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Études électorales

Political Financing and the Control of Election Expenses in Québec - Past and Present

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Foreword

In April 1978, the last provisions of the Act to govern the financing of political parties came into force. Passed unanimously a few months earlier by the members of the National Assembly after a wide public debate, this Act established an original, integrated system for the financing of political parties and the control of election expenses. The basic principles underlying the Act were transparency and equity. The Act's objectives were to allow electors alone to contribute to the financing of political parties, to encourage small contributions at the grass roots, to encourage the cooperation of the parties, and finally to vest the Director General of Financing of Political Parties with a dual role of control and information.

On the 25th anniversary of the coming into force of the Act, the Chief Electoral Officer has decided to publish this study on political financing and the control of election expenses. By tracing the development of Québec's legislation in this regard from past to present, this work is intended to build awareness of the Act and to publicize its rules, values and principles.

Introduction

The first elections in the province of Québec were held in 1792. Over the subsequent two centuries, the electoral system underwent many transformations. One of the most noteworthy reforms was undoubtedly the passage of the Act to govern the financing of political parties and to amend the Election Act in 1977.

In Québec and elsewhere, jurisdictions did acquire democractic electoral principles effortlessly. From the beginning of the 19th century to the 1960s, voting disruptions, vote purchasing and generous donations to political parties in exchange for promises of rewards were commonplace.

In order to improve election practices, the governments of the various jurisdictions, including the Government of Québec, passed legislations that ranged from more to less stringent over the years. This improvement process was characterized by a series of advances and setbacks, culminating in Québec with the Act to govern the financing of political parties and to amend the Election Act.

By establishing strict rules regarding election expenses and political-party financing, this Act represented a key contribution to the democratization of Québec's electoral system. A quarter of a century after the Act was passed, it is important to recall the history, the content and the effects of legislation whose principles still constitute one of the foundations of our electoral system.

This study first outlines the principal historical milestones that have marked Québec's political-financing legislation. Secondly, it describes the provisions and rules that are currently in effect.

Thirdly, the study deals with the municipal component of the legislation, in particular the similarities and differences between the Election Act and the Act respecting elections and referendums in municipalities.

The fourth chapter describes the recently adopted simplified school-board election system that provides for the election of councils of commissioners.

The issue of political financing during referendums is covered in the fifth chapter. The specific characteristics of the referendum system are described, in particular the umbrella committees and the rules pertaining to private intervenors.

Chapter six describes the coercitive component of the Act. The powers of the Chief Electoral Officer, the most frequent offences, the penalties imposed on offenders, as well as legislative challenges are covered.

The next chapter reports on political financing from 1978 to present day. In particular, statistics on popular-contribution trends and government allocations to political parties are provided.

The eighth and final chapter provides an overview of political financing in Canada and abroad, attesting that Québec's system of political financing and control of election expenses is among the most rigorous in the world.

1 History of Political-Party Financing and the Control of Election Expenses in Québec

1.1 From the beginnings of parliamentarism to the 1960s

The citizens of Québec voted for the first time in 1792. The parliamentary system of the day, inherited from Great Britain, was the same as the system currently in effect. In this free-election system, the financial issue arose quickly and acutely—first because elections were held at considerable expense and second because members of the National Assembly received no salary. Electors began to make contributions to pay the salaries of their future members, but these subscriptions were made at the great risk of corruption.

From 1792 to 1875, party financing was not regulated, the right to vote was regulated to a slight extent and abuses were legion. Legal provisions did not protect against intimidation, embezzlement and violence. During the first half of the 19th century, voting was oral and public—hardly ensuring free exercise of the vote by electors. In the absence of control, the names of Judas Iscariot and Julius Cæsar even appeared on Québec City's electoral lists in 1857. Votes were purchased openly, and candidates readily hired bullies to disrupt the voting process and intimidate electors.

In their work entitled *Les mœurs électorales dans le Québec, de 1791 à nos jours,* the historians Jean and Marcel Hamelin related: [translation] "The barbarianism which characterized the provincial elections encouraged a reprobative movement throughout the province. After the elections of 1871, newspapers, brochures and pastoral letters denounced the electoral corruption. […] The strength of the protests and the very ignominy of the election campaigns led politicians to significantly amend electoral legislation."

Law of 1875

Elections had to become more civilized. And so, the Act "38 Victoria, chapter 7," patterned on the English Corrupt Illegal Practices Act, passed in 1854, was assented to on February 23, 1875. For the first time, Québec had a law that dealt with the control of election expenses. Among its highlights were:

- the obligation for every candidate to incur expenses through an official agent;
- the obligation for the agent to provide a detailed statement of election expenses, together with vouchers, to the returning officer;
- the requirement to publish election expenses in the Gazette officielle;
- fines or penalties for offences.

The Law of 1875 established the foundations of modern election campaigns. However, a first setback occurred in 1892, when candidates were no longer required to provide detailed statements of their election expenses.

Law of 1895—innovative legislation

Despite the amendments made in 1892, corruption was far from being eliminated. Only three years later, under pressure from the reformist wing of the Conservative Party, the government adopted strict rules with regard to election financing. The principal innovations of the law were:

- the obligation for the official agent to prepare a daily statement of election expenses and indicate the source of these funds;
- in particular, the determination of a maximum amount of election expenses.

Québec could then boast one of the best electoral laws in the world—but the law would not survive. In 1903, the Liberal government made major amendments, which negated the essence of the law:

- candidates could now have several agents, making it more difficult to control election expenses;
- the fixed maximum amount of election expenses was abolished.

Control gradually ends

From 1903 to 1936, the legislator's interventions were intended to gradually eliminate electoral-expense control mechanisms. The year 1932 marked a decisive step in this direction since it was no longer necessary for candidates to have official agents. The rules were dealt a severe blow by the Law of 1936, which eliminated the requirement to present a statement of election expenses.

From then on, the door was open to corruption and the proliferation of slush funds. Doubtful financing practices had, in fact, been firmly in place for decades. In civilizing the voting process, the laws had obliged the parties to abandon intimidation in favour of other strategies, such as propaganda. However, that was expensive and, toward 1880, dipping into the public purse already seemed to have become a convenient financing method for the political parties. In addition, the parties accused one another of embezzling public funds, several scandals broke out and caricaturists had

a field day. In The Evolution and Application of Quebec Election Expense Legislation, the historian Harold M. Angell wrote that using public funds for electoral purposes was nothing new, but the systematic use of public funds for electoral purposes was.

At the end of the 19th century, wealthy merchants and large entrepreneurs made political contributions in exchange for contracts and other privileges. During the 1930s, this practice continued to grow. Legal persons in the form of businesses, associations, unions, and lobby groups began to play an increasingly important role in political-party financing.

Parties financed by legal persons

The 1930s witnessed the development of a semi-official "taxation" system the purpose of which was to obtain substantial amounts for the election fund and organization of the governing party.

This taxation took two forms. The first concerned permits, which the provincial administration could grant or refuse, at its discretion. The obtainment of such a permit could even be contingent upon a contribution to the election fund of the party in power. During an election period, the permit holder was required to make another contribution to avoid having the permit revoked.

The second form of taxation consisted of "kickbacks". Under this practice, government purchases were made at a much higher price than usual and, in return, suppliers were required to return the difference between the actual selling price and the price they were billed to the governing party.

These methods enabled the party in power to finance itself. With financial resources that were considerably greater than those of its adversaries, the governing party could engage in electoral propaganda that was virtually impossible to counter and as a result could expect to remain in power for quite some time. The reign of Maurice Duplessis, who governed without interruption from 1944 until his death in 1959, shows the extent to which the financing system of the day favoured the party in power.

In the early 1960s, the Royal Commission of Inquiry on morality in public expenditures (the "Salvas Commission") revealed the full extent and the institutional character of the kickback practice that flourished under the Union Nationale's reign.

A reform movement begins

The 1956 election campaign prepared the public for change. That year, the Union Nationale's election expenses were at least eight times higher than those of the Liberal Party, as discovered by a journalist from Le Devoir, Pierre Laporte, after an in-depth inquiry entitled "Les élections ne se font pas avec des prières" (Elections are not won by prayers). That expression was coined by a certain Mr. Tarte, an election

organizer in the 1910s, and not by the journalist. Mr. Laporte's articles, published between October 1 and December 7, 1956, showed, in particular, that even the main opposition party did not have the resources to counter the propaganda of the party in power. This disproportion—more so than the amounts concerned—caused concern and indignation because it gave the impression that democracy was flawed.

Not only the media, but also the public, demanded reform. One of the Liberal Party's promises during the 1960 election campaign was that election expenses would be limited, as set out in section 48 of the bill proposed by party leader Jean Lesage.

Election reform under scrutiny

When it formed the government, the Liberal Party made electoral reform one of the main thrusts of its legislative agenda. The discussion on reform was based on two studies. The first was conducted by the Commission politique de la Fédération libérale du Québec. The second, conducted by Harold M. Angell, was presented to the party congress in November 1961. The author dealt, in particular, with the limitation of election expenses, the disclosure of electoral funds and government assistance in the financing of election campaigns.

Although election reform was the subject of vigorous debate at the congress, several resolutions were nonetheless adopted, including:

- compulsory appointment of an official agent for each candidate;
- payment of certain expenses of candidates by the government;
- an amount allocated by the government to each candidate receiving at least 20% of the votes, this amount being set in accordance with the number of electors registered on the lists, and an additional subsidy for candidates from election divisions having very broad territories;
- a contribution to certain expenses of recognized parties that have received at least 10% of the total votes;
- limitation of the expenses of candidates and political parties;
- obligation for the candidates and parties to publish an official report of all election expenses;
- annual payment of party expenses between elections at a rate of $0.05 per elector;
- administration of the Election Act by a quasi-judicial commission.

These resolutions set the stage for Bill 15, tabled before the members in 1962. On the whole, it was well received by the public and the media. An editorialist from The Montreal Star even described it as "revolutionary". In addition, it prompted reaction in the rest of the country. Ontario Liberal leader John Wintermeyer stated that he wanted similar legislation for his province, whereas Donald MacDonald, leader of the New Democratic Party, saw the Québec bill as a threat to certain fundamental political rights.

Because of the election held in November 1962, the bill was not passed, remaining at the draft stage and having no effect on the election of that year. However, it was returned to the agenda by the re-elected Liberal Party and assented to on July 3, 1963 as the Quebec Election Act. The Act came into force on January 1, 1964.

1.2 From 1963 to 1977—the situation at a glance

In general, the Law of 1963 reproduced the spirit of the Law of 1895, with two major exceptions: it did not contain any provision regarding the source of electoral funds, nor did it limit the number of employees or agents that could be engaged by a party or a candidate. With regard to election expenses, the Act was amended three times—in 1965, 1966 and 1975.

The Act included a major innovation—the establishment of a partial reimbursement, by the state, of election expenses incurred by the official agents of elected candidates and candidates who received at least 20% of the votes in their electoral divisions. The Act was tested when four by-elections were held on October 5, 1964, arousing strong interest. Not only were election expenses limited, but also, for the first time in North America, the government paid a portion of the expenses of an election campaign.

However, the fact that the Act was silent with regard to political-party financing drew criticism from the media and politicians as of 1963. According to this criticism, the government was permitting secret election funds deemed harmful to democracy to continue to exist. For example, on October 22, 1963, Le Devoir editorialist Claude Ryan wrote scathingly that the perpetuation of the old system in the midst of political renewal had enabled the old parties to remain established for generations. Members of the National Assembly and government members also began to question the origins of electoral funds and the fact that the parties could be beholden to large donors, since these donors were often also legal persons seeking “political favours”.

Electoral reform and democratization of the public administration

René Lévesque led those who demanded legislation on political-party financing. As Minister of Public Works, a department traditionally associated with government favouritism, and Minister of Hydraulic Resources, the department responsible for Hydro-Québec, he played an important role in transforming the public administration by establishing the requirement that the government issue calls for tenders before awarding contracts. This significant initial measure regarding the integrity of public finances helped—albeit only partially—release electors from the control of electoral funds and was followed up by the electoral reform of 1963.

The Lesage government bid farewell to nepotism and in so doing significantly transformed the public administration. From then on, transparency was in order when it

came to awarding contracts. But for René Lévesque, the same transparency should also apply to the financing of political parties since he considered that the elimination of slush funds was a principle underlying the exercise of democracy. Although others shared the idea, it took a few more years for legislation to ensue.

Party financing—a growing concern

Between 1963 and 1977, political-party financing was often scrutinized. However, the amendments made to the Act in 1965 and 1966 concerned election expenses only. And the 1975 changes, made during the Bourassa government's second mandate, essentially concerned the role of the Chief Returning Officer, who was henceforth called upon to pay an allocation to the political parties.

During the 1970 election campaign, under the pressure of public opinion and the media, the Liberal Party promised to eliminate slush funds. In 1973, the party was brutally reminded of this commitment, when testimony from Montréal financiers before the Commission of Inquiry Into Organized Crime revived the debate on political-party financing. The government set up a parliamentary committee entrusted with examining this increasingly critical issue. Then, in 1975, it unveiled the outline of a draft bill providing for the creation of an electoral-expense control commission, declaration of the amounts collected and disclosure of the identity of the largest donors. The draft bill died on the order paper when an election was held on November 15, 1976.

