Legislative Summary **LS-461E**

BILL C-3: AN ACT TO AMEND THE CANADA ELECTIONS ACT AND THE INCOME TAX ACT

Megan Furi
Law and Government Division

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LEGISLATIVE HISTORY OF BILL C-3

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	10 February 2004	First Reading:	
Referred to Committee:	18 February 2004	Second Reading:	
Committee Report:	12 March 2004	Committee Report:	
Report Stage and Second Reading:	26 March 2004	Report Stage:	
Third Reading:	26 March 2004	Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BACKGROUND

Bill C-3, An Act to amend the Canada Elections Act and the Income Tax Act, was introduced in the House of Commons by the Leader of the Government in the House, the Hon. Jacques Saada, P.C., M.P., and received first reading on 10 February 2004.(1)

The bill had originally been introduced in the House of Commons as Bill C-51 in the 2nd session of the 37th Parliament on 2 October 2003 by the then Leader of the Government in the House, the Hon. Don Boudria, P.C., M.P. It did not receive second reading before Parliament was prorogued on 12 November 2003.

The bill has two main objectives:

- party registration and accountability; and
- anti-abuse measures.

Bill C-3 was introduced in response to the decision of the Supreme Court of Canada in *Figueroa* v. *Canada (Attorney General)*, 2003 SCC 37. Miguel Figueroa is the leader of the Communist Party of Canada, which was founded in 1921, and had been registered as a party under the *Canada Elections Act* since party registration began in 1974. In the 1993 federal general election, however, the party lost its status as a registered party, and all of the associated

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) By a motion adopted on 10 February 2004, the House of Commons provided for the reintroduction in the 3rd session of government bills that had not received royal assent during the previous session and that died on the *Order Paper* when Parliament was prorogued on 12 November 2003. The bills could be reinstated at the same stage in the legislative process as they had reached when the 2nd session was prorogued. Bill C-3 is the reinstated version of Bill C-51, which died on the *Order Paper*.

benefits, because it failed to nominate at least 50 candidates. As a consequence of deregistration, the party was forced to liquidate its assets, pay all its debts, and remit the outstanding balance to the Chief Electoral Officer. Several other parties were deregistered at the same time, and for the same reason.

Mr. Figueroa, on behalf of the members of the Communist Party of Canada, commenced an action against the Attorney General seeking a declaration that several provisions of the *Canada Elections Act* infringed various provisions of the *Canadian Charter of Rights and Freedoms* and were, therefore, of no force and effect. The original decision was rendered on 10 March 1999 by Madame Justice Molloy of the Ontario Court of Justice (General Division). She held that the requirement that a party must nominate at least 50 candidates in order to be a registered political party in federal elections violated section 3[(2)] of the Charter and could not be saved by section 1. She ordered that the relevant provisions be amended by changing the word "fifty" to "two." She also struck down the prohibition against identifying on the ballot the party affiliation of candidates who were not endorsed by a registered political party as contrary to section 3.

The Attorney General appealed this judgment and, in August 2000, the Ontario Court of Appeal delivered its decision. Writing for the unanimous Court, Mr. Justice Doherty held that the purpose underlying the right to stand for election in section 3 of the Charter was effective representation. Political parties enhance effective representation by: structuring voter choice; providing a vehicle for public participation in politics; and giving the voter an opportunity to be involved in the process of choosing the government of the country. The judge noted that these roles require a significant level of involvement in the electoral process. Some meaningful level of participation is, therefore, properly a prerequisite condition to eligibility for the benefits available to registered parties, and the number of candidates is a legitimate means of measuring that participation. Although reasonable people might differ on the specific measure or number, the Court found that the 50-candidate requirement was within the bounds of reasonableness. It also rejected Mr. Figueroa's arguments that the 50-candidate requirement infringed sections 15 (equality rights) and 2(d) (freedom of association) of the Charter.

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(2) Section 3 of the *Canadian Charter of Rights and Freedoms* provides as follows:

> 3. 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.

Mr. Justice Doherty, however, went on to hold that the sections of the *Canada Elections Act* which provided that only registered parties may have party affiliation listed on the ballot violate the right to vote in section 3 and are not justifiable under section 1 of the Charter. The right to vote contains an informational component, and the listing of party affiliation on the ballot is an important piece of information for voters. Although the provisions of the Act seek to avoid confusing or misleading voters, it did not follow that, because a political party nominated 49 or fewer candidates, the listing of party affiliation on the ballot would mislead or confuse the voters. In fact, for smaller parties, it may provide the only information that the voter has about that particular candidate. These provisions of the Act were, therefore, declared invalid, but that declaration was suspended for six months to allow Parliament a reasonable opportunity to amend the legislation. (Because of the dissolution of Parliament for the 27 November 2000 federal general election, Parliament did not sit very much during the six months.)[(3)]

The decision was appealed to the Supreme Court of Canada. In June 2003, the Supreme Court ruled that the 50-candidate threshold was unconstitutional under section 3 of the Charter. Writing for the majority, Mr. Justice Iacobucci explained that the 50-candidate minimum diminished a citizen's right to play a meaningful role in the electoral process by denying political parties who run less than 50 candidates the right to issue tax receipts, the right to receive unspent election funds and the right to have the party affiliation listed on the ballot.

