coincided with the enactment of legislation which, for the first time, formally recognized political parties.

The legal recognition and registration of political parties is a relatively recent development in Canada. Registration under the *Canada Elections Act* is not mandatory, but does bring significant benefits and opportunities; with these rights come corresponding duties and obligations, including the requirement to provide certain reports.

The *Canada Elections Act* was amended in June 2001 to allow the political affiliation of candidates who do not belong to registered parties to be indicated on the ballot, provided the group nominates at least 12 candidates. The Ontario Court of Appeal had

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(6) See John C. Courtney, “Recognition of Canadian Political Parties in Parliament and in Law,” *Canadian Journal of Political Science*, Vol. XI, No. 1, March 1978.

previously ruled that it was unconstitutional to prohibit all political affiliations from being shown on ballots except those of registered parties. Registration, however, remains the key to being eligible for other benefits accruing to parties. These benefits include:

- entitlement to issue tax receipts;
- reimbursement of election expenses;
- access to copies of the voters lists on an annual basis; and
- access to broadcasting time.

Until recently, a political party was required to nominate at least 50 candidates in a general election in order to qualify as a registered party. In June 2003, however, the Supreme Court of Canada ruled in *Figueroa* v. *Canada (Attorney General)*(7) that the 50-candidate threshold was unconstitutional under section 3 of the *Canadian Charter of Rights and Freedoms*. The Court felt that a threshold higher than one candidate diminished citizens' rights to play a meaningful role in the electoral process and to make an informed choice. The Supreme Court suspended the decision for 12 months, until 27 June 2004, to allow Parliament the opportunity to amend the legislation. A bill to address the decision was tabled in the House of Commons in October 2003, but died on the *Order Paper* when the session was prorogued in November 2003. It was reintroduced and passed in the next session, and received Royal Assent on 14 May 2004.(8)

The bill amends the requirements for application for registration. Under the provisions of the bill, an eligible party becomes a registered party if it has at least one candidate whose nomination has been confirmed for an election and its application to become registered was made at least 60 days before the issue of a writ for that election. The bill includes, for the first time, a definition of a "political party" as an organization "one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election."(9) It provides for the name of the political party that has endorsed

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(7) [2003] 1 SCC 37.

(8) See Megan Furi, *Bill C-3: An Act to amend the Canada Elections Act and the Income Tax Act*, Legislative Summary LS-461, Parliamentary Research Branch, Library of Parliament, April 2004.

(9) The *Canada Elections Act* did not previously attempt to define or describe what a political party is. Some provincial jurisdictions in Canada have attempted to define this in statutes, while others make no such attempt. Most jurisdictions have opted for a procedural definition, i.e., an organization is a political party if it has been registered in compliance with the procedures set out in the relevant legislation.

a candidate to be listed on the ballot under the name of the candidate, if the party is a registered party. This amendment eliminates the requirement that a party have candidates in a minimum of 12 electoral districts in a general election. Parties that fail to run a single candidate in a general election, however, will be automatically deregistered.

The bill contains a sunset provision, which states that its amendments will cease to have effect two years after the day on which the bill comes into force or, if Parliament is not in session, 90 days after the beginning of the next session. This section was added at the committee stage in the House of Commons in order to accommodate some of the concerns raised by witnesses before the Committee. The issue of party registration will, therefore, need to be revisited by Parliament.

ELECTION EXPENSES

The 1974 *Election Expenses Act* established a new regime for the financing of federal elections in Canada. It was a response to a growing concern over the political fund-raising and the financing of parties and election campaigns, and the culmination of more than a decade of debate and re-examination of the fundamental principles of Canadian elections. The main purpose of this legislation was to control election spending by both parties and candidates. The Act introduced a degree of financial equivalency among different candidates and provided assistance to parties and candidates. In return, controls and requirements were imposed in order to enable public scrutiny and to encourage greater public confidence in the political and electoral process. Premised on the notion that the financing of elections ought to be open to public scrutiny, the Act:

- imposed spending limits;
- provided for the disclosure of campaign expenses and contributions;
- introduced a system of partial public financing;
- regulated political broadcasting by parties and candidates; and
- implemented various other changes designed to equalize the political process.