1.3 The 1977 reform—an international precedent

During the 1976 campaign, the Parti Québécois, led by René Lévesque, made reforming electoral practices one of its principal commitments. That issue had long been the trumpeted cause of the former Liberal minister. In 1977, when the National Assembly unanimously passed the Act to govern the financing of political parties and to amend the Elections Act, which came to be known as "Bill 2," the political will to democratize the rules of the electoral game was established, and Québec acquired forward-thinking legislation that was unique in the world.

Principles underlying the reform

In 1970, the Parti Québécois published a working document entitled *La réforme électorale.* In particular, the document indicated that with the full reimbursement of election expenses and government subsidies for documentation, research and political-information purposes, the financing of political parties would be greatly facilitated, and contributions that might create "debts of gratitude" in respect of private interests could be prohibited.

The principles that would guide the Law of 1977 were hence in place. The cornerstones of the reform were that legal persons were prohibited from contributing to

party funds and a limit was placed on individual contributions. Businesses, interest groups and citizens could no longer use their money to manipulate power. In return, the government would compensate for the reduced financing entailed by these measures by allocations to the parties.

The Law of 1977 aimed to eliminate possible "debts of gratitude", as well as political-party slush funds. The government intended to definitively solve the problem of secrecy surrounding the source of party funds and the management of party budgets.

The two major reform principles submitted to the members of the National Assembly in 1977 were transparency and equity. These principles were then reflected in the following provisions:

- limitation of the financial contributions of electors, to one or more parties, to $3,000 per year;
- obligation for the parties to publicize the sources of their subscriptions exceeding $100;
- publication of election expenses;
- a state contribution of $0.25 per elector to the expenses of recognized political parties;
- imposition of severe fines of up to $25,000 on offenders.

The 1977 reform was considerably different from the previous reform. In fact, the two laws were dissimilar in spirit—the Law of 1963 focusing on the limitation and publication of election expenses and the 1977 reform encompassing the entire spectrum of political-party financing, prohibiting contributions from legal persons and creating a separate institution, the Director General of Financing of Political Parties, entrusted with applying the provisions of the law.

Educating the public—a priority

Although the maximum amount of the fines imposed for offences was relatively high, the law was intended to educate and inform the public rather than to coerce. The government had been concerned about this aspect from the time it tabled its draft reform before the National Assembly.

The position of Director General of Financing of Political Parties was created for a dual purpose—to control political financing, of course, but also to educate and inform the public. The institution emphasized this role in the years following passage of the law, in particular by organizing several information meetings in electoral divisions and municipalities and publishing notices in newspapers. The institution also had its own communications department, which was responsible, in particular, for providing information about the law.

Contributions from legal persons—the thrust of the debate

With its reform, the Lévesque government hoped to succeed where even the avant-gardist California, with its strict electoral-financing law, had failed. Creating a piece of historical irony, this state had endeavoured before Québec to prohibit legal persons from financing political parties, but had lost its case before the Supreme Court, which deemed that this provision violated the American Constitution. Californians had advised Québec government representatives to prohibit legal persons contributions.

Similar arguments threatened the passage of "Bill 2" in its entirety. Although the press and the Opposition considered that the government showed courage in introducing this legislation, they nonetheless questioned the merit of prohibiting contributions from legal persons. This provision also drew criticism from chambers of commerce and a number of unions.

But the government substantially maintained its argument that political life concerned citizens, and not legal persons, and political parties should belong only to citizens. The Act to govern the financing of political parties and to amend the Elections Act was enacted on August 26, 1977 and came into force gradually. On April 1, 1978, all of its provisions were applicable.

2 Current Provisions for Political Financing and Control of Election Expenses

The Québec Election Act is comprehensive legislation governing the various aspects of the provincial electoral system. It includes provisions regarding representation and electoral proceedings, as well as provisions pertaining to the financing of political parties and the control of election expenses. Referendums are governed by the Referendum Act and the Special Version of the Election Act for the Holding of a Referendum.

The provisions on the financing of political parties and the control of election expenses were integrated into the Election Act in 1985. To date, they have been amended a number of times, with a view to consolidating, streamlining and improving the system. However, the provisions continue to be consistent with the initial spirit of the reform of 1977 and aim to achieve equity and transparency with regard to political financing and the control of election expenses.

2.1 General spirit of election legislation today

With nearly 600 sections and 9 titles, Québec's Election Act covers a broad spectrum. It determines the rules that prevail during general elections and by-elections, as well as the mechanisms through which citizens elect their representatives. It is also the means through which the legislator ensures equitable representation of all citizens in the National Assembly. Finally, its provisions pertaining to the financing of political parties and the control of election expenses—which constituted he thrust of the 1977 reform—continue to mark the legislation today.

The legislator has provided comprehensive political-financing rules so that citizens may retain full power over their political parties and, accordingly, over the government. The uniqueness of the Québec model lies in the rules it encompasses. The system is based on the following principles:

- Popular financing: only electors may make contributions to the political parties, up to an annual limit. Québec legislation aims to prevent elected representatives and the government from being pressured by financial power.

- Equity: the legislation provides that each of the actors on the political stage may be heard and promotes equal opportunity among the parties. These objectives may be attained, in particular, by limiting the amount of contributions and election expenses.
- Transparency: political parties, candidates and party authorities must account for their financing and election-expenses activities by transmitting publicly accessible reports to the Chief Electoral Officer.
- Partial state financing: as significant as it may be, popular financing does not suffice to meet all party requirements, especially since election campaigns are now increasingly conducted through the electronic media. The state therefore provides substantial financial support to the parties in the form of annual allocations, partial reimbursement of election expenses and reimbursement of the costs of auditing financial statements.

2.2 Authorization to obtain financing and incur election expenses

Even before soliciting contributions and incurring election expenses, a political party must be duly authorized. In this regard, section 41 of the Election Act stipulates that: "Every political party, party authority or independent candidate wishing to solicit or collect contributions or to incur expenses or contract loans shall obtain an authorization from the Chief Electoral Officer in accordance with this chapter.".

This section is assuredly one of the masterpieces of the legislation. The rules of authorization of political entities, namely parties, their organizations throughout the electoral divisions, the regions or the province, and independent candidates, are relatively simple.

- For political parties:
  - apply to the Chief Electoral Officer through the party leader;
  - undertake to present a candidate in at least 20 electoral divisions during every general election;
  - support the application by the signatures of at least 500 electors, at a rate of 25 electors in 20 different electoral divisions;
  - make a deposit of $500, refundable when the first financial report of the party is filed.

- For independent candidates:
  - undertake to run as an independent candidate in the next election;
  - support their applications to the Chief Electoral Officer by a list of at least 100 electors from their electoral divisions.

Representing Citizens

To obtain the status of authorized provincial party, a party must first demonstrate that it has a certain number of supporters throughout the province of Québec, hence resulting in the requirement that the signatories supporting the application for authorization come from at least 20 different electoral divisions. Québec currently has 125 electoral divisions, which are delimited by the Commission de la représentation électorale and established to consolidate a relatively equal number of electors on the basis of demographic, geographic and sociological criteria. Delimitation of the electoral divisions is also intended to give electors the best possible access to the member who represents them and to enable elected officials to represent citizens adequately.

In short, authorization of the political entities consists of recognizing the right to solicit contributions from the public, contract loans and spend such money.

The party authorization is permanent unless the party is not able to present candidates in at least 20 electoral divisions in a general election. An elected independent candidate is authorized as long as he is sitting in the National Assembly and runs again as an independent candidate. An independent candidate who is not elected may be authorized until December 31 of the year following the election year for the sole purpose of paying the debts arising from his election expenses. In addition, the Chief Electoral Officer is authorized at any time to withdraw his authorization from a political entity that does not comply with its legal obligations.

2.3 Political financing

The provisions on authorized financing sources and the obligations of political entities receiving donations meet the financing-equity objective sought by the legislation.

The authorization to solicit contributions is accompanied by a duty of transparency and an obligation to report. At the heart of the process is the official representative. The authorized political entity is obliged to have an official representative because only the official representative is entitled to raise funds. However, since the official representative may designate mandataries, the chairman of a party's provincial fundraising campaign will not necessarily be the official representative. However, as the official representative's mandatary, the chairman may solicit funds. Persons acting locally have the same right.

Political entities have access to three main sources of financing: elector contributions, state allocations and the partial reimbursement of election expenses.

Political contributions: who may give what?

At the heart of Québec's electoral legislation are precise mechanisms regarding contributions made to political entities. The main provisions in force at the provincial level are as follows:

- Only electors, and not legal persons, may make political contributions.
- Contributions are limited to $3,000 per year to each of the authorized political entities, and the first $400 may give rise to a $300 tax credit.
- Electors must make their contributions out of their own property and not out of their business revenues, for example.

In Québec, Who is an Elector?

All electoral legislation in Québec gravitates around the elector. Hence, determination of the criteria that qualify citizens as electors is fundamental. Provincially, Québec's legislation grants voting rights to any person who is 18 years of age or older, is a Canadian citizen and has been domiciled in Québec for six months. In addition, the legislator has given citizens the most universal voting rights possible, and only persons who have been declared guilty of certain offences under the Election Act or the Referendum Act and persons under curatorship are precluded from voting.

Moreover, contributions are not just donations in money. Goods or services provided free of charge must also be taken into account, with the exception of volunteer work, anonymous donations collected during a political activity, loans granted for political purposes at the current market rate of interest, and dues of membership (or membership renewal) in a political party of not over $50.

State allocations

By imposing a limit on elector contributions, the legislator is ensuring that the parties are freed from the influence of major donors—especially the influence of legal persons. To compensate for this limit, the state provides support, authorized parties receiving annual allocations designed to reimburse expenses pertaining to their day-to-day administration, the publication of their platforms and the coordination of the political action of their members. The total budgeted amount of the allocation, which is determined by the Election Act, is equal to $0.50 per elector registered on the list of electors used during the last general elections and is divided among the parties on the basis of the percentage of valid votes obtained in those elections.

However, the state allocation is not paid automatically, and its use is not left to the discretion of the recipient parties.

- It is used to reimburse expenses actually incurred and paid.
- The state requires that vouchers be presented.

In 2001, Québec had 12 authorized political parties, which in the aggregate obtained revenues from the following sources:

TABLE I :

Political Parties—Revenue Sources[1]

Fiscal year ended December 31, 2001

	Amount	% of total revenues
Contributions of over $200	6 740 139 $	48 %
Contributions of $200 or less	3 183 102 $	23 %
State participation	2 846 982 $	20 %
Memberships	840 844 $	6 %
Other revenues	486 225 $	3 %
Total :	**14 097 292 $**	**100 %**

TABLE II :

Party Contributions in 2001

Total number of contributions and aggregate amount, 2001[2]

	Number	Amount
Parti Québécois	31 821	4 108 321 $
Liberal Party of Québec / Parti libéral du Québec	23 644	5 529 347 $
Action démocratique du Québec	1 496	173 130 $
Other parties	1 121	112 443 $
Total :	**58 082**	**9 923 241 $**

The obligation of accountability

The principle of transparency set out in the election legislation means that political entities must be accountable, with regard to both state allocations and electoral contributions. This responsibility is incumbent on the official representative and consists primarily of the obligation to:

- issue receipts for each donation, regardless of the amount;
- disclose the identity of donors who have made contributions greater than $200;
- provide yearly to the Chief Electoral Officer the party's audited financial report, including the list of donors, and make it accessible to the population.

1 Le Directeur général des élections du Québec, Divulgation des rapports financiers des partis politiques : Statistiques et renseignements additionnels, Fiscal year ended December 31, 2001, Québec, DGEQ, 2002, p. 5.

2 Idem, p. 5.

2.4 Control of election expenses

The ultimate purpose of the authorization of political entities as well as the control of their financing is to ensure equity in the electoral game. During an election period, money, as we know, is the sinews of war. Hence, the legislator has paid particular attention to the election expenses of the parties and candidates. In Québec, these expenses are limited, reimbursed by the state up to a maximum of 50% and subject to control mechanisms.

Election expenses

Section 402 of the Election Act clearly defines the cost of any goods or services used for the following purposes during an election period as an election expense:

- to promote or oppose, directly or indirectly, the election of a candidate or the candidates of a party;
- to propagate or oppose the program or policies of a candidate or party;
- to approve or disapprove courses of action advocated or opposed by a candidate or party; or
- to approve or disapprove any act done or proposed by a party, a candidate or their supporters.

Similarly, the Act establishes limits for election expenses. In 2002, these limits, which are adjusted on April 1 of each year according to the change in the average Consumer Price Index for the preceding year, are calculated on the basis of the number of electors[3]:

- For a party: $0.61 per elector in all the electoral divisions in which it has a candidate.
- For a candidate: $1.02 per elector in his electoral division. For a by-election, this limit is increased by $0.61.

The following amounts were permitted and incurred in the 1998 general elections:

- Total permitted for all political parties and candidates: $41,248,392;
- Total expenses incurred: $15,282,132 (37.05 % of the limit established by the Election Act).

3 Because of their geographic and demographic characteristics, certain electoral divisions are treated as exceptions. Hence, the maximum permitted expense limit is increased by $0.25 per elector in Duplessis, Rouyn–Noranda–Témiscamingue, Saguenay, and Ungava and by $0.70 per elector in the Îles-de-la-Madeleine. These amounts are indexed annually.