The Court ruled that withholding the right to issue tax receipts and retain unspent election funds from candidates of parties that have not met the 50-candidate threshold undermines the right of citizens to meaningful participation in the electoral process. The Court reasoned that the candidate threshold infringes section 3 "by decreasing the capacity of members and supporters of the disadvantaged parties to introduce ideas and opinions into the open dialogue and debate that the electoral process engenders."[(4)] Furthermore, the Court ruled that withholding the right to list party affiliations on ballots also infringes on section 3 because it undermines the right of citizens to make an informed choice. The Supreme Court suspended the decision for twelve months to allow Parliament the opportunity to amend the legislation.

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(3) Legislation was introduced in the 1st session of the 37th Parliament to accommodate this aspect of the decision. For more information, see James R. Robertson, *Bill C-9: Amendments to the Canada Elections Act and Electoral Boundaries Readjustment Act*, LS-392E, Parliamentary Research Branch, Library of Parliament, Ottawa, 9 March 2001.

(4) *Figueroa* v. *Canada (Attorney General)*, 2003 SCC 37, at para. 53.

The legal recognition and registration of political parties is a relatively recent development. Registration was introduced in the early 1970s as part of various changes to Canada's electoral legislation, although the *Canada Elections Act* currently does not attempt to define or describe a political party.

To register, under existing electoral law, a political entity can file an application for registration signed by the leader of the party and containing certain information. The basic requirements are relatively simple to satisfy; for instance, each party is required to have an auditor and a chief agent. Under the Act, the names, addresses, occupations and signatures of 100 electors who are party members must accompany each application; the intent of this requirement is to ensure that the party has a certain minimum level of support. On receipt of the application for registration, the Chief Electoral Officer is required to examine the application and determine whether the party has complied with the requirements for registration. There are certain prohibitions against registration in the Act: for instance, if the name of the party, its abbreviation or a party logo could be confused with that of a party that has already been registered, the application will be refused. If the application is in order, registration will be subject to the following condition: the party must nominate at least 50 candidates in the next general election. Failure to nominate 50 or more candidates in a general election results in mandatory deregistration, even if the party meets all the other requirements of the Act. It should be noted that the requirement is only for a certain number of candidates to be *nominated*, not that they be elected or receive a certain minimum percentage of voter support.

Another key point is that political parties are not required to register under the *Canada Elections Act*, i.e., unregistered political parties can participate in elections. Upon registration, various provisions of the *Canada Elections Act* apply, such as the need for the party to file certain reports. Failure to comply with any of these provisions, or certain others, can lead to deregistration.

Registration, however, does convey significant benefits and opportunities to a party. For example, only registered political parties are entitled to:

- issue tax receipts;
- receive reimbursement of certain election expenses;
- receive airtime on radio and television; and
- receive lists of electors from the Permanent Register of Electors on an annual basis.

Registration also currently gives parties the exclusive right to have their candidates identified – on ballots – as belonging to the party. Until 1970, election ballots listed candidates' name, address and occupation. There was no provision for identifying their political affiliation; therefore, before entering the voting booth, a voter had to know which candidate represented a particular party. There was great scope for voter confusion, both inadvertent and sometimes consciously planned by candidates – for example, where candidates with similar names ran in the same riding. The law was changed in 1970 to allow candidates' political affiliation to be shown on the ballots and to delete their address and occupation. Not only did these changes assist voters, they also accorded better with the reality of modern political campaigns. The changes coincided with the enactment of a new *Canada Elections Act* which, for the first time, formally recognized political parties.

DESCRIPTION AND ANALYSIS

A. Registration and Accountability

Pursuant to the judgment of the Supreme Court of Canada, Bill C-3 changes the registration requirements for political parties. The first clause of Bill C-3 adds the definition of a "political party" to the *Canada Elections Act*. According to the definition, a political party is 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."

Clause 2 amends section 117(2) of the *Canada Elections Act* by stating that the name of the political party that has endorsed the candidate shall 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. The Supreme Court of Canada ruled the minimum requirement unconstitutional. Parties that fail to run a single candidate in a general election, however, will be automatically deregistered.

Clause 3(3) amends the requirements for application for registration. Under the proposed new section 366(2)(i), parties are required to submit the names and addresses of 250 electors and their declarations, in the prescribed form, that they are members of the party and support the party's application for registration.