The *Election Expenses Act* extended the system of party registration that had been established in 1970. This was required in order to permit the other aspects of the legislation to operate properly. The Act imposed a limitation on the amount of money that registered political parties and candidates were able to spend. This limitation is based on the number of electors on the preliminary list of voters.

In January 2003, the government introduced Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (Political Financing). This initiative implemented a commitment by then Prime Minister Jean Chrétien in June 2002 that the government would strengthen legislation governing the financing of political parties and candidates, in order to enhance the fairness and transparency of the electoral system. The bill represents the most significant reform to Canada's electoral and campaign finance laws since the 1974 law.

In recent years, various issues had emerged with respect to campaign and electoral finance. Concerns were expressed about the unregulated expenses of nomination and leadership campaigns, and also about the continued influence of major donors, including corporations, unions and other entities. Proposals had been put forward to limit donations or the sources of donations. Since 1977, the Province of Quebec, and, since 2000, the Province of Manitoba, have had very stringent laws regarding political donations, and it had been urged, by the Lortie Commission in 1991 and others, that similar rules should be enacted at the federal level.

The bill, which received Royal Assent on 19 June 2003, has several general components or themes:

- A ban (with minor exceptions) on political donations by corporations and unions: Bill C-24 introduced a requirement that only individuals (citizens and permanent residents) may make financial contributions to registered parties, candidates, constituency associations, and leadership and nomination contestants. Corporations, trade unions and associations are prohibited from making such contributions, although they may contribute small amounts – a maximum or total of $1,000 collectively – to a party's candidates, nomination contestants and electoral district associations, and to a candidate for an election who is not the candidate for a registered party.

- A limitation on individual contributions: contributions by individuals are subject to an annual limit of $5,000 in total to each registered party and its electoral district associations, candidates and nomination contestants.

- The registration of constituency associations, with reporting requirements: under the bill, constituency associations – referred to as "electoral district associations" – are required to

register with Elections Canada. They are required to provide certain information, and to report annually.

- The extension of regulation to nomination and leadership campaigns: the bill extends spending limits to nomination contestants, setting the limit at 20% of the amount to which the candidate in that riding was subject during the last election period. With respect to leadership campaigns, they are required to be registered with Elections Canada, and to comply with various reporting and auditing requirements. No spending limits are imposed on such campaigns, but a $5,000 annual limit for individuals' contributions to leadership campaigns is introduced.

- Enhanced public financing of the political system, particularly at the level of political parties: Bill C-24 contains significant public financing measures, in part to compensate parties for the removal of corporate and union donations. The rate of reimbursement of electoral expenses for parties is raised from 22½% to 50%. The bill also makes provision for registered parties with a minimum level of electoral support to receive an annual allowance in the amount of $1.75 per vote received by the party in the previous general election. As an incentive to encourage contributions by individuals, the bill also amended the *Income Tax Act* to double the amount of an individual's political donation that is eligible for a 75% tax credit, from $200 to $400, and to increase accordingly each other bracket of the tax credit, to a maximum tax credit of $650 for political donations of $1,275 or more.

CONSTITUENCIES AND REDISTRIBUTION

Each of the 308 Members of the Canadian House of Commons – including the Prime Minister and cabinet ministers, the Leader of the Opposition, and the Speaker – is elected to represent a particular constituency. As noted above, elections in Canada are organized on a constituency basis and are largely administered at this level.

In the early years of Confederation, boundary lines were drawn by the government, with the result that boundaries were usually set in order to maximize the electoral success of the governing party. The *Representation Act* of 1903 placed the readjustment of constituency boundaries in the hands of a bipartisan committee of the House of Commons, although the governing party continued to exercise a greater influence through its majority on the committee. In any event, the drawing of such boundaries by politicians ensured that partisan considerations continued to be paramount. There were no guidelines or principles to guide the deliberations, which were frequently acrimonious. Changes to this process were not effected until the early 1960s.