The following expenses were permitted and incurred by the three parties represented in the National Assembly:

TABLE III :

Election Expenses Permitted and Incurred

1998 General Elections [4]

Permitted expenses		Incurred expenses
Action démocratique du Québec		
- party:	$ 2 642 404	$ 948 112
- all of its candidates:	$ 5 360 467	(11,85 % of permitted limit)
Parti libéral du Québec / Liberal Party of Québec		
- party:	$ 2 642 404	$ 7 383 102
- all of its candidates:	$ 5 327 250	(92,64 % of permitted limit)
Parti Québécois		
- party:	$ 2 623 436	$ 6 730 180
- all of its candidates:	$ 5 327 250	(84,65 % of permitted limit)

The rules for the control of election expenses are similar to the political-financing rules. In an election period, parties and candidates appoint an official agent. This official agent, who was appointed for the first time in 1895, is an essential component in an election campaign.

- He is the only person entitled to incur expenses on behalf of the party or the candidate.
- He must incur the expenses out of an election fund deposited in an account at a financial institution that is separate from the account of the official representative. This fund is composed of the amounts held by an authorized entity in accordance with the Act. Therefore, the political-financing process culminates at the time of the election campaign.
- He must be known to the Chief Electoral Officer and the public. Hence, his name must accompany all electoral publicity (newspaper advertisements, folders, air time, etc.). For this reason, all publicity in the electronic media will state that the message has been sponsored and paid for by so-and-so, official agent.
- He is responsible for delivering a detailed return, including vouchers, of all his election expenses to the Chief Electoral Officer within 90 days after the election in the case of a candidate and within 120 days for a party. The report must be accessible to the public.

4 Directeur général des élections du Québec - Sommaires des rapports de dépenses électorales, Élections générales du 30 novembre 1998, 14 décembre 1998.

Reimbursement of expenses

After their returns have been transmitted to the Chief Electoral Officer, political parties that have received 1% of the votes in their electoral divisions and candidates who have obtained 15% of the votes in their electoral divisions will be reimbursed half of the election expenses they have incurred and paid in accordance with the Act under the following conditions:

- For a candidate: that he be elected or have obtained at least 15% of valid votes.
- For a party: that it have obtained at least 1% of valid votes.

However, upon receipt of the results of the poll, the Chief Electoral Officer must pay an advance on the reimbursement equal to 35% of the maximum election expenses to candidates entitled to the reimbursement. On receipt of an attestation from the official agent of a party of the estimated amount of election expenses incurred, the Chief Electoral Officer must pay to the party entitled to reimbursement an advance equal to 35% of the lesser of the amount corresponding to the permitted limit and the stated estimated amount.

2.5 Principal changes since 1977

The essence of the Electoral Act concerning the authorization of political entities, financing and election expenses has remained much the same since 1977. However, the legislator has remedied certain gaps or ambiguities over the years. The contestation of provisions before the courts has also led to changes in the legislation. Since the time the Act was passed, several amendments have been made, either by adding or deleting provisions. The following are some of the amendments that have been made.

Authorization

The provisions concerning the authorization of political entities were aimed at responding to the changes in Québec political life over the years. Hence, in 1985, the Election Act established procedures to be followed in respect of a change in the name of a political party and the merger of previously authorized parties. In addition, in the same year, the legislator specified that the withdrawal of a party's authorization automatically entailed the loss of the authorization of each its authorities. This measure was adopted to prevent parties from contravening the Act.

In addition, measures were introduced to compensate for deficiencies and vagueness. For example, as of 1989, when election legislation underwent extensive revision, an authorized party that lost its leader has been required to appoint an interim leader within 30 days—an obligation that the Act did not previously contain.

A significant amendment with regard to authorization came into force more recently, in 1998. Previously, party authorization was subject to two main conditions: the party had to undertake to present a candidate in 10 electoral divisions and obtain the signatures of 1,000 electors in support of its application. However, the Act was silent with regard to the number of electoral divisions from which these electors must originate. Since 1998, the party has been required to undertake to present a candidate in 20 electoral divisions and obtain the signatures of 25 electors in 20 different electoral divisions. To be recognized as a provincial party, a party must therefore have a certain base in several regions.

This new "coverage" requirement did not have any negative effect on the number of authorized parties. From 1980 to 2001, this number in fact changed very little, with Québec having about 12 authorized political parties year after year. And on October 31, 2002, 15 parties were authorized.

Political financing

With regard to political financing, notable amendments were made to the Act starting in 1978. However, the most significant changes were introduced as part of the 1989 revision of the Act. Whereas previously the allocation was payable only to parties represented in the National Assembly, the legislator extended payment of the allocation to all authorized political parties. This measure was aimed at consolidating political organizations. In view of the same objective, the limit placed on electoral contributions, which had been set since 1977 at $3,000 per year, per individual, became $3,000 per year per elector to each authorized political party.

Control of election expenses

With regard to the control of election expenses, as many as thirty amendments have been made over the years. The most significant changes without a doubt concern the reimbursement of election expenses. Starting in 1984, candidates who were automatically entitled to receive a reimbursement of their election expenses were given an advance. To be entitled to a reimbursement of their expenses, candidates then had to satisfy one of the following conditions: they were required to have been declared elected, have obtained at least 20% of the valid votes, have been elected in the last election, be the candidate of either of the two parties whose candidates obtained the greatest number of votes in the last election in the electoral division, and be entitled to recommend the deputy returning officers and secretaries in accordance with the Act.

In 1992, the parties were given the right to be reimbursed for 50% of their expenses, hence encouraging third parties. In 1998, the percentage of valid votes required of a candidate was decreased to 15%. In 2001, references to the last election were eliminated.

Also in 1998, following a Supreme Court judgment, a lengthy section pertaining to the "private intervenor" was added. These recent provisions enable third parties to express their views during an election campaign. Private intervention is strictly defined and controlled.

Private intervenors are electors or groups composed in the majority of natural persons who are qualified electors that are entitled to incur publicity expenses in order to broadcast their opinions, on the condition that they do not promote or oppose any candidate or party, for example by advocating spoiling of the ballots or abstention. In order to prevent disguised expenses on behalf of a candidate or a party, private intervenors are also subject to the general economy of the Act by way of authorization prior to obtaining such status, the restriction of publicity expenses to $300 and a requirement to report their expenses to the Chief Electoral Officer.

Over the past 25 years, it is clear that the legislator has been intent upon preserving the spirit of the 1977 reform while improving and adapting it to changes in the political life of Québec. One thing is certain: the control of political financing and election expenses is without a doubt the best means of guaranteeing sound political practices.

3 Municipal Elections

Democratic voting practices in municipalities certainly deserve the same attention as at the provincial and federal levels. And in this respect municipal elections are duly regulated. As is the case with provincial elections, this legislative regulation extends to the financing of political parties and independent candidates and includes mechanisms for controlling their election expenses. Today, in fact, only municipalities having fewer than 5,000 inhabitants are not subject to the provisions on political financing and the control of election expenses.

3.1 Situation in the municipalities—past and present

In 1977, when the government of Québec passed the reform that thoroughly revised provincial political financing and the regulation of expenses during election campaigns, it already intended that municipalities be subject to similar controls. Clearly electoral slush funds and political favours in the form of contracts and other privileges were not the exclusive domain of provincial political parties!

In June 1978, the government therefore passed the Act respecting elections in certain municipalities and amending the Cities and Towns Act, which contained the first provisions pertaining to the financing and control of election expenses in municipalities.

Gradual implementation

These provisions were implemented gradually. At first, they applied only to municipalities having 100,000 inhabitants or more that were holding elections in 1978, namely Montréal and Longueuil, and optionally to municipalities with 20,000 or more inhabitants. In 1979, the legislator applied the provisions to the 13 municipalities having 20,000 habitants holding elections that year, but did not make the provisions permanent. In 1980, following amendments to the Act, political financing and election expenses were permanently regulated in all municipalities having 20,000 or more inhabitants, without exception.

However, although there were nearly 1,600 municipalities in Québec in 1980, only about 50 had at least 20,000 inhabitants. Despite this, the legislator did not continue the process he had started 20 years previously until 1998, at which time municipali-

ties of 10,000 inhabitants or more became subject to the rules on financing and the control of election expenses. In that year, the number of municipalities subject to the rules increased from 61, constituting a total population of 4.1 million, to 125, representing nearly 5 million persons. Finally, in 1999, the provisions became applicable to municipalities of 5,000 inhabitants or more, and 203 municipalities were then subject to the rules. This number decreased to 146 in 2002 as a result of municipal mergers, and now over 6 million persons are required to comply with the provisions.

A major reform

During the 1980s, municipal electoral provisions were scattered throughout a few laws and several charters. Following representations by the Chief Electoral Officer, the legislator agreed that it was necessary to revise these sparse provisions. Accordingly, on January 1, 1988, the Act respecting elections and referendums in municipalities, commonly referred to as the AERM, came into force. It constituted a complete consolidation of the previous legislation and regulated all aspects of the municipal electoral process, including political financing and election expenses.

Migratory Currents and the Act

From one year to the next, a municipality gains and loses residents. What happens to a municipality whose population falls below 5,000 inhabitants? It remains subject to the provisions on financing and election expenses unless it obtains the right to opt out of these provisions from the Minister of Municipal Affairs and Greater Montréal. However, it will automatically become subject to the rules again as soon as its population exceeds 5,000 inhabitants.

3.2 Municipal and provincial election legislation: a harmonious model

The Act respecting elections and referendums in municipalities was drafted with a view to providing consistency with provincial electoral legislation. The same principles of equity and transparency therefore apply at both levels, and similar rules of authorization, financing and control of election expenses regulate provincial and municipal political entities.

Chapter XIII—the crux of municipal election legislation

Chapter XIII of the Act respecting elections and referendums in municipalities consolidates the provisions pertaining to political financing and the control of election expenses. It can be said to be the equivalent of titles III and IV of the provincial legislation and is established on the following principles:

- popular financing of the parties and candidates by means of modest, diversified contributions in order to prevent financial power from controlling who is elected;

- equity among the parties and candidates, promoted by the establishment of a limit on political contributions as well as by the control of election expenses and their partial reimbursement;
- transparency, provided by the obligation of accountability and public disclosure of financial reports and returns of election expenses.

Authorization to solicit and spend

Authorization may be considered a kind of clearance that gives parties and independent candidates the right to solicit or collect funds, contract loans and incur expenses. At the municipal level, parties obtain such authorization from the Chief Electoral Officer, and independent candidates obtain it from the clerk or secretary–treasurer and, during election periods, from the returning officer of the municipality, should they be delegated to provide it. In making its application, the party must undertake to present candidates for at least one-third of the offices of councillor at any future general election. Candidates to the office of mayor or councillor must demonstrate that they have a certain amount of popular support. In seeking the position of mayor, a candidate must include the signatures of 5, 10, 50, 100, or 200 electors, depending on the size of the municipality, with his application for authorization. A councillor must be supported by 5, 10 or 25 electors.

Sources of political financing: what and how?

Like that of authorized political entities, the financial existence of municipal parties and independent candidates is associated with a precondition—having an official representative—since only he is entitled to collect funds. The official representative is also responsible for preparing a financial report, which, in the case of a party, must be accompanied by the auditor's report.

The possible financing sources are the same at the municipal and provincial levels. The differences between the two levels primarily concern the authorized amounts and certain rules that must be respected by the political entities.

Contributions

Provincial	Municipal
Only electors are entitled to contribute.	Only electors of the municipality are entitled to contribute.
Each elector is allowed to contribute a maximum of $3,000 to each authorized political party and independent candidate.	Each elector is allowed to contribute a maximum of $1,000 to each authorized political party and independent candidate in the municipality.
Each elector may obtain a maximum tax credit of $300.	Each elector may obtain a maximum tax credit of $105.
Electors must make their contributions out of their own property.	Same rule.
The official representative must issue a receipt for every contribution and disclose the identity of donors contributing amounts of over $200.	The official representative must issue a receipt for every contribution and disclose the identity of donors contributing amounts of over $100.

Qualified Electors at the Municipal Level

Every person of full age who is a Canadian citizen and is neither under curatorship nor under any voting disqualification is an elector of a municipality upon fulfilling one of the following two conditions:

- the person is domiciled in the territory of the municipality and has been in Québec for at least six months;
- the person has been, for at least one year, the owner of an immovable or the occupant of a business establishment situated in the territory of the municipality.

Both the provincial and the municipal legislation also permit other sources of financing that are not considered to be contributions and hence do not reduce the maximum contribution per elector.

Other sources of financing

Provincial	Municipal
Annual party-membership dues of not more than $50 paid by natural persons.	Same rules, but with a $25 limit.
Price of admission to a political activity not exceeding $60 per day per person.	Same rules.
Anonymous donations collected during a political activity: no fixed limit, but the total as well as the nature, location and date of the activity must be indicated in the annual financial report of the political entity.	Same rules except the total amount is limited to 20% of the total contributions. The excess amount must be remitted to the treasurer of the municipality.
Annual state allocation: $0.50 per elector whose name was entered on the electoral lists used during the last general elections ($2.6 million) and divided among the parties according to the percentage of votes obtained by each of them.	According to the Cities and Towns Act, allocations to the parties in municipalities of 500,000 or more inhabitants and reimbursement of research and secretarial expenses of councillors in municipalities having 50,000 inhabitants or more.
Loan at the current market rate of interest contracted with a financial establishment or an elector. The loan must be repaid at maturity, with interest.	Same rules, but each elector is prohibited from providing surety for or lending an amount exceeding $10,000.

The price of municipal campaigns

Both the provincial and the municipal legislation define an election expense in roughly the same way, namely as the cost of any goods or services used during an election period to promote or oppose the ideas or actions of a party or a candidate. Similarly, both legislations oblige parties and independent candidates to have an official agent, who is the only person entitled to incur election expenses. He must pay these expenses out of a fund specially reserved for such purpose.

