

POLITICAL FINANCING AND CAMPAIGN REGULATION

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TABLE OF CONTENTS

	Page
BACKGROUND	1
LIMITS IMPOSED ON CONTRIBUTIONS FOR POLITICAL ACTIVITIES	2
LIMITS IMPOSED ON PARTICIPANTS' SPENDING FOR POLITICAL ACTIVITIES	3
PUBLIC FUNDING OF POLITICAL PARTIES AND CANDIDATES	4
THE REGULATION OF CAMPAIGNS	4
A. Leadership Campaigns	4
B. Nomination Campaigns	5
LIMITS ON THIRD-PARTY ELECTION ADVERTISING	6
ENFORCEMENT OF POLITICAL FINANCING RULES	6
RECENT REFORMS RECOMMENDED BY THE CHIEF ELECTORAL OFFICER	6
A. Enhanced Examination and Inquiry Powers for the Chief Electoral Officer	7
B. Reports of Volunteer Labour	7
C. Extension of Limitation Period for Prosecution of Offences	7
PARTY POSITIONS ON POLITICAL FINANCING REFORMS	8



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BACKGROUND

The financing of political campaigns has been an important electoral reform issue since at least the early 1970s. It has been the subject of much debate and examination, and prompted a number of studies and reviews by various bodies, including the Royal Commission on Electoral Reform and Party Financing (Lortie Commission). The issue has been driven largely by a growing concern over the cost of election campaigns, campaign spending by political parties and candidates, and the fundraising activities of political parties and candidates. Underlying the push for reform has also been a desire to introduce some degree of financial fairness among candidates and parties.

The 1974 *Election Expenses Act* introduced significant changes to the way election financing is regulated and effectively established a new regime for the financing of federal elections. Greater controls were imposed on election spending, notably in the areas of: spending limits; disclosure of campaign expenses; partial public financing of election campaigns; regulated political broadcasting;⁽¹⁾ and tax deductibility of electoral contributions to encourage individuals to contribute to parties and candidates.

The work of the Lortie Commission and the various House of Commons committees that were established to study electoral reform laid the foundation for further legislative reforms. A number of important changes to election financing were implemented with the major overhaul of the *Canada Elections Act* brought about by Bill C-2, introduced in the House of Commons on 14 October 1999. The most significant changes to political financing and campaign regulation, however, came about with Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), which took effect on 1 January 2004.⁽²⁾

(1) J. R. Robertson, *The Canadian Electoral System*, BP-437E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, May 2004, p. 9.

(2) J. R. Robertson, *Bill C-24: An Act to amend the Canada Elections Act and the Income Tax Act (Political Financing)*, LS-448E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 June 2003.

Reforms to the regime governing the financing of political campaigns will continue to be of interest in the 39th Parliament. A number of political parties have already signalled their intention to seek a variety of reforms, including imposing a limit of \$1,000 on the amount that individuals may contribute in an election campaign, and banning union and corporate contributions.

LIMITS IMPOSED ON CONTRIBUTIONS FOR POLITICAL ACTIVITIES

Individuals (Canadian citizens and permanent residents) may make financial contributions to registered parties, candidates, constituency associations, and leadership and nomination contestants (*Canada Elections Act*, section 404). These individuals may contribute a maximum (section 405):

- \$5,000 in any calendar year to a particular registered political party and its constituency associations, candidates and nomination contestants, collectively;
- \$5,000 in total in a particular election to a candidate who is not the candidate of a registered political party; and
- \$5,000 in total to leadership contestants in a particular leadership contest.

Electoral candidates and nomination contestants of a registered party, as well as party leadership candidates, may contribute an additional \$5,000 of their own funds to their own campaigns or nomination contests. The \$5,000 limit also applies to contributions by candidates who are not candidates of a registered political party to their own campaigns.

Unions and corporations are no longer permitted to make political contributions to registered political parties and leadership contestants. They may, however, make modest contributions to candidates, constituency associations and nomination contestants as follows (section 404.1):

- a maximum of \$1,000 in any calendar year to the constituency associations, candidates and nomination contestants of a particular registered political party, collectively; and
- a maximum of \$1,000 in a particular election to a candidate who is not the candidate of a registered political party.

Unions that do not hold bargaining rights for employees in Canada, corporations not carrying on business in Canada, Crown corporations, and corporations receiving more than 50% of their funding from the Government of Canada are not permitted to make any contributions even at the reduced level.

Contributions include donations of money, goods and services. A candidate's or nomination contestant's own funds used in an election or nomination contest are considered to be contributions. Party membership fees are not considered contributions. The contribution limits prescribed above in the *Canada Elections Act* are adjusted annually to take account of inflation.