The *Electoral Boundaries Readjustment Act*, which was first passed in 1964, now governs the establishment of constituency boundaries in Canada. This legislation ensures that

the drawing of electoral boundaries is in the hands of formally non-partisan bodies operating under specified general principles. The Act provides for the appointment of Electoral Boundaries Commissions in each province. Each Commission consists of a chairperson, who is normally a provincial court judge appointed by the chief justice of the province, and two residents of the province appointed by the Speaker of the House of Commons.

Following the completion of each decennial census, the Chief Electoral Officer calculates the total number of House of Commons seats and their distribution among the provinces and territories, according to a constitutionally entrenched formula. This information is forwarded to each Electoral Boundaries Commission, which then has one year in which to recommend constituency boundaries. The process of preparing new electoral boundaries must include publicizing the proposed boundaries, and at least one public hearing at which interested persons may make representations to the Commission in response to its proposals.

When each Commission's report is completed, it is forwarded to the Chief Electoral Officer and the Speaker of the House of Commons. Members of Parliament can register objections to a report; if ten Members or more do so, the objection is required to be debated in a committee of the House of Commons within 30 days. Copies of the objection and related House debates are then forwarded to the appropriate Electoral Boundaries Commission for consideration. Following such consideration, or in the absence of objection, a draft representation order specifying the number of Members to be elected by the province and the boundaries of each constituency is proclaimed. There is a one-year delay before the new boundaries come into effect, as returning officers need to be appointed and party constituency organizations reconstituted in all ridings where there are changes in the boundaries.

The *Electoral Boundaries Readjustment Act* specifies that a Commission is to draw constituency boundaries in such a way that the population of each constituency is as close as possible to the quotient obtained by dividing the provincial population of eligible voters by the number of seats allocated to the province. No constituency is permitted to have a population smaller than 75% of this figure, or greater than 125%. Commissions may vary the size of constituencies within this range on the basis of "special geographic considerations," such as the density of population in various regions of the province, and the accessibility, size and shape of such regions. Variations may also be allowed if "any special community or diversity of interests of the inhabitants of various regions" appears to warrant them.

There are a number of issues with respect to constituency boundaries in Canada.

- First, as noted above, the redistribution is conducted on the basis of decennial censuses. The process, however, is so lengthy that a great deal of time can elapse between the census and the coming into force of new boundaries. For example, the redistribution on the basis of the 1981 census was not in effect until the 1988 federal general election. During the intervening period, a great deal of population movement and change had occurred; this is particularly likely to happen on the outskirts of major cities and in certain regions of economic growth or decay. The result is that the new boundaries may be out of date by the time they are instituted.

- Another issue involves the distinction between rural and urban areas. In the 19th century, it became accepted that urban constituencies could have a greater population than rural constituencies. There is some merit to treating the two differently: urban ridings are much more compact, whereas rural ridings usually have much sparser populations, making communication and transportation more difficult. The permissible variations in constituency populations, designed largely to allow this policy to continue, are open to abuse and can give a disproportionate voice to rural areas and concerns. Challenges to such policies were launched, and some courts struck down provincial attempts to favour rural constituencies. The Supreme Court of Canada, however, has upheld legislation that permitted reasonable differences in constituency populations.

- For some time there has been a certain amount of dissatisfaction with the electoral boundary readjustment process, which has never proceeded without some delay or controversy. Part of the problem is that the process involves change and challenges to the *status quo*. At the same time, efforts to revise the system are invariably tinged with political considerations. A 1995 effort to modify the electoral boundaries readjustment system ultimately failed. As a result, the process remains the same. In 2004, a parliamentary committee tabled a report outlining its concerns with the system, and recommending changes.(10)

ELECTORAL CANDIDACY

The qualifications and disqualifications for candidacy in a federal election are contained in the *Canada Elections Act*. They are closely related to the provisions that govern the right to vote. With some exceptions, anyone who is entitled to vote can also become a candidate for election; a candidate must be at least 18 years of age, a citizen of Canada, and have established residency somewhere in the country (although not necessarily in the constituency of his or her candidacy). The disqualifications applying to electors also generally apply to candidates.