The principal difference introduced by the municipal legislation lies in the permitted amount of the expenses, which is calculated in accordance with the size of the municipality.

Permitted expenses limits in 2002

Election to the office of mayor:

- a basic amount of $5,400, increased by:
  - $0.42 per person whose name is entered on the electoral list of the municipality above 1,000 but not above 20,000 electors;
  - $0.72 per person entered on that list above 20,000 but not above 100,000 electors;

- $0.54 per person entered on that list above 100,000 electors.

Election to the office of councillor:

- a basic amount of $2,700, increased by $0.42 per person whose name is entered on the list of electors of the electoral district above 1,000 electors.

Reimbursement of Election Expenses

Provincial	Municipal
Percentage = 50% of expenses incurred and paid in accordance with the Act.	Percentage = 50% of expenses incurred and paid in accordance with the Act.
Expenses reimbursed by the state.	Expenses reimbursed by the municipality.
To the party: if it has obtained at least 1% of valid votes. To the candidate: if the candidate has been elected or has obtained at least 15% of the valid votes and, in the case of an independent candidate who has not been elected, up to the amount of the debts arising from such candidate's election expenses.	To the party: for its candidates who have been elected or have obtained at least 15% of the votes and, in the case of an independent candidate, if the candidate also meets one of these two conditions without exceeding the total amount of the debts arising from the election expenses and the personal contribution of such candidate.
Advance on the reimbursement of expenses paid to the candidate and the party after receipt of the results of the addition of the votes.	No advance.

3.3 Administration of Chapter XIII

Although the general application of the Act respecting elections and referendums in municipalities falls under the jurisdiction of the Minister of Municipal Affairs and Greater Montréal, the application of the provisions of Chapter XIII, pertaining to political financing and the control of election expenses, was entrusted to the Chief Electoral Officer.

A multi-facetted mandate

With regard to political financing, the powers of the Chief Electoral Officer are just as significant municipally as provincially. The Chief Electoral Officer's powers consist primarily of:

- authorizing political parties and independent candidates;
- ensuring uniform application of the legislation from municipality to municipality;
- overseeing the practices of authorized parties and candidates with regard to political financing and election expenses;
- examining the financial reports and returns of election expenses of the parties and independent candidates;
- inquiring into the source of political contributions and the legality of election expenses;
- issuing directives and recommendations regarding the application of Chapter XIII ;
- informing the public and all persons concerned.

Improved legislation

On the strength of his expertise in the field, the Chief Electoral Officer may also transmit recommendations to the legislator that lead to improvements in the legislation. For instance, one of the major amendments, made in 1999, concerned the contribution of electors. The total contribution paid by the same elector had been limited to $500 per year in 1978 and then increased to $750 in 1986. This limit was then set at $1,000 paid to each of the political entities upon the Chief Electoral Officer's recommendation. This recommendation was based on the increase in the Consumer Price Index and was aimed at harmonizing the municipal and provincial legislation.

In addition, in 1998, the legislator revised the amount of the fines imposed, which had not changed since 1987. In general, the minimum fine imposed on a natural person increased from $100 to $500, and the minimum fine imposed on a legal person increased from $300 to $1,500. Maximum fines of up to $10,000 for natural persons and $25,000 for legal persons could be imposed.

Strengthening municipal democracy through education

The Chief Electoral Officer may inquire into the application of Chapter XIII of the Act respecting elections and referendums in municipalities of his own initiative or at the request of a person. In this respect, he is vested with the powers of a commissioner of inquiry and may bring proceedings.

To date, there have been more municipal than provincial offences. The fact that municipalities having between 5,000 and 20,000 inhabitants have only very recently become subject to the provisions pertaining to political financing and the control of election expenses may explain this situation. The institution of the Chief Electoral Officer is therefore intensifying its educational role to ensure that the legislation is clearly understood by everyone. For example, it offers training sessions to municipal clerks and treasurers, who have specific responsibilities concerning the application of the Act. In this respect:

- clerks or secretary–treasurers and returning officers are responsible for authorizing independent candidates following a delegation of powers by the Chief Electoral Officer;
- treasurers receive the financial reports and reports of election expenses of the political entities, make these reports accessible to the public and reimburse election expenses.

Striving for application to all municipalities

At the provincial and municipal levels, the provisions pertaining to political financing and the control of election expenses have represented a major step toward the assurance of sound electoral practices. However, for the time being, municipalities having fewer than 5,000 inhabitants are not subject to these provisions. A risk of confusion therefore exists for all electors in Québec in that rules with respect to political financing and the control of election expenses exist at the provincial level and at the municipal level for municipalities having 5,000 or more inhabitants but are totally absent for municipalities having fewer than 5,000 inhabitants.

To ensure greater equity for all electors in Québec, the Chief Electoral Officer has recommended that the legislator establish a simplified system of political financing, applicable to municipalities with fewer than 5,000 inhabitants. Such a system would help maintain the integrity of the electoral system at both levels and permit the intervention of third parties in accordance with the rules enacted in the legislation for any intervenor.

4 School Elections

4.1 A simplified system for school elections

In 2002, the government of Québec amended the Act respecting school elections in order to harmonize the electoral provisions at the three electoral levels. A simplified, streamlined system of political financing and control of election expenses was implemented.

General economy of the Act

Although the legislator simplified the school election system, he did not in so doing mitigate it, intending the same principles of equity and transparency that underlie the provisions of provincial and municipal electoral legislation also to prevail over the financing of school elections.

Serving Schools—A Political Commitment

History does not say much about the thousands of men, especially from the liberal professions and the clergy, and more recently women, who have devoted themselves to school administration. Yet, the famous painter Ozias Leduc was a school commissioner in Saint-Hilaire from 1918 to 1922. In addition, two of our noteworthy political figures, Honoré Mercier and Sir Wilfrid Laurier, had at least one thing in common: they were both initiated to the duty of serving the community by their father who was a school commissioner.

The following key rules arise from these principles:

- Authorization: to solicit contributions, contract loans and incur expenses, candidates must first be authorized to do so. Candidates may obtain authorization as of January 1st of each election year by filing an application supported by ten electors with the returning officer of the school board.
- Popular financing: only electors in the school board are entitled to make contributions to candidates. This was one of the major innovations introduced in the Act respecting school elections in 2002.
- A limit on permitted election expenses: the Act imposes a limit on the amounts that candidates may spend on their election campaigns.
- Financial reporting: whether or not they are elected, candidates must file a financial report and a return of election expenses.

Major differences

The regulation of political financing and election expenses applied provincially, municipally and at the school-board level is aimed at ensuring that democratic practices have the same value at all levels of government. However, certain obligations placed on provincial and municipal political entities would without doubt be unduly binding if they were to be applied to school elections.

The main differences between the provisions regarding political financing and the control of election expenses provincially and municipally and those applicable to school elections are:

- Whereas at the provincial and municipal levels, only the official representative of the authorized political entity may solicit contributions, candidates to the office of commissioner in school elections are themselves responsible for financing and generally for filing their financial reports.
- Similarly, the official agent is the only person authorized to incur election expenses at the provincial and municipal levels, but in school elections the candidates themselves take on this role, identifying their publicity, on their behalf, and filing their own returns of election expenses within 90 days following the poll, as prescribed.

Independent Candidates and Not Political Parties

Authorization to form political parties to administer schools, particularly in urban areas, is currently being sought. According to the Mouvement pour une école moderne et ouverte, the primary organization behind this idea, political parties could exercise the role of commissioner on a permanent basis. However, the legislator does not seem to subscribe to the argument and, for the time being, only independent candidates and recognized tickets may run for school elections.

Financing rules

After authorization has been obtained, candidates may then vie for financing. The main financing rules for school elections enacted by the legislator compared with the municipal financing rules are as follows:

Contributions

Municipal	School
Only municipal electors are entitled to contribute.	Only electors in the school board are entitled to contribute.
Each elector is entitled to contribute a maximum of $1,000 per year to each authorized political party and independent candidate in the municipality.	Each elector is entitled to contribute a maximum of $1,000 per year to each independent candidate authorized in the territory of the school board, but the total political contribution is limited to $3,000 for the same school board.
Each elector may obtain a maximum tax credit of $105.	No tax credit.
Electors must make their contributions out of their own property.	Same rule.
The official representative must issue a receipt for every contribution and disclose the identity of donors contributing amounts of over $100.	The authorized candidate must issue a receipt for every contribution and disclose the identity of donors contributing amounts of over $100.

Like provincial and municipal political entities, candidates in school elections have access to revenue sources that are not considered to be contributions, including:

- price of admission to a political activity not exceeding $60 per day per person;
- anonymous donations collected during a political activity amounting to not more than 20% of the total contributions;
- loans granted by financial establishments or electors in the school board.

School Electors

In order to vote for a commissioner of a school board, a citizen must first qualify as an elector by indicating that on polling day he:

- has attained 18 years of age;
- is a Canadian citizen;
- is domiciled in the territory of the school board and has been domiciled in Québec for six months;
- is not deprived of electoral rights.

In addition, at the time of voting, the elector's name must be entered on the list of any of the school boards where the elector is domiciled, in accordance with the rules set out in the Act respecting school elections.

Election expenses

The provincial, municipal and school-election legislation all define an election expense as the cost of any goods or services used during an election period in particular to promote or oppose the ideas or actions of a party or a candidate.

A definition was already included in the Act respecting school elections in 1989. However, the provisions adopted in 2002 harmonized the application of the rules, which previously varied from one school board to the other. Accordingly, throughout the entire territory of Québec, the election expenses of a candidate to the office of school commissioner were limited to an amount of $2,700, increased by $0.42 per person entered on the list of electors of the school board. In addition, the same rate of reimbursement of their expenses became applicable to all candidates.

This reimbursement of expenses:

- is granted to candidates who have been elected or have obtained at least 15% of the valid votes;
- is fixed by government regulation;
- is made by the school board.

However, the reimbursement to a candidate cannot exceed the amount of the debts arising from the election expenses and the personal contribution of the candidate.

Excess Funds

The contributions and other amounts collected must be used to finance the candidate's election campaign. Candidates may amass amounts that are greater than they actually spend or than the Act permits them to spend. However, even if the candidate is elected, he is not entitled to keep the remaining money and is required to remit it to the school board.

4.2 School administration—new democractic challenges

Although the Act respecting school elections falls under the jurisdiction of the Minister of Education, the Chief Electoral Officer is responsible for applying the provisions pertaining to the financing of candidates and the control of their election expenses.

In this regard, the institution is vested with powers of supervision, auditing and inquiry. It is also responsible for informing the public and all persons concerned, particularly the directors general of school boards in that they are called upon to play a crucial role in applying the new provisions of the Act.

The school board—substituting for the Chief Electoral Officer

In his role as administrator of election financing, the Chief Electoral Officer may delegate his powers to the director general of a school board, although he maintains authority over supervision and control at all times. As a result of the powers delegated to them, directors general of school boards have responsibilities concerning:

- authorization of candidates;
- supervision with regard to political financing and election expenses;
- auditing of financial reports and returns of election expenses of candidates;
- reimbursement of election expenses out of the general fund.

Taking school democracy seriously

The legislator has set out penalties for natural persons and legal persons who contravene the provisions regarding financing and election expenses. These sanctions are almost exclusively fines—a minimum of $100 for a natural person and a minimum of $300 for a legal person. In addition, the Chief Electoral Officer must inquire into alleged or proven irregularities pursuant to the powers conferred on him.

But before using its coercitive power, the institution first endeavours to educate the public as well as the persons concerned at the school political level. Similarly, the bringing into force of provisions regarding the financing of candidates and the control of election expenses at the school level attests to the legislator's concern for school democracy.

Since the decisions made at the school level often have immediate effects on the lives of citizens, it is important in return that an equitable, transparent process prevail when decision-makers are elected. As a result, popular participation in elections as well as the probity of school administration cannot help but be strengthened.

5 Political Financing and Referendums

Referendums are well established as a means of consultation in the political traditions of several countries. In Québec, the first provincial referendum was held on April 10, 1919 to answer the following question: "Is it your opinion that the sale of beer, cider and light wines, as defined by law, should be allowed?"

The Referendum Act, enacted in 1978, sets out the rules for the holding and financing of referendums. Inspired strongly by the Election Act, which could be considered to be its "older sister," the Referendum Act is based on the same principles of equity and transparency with regard to financing and expenses. Like the electoral poll, the administration and control of the referendum process are placed under the impartial authority of the Chief Electoral Officer.

However, in order to better ensure compliance with these principles of equity and transparency, the legislator introduced certain provisions that are particular to the Referendum Act. Hence, the nature of the entities authorized to enter the race, as well as the conditions of their financing and the control of their expenses, differ somewhat depending on whether a referendum period or an election period is concerned.

5.1 General provisions of the Referendum Act

With a view to streamlining and harmonizing the existing democratic mechanisms, most of the provisions of the Election Act establishing polling conditions prevail during a referendum. Therefore, the two laws share the same definitions with regard to:

- the qualification of electors;
- electoral representation (the electoral map);
- posters, billboards and publicity;
- electoral organs;
- the order of election;
- the holding of the vote.