Under proposed new section 366(2)(j), parties are required to submit with their application a declaration stating that one of the party's fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election. Clause 3(4) permits the Chief Electoral Officer to ask the party leader to provide any relevant information to confirm the purpose of the party.

Clause 4 modifies section 368 of the *Canada Elections Act.* It states that a party becomes eligible for registration once it has at least three officers in addition to its leader and has appointed a chief agent and officer, and the Chief Electoral Officer is satisfied that the information provided under section 366(2) is accurate.

Under proposed section 370, 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. Should an eligible party submit an application after that 60-day period, it will become registered for the next general election, or any by-election that precedes it, provided it satisfies the requirements for registration.

Clause 15 adds to section 384, which deals with the yearly confirmation of registration. It requires that registered and eligible parties provide the Chief Electoral Officer with the names and addresses of 250 electors and their declarations that they are members of the party. Parties must submit this information every third year, beginning in 2007. Each year, the leaders of registered and eligible parties must submit a confirmation that one of the fundamental purposes of the party is as described in section 366(2)(j).

B. Anti-abuse Measures

Bill C-3 protects against abuse of the new registration provisions. For example, it makes it an offence to knowingly make false statements in relation to the registration of a party. Clause 16 states that no political party or party leader shall provide the Chief Electoral Officer with information they know to be false or misleading. According to clause 22(2), if a person is convicted of an offence under the Act that results directly or indirectly in financial benefit, the court may order the person to pay to the Receiver General an amount that is not more than the financial benefit. Should a registered party, its chief agent or registered agent or one of its officers be convicted of an offence relating to providing false or misleading information, clause 22(3) grants the courts the power to order deregistration and the liquidation of the party's assets.

Clause 17 protects against the solicitation or receipt of a contribution on behalf of a registered party, registered association or candidate if the contribution would be transferred to a person or entity other than the registered party, candidate, leadership contestant or electoral district association. This provision defends against a political party falsely created as a front to feed money elsewhere.

The bill also contains provisions regarding deregistration. Proposed new section 385.1(1) states that a party will be deregistered if it fails to endorse a candidate in a general election. A party could also be deregistered if the Chief Electoral Officer is not satisfied that a registered party is in compliance with the minimum membership condition or the stipulation that a party must have three officers in addition to the leader.

Clause 23 amends section 521 of the *Canada Elections Act* by adding rules regarding judicial deregistration. If there are reasonable grounds to suspect that a registered party does not have participation in public affairs – identified as endorsing and supporting at least one candidate in an election – as a fundamental purpose, the party will be notified. If the party fails to show that participation in public affairs is one of its fundamental purposes, and a court is satisfied that the purpose of participating in public affairs is not met, the court shall direct the Chief Electoral Officer to deregister the party, which may include the liquidation of assets. The court's decision will be based on factors relevant to determining the party's purpose, including the party's constitution, political program, annual report to members, the nature and extent of its activities, its use of funds, and whether the party is a non-profit entity.

Clause 25 ensures that any political party that has an application for deregistration pending is prohibited from issuing a tax receipt unless the application is withdrawn or dismissed.

DISCUSSION

In the *Figueroa* decision, the Supreme Court of Canada made it clear that the 50-candidate threshold infringes on section 3 of the *Charter of Rights and Freedoms* by denying candidates and their supporters the opportunity for meaningful participation. Mr. Justice Iacobucci, writing for the majority, explained that while section 3 grants only a right to vote and to run for office, it was necessary to look beyond the words of the section and adopt a broad interpretive approach. The majority of the Court decided that the purpose of section 3 is, in fact, effective representation and should be understood as meaning that each citizen has the right to play a meaningful role in the electoral process, rather than meaning the election of a particular form of government.

Mr. Justice LeBel, writing for the minority, agreed that the 50-candidate threshold violated an individual's right to meaningful participation. He also noted that competing in elections to gain a position in the legislature is one of the main functions of political parties. Although he did not offer justification for maintaining a requirement to nominate a large number of candidates, he concluded that:

> A requirement of nominating at least one candidate, and perhaps more, in order to qualify for registration as a party would not raise any serious constitutional concerns. … Nominating candidates and competing in the electoral process is fundamental to the nature of parties as opposed to other kinds of political associations, such as interest groups.(5)

During the debate on Bill C-51, the Hon. Don Boudria explained that the bill was meant to strike an appropriate balance between fairness to parties and the need to preserve the integrity of the electoral system. The registration requirements are meant to ensure that registered parties are genuine participants in the process. The main issue raised by the opposition parties was the failure of the government to act on the 50-candidate threshold until prompted by the Supreme Court decision and the effect of the candidate threshold on fringe parties.

(5) *Figueroa* v. *Canada (Attorney General)*, 2003 SCC 37, at para. 149.