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(10) See House of Commons, Standing Committee on Procedure and House Affairs, Sixteenth Report, 2 April 2004.

The *Canada Elections Act* also sets out a series of disqualifications that apply exclusively to electoral candidacy. Previously, persons involved in a contractual relationship with the Crown were disqualified, but this restriction was removed in 1993. Current disqualifications include the following:

- A person guilty of any corrupt electoral practice or of an illegal electoral practice is disqualified for five years after being found guilty.
- Persons who were candidates in a previous election and failed to file an auditor's report or statement of election expenses forfeit the right to run again.
- Certain officials (sheriffs, clerks of the peace, county or judicial district crown attorneys) are also disqualified, as are members of provincial legislatures and territorial councils.

The prohibitions against persons who have been found guilty of election offences could perhaps be challenged under the Charter. In one case, a provincial legislator who had been convicted of a criminal offence in connection with his official duties was evicted from office. An effort to bar him from running in the ensuing by-election, however, was struck down by the courts.(11)

The formal process of nomination requires the preparation of a nomination paper containing the name and address of the candidate, the candidate's agent (legally responsible for the receipt, disbursement and account of expenses), and the candidate's auditor. The paper must contain a statement, signed under oath by the candidate, of consent to the nomination. It must also be signed by 100 electors accredited within the electoral district (50 electors for more remote electoral districts), and each signature must be witnessed by a qualified person. The nomination paper, accompanied by a deposit of $1,000, must be submitted to the returning officer, on or by the 28th day before polling day. The deposit is returned when the candidate files the required auditor's report and statement of election expenses.

The selection of candidates by registered parties is governed by the nomination procedures of each party. Local nominating conventions may be open to all members of the party, may be closed to all except delegates hand-picked by the party executive, or may fall somewhere in between these two extremes. Expenses incurred by persons seeking a nomination, which can be substantial, are generally not considered to be election expenses, nor are donations entitled to a tax deduction.

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(11) *MacLean* v. *Attorney General of Nova Scotia* (1987), 35 D.L.R. (4th) 306 (N.S.S.C.).

Where the candidate has the endorsement of a registered political party, an instrument stating this and signed by the leader of the party (or a delegated person) must be submitted with the nomination papers. In the absence of this consent, the candidate will be listed on the ballot as an "independent" or without any designation. This procedure is, thus, tied to the designation of affiliation of candidates, and is designed to ensure that only officially sanctioned candidates run under the party name.

ADVERTISING AND BROADCASTING DURING AN ELECTION CAMPAIGN

During an election campaign, party election broadcasting is restricted with respect to its date and place of origin. The *Canada Elections Act* prohibits registered parties from promoting or opposing any registered party or candidate by broadcasting or publishing between the date of the issue of the writs and the 29th day before polling or on polling day until the close of voting. This prohibition specifically includes government publications. It is also an offence for any person to use broadcasting media outside Canada for campaigning.

An attempt is made, within the electoral process, to ensure that the parties have fair access to the major media. The Act stipulates that every broadcaster must make available 6.5 hours of time, between the 29th and 2nd days before polling, for purchase by the registered parties. The Broadcasting Arbitrator – an official appointed by the Chief Electoral Officer – is responsible for allocating the time among the parties. In the absence of an agreement among the various registered political parties, the Broadcasting Arbitrator is required to allocate the time in proportion to the strength of the various parties in the previous election, subject to considerations of fairness and the public interest. The resulting allocation determines the amount of broadcasting time that the parties may purchase during a campaign. Newly registered parties are each entitled to purchase up to six minutes of time, up to a total of 39 minutes per broadcaster.