The referendum—a three-stage event

However, the referendum calendar is not the same as the election calendar. The referendum event is divided into three periods:

- The "pre-referendum period" begins on the day the question (or bill) submitted for consultation is tabled before the National Assembly and terminates with the government writ. During this stage, which continues for a minimum of 18 days, 35 hours of parliamentary debates distributed among the governing party and the opposition parties are held.
- The government writ marks the beginning of the referendum period per se. The writ indicates the polling date. The referendum campaign varies between 33 and 39 days and is closed by the poll, which must be held on a Monday.
- The polling day is followed by a 90-day "post-referendum period". During this period, the national committees must file their reports of regulated expenses, which are audited by the Chief Electoral Officer.

A committee for each option submitted

In addition, during the referendum period, our partisan political organization is challenged in some respects because the poll is aimed at rendering a decision on an opinion, rather than on electing representatives. And the options are not defended by political parties: they are defended by committees formed initially by the members of the National Assembly. At the beginning of the referendum process, these committees, which are intended to bring together the supporters of an option, are provisional. Each member may join the ranks of any committee, regardless of the political party to which he belongs. Hence, a member of a party advocating human-cloning legislation might very well join the supporters of the opposite position within another party.

In accordance with the Act, the provisional committees must be formed within five days after the question is adopted. After these five days, the Chief Electoral Officer must call a meeting of each provisional committee in order that the members may:

- appoint a chairman;
- adopt an official name;
- adopt an internal by-law.

Once all these conditions have been satisfied, the provisional committees become the only national committees conveying one of the options submitted.

5.2 Umbrella committees

National committees, also known as “umbrella committees”, are the most noteworthy feature of the Referendum Act. These committees are independent of the political parties, and they campaign as the official spokespersons and advocates of the referendum options at stake. For this very reason, they are authorized, like political parties, to solicit financial contributions, obtain state financing and incur expenses.

In creating these special referendum entities, Québec drew on the British experience, which also inspired the foundations of our election legislation at the end of the 19th century. National committees appeared in 1975 when a referendum was held on the question of Great Britain’s membership in the European Common Market. By introducing them into the legislation, the legislator wanted all citizens, including members, to render a conscientious decision on a question rather than rallying to a party line.

The establishment of national committees also constitutes a means of ensuring the utmost equity and transparency in referendum procedures. Since national committees are financially separate from the political parties and their existence begins on day one of the referendum campaign, they must all start with zero funds. In this way, all the options start off on the same footing. And since the parties and the committees keep separate accounts, the control of financing and expenses is facilitated.

5.3 Financing and control of expenses in referendum periods

When the provisional committees become national committees, they may take part in referendums. The official agent must then open an account in the committee's name in a financial institution having an office in Québec in order to keep track of all the financial activities of the committee. In addition, as is the case for a political party that is launched in the middle of an election campaign, only the official agent and his local agents may solicit contributions, authorize transfers of funds and incur expenses.

Popular financing

Whether in a referendum or an election, money is said to be the sinews of war. But to prevent national committees from having disproportionate resources or relaying the message of a lobby group or a business, the legislator has prohibited them from receiving contributions from legal persons. In fact, the principal financing rules that apply to national committees are similar to those pertaining to authorized political entities, namely:

- contributions may be made only by electors, but no tax credit is issuable;
- contributions are limited to $3,000 per elector, made out of his own property, to each of the national committees;
- a list of donors making contributions of over $200 must be published;
- the possibility of doing volunteer work, which is not considered to be a contribution.

State subsidies universally available

Contrary to political parties, national committees are temporary entities that exist only for the duration of the referendum event. On day one of the campaign, they have no funds in their accounts. In order to ensure an equal opportunity to all, the state is required to pay a subsidy to each national committee within three days of issuing the writ.

The Referendum Act establishes a limit on the regulated expenses of national committees. In 2002, this limit was $1 per registered elector whose name was entered on the list of electors. This subsidy enables the national committees to immediately launch their campaigns and take care of logistics, hiring of staff, day-to-day office expenses, promotion, preparation of advertising material, etc. In short, payment of the state subsidy to all national committees certainly provides the impetus for the referendum event throughout the territory.

Contributions and Political Parties

In the 1995 provincial referendum, the National Committee for the Yes and the National Committee for the No each received $5,000,000 for their campaigns. Half of this amount came from the state subsidy. The other half came to some degree from the electorate but primarily from the political parties, which contributed approximately $2,500,000 to each of the two committees.

During referendum periods, the Referendum Act permits the political parties to transfer amounts to the national committees. Only one limitation is imposed on party contributions—that they not exceed $0.50 per elector. At first, this practice could appear to compromise the principle of popular financing, which prohibits political contributions by legal persons. But since only electors may make contributions to a political party, the amounts that the party provides in the form of a loan or a transfer of funds are considered to be popular financing.

Control of expenses

The payment of a subsidy that in the past covered half of the authorized expenses of the national committees greatly facilitated their existence and the accomplishment of their missions. This direct and irrevocable subsidy is markedly different from the subsidy granted with respect to election campaigns, where half of the eligible election expenses may be reimbursed after the fact. However, this certainly does not mean that expenses are any less tightly controlled during a referendum period.

In fact, the state subsidy carries with it the obligation of accountability. Hence, the national committee must file a return of regulated expenses within 90 days after polling day to enable the Chief Electoral Officer to determine whether each declared expense is in compliance. The return is accessible to the public, as dictated by the principle of transparency clearly affirmed by the legislator.

Zero Deficit

A political party is entitled to have debts—but not so a national committee. National committees may contract short-term loans at the market rate from a political party but must reimburse them in full, in principal and interest. This is because national committees, contrary to political parties, exist only for the duration of the referendum event. For this very reason, the Referendum Act does not permit national committees to record any deficit resulting from the poll.

5.4 The advent of private intervenors

The referendum context led to significant changes in electoral legislation. Until 1998, third parties (persons or groups not authorized by the Chief Electoral Officer) were prohibited from participating in election debates. Moreover, the Referendum Act required affiliation with a national committee.

During the 1992 referendum campaign, an elector, Mr. Robert Libman, considered that his political opinion was inconsistent with the principal opinions conveyed by the national committees of Québec. He contested the legislative provisions concerning the intervention of third parties, citing a restriction on his freedom of expression.

The Supreme Court of Canada was required to render its judgment on October 9, 1997 (Libman v. The Attorney General of Quebec (1997), 3 S.C.R. 569). While acknowledging the commendability of the Act, the judges nonetheless also acknowledged the expression of pluralism in political opinions. The Québec legislator therefore introduced amendments designed to accept the intervention of third parties in referendum campaigns under certain conditions. Such third parties would be electors or groups of electors who considered that they could not publicly express an opinion through the national committees.

Separate opinion and publicity privilege

Before taking part publicly in the debate, the elector or the group composed in the majority of natural persons who are qualified electors must obtain authorization as a "private intervenor" from the Chief Electoral Officer. This status enables an elector or a group of electors to express a separate or marginal opinion and, in so doing, they may champion the status quo or advocate the spoiling of ballots, for example. However, it is imperative that the intervention of a neutral private intervenor not serve the interests of the national committee. In addition, the legislation dismisses motions that are not in accordance with legal requirements.

The legislation establishes a limit of $1,000 on a private intervenor's allowable expenses. This amount must be used exclusively for publicizing the private intervention. In addition, a private intervenor must file his return of expenses within 30 days following the poll.

In short, a neutral private intervenor cannot compete with a national committee on its own terrain or even incur heavy expenses in order to lead a heightened campaign. Even in the form of a group, a private intervenor is not considered to be a sort of marginal national committee and in this respect it "rides alone".

5.5 The Conseil du référendum—A special tribunal

Because of its temporary status, the referendum process does not provide a second chance to express an opinion. And although the Referendum Act endeavours to set out the rules of the game clearly, an elector may consider that he has been aggrieved or prejudiced.

For this reason, the Referendum Act established an exclusive superior judicial authority: the Conseil du référendum. This authority, which is composed of three judges of the Court of Québec, including a chairman, appointed by the Chief Justice of that court, examines and determines any dispute pertaining to a referendum and the application of the Act. It is therefore a tribunal through which to judicially contest a decision rendered by the institution or any other motion submitted by an officially recognized authority, for example the contestation of referendum results by the chairman of a national committee. The verdict rendered by the Conseil du référendum is final and without appeal. The Chief Electoral Officer must apply the provisions of the Referendum Act, whereas the Conseil du référendum interprets the Act and may render a decision by preference in order not to prejudice the applicant.

Hence, referendums are closely regulated, with regard to the actions of the national committees and the rights of electors—thereby providing a solid guarantee that they can really be instrumental in ensuring direct democracy.

Québec's first referendum was held in 1919, and its second, excluding the 1942 plebiscite on conscription, was not held until 61 years later. However, referendums have become more frequent since 1980. As a result of the political context, referendums have up to now tended to concern constitutional matters. But party because of the increasing complexity of societal challenges, many sensitive subjects may well be dealt with in referendums. Hence, equity and transparency are principles that must be preserved in the referendum process.

6 The Coercitive Component of the Legislation

With the mandate of administering the poll as well as regulating the financing and control of the expenses of political entities, the Chief Electoral Officer is without a doubt the custodian of electoral legislation.

In 1983, with the coming into force of the Act respecting the integration of the administration of the electoral system, the Director General of Elections, as the Chief Electoral Officer was known at the time, assumed responsibility for the regulation of political financing, which had up to then been overseen by the Director General of Financing of Political Parties. Because of this new responsibility, the institution added a Service de la vérification, entrusted the handling of complaints to its Service du contentieux and enlisted the assistance of additional investigators.

This coercitive role is not inconsistent with the missions of education and democracy—also incumbent on the institution—arising directly from the spirit of the 1977 reform. In the eyes of the legislator, for political practices to be remedied once and for all, the entire population—not only the electors but also legal persons and political parties—first had to acquire a new ethic. For this reason, education, regulation and control became indissociable.

6.1 Powers of the Chief Electoral Officer

The Chief Electoral Officer has the powers of a commissioner appointed pursuant to the Act respecting public inquiry commissions, with the exception of the power to order imprisonment. In this capacity, the institution may use all legal means available to it to undertake an inquiry. These powers, which are comparable to those of other government agencies and departments having inquiry responsibilities, allow it to summon witnesses and even to compel them to produce documents. In its role as prosecutor, the Chief Elector Officer may bring penal proceedings in connection with legislation under its administration.

Informing before taking proceedings

Nonetheless, for several years, there were few inquires and proceedings. This was because the Chief Electoral Officer, as an impartial institution, could be said to have worn two hats. One consisted of educating those concerned, in particular the representatives and militants of the provincial and municipal political parties. The other consisted of administering the law as it applied to the same interested parties. Initially, the institution focused on the training and education component of its mandate and was more interested in making participants accountable than in systematically bringing judicial proceedings. The same intent remains today.

Administering the Act

Although the public largely adheres to the principles of equity and transparency with respecting to political financing and election expenses, offences are inevitably committed, as evidenced by the annual financial reports and reports of election expenses which the political entities submit to the Chief Electoral Officer for examination. In addition, the institution may conduct inquiries following complaints filed by citizens, agencies, political parties, and the media, as well as on its own initiative.

The greatest number of complaints are of course received during election or referendum years. In this regard, the referendum held on October 30, 1995 was without doubt the subject of the most complaints ever. Over 400 complaints related to the various aspects of the legislation were filed—twice as many as during the Canada-wide referendum of 1992 and as the average recorded during general elections. But with massive public participation at a rate that exceeded 93%, the extreme polarization of the debate and the emotions that were evoked by the event, this large number of complaints could certainly have been expected.

Not all inquiries give rise to court proceedings. The Chief Electoral Officer decides to bring proceedings in accordance with the following criteria:

- the alleged acts clearly constitute an offence;
- on the basis of information gathered (documents such as reports, invoices and cheques or personal testimony), convincing evidence can be adduced before the court;
- the offence is exemplary in nature.

When judicial proceedings are brought, the offender pleads guilty and pays the fine in 65% of cases, hence terminating the proceedings. When no plea is recorded or a not-guilty plea is transmitted, the case is transferred to the court for hearing.

Despite the coercitive power it possesses, the Chief Electoral Officer first endeavours to obtain the cooperation of the persons concerned, several of whom are also participants in the electoral system. The institution in fact aims to retain the confi-

dence of electors and all political participants with regard to its roles as administrator of the Act as well as investigator and prosecutor rather than to bring countless proceedings.

6.2 Principal offences and penalties

With regard to political financing and election expenses, the Act defines a series of offences. The principal offences are as follows:

- contributions from non-electors;
- contributions from electors that are not made out of their own property;
- contributions from third parties that are paid through electors;
- solicitors who are not authorized by the official representative;
- election expenses that are not authorized by an official agent;
- election expenses indicating prices that different from market prices;
- executing orders for election expenses that are not given or authorized by an official agent;
- reports of election expenses or financial reports not filed;
- supplier claims not paid prior to filing of the report of election expenses.

These principal offences are committed at both the provincial and municipal levels. With the exception of the last two offences, which are related to the report of election expenses and the financial report, the fines applicable under the Election Act and the Act respecting elections and referendums in municipalities vary from $500 to $10,000.

For a first offence, the Chief Electoral Officer, acting as prosecutor, generally imposes the minimum penalty. When a more severe penalty is imposed, the judge will take into account the following criteria:

- the fact that it is a second or subsequent conviction;
- the status of the offender;
- the size of the expense or contribution.

Certain trends can be seen from the statistics compiled regarding proceedings brought by the Chief Electoral Officer over the years.

In this respect, it appears that certain offences that were more frequent 15 or 20 years ago have become much less frequent. For example, provincially, the number of contributions exceeding the maximum permissible contributions—one of the most common offences in the past—is now very low, if not nil.