LIMITS IMPOSED ON PARTICIPANTS' SPENDING FOR POLITICAL ACTIVITIES

Limits on spending by *political parties* during an election are determined by multiplying \$0.70 by the number of names on the registered list of electors for constituencies in which the party has endorsed a candidate (*Canada Elections Act*, section 422).

Limits on spending by a *candidate* in an election are: \$2.07 for each of the first 15,000 electors in the constituency; \$1.04 for each of the next 10,000 electors; and \$0.52 for each of the remaining electors. This amount is increased if the number of electors per square kilometre of a constituency is less than 10 (section 441).

Limits on spending by *nomination contestants* are 20% of the spending limit established for electoral candidates, not including some personal expenses such as travel and living expenses (section 478.14).

No spending limits are imposed on *leadership candidates*. Candidates are required, however, to provide to Elections Canada: a statement of leadership campaign expenses; disclosure of the terms of all financial loans and the name of the lender; the name and address of each contributor who contributes more than \$200; and a declaration of the total amount of contributions (section 435.3). Candidates are also required to register with Elections Canada in order to accept contributions or incur expenses (section 435.05).

PUBLIC FUNDING OF POLITICAL PARTIES AND CANDIDATES

Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), also increased and extended the level of public financing of political parties and candidates.

Parties are entitled to reimbursement of 50% of their electoral expenses provided that candidates endorsed by the party received at least 2% of valid votes cast in an election or 5% of valid votes cast in constituencies in which the party endorsed a candidate (section 435).

Individual *candidates* are also entitled to reimbursement of electoral expenses if they receive 10% or more of the valid votes cast. The maximum amount that may be reimbursed is the lesser of 60% of the candidate's paid election and personal expenses, or 60% of the maximum the candidate is allowed to spend in an election under section 441(3) of the *Canada Elections Act* (section 464).

Political parties are entitled to an annual allowance of \$1.75 per vote received by the party in the previous election, provided that candidates endorsed by the party received at least 2% of the valid votes cast in that election or 5% of valid votes cast in the constituencies in which the party endorsed a candidate. The \$1.75 allowance per vote is paid in quarterly instalments of \$0.4375 per vote and is adjusted annually for inflation (section 435.01).

Amendments to the *Income Tax Act* now provide increased incentives for individuals to contribute to political parties and candidates. These amendments double the amount of an individual's contribution that is eligible for the 75% tax credit from \$200 to \$400. The other tax brackets of the tax credit were increased accordingly, resulting in a maximum tax credit of \$650 for donations of \$1,275 or more.

THE REGULATION OF CAMPAIGNS

A. Leadership Campaigns

Rules for the conduct of leadership campaigns have been in force since 1 January 2004 (Part 18, Division 3.1, of the *Canada Elections Act*). Prior to this date, campaigns were unregulated.

Once a leadership campaign is called by a registered party, the party must notify Elections Canada. Candidates are deemed to be candidates upon acceptance of a contribution or the incurring of a campaign expense, at which time they are required to register with Elections Canada. Candidates are required to file regular reports on the amounts and sources of donations (section 435.31), including: one report covering the period that begins on the first day of the contest and ends four weeks before the conclusion of the contest; and, one report for each of the three weeks leading up to the leadership contest. Six months following the leadership contest, candidates must submit a more complete statement to the Chief Electoral Officer (section 435.3(6)).

Candidates must appoint an auditor at the time of registration. They must also submit an audited report if they spend or receive more than \$5,000 (section 435.33). Campaign agents and financial agents must also be appointed by each candidate. The financial returns of all candidates are published.

B. Nomination Campaigns

Prior to Bill C-24, nomination contests were unregulated. As of 1 January 2004, nomination contests are subject to special rules provided for in the *Canada Elections Act* (Part 18, Division 5).

Within 30 days after the date on which a nomination contest is held, the constituency association must report the holding of the contest to Elections Canada (section 478.02). A nomination contestant is deemed to be a contestant upon acceptance of a contribution or the incurring of an expense (section 478.03). Nomination contestants must appoint a financial agent to accept contributions and incur expenses. Contestants must report contributions and expenses to Elections Canada if contributions or expenses exceed \$1,000 (section 478.23). An auditor must be appointed if the contestant spends or receives contributions in excess of \$10,000.

The reporting obligations arise after the completion of the nomination contest (unlike leadership campaigns, in which the candidates must provide reports during the campaign). Nomination contestants must file a financial return, if required, within four months after the completion of the nomination contest. If the nomination contest occurs during an election period, the return may be filed within four months after the election day.

LIMITS ON THIRD-PARTY ELECTION ADVERTISING

A third party is defined as an individual or a group that is neither a candidate nor a political party. Third parties play an increasingly significant role in election campaigns by supporting or opposing, through advertising or other expenditures, individual candidates or parties.