In addition to regulating the buying of time by parties, the Act provides them with access to free time. During the phase of the election in which parties are allowed to advertise, networks are required to make available a certain amount of free time in accordance with rules set out in the legislation.

The *Canada Elections Act* also safeguards party access to the media by stipulating that broadcasting time to which the parties are entitled must be sold to them at regular rates. This requirement also applies to advertising space. The fund-raising success of political parties and candidates, as well as the limits on election expenses, influences whether the parties are able to take advantage of the advertising opportunities to which they are entitled.

The issue of third-party advertising remains ongoing and highly contentious. Third parties are individuals and groups who are neither candidates nor political parties. In recent years, they have played an increasing role in election campaigns, often incurring advertising and other expenditures to oppose or support individual candidates or parties. The argument is that, because spending by political parties and candidates is carefully regulated to ensure fairness and a level playing field, other groups and individuals should also be subject to certain limits and restrictions. At the other extreme is the position that any restrictions on third parties constitute an unwarranted infringement of freedom of expression and other rights under the *Canadian Charter of Rights and Freedoms*. There have been successful court challenges to the previous attempts to impose restrictions on third parties in the *Canada Elections Act*, although these cases were not appealed to the Supreme Court of Canada. In a 1998 ruling on Quebec's referendum legislation, however, the Supreme Court found that restrictions on third-party spending could be constitutionally justified. Assuming that a blanket prohibition on such spending is rejected, the difficulty is in determining what kinds of restrictions to impose, be they spending limits (and, if so, the reasonableness of the limits), registration requirements, or requirements for reporting and disclosure of contributions and/or expenses.

The 2000 *Canada Elections Act* introduced a new system of regulation foron third-party advertising during election periods, including spending limits and reporting and disclosure requirements. Such individuals or groups would be required to register with the Chief Electoral Officer if they incurred election advertising expenses totalling $500 or more. A third party would not be allowed to incur total election advertising expenses of more than $150,000 in relation to a general election, and of this amount, no more than $3,000 could be incurred to promote or oppose the election of one or more candidates in an individual constituency. Registered third parties are required to keep records of all contributions during an election period and authorize all election advertising. Within four months of the election, they are required to file election advertising reports containing a list of election advertising expenses, the time and place of the broadcast or publication of the advertisements, and details of contributions received in the period beginning six months before the issue of the writ and ending on polling day; the names and addresses of persons contributing more than $200 would have to be included. The Chief Electoral Officer is required to publish the names and addresses of third parties as they were registered, together with the election advertising reports, within one year of the issue of the writ.

These provisions regarding third-party spending restrictions and regulations were challenged in the courts, but were upheld by the Supreme Court of Canada in a decision rendered on 18 May 2004.

SELECTED ASPECTS OF CANADIAN ELECTION CAMPAIGNS

Although advertising is regulated during federal election campaigns, no effort is made to regulate or monitor news coverage, or the editorial content of broadcasters or print media. However, the Canadian Radio-television and Telecommunications Commission (CRTC) – which regulates broadcasting in Canada – has promulgated rules and guidelines for election coverage, and can receive complaints regarding uneven or biased coverage. With respect to print media, there are fewer opportunities for redress, although most provinces have press councils that can investigate complaints.

The leaders of the major political parties generally engage in televised debates at some point during the election campaign. There is usually at least one debate in each of the two official languages. However, there is no statutory requirement that such debates be held, although some commentators have suggested that they should be made mandatory. Such debates are a relatively recent development, and the format tends to change depending on the negotiations between the parties and the television networks, the parties' relative strengths and weaknesses, and other factors. Smaller and "fringe" parties have often objected to their exclusion from such debates. Many debates among candidates are also scheduled at the constituency level.