However, certain types of offences that were practically non-existent 15 or 20 years ago have led to an increasing number of proceedings. Although they remain uncommon in absolute numbers, contributions made by non-electors through persons who are qualified electors have increased slightly.

Publicity, the Media and the Act

In the provincial general elections of November 30,1998, the election expenses of all the authorized political entities amounted to $15 million. Much of this amount was obviously used to purchase media advertising, which plays a crucial role in transmitting the image and message of parties and candidates, as attested by the publicity expenses of the parties, which have tripled in 20 years. The Act limits election expenses so that media exposure will be equitable for everyone. There have not been many offences relating to publicity in the media. Publicity offences primarily concern the printing of material that has not been authorized by the official agent or identified in accordance with the requirements of the Act.

Administrative sanctions

The Act requires that the political entities file financial reports and reports of election expenses within specific periods of time. A party that does not comply with its obligations pertaining to the filing of such reports or with regard to expenses and loans may have its authorization revoked by the Chief Electoral Officer.

Severity of the Fines

As a general rule, an elector or a legal person who is guilty of a first offence will be given the minimum fine. However, there are "aggravating factors" pursuant to which the Chief Electoral Officer will request a higher fine, including a second or subsequent offence, the offender's status as well as the amount of the unlawful contribution or expense.
Fines imposed on legal persons are much more severe since one of the fundamental objectives of Québec's electoral legislation is to ensure that citizens control the principal levers of power.

In addition, a party leader may lose his right to sit in the National Assembly if his party's reports are not transmitted within the required times and for as long as the reports have not been filed.

A "corrupt" electoral practice, for example the filing of false reports of expenses or false invoices, may entail the loss of the right for a period of five years to engage in partisan work, vote or be a candidate in an election and hold any office to which appointment is made by an order of the government or by a resolution of the National Assembly.

6.3 Legislative challenges

In entrusting the administration of election legislation as well as the responsibility for conducting inquires and prosecution to one institution, the Québec legislator has certainly drafted innovative legislation since fulfilling more than one role is not the rule. In short, the Chief Electoral Officer is the arbitrator of the election system and the administration of the Act. In this respect, the institution provides its expertise by issuing directives and proposing and recommending legislative amendments to improve the Act's scope and rigour and at the same time must deal with the legal or other trends that may affect this scope and rigour.

Charters influence

From the outset, the Québec and Canadian charters of rights and freedoms provide clear challenges to the legislator. Since the advent of the charters, the constitutionality of laws has been subject to court assessment, the courts having acquired the power to invalidate any legislative provision that infringes human rights and freedoms when such infringement cannot be considered to be reasonable in a free and democratic society. The advent of the charters is not recent. However, citizens began to invoke them more frequently in the 1990s, resulting in numerous legislative changes.

With regard to elections, the contestations most often are based on the freedoms of expression and association, of which the Libman case is certainly the most famous illustration. In that case, in 1997, the Supreme Court of Canada invalidated the provisions of the Special Version of the Election Act for the Holding of a Referendum that prohibited the intervention of third parties outside of the national committees. Up to that time, only the national committees were authorized to incur expenses to promote one of the options submitted to a referendum, and groups or persons wishing to take part in the debate were required to concur with a national committee. As a result, Robert Libman contested these dispositions, citing that they infringed the freedom of expression.

In its judgment, the Supreme Court commended the objectives of the legislation, namely to guarantee equality among the options and prevent the referendum debate from being dominated by a few wealthy persons or groups. However, the means taken by the legislator to achieve these objectives were considered to be too restrictive. Nonetheless, this decision did not alter the foundations of Québec's referendum legislation. After the decision was rendered, amendments were introduced to permit third parties to intervene in a referendum debate in accordance with specific guidelines.

The Supreme Court has on numerous occasions reaffirmed the central importance of freedom of expression in the political arena. In addition, the Québec legislator has provided for various means of controlling election expenses to ensure that elections and referendums are fully democratic exercises. To the legislator, the Libman case attests to the delicate balance that exists between individual freedoms and an equitable electoral process.

Obstacles to administration of the Act

Today, citizens have a clear understanding of the notion of human rights and freedoms and have become more familiar with the spirit of the charters. In turn, the administration of electoral legislation has been affected.

In this regard, the investigators of the Chief Electoral Officer are increasingly confronted with cases of reticence and hesitation or even refusal to cooperate and must at times use their powers to compel in order to gather information.

The courts, for their part, have determined that in most cases, these powers must be exercised cautiously since the provisions of the Canadian and Québec charters remain in force and apply to the Chief Electoral Officer.

Preserving equal rights

The principles of equity and transparency inherent in electoral legislation are certainly not inconsistent with individual rights and freedoms such as the freedom of expression and respect for private life. The Supreme Court of Canada reaffirmed the relevance of the fundamental principles of the Act in rendering its 1997 decision in Libman. In the opinion of the highest court in the land, duly regulated political financing and rigorous control of election expenses are the best guarantee of sound political practices. One of the major challenges the legislator faces today is certainly the preservation of this collective asset as it faces the test of individual rights, freedoms and interests.

7 Financing Since 1978

The legislative provisions pertaining to the financing and control of election expenses are just over a quarter of a century old. They have certainly resulted in significant changes to party treasuries and enabled Québec, contrary to most modern democracies, to avoid and even transform to its advantage the challenging issue of spiralling costs.

In this respect, the financial contributions of thousands of electors fortify the parties by helping to project and promote their ideas during election debates and referendums, as well as during everyday events. In addition, state assistance relieves the main political parties of concerns about day-to-day operating expenses and provides new parties with the resources to establish an initial platform.

The combination of these two principal sources of political-party financing is intended to fully benefit citizens. Despite the substantial increase in public funding, the political parties and candidates continue to rely on popular support—from which they still derive most of their revenues.

7.1 Financing highlights

Excluding the 1980 referendum, the first real electoral test for the legislative provisions on political financing and control of election expenses occurred in 1981. The number of donors also reached a historical peak in that year.

During the course of 1981, an aggregate amount of $6,372,287 was paid in contributions, anonymous donations, entrance fees to activities, and memberships. A total of 184,533 receipts was returned to electors who made monetary contributions amounting to $4,402,037. Amounts of over $100 were contributed by 5,337 electors, totalling $1,240,242[5].

Nearly 20 years later, during the 1998 election year, the number of donors dropped by half. However, during these two decades, the average value of contributions continued to rise, increasing from $24 in 1981 to $171 in 2001.

5 Directeur général du financement des partis politiques, Assemblée nationale, Rapport annuel 1981–1982, Éditeur Officiel du Québec, 1982, p. 16.

Nonetheless, any comparison with 1981 must be examined cautiously, given the numerous amendments made in the legislation since then, as well as the changes in the socioeconomic situation nationally.

The 1985 elections were held in a context of social inertia and strong economic decline, which began in 1982. Revenues from membership and individual contributions dropped considerably. The popular financing record attained in 1981—which has been unequalled since then—perhaps attests more to the values of a particular time than to the efficiency of the system as a whole.

Image campaigns—costly campaigns

As a result of this decrease in political militantism—manifested in all democracies—the parties had to develop new strategies. They relied more on image campaigns than on militant rallies and other activities intended to increase participation. Campaigns began to take place on the small screen. However, televised advertising messages, produced at great expense by communications firms, placed a burden on the parties' electoral budgets. In addition, these budgets were not elastic, since the Act limited election expenses in accordance with the number of registered electors.

No doubt taking into account the erosion of the purchasing power of electors and to maintain the financial autonomy of the political parties, which also were confronted with economic contingencies and increased costs associated with the promotion of their ideas, the legislator considerably increased the leeway of the parties and the candidates as follows:

- in 1989, the total annual limit on individual contributions, which up to then was established at $3,000 for all of the authorized political parties together, was increased to $3,000 for each of the parties individually;
- in 1992, the limit on the election expenses of candidates increased from $0.80 to $1 per registered elector, and the limit for the parties rose from $0.25 to $0.50 per registered elector.
- also in 1992, the state began reimbursing the election expenses of the parties, at a rate of 50% of expenses incurred and paid in accordance with the Act;
- in 1992, as well, the annual state allowance to the parties increased from $0.25 to $0.50 per registered elector;
- in 2001, the maximum tax credit granted to donors was raised from $250 to $300, and in the same year the limit on party election expenses increased from $0.50 to $0.60 per registered elector.

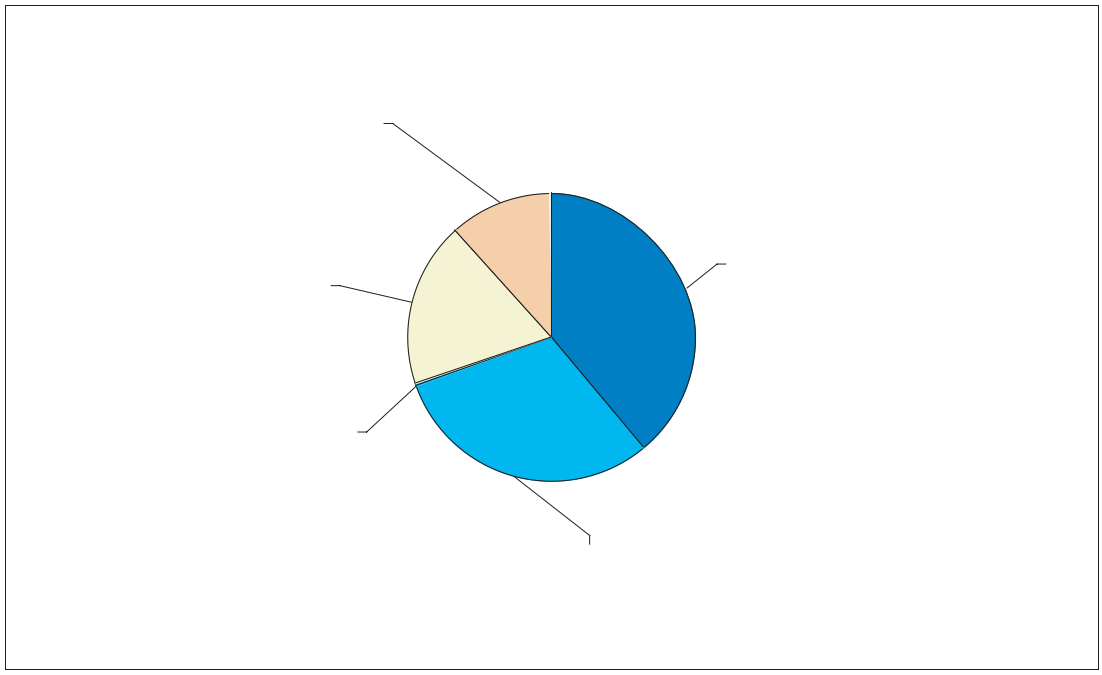
Because of changes to popular-financing rules and the substantial increase in public assistance, the two main parties—the Liberal Party of Québec and the Parti Québécois—as well as their candidates, incurred $7.6 million in advertising expenses in the 1994 elections, one and a half times the amount of $5.1 million spent in the 1985 elections.

The state's share

The state's share, which represented nearly half of all political financing from 1990 to 2001 allocated as shown in the graph below, was composed of five budget items:

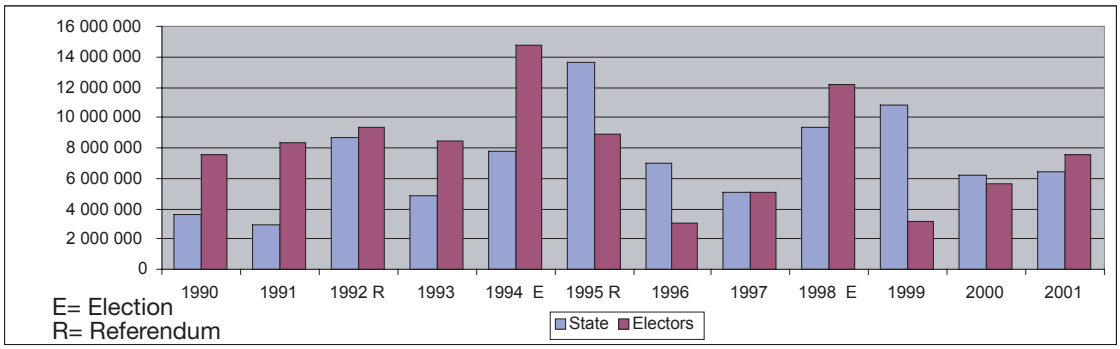
- annual allocation to the authorized political entities;
- reimbursement of auditing costs;
- partial reimbursement of election expenses;
- subsidies to the national committees;
- tax credits.

Average Composition of Public Assistance – 1990–2001



The increase noted in the year following an election event was due to the reimbursement of election expenses incurred by the political parties, the candidates being entitled to advance on the reimbursement in the election year. With regard to referendums, state assistance appeared in the same calendar year since it consisted of a direct subsidy and not a reimbursement.