Third parties may not incur more than \$150,000 in total election advertising expenses. Of that amount, no more than \$3,000 may be spent on supporting or opposing the election of one or more candidates in an individual constituency. With respect to a party leader, the \$3,000 spending limit applies only to his or her candidacy in a particular constituency. These amounts are adjusted for inflation.

These limits were challenged as an infringement of the right to free speech in the *Charter of Rights and Freedoms*. The Supreme Court of Canada in *Harper v. Canada (Attorney General)*, however, in a majority judgment, upheld the challenged provisions on the basis that they promoted electoral fairness.⁽³⁾

ENFORCEMENT OF POLITICAL FINANCING RULES

The *Canada Elections Act* prescribes a long list of offences for breach of political financing rules, including circumventing or conspiring to circumvent the rules that limit political donations, failing to report a contribution or an expense, and spending in excess of the prescribed limits (section 497).

There is a limitation period on the time within which a prosecution for an offence may be initiated: 18 months from the date on which the offence came to light, with an absolute limit of seven years from the occurrence of the offence (section 514(1)).

RECENT REFORMS RECOMMENDED BY THE CHIEF ELECTORAL OFFICER

In his report on the 38th General Election, tabled in the House of Commons on 29 September 2005, the Chief Electoral Officer made a series of recommendations to amend the *Canada Elections Act*.⁽⁴⁾ Some of those recommendations are highlighted below.

(3) [2004] 1 S.C.R. 827.

(4) Elections Canada, *Completing the Cycle of Electoral Reforms: Recommendations from the Chief Electoral Officer on the 38th General Election*, Ottawa, 29 September 2005.

A. Enhanced Examination and Inquiry Powers for the Chief Electoral Officer

The *Canada Elections Act* grants the Chief Electoral Officer only limited verification powers over candidate and nomination contestant returns and no effective review powers over the returns of registered parties, registered constituency associations, leadership contestants or third parties. The Chief Electoral Officer seeks statutory authority to conduct audits and reviews of the returns of all political entities that are subject to the Act. The powers sought are extensive and include:

- Power to examine any document that relates or should relate to the information that is or should be in the records of the political entity or its election return.
- Power to compel a political entity to provide any document or additional information.
- Power to enter premises and compel the occupant to provide required information or answer questions. Entry into a dwelling should be done only on consent or by *ex parte* warrant issued by a judge.
- Power to compel any person who is not a political entity subject to the Act to provide any information or document, with prior judicial authorization.

B. Reports of Volunteer Labour

Allegations were made at the Commission of Inquiry into the Sponsorship Program and Advertising Activities that a registered party benefited from the work of full-time volunteers who were on the payroll of an outside organization while the volunteer work was being provided to the party. This work constitutes a contribution to the party made by the organization employing the individual. The Chief Electoral Officer recommends amending the Act to require registered political parties who receive an annual allowance under section 435.01 of the Act to submit a statement of volunteer labour provided to the party as part of its annual financial report to Elections Canada. Parties receiving an annual allowance are those parties who received at least 2% of the national vote or 5% of the vote in the constituencies in which they endorsed a candidate in the most recent general election.

C. Extension of Limitation Period for Prosecution of Offences

Allegations made at the Commission of Inquiry into the Sponsorship Program and Advertising Activities concerning breaches of the financial reporting obligations under the *Canada Elections Act* were the impetus for the recommendation to extend the limitation period

for commencing a prosecution under the Act from the current seven years to ten years. The Chief Electoral Officer maintains in his report that the current limitation renders him incapable of pursuing allegations of the kind made during the Commission of Inquiry, which go back to dates outside the limitation period.

Despite the fact that some of the harms to which the Chief Electoral Officer's recommendations are directed came to light during the Commission of Inquiry's hearings, Justice Gomery did not make any recommendations on electoral financing reform. Similarly, following the tabling of the Chief Electoral Officer's report in the House of Commons and his subsequent appearances before the Standing Committee on Procedure and House Affairs in October and November 2005, there has been no response from Parliament or the government to date. This was likely due to the dissolution of Parliament in November 2006.

PARTY POSITIONS ON POLITICAL FINANCING REFORMS

A number of political parties included electoral reforms in their 2006 election campaign platforms, some of which address political financing. The Conservative Party of Canada has proposed, among other things, extending to ten years the limitation period within which prosecutions of offences under the Act may be initiated. In addition, it has proposed limiting individual contributions to political parties or candidates to \$1,000. It has also proposed a prohibition on contributions to political parties, riding associations and candidates by corporations, unions and other organizations.

The New Democratic Party proposed strict, but unspecified, spending limits on party leadership contests. The Green Party proposed limiting individual contributions to \$1,000, and imposing an outright ban on union and corporate contributions.

Neither the Liberal Party of Canada nor the Bloc Québécois addressed political financing in their election platforms.