Except for prohibiting the release of opinion poll results on election day, there are generally no restrictions or prohibitions on the conduct of opinion polls during an election campaign or on the publishing of their results. Opinion polls are quite common, with many newspapers and television networks sponsoring several during the election period. The Act requires the disclosure of certain information about such opinion polls, such as who paid for them and what questions were asked. An earlier prohibition on polls during the last weekend of an electoral campaign was struck down by the Supreme Court of Canada.

The rights of public-sector workers to run and otherwise participate in elections has been the subject of much discussion and several court cases. On the one hand is the desire for a permanent non-partisan public service that does not become involved in political campaigns; on the other, there are the rights of individual public-sector workers, as citizens, to participate in elections in the same ways as other Canadians.

The holding of meetings and rallies as an expression of freedom of association and assembly is not subject to general restrictions other than those intended to protect public order, such as the prohibitions in the Canadian *Criminal Code* against unlawful assembly or riot. The *Criminal Code* also contains general safeguards such as the prohibition against having weapons at a public meeting. It is an offence under the *Canada Elections Act* to act or conspire to act in a disorderly manner intended to interfere with an election meeting, during the period beginning with the issue of the writs and ending the day after polling day.

In addition to the prohibition against interfering with public meetings, the *Canada Elections Act* contains a series of provisions relating to such corrupt or illegal practices as:

- distributing unauthorized campaign literature;
- tampering with authorized campaign posters or advertisements;
- incurring campaign expenses without authorization;
- falsely reporting campaign expenses;
- spending by registered parties on behalf of particular candidates (other than the leader);
- committing the act of bribery; and
- corruptly inducing voters.

The Commissioner of Elections Canada is specifically responsible for enforcing the *Canada Elections Act*, and the conviction of a candidate or candidate's agent can result in the nullification of an election. In addition to specific penalties, the Act provides that any person found guilty of a corrupt or illegal practice shall be barred from sitting in the House of Commons or voting for five years.

The previous *Canada Elections Act* could be enforced only through the criminal courts. Under the 2000 Act, however, the Commissioner of Elections Canada has the authority to resolve contraventions through remedial rather than punitive measures in appropriate cases. As an alternative to prosecution, the Commissioner has the authority to conclude a compliance agreement with anyone the Commissioner believes on reasonable grounds has committed or will commit an offence. Such agreements are based on the voluntary agreement of the violator to comply with the requirements of the Act, and to publish the agreement. The Commissioner may also seek an injunction from a court to put an immediate end to an activity or situation that, in the Commissioner's opinion, could compromise the fairness of an election campaign.

ELECTION DAY PROCEDURES

The *Canada Elections Act* contains detailed provisions with respect to the actual conduct of voting on election day. This includes the location of polling stations, the officials to oversee and administer the votes, the procedure whereby voters get their ballots, and the boxes in which the ballots are placed. Until 1993, there was a prohibition in the Act against the sale of intoxicating beverages while the polls are open; this was a holdover from the unruly early days of elections, when it was common to "bribe" voters by buying them a drink.

There are five different time zones in Canada and, until 1996, polls opened and closed on the basis of local time; thus, results were often being announced for ridings in the eastern part of the country well before the polls had closed in the west. Amendments to the *Canada Elections Act* in December 1996 provided that the polls will be open for voting for 12 consecutive hours, but the times vary by time zone. The hours of voting (local time) are now as follows:

- 8:30 a.m. to 8:30 p.m. in the Newfoundland and Atlantic time zones (Newfoundland, Nova Scotia, Prince Edward Island, and New Brunswick);
- 9:30 a.m. to 9:30 p.m. in the Eastern time zone (Quebec and Ontario);
- 8:30 a.m. to 8:30 p.m. in the Central time zone (Manitoba, parts of Saskatchewan, and Nunavut);
- 7:30 a.m. to 7:30 p.m. in the Mountain time zone (parts of Saskatchewan, Alberta, and the Northwest Territories); and
- 7:00 a.m. to 7:00 p.m. in the Pacific time zone (British Columbia and the Yukon).