Net Public and Popular Financing – 1990–2001



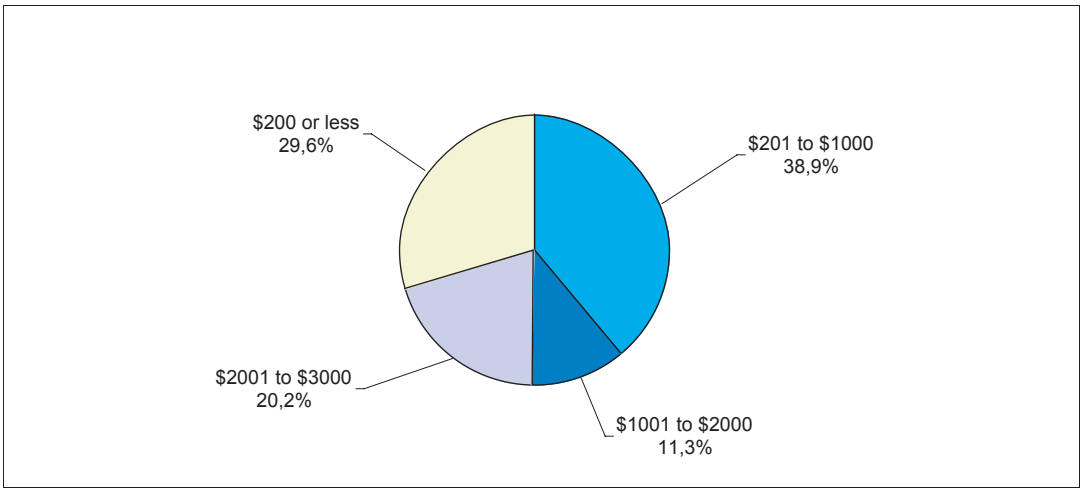
Transparent public funding

Information on political financing is available to the public. A breakdown of the amounts paid annually in allowances, subsidies to national committees and reimbursement of party election expenses to every political party, as well as tax credits to donors, could therefore be obtained.

Contributions of all sizes

Although there were fewer donors than in 1981, contributions of $200 or less represented more than one-third of the financial resources of the two main political parties, with 105,190 donors contributing a total of $10.4 million to the two main parties in the 1994 elections. Moreover, the wealthiest donors gave more generously, the average contribution quadrupling to $171 in 2001. In addition, the political parties continued to receive loyal support from donors with modest incomes.

Contributions According to Amount Contributed – 2001

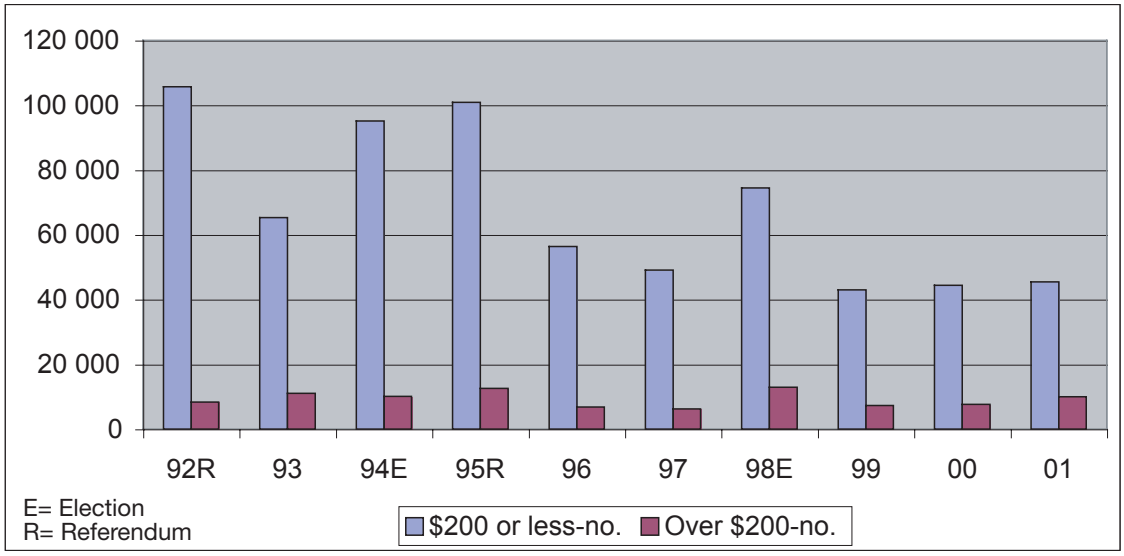


The legislation provides for two categories of individual contributions:
• $200 or less,
• over $200.

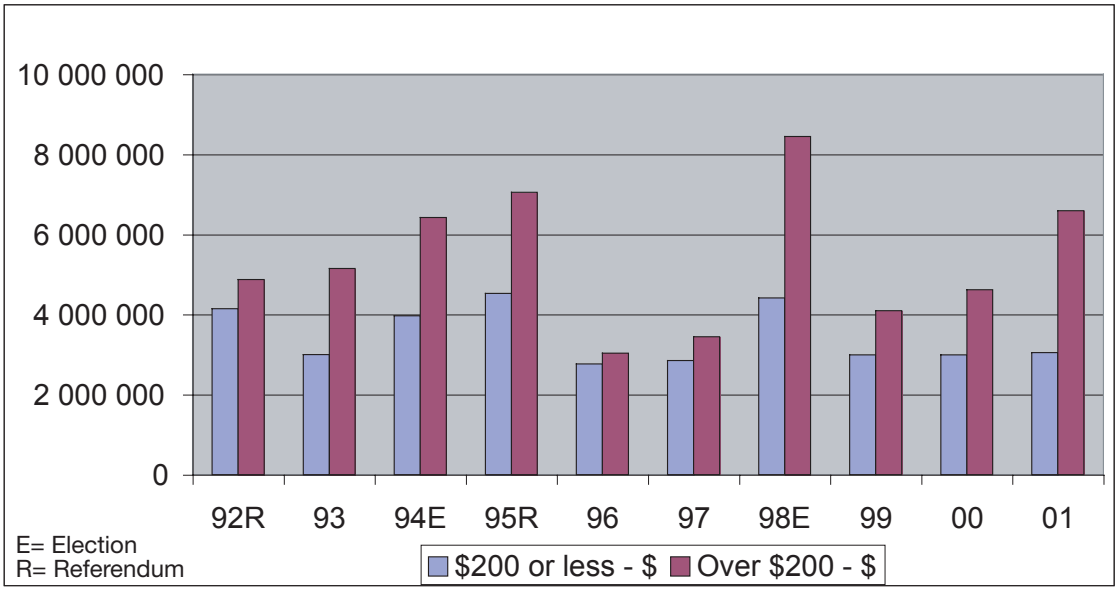
Although all contributions must be accounted for, only donors whose total contributions exceed $200 need be identitifed. Hence, the financial reports of the political entities present the contributions collected under these two categories only. However, the composition of popular financing may be analyzed more finely using other data available. A summary analysis deduced from these data, collected from the two main political parties representative of the period examined, is provided below.

- Year after year from 1992 to 2001, small contributions of $200 or less accounted for 39% of all contributions to the two main political parties.
- Average annual value of small contributions: $3,468,426.
- Nearly 10% of contributions were greater than $400 but represented 55% of the total value.
- The total number of contributions increased by an average of one-third in election (E) and referendum (R) years.
- The number of contributions has approached 50,000 since the 1998 general elections. These data represent the gross portion of popular participation. They exclude tax credits granted.

Number of contributions paid to the Liberal Party of Québec and the Parti Québécois (according to contribution category) – 1992–2001



Value of contributions paid to the Liberal Party of Québec and the Parti Québécois (according to contribution category) – 1992–2001



Tax credits—an egalitarian fiscal incentive

In 2001, contributions of $1,000 or less constituted over two-thirds (68%) of total contributions, and a maximum tax credit of $300 was granted on a maximum contribution of $400. On the other end of the spectrum, nearly 500 donors contributed a total of $1,476,000, which gave rise to an aggregate tax credit of $150,000.

Considering all contributions together, the ministère du Revenu du Québec granted tax credits of $3,468,000 to 40,136 taxpayers, representing an average credit of $86 to each of these taxpayers. Moreover, since 9 donors out of 10 did not contribute more than the maximum amount required to receive the maximum tax credit, this fiscal incentive obviously encouraged contributions from modest donors, as the legislator intended, and played a very marginal role for wealthier donors.

Elections and referendums—increased contributions

The democratic consultation process always arouses strong interest in citizens, and this is reflected in a greater number of individual contributions. The referendums of 1992 and 1995 successively accounted for close to 100,000 contributions, as did the 1994 and 1998 election years. These specific increases can be explained as much by the intense solicitation effort as by higher contributions by regular donors and the participation of other electors. These sudden increases must no doubt be interpreted as a positive sign attesting to the credibility that donors gave to the political parties.

Anonymous donations—the reality behind the myth

In 2001, the portion of party revenues derived from anonymous donations did not even amount to one half of a percentage point. In that year, contributions collected by all the authorized entities amounted to $9,923,241, whereas the total declared value for anonymous donations was $18,557, corresponding to an infinitesimal proportion of 0.13% of all revenues.

Diversification of solicitation methods

To make up for the decrease in individual contributions and in memberships—since membership dues traditionally constituted a non-negligible revenue source for the parties—other types of financing activities were added over the years, as provided for by the legislator. In this regard, the parties seemed to rely more on benefit suppers, conferences and golf tournaments as lucrative, and legitimate, popular-financing activities. These activities generated $5,748,505 for the main parties in 2001. The legislation considers the total revenues generated by these activities to be individual contributions.

Contributing by credit card

Québecers often use credit and debit cards to pay for their purchases and meet their day-to-day expenses, and a growing number of organizations other than merchants

and businesses accept these payment methods. This trend may also facilitate the financing of political parties, which have been authorized since 2002 to collect contributions of over $200 paid electronically.

7.2 Information technologies serving citizens

Throughout the world, new information technologies such as one-stop service, electronic transactions, forms, answering and orientation services, as well as digitization of the laws and government publications are redefining governance, bringing the government closer to its citizens and improving services. They also constitute value-added services that can be provided at a very low cost.

In an effort to carry out its fundamental mandate of communication and education effectively, the Chief Electoral Officer uses the new technologies to circulate its publications more widely and to provide all the voting information citizens require during election periods. In short, the new information technologies provide a complementary means of communication but do not replace the other media or the postal service in information campaigns.

Heightened transparency—on-line consultation

Disclosure of the identity of political-party donors guarantees that popular financing is transparent. In this regard, the Web provides a powerful means of disclosing the financial reports of the authorized entities. The financial reports and records of persons donating over $200 per year may be consulted on line on the Chief Electoral Officer's Web site by using one or more of the following search criteria:

- year,
- party,
- last name,
- first name,
- contribution amount.

The search interface displays the results according to the name of the political party or the donor's name. It also displays the number of contributions per result. This database therefore provides optimum information and permits refined statistical analysis. Although available to the public, this information was up to now primarily consulted by media representatives. Consequently, the electronic version, available on line or as a downloadable file, will facilitate the documentary research of specialists, journalists and citizens.

8 Political Financing in Québec, Canada and Abroad

Because governing is capital-intensive and influence-prone, democracies have long been concerned about the financing of political activities. In 1854, a British anti-corruption law limited the election expenses of parties and candidates, and in the 1920s, Germany introduced the notion of state financing. Over the past 20 years, several democracies have experienced scandals that have weakened citizens' confidence in elected representatives and resulted in legislation designed to re-establish the system's credibility.

Compared with the rest of the world, the Québec model of political financing and control of election expenses has remained one of the most stringent.

8.1 Contributions

Historically, the contributions of individuals and legal persons have constituted the primary source of political-party financing. All democratic systems have had to determine how to define a contribution, an authorized donor and permitted amounts. In other words, the legislation of the various states has been required to focus on the what?, who? and how much? questions and provide various answers to them.

What?

In addition to monetary donations, Québec legislation considers the price of goods or services provided free of charge to be a contribution. Such is not the case in several states, which exclude certain services—and sometimes even goods—provided by individuals or legal persons. However, one thing is certain: charitable work is not considered to be a contribution.

Who?

The legislation of Québec and, since 2002, of Manitoba, are the only legislations in the world that prohibit contributions from legal persons and requires donors to have electoral status. Although it permits unions and other associations to finance political parties, France became one of the only European countries to prohibit contributions from private enterprise in 1995.

"Foreign" Financing

In the early 1990s, the United Kingdom noted that it had become a victim of its "popularity" abroad, deriving most of its political financing from foreign sources. Several states do permit foreign contributions, but not so for Québec. In 2001, the United Kingdom decided to restrict this "privilege" to members of the European Union. On this side of the Atlantic, the Maritime provinces, British Columbia and the Yukon accept foreign contributions if the company carries on activities locally. However, the United States prohibits this financing practice as a form of interference in the conduct of the internal affairs of the nation.

How Much?

The establishment of a contribution limit is the usual means of dissipating appearances of control and influence exerted on a political party by a natural or legal person. However, the limits vary considerably from one jurisdiction to another. In Canada, only Manitoba has adopted Québec's contribution limit of $3,000 per elector per year to each of the authorized political entities, and the rules in most of the other provinces bear very little resemblance to those of Québec.

A few examples follow:

- Ontario's contribution limit is $7,500 to each of the parties. In addition, Ontario permits a $1,000 contribution to a constituency association and a party candidate during an election campaign, with a maximum contribution of $5,000 per year to all associations and all candidates, respectively.
- In Alberta, the contribution limit is $15,000 to each of the parties during a regular year and $30,000 during an election year, excluding amounts paid during the calendar year, plus direct contributions to constituency associations and party candidates, as in Ontario.
- British Columbia has not established any limit on contributions from natural or legal persons, as is the case with the federal legislation.