The *Canada Elections Act* stipulates that no person shall publicize any election results in an election district before the closing of the polls in that district.

Polls are open during the day, and employees must be given at least three consecutive hours off work in order to vote. Elections in Canada are held on a Monday (unless it is a statutory holiday), rather than on weekends or holidays as in many European jurisdictions. Unlike the case in some countries, such as Australia, voting is not mandatory in Canada. The participation rate in federal general elections is traditionally around 75%, but has been declining in recent elections.

Provision is made for advance polls. There are also special voting procedures for persons voting outside the area where they are normally resident.

Voters cast their ballot for only one candidate. The Canadian electoral system is of the “first past the post” or “single member plurality” type. In other words, the candidate who gets the most votes in a particular constituency is the winner. There is no requirement that the winner get an absolute majority of the votes cast, or of the votes capable of being cast. The result has been that in some cases governments are elected with only a small percentage of the popular vote, while, in other cases, parties get a substantial percentage of the popular vote but few parliamentary seats. Various proposals have been put forward with respect to different types of electoral systems – including some form of proportional representation, ranking of candidates, and so forth.

The *Canada Elections Act* sets out extensive provisions for the compiling and reporting of election results. The fact that these procedures are specific and comprehensive, in combination with the fact that the vote count is open to scrutiny and objections by representatives of the contending parties, militates against bias or the appearance of bias.

Immediately after the closing of the poll, and in the view of the poll clerk and designated party agents or candidates, the deputy returning officer of each polling division must carry out several counts in order to ascertain that all the ballot papers received from the Chief Electoral Officer are accounted for. The number of votes given each candidate is then tallied by the deputy returning officer, with the attending party representative having the opportunity to examine each ballot and to keep score on supplied tally sheets.

The Act provides specific instructions for the rejection of ballots. Unmarked, double-marked, improperly marked ballots, or ballots that identify the elector must be rejected, as must any ballot not supplied by the deputy returning officer. The Act also specifies instructions for problematical cases, such as ballots which the deputy returning officer accidentally neglected to sign prior to the vote.

If objections are raised by candidates or their representatives, the deputy returning officer is required to record these for future reference, and make a decision so that the count can proceed. Following the completion of the count, an official statement of the results of the poll must be prepared. Copies of this statement must be enclosed in the ballot box for use by the returning officer, delivered to the representative of each candidate, and mailed to each candidate. The ballot boxes, sealed and containing the ballots and other materials, must be conveyed to the returning officer.

The official count is conducted by the returning officer. If the official count indicates that two candidates have received an equal number of votes, or are separated by 1/1000 of the total vote, the returning officer is required to apply to a district court judge for an official recount. Other persons can also apply for a judicial recount within four days of the announcement of the official results. All candidates can apply for the reimbursement of the costs incurred with respect to such a recount.

Six days after the official count or immediately following a judicial recount, the returning officer must formally declare elected the candidate with the highest number of votes. The returning officer is then required to return the writ of election, along with a post-election report and other documentation, to the Chief Electoral Officer, who publicizes the results, provides Parliament with a report on the conduct of the election, and retains the forwarded documents in case the election is contested.

The Act allows challenges to elections in certain circumstances. In extreme cases, the results of an election can be nullified, but in most cases nowadays this does not happen.

CONCLUSION

As the above summary illustrates, the Canadian electoral system is very complex. The system is closely regulated, and virtually every aspect of it is the subject of detailed provisions. The system has many interrelated features: they can be based on historical precedent, administrative convenience, or philosophical conviction. The Canadian electoral system is not static; it is continually evolving in response to new challenges and circumstances.

The Canadian electoral system is characterized as non-partisan and is administered in a neutral way by the Chief Electoral Officer. The activities of political parties are closely regulated in order to ensure fairness. Most Canadians are entitled to vote in federal elections but certain groups are disqualified under provisions which, like other aspects of the electoral system, are increasingly being challenged under the *Canadian Charter of Rights and Freedoms*.