Table IV
Provisions on Election Financing in Canada[6]

Jurisdiction	Limits on election expenses	Limits on amount contributed during a year or an election period	Regulation of third party advertising during an election period	Blackout period	Restrictions on opinion polls
Canada	○		○	○	○
Newfoundland and Labrador	○			○	
Prince Edward Island	○				
Nova Scotia	○				
New Brunswick	○	○		○	
Québec	○	○	○	○	
Ontario	○	○		○	
Manitoba	○	○			
Saskatchewan	○				
Alberta		○			
British Columbia	○		○	○	○
Yukon Territory					
Northwest Territories*	○	○		○	
Nunavut*	○	○		○	

Source : Adapted from the Compendium of Election Administration in Canada: A Comparative Overview

* Political parties do not exist at territorial level in the Northwest Territories or Nunavut.

6 Elections Canada, Electoral Insight, May 2002, p. 5.

Table V
Provisions on Public Funding[7]

Jurisdiction	Tax credit	Annual allowances to the political parties	Reimbursement of election expenses	
			Political parties	Candidates
Canada	○		○	○
Newfoundland and Labrador	○			○
Prince Edward Island	○	○		○
Nova Scotia	○			○
New Brunswick	○	○		○
Québec	○	○	○	○
Ontario	○		○	○
Manitoba	○		○	○
Saskatchewan	○		○	○
Alberta	○			
British Columbia	○			
Yukon Territory	○			
Northwest Territories*	○			
Nunavut*	○			

Source : Adapted from the Compendium of Election Administration in Canada: A Comparative Overview

* Political parties do not exist at the territorial level in the Northwest Territories or Nunavut.

7 Elections Canada, Electoral Insight, May 2002, p. 7.

Varying Limits

France limits contributions of natural persons to F30,000 (about CAN$7,500) to each party. Germany has no formal limit and permits donations to be made on behalf of spouses and children. The United States has established an unusual mixed model. Although for all intents and purposes no limit is imposed on corporate contributions, contributions by electors are limited to a total of US$25,000 per year, consisting of a maximum contribution of US$20,000 to one or all parties and a maximum contribution of US$5,000 to an advocacy association called a "political action committee".

8.2 Public funding

State funding became more pervasive, first in Europe, during the second half of the 20th century, and appeared in democracies as one of the most pragmatic means of improving party finances and rendering political parties viable. In several jurisdictions, public funding today constitutes a significant portion of party treasuries.

Here and abroad, it takes similar forms:

- Direct subsidies: annual allowances and partial reimbursement of election expenses.
- Indirect subsidies: tax credits or refunds granted to taxpayers, various deductions of expenses incurred, tax exemptions, and free postage.

The amount of public funding varies according to the jurisdiction. In this regard, Alberta and British Columbia are at one end of the spectrum, where minimal state participation amounts to a tax credit granted to taxpayers. With its legislation providing for an annual allowance, reimbursement of election expenses and tax credits, Québec is situated at the other end.

Annual allowance

The annual allowance to the parties was established in Québec in 1975. However, it is more of an exception than a rule in Canada. In this respect, Manitoban political parties do not receive allowances but are controlled similarly to Québec parties. Prince Edward Island does pay an allowance but allows corporate contributions. However, like Québec, most European states provide allocations as part of their overall funding and divide the amounts among the parties in accordance with the valid votes obtained in the last general elections.

Reimbursement of election expenses

Most industrialized countries grant a partial reimbursement of election expenses that never exceeds 50%, contingent upon the obtainment of a certain percentage of valid votes. Since 1998, this threshold in Québec has been 1% of valid votes for parties and 15% for candidates, constituting one of the lowest percentages in the world. Although in Germany, 0.5% of valid votes is enough to obtain a reimbursement of expenses, the threshold is 2.5% in Sweden, 5% in France and 75% in Taiwan.

In Canada, the federal legislation imposes limits on the expenses of parties and candidates.[8] Expenses are reimbursed up to a maximum of 22.5% for parties and 50% for candidates. In Europe, as a general rule, expenses are also limited. However, taking into account the specific features of the electoral systems and the number of inhabitants, European countries cannot easily be compared with Québec. Suffice it to say that in France, a presidential candidate in the run-off ballot is entitled to spend up to F120 million (approximately CAN$30 million).

The Price of American Democracy

Throughout the world, modern communication methods and the mass media have resulted in spiralling election costs. The United States certainly has beaten all the records, posting a 500% increase in the cost of election campaigns in 30 years, excluding inflation! According to the most conservative estimates, the 1998 congressional elections cost US$500 million.

8.3 Third-party views in election campaigns

In Europe, the United States and even in Canada, third parties play an important role in election campaigns. Québec differs in this regard in that third parties—groups or individuals that are neither parties nor candidates—are relegated to a marginal role.

The Québec legislator has permitted third parties—or "private intervenors"—to participate in election campaigns only since 1998. Private intervenors are entitled to express political views, but upon strict conditions, in order to preserve the principle of equity among the parties and among the candidates regarding election expenses. They must obtain authorization, are not entitled to spend over $300 on publicity and must file reports with the Chief Electoral Officer after the campaign.

In Québec, private interventions serve to publicize a different opinion on a topic of public interest that is not defended by any of the parties or candidates nominated. Other jurisdictions have developed a concept of third party that reflects a very different vision.

A broad definition

In the United States and Europe, all types of groups that do not constitute authorized political entities, private companies or trade unions are considered to be third parties. Ideological associations, lobby groups and pressure groups also fall into this category. As a general rule, these third parties are associated with a political party or a candidate and are called "political action committees" in the United States and "foundations" in Western Europe.

8 The limit on the election expenses of a party registered for an election is $0.62 per registered elector. The expenses of a candidate are limited to $2.07 for the first 15,000 registered electors, $1.04 for the next 10,000 and $0.52 for the remainder.

Third-party financing

Political action committees and foundations have considerable resources, given their financing sources. Receiving contributions from citizens and legal persons, the American committees spend several hundred million dollars on election advertising. Corporations, for their part, finance electoral campaigns through these committees.

The German foundations—known as Stiftungen—also receive contributions from natural and legal persons and obtain a government subsidy. Political foundations are generally organizations associated with a political party, even though they have a separate legal status. These foundations normally do work that benefits the associated party without constituting electoral propaganda per se. Their political role is explicitly recognized in that this public financing is distributed on the basis of the representation of the associated parties in the Bundestag (the German parliament). In 1993, the government gave these foundations DM326 million (approximately CAN$264 million). Most of this amount was shared among the five main Stiftungen.

France, Italy and Sweden, in particular, have similar foundations—deeply rooted in tradition—which intervene to varying degrees in the political arena. They constitute somewhat discreet—but entirely legitimate—vehicles of party and candidate financing.

Canadian federal legislation regulates the intervention of third parties more closely. Such third parties, which may as in the United States and Europe be associations or groups, must obtain authorization to incur expenses of over $500. In addition, third-party expenses are limited to $150,000 nationally and $3,000 per electoral district. These limits are indexed in accordance with the legislation.

8.4 Disclosure of contributions—various models

Transparency—a fundamental principle of much election legislation—requires that parties and candidates comply with rules regarding accountability and the disclosure of financing sources. In this respect, Québec, which requires political entities to file detailed financial reports and reports of election expenses that are accessible to the public, certainly possesses one of the most rigorous election laws in the world.

Although the disclosure of political contributions and election expenses is acknowledged as a legitimate practice serving collective interests, it is interpreted and applied in various ways, depending on the jurisdiction. A number of different models are described below.

Canadian Federal model

Even though there is no contribution limit, federal political entities must file an annual financial report disclosing the identity of every donor contributing $200 or more. The report must indicate the donor's name and address in the case of an individual and the corporate name and the identity of the chief executive in the case of a company, a trade union or any other organization. Political entities must also file a report of election expenses because these expenses are partially reimbursed.

American model

Because American legislation is complex, it is difficult to establish a clear financial portrait of the political parties. The disclosure obligation concerns donations of US$200 or more, and the parties must provide detailed information on the identity of donors. However, revenue sources need only be disclosed with regard to federal elections, which right away considerably hinders the possibility of following the financial history of the parties. In addition, companies and trade unions can contribute considerable undeclared amounts to the political action committees for advertising purposes in order to support the campaigns of parties and candidates.

British model

In the United Kingdom, the contribution disclosure mechanism is very different. First, any contribution of over £200 (approximately CAN$500) must be included in the annual balance sheets filed by the political entities. However, the political entities are not required to disclose the identity of donors. In addition, when the contribution exceeds £5,000 (approximately CAN$12,500), the donor himself is responsible for the disclosure but is not required to reveal the exact amount or the party receiving the contribution. Moreover, private enterprises must include the amount of their party contributions in their annual reports.

8.5 Political financing—different mechanisms serving similar objectives

In 1977, the introduction of strict measures to control political financing and election expenses in Québec legislation was intended to limit the risk of corruption and promote equity by reducing the disparities between political organizations.

The improvement of party finances and electoral practices is without doubt a goal that is shared by all great democracies. As we have seen, the means of achieving this goal vary according to the jurisdiction and clearly cannot be dissociated from a given political culture.

Over the past 20 years, several governments have tightened their legislation—a trend that has increased as a result of a series of scandals that few governments escaped. Québec's provisions with regard to political financing and the control of election expenses may perhaps be considered to play a kind of preventive role because they limit the possibilities of abuse.

Election legislation must also promote the political action of parties and the participation of citizens in the democratic process. Provisions that are too rigid may impede this action, whereas provisions that are too lax may pave the way to corruption and discredit the electoral system. In the years to come, the challenge for all legislation, including Québec's legislation, will be to maintain a fair balance between measures aimed at controlling political entities and measures intended to ensure that our democracies are effective.

Appendix

○ Chronology of political financing

Chronology of political financing

Law of 1875

In 1875, the legislator established relatively strict rules to control the election expenses of candidates in provincial elections.

This law also set out the obligation for every candidate to have an agent, who alone was authorized to incur election expenses on behalf of the candidate. The agent was required to file a full report of election expenses, along with all vouchers in support thereof. Offenders were liable to monetary sanctions or imprisonment.

Law of 1895

This law established a limit on election expenses and required that the source of electoral funds be indicated and reports of election expenses be published.

The Law of 1895 included very severe sanctions including imprisonment with or without forced labour.

1900 to 1960

This period was characterized by a progressive reduction in the controls on election expenses.

In 1903

The limit on election expenses was abolished, and candidates were no longer required to appoint just one agent to be responsible for their election expenses.

In 1932

Candidates were no longer required to have an agent responsible for their election expenses.

In 1936

The government abolished the obligation to file a statement of election expenses.

1960 to 1976

Although the Québec Election Act of 1963 included a lengthy section on election expenses providing for more severe sanctions and penalties, the Act lacked rigorous concrete application mechanisms.

In 1963

The Québec Election Act required the parties and candidates to appoint an official agent, election expenses had to be declared in a report of which a summary was made public and election expenses were again limited. The Act provided for partial state reimbursement of election expenses.

In 1975

The legislation now provided for a form of public financing by means of an allocation to the parties represented in Parliament.

August 26, 1977

The Act to govern the financing of political parties was assented to after being unanimously passed by the members of the National Assembly of Québec.

This legislation marked a turning point for financing in the political process of Québec.

Two basic principles underlay this reform of political financing in Québec: TRANSPARENCY and EQUITY. The fundamental objectives sought by the Law of 1977 were as follows:

1. To allow electors alone to contribute to the financing of political parties.
2. To control this financing by requiring the political parties to disclose the sources of their income and their expenditures.
3. To encourage small contributions at the grass roots.
4. To encourage the involvement of the political parties.
5. To vest the Director General of Financing of Political Parties with a dual role of control and information.

June 23, 1978

The Act respecting the 1978 elections in certain municipalities and amending the Cities and Towns Act was assented to.

This legislation applied obligatorily to municipalities that held general elections in 1978 and had 100,000 or more inhabitants (Montréal and Longueuil) as well as to municipalities of 20,000 inhabitants or more that decided to adhere to it (Saint-Léonard and Pointe-aux-Trembles).

In short, this legislation applied the same principles concerning the regulation of election expenses to municipalities as were applied provincially, adapted as required.

June 1979

The National Assembly of Québec extended the application of the Act respecting elections in certain municipalities and amending the Cities and Towns Act to municipalities of 20,000 inhabitants or more that were required to hold general elections in 1979, namely 13 municipalities. At that time, 55 municipalities having a total population of over 3.6 million met that requirement.

June 1980

All municipalities of 20,000 inhabitants or more were subject to the legislation.

December 16, 1982

The passage of the Act respecting the integration of the administration of the electoral system transformed the organization of election administration in Québec.

When it came into force on January 1, 1983, this legislation entrusted the Chief Electoral Officer with the responsibility of administering the provisions pertaining to the financing of provincial and municipal political parties, which had been assumed since 1977 by a separate entity, the Director General of Financing of Political Parties.

December 21, 1984

A new Election Act, integrating the Election Act, the Act respecting electoral lists and the Act to govern the financing of political parties into one law, was assented to.

June 23, 1987

The Act respecting elections and referendums in municipalities was assented to and came into force on January 1, 1988.

September 1998

The AERM was amended to subject all municipalities having 10,000 inhabitants or more to the rules on financing and the control of election expenses.

September 1999

The AERM was again amended, and the rules on financing and the control of election expenses now applied to all municipalities having 5,000 inhabitants or more.

June 2002

The Act respecting school elections was amended to introduce a simplified system of political financing and control of school-election expenses.

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