

## POLITICAL PARTY AND CAMPAIGN FINANCING IN CANADA<sup>1</sup>

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### I. INTRODUCTION

In Canada, the federal constitution allows political party and election campaign finance to be regulated by each of the fourteen separate jurisdictions (the federal and ten provincial governments as well as three territories). This has been and remains a significant advantage in Canadian politics from the perspective of democratic reform. Innovations can occur in any one of these fourteen jurisdictions. Each is autonomous in these matters, subject only to the Canadian constitution as interpreted by the courts. Innovations in one or more jurisdictions can act as experiments, the success of which can lead to public pressures for the other jurisdictions to follow suit. In important respects this has been the actual Canadian experience. Only two other factors have been as important: the desire on the part of all the leading parties, at least at critical points in time, to keep the escalation of election costs under some semblance of control; and, the public consensus that the experience of the United States in these matters ought not to be emulated.

The national Canadian regime that is the subject of this article is among the most comprehensive and coherent in the world. It is contained almost entirely within a single law – the Canada Elections Act.<sup>2</sup> It is also relatively simple and straightforward; no army of legal specialists is required to understand its purposes or requirements. The regime is administered in an impartial and effective manner by an independent agency of Parliament (and not the Government). The regime achieves its intended results: it is effective in regulating what it is meant to regulate; its objectives are realized; and, there is public trust and confidence in the integrity of the regime and its enforcement.

The regime combines the following fundamental features:

- *Election spending limits* on political parties, candidates, “third parties” (independent groups), and contestants for party-candidate nominations;
- *Contribution limits* with respect to who may contribute, to whom, and in what amounts, and when;
- *Public funding* for qualifying political parties and candidates both directly and indirectly (including partial reimbursement of election expenses; annual grants; and tax credits for contributions);
- *Disclosure* of contributions and expenditures by candidates, political parties, local party associations, third parties, and party-nomination and leadership contestants;
- *Access to broadcasting time* for free-time and paid-time election campaign advertising for political parties; and,

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<sup>1</sup> The opinions expressed in this document do not reflect the official position of the Organization of American States.

<sup>2</sup> Tax credits for contributions are found in the Income Tax Act; provisions for research and administrative support to Members of Parliament and their party caucuses are found in the Parliament of Canada Act.

- *Independent and impartial administration and enforcement* of the single, comprehensive election law, encompassing all other non-finance dimensions of the federal election regime.

The Canadian regime has recently been subject to major changes, invariably described as the most significant reforms since the basics of the modern regime were put in place in 1974. The 2003 amendments included the most important aspects of the contributions limits provisions now in place, a major extension of the disclosure (and related registration) requirements, significantly increased public funding for political parties (to compensate for the new contribution limits, including the outright bans on contributions to political parties by corporations and unions), and quarterly reporting on contributions by parties that receive annual allowances after January, 2005.

Although Canadians indicate in public opinion and attitude surveys (albeit all conducted prior to the most recent amendments) that they are concerned about the role of money in the political process generally as well as in elections,<sup>3</sup> there are no indications that major problems exist with the current regime. The number of complaints from citizens or participants is minimal; the number of prosecutions is minimal and related to minor offences.

The media occasionally find cause to focus on alleged links between major contributors to the governing party and government patronage in the form of contracts or other kinds of favourable treatment of private interests by the government or individual ministers. With precious few exceptions, however, Canadian political corruption arising from political finance is extremely limited and invariably trivial. The significant patronage and policy favouritism that has been and can still be found in the system rests essentially on partisanship and personal connections rather than on political finance.

The major corroding effects of political finance in Canada had been wrestled to the ground, even before the 2003 contribution limits, by the 1974 regime. Spending limits and a supportive political culture were paramount in this regard. Indeed, the contribution limits introduced in 2003, especially the outright ban on contributions by corporations and unions to national political parties, was largely, if not exclusively, a response to public perceptions that few, if any, experts thought had a grounding in reality. The level of contributions by corporations to the parties prior to the ban amounted to relatively small amounts in all cases, although the proportion of the total funding for the Liberal Party was often close to 50 per cent.

With perhaps one exception, continuing concerns are minimal. Disclosure is not as immediate as it might be and does not occur before election-day, although after January, 2005 parties will be required to disclose contributions quarterly, and party-leadership contestants will be required to report weekly in the final four weeks before the selection of a leader. Other features of the regime also address the concern that pre-election disclosure is meant to address. Some think that the level at which individual contributors must be

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<sup>3</sup> See, for example, Paul Howe and David Northrup, *Strengthening Canadian Democracy: The Views of Canadians*, Institute for Research on Public Policy, *Policy Matters*, July 2000, Vol. 1, No. 5, pp. 36-39; and, Elections Canada, 2000 General Election Post-event Overview, p. 14.

identified (\$200) is set too low and discourages small contributions. Some continue to press for a ban on all contributions by other than individual citizens, since corporations and unions may still give small amounts to candidates and local party associations. Some want spending limits applied to the party-leadership contests that select the leader in each party. Some want the spending limit for political parties lowered. Some want more free-time election broadcasts for political parties. And, some are concerned that political parties, especially following the 2003 amendments, will be too dependent financially on the public treasury. Some think that new political parties will be disadvantaged by the formula that provides annual funding for political parties – a formula based on prior electoral performance. By international standards, these are hardly burning issues. Barring some unforeseen development, party and election finance is not likely to be a salient political reform issue for some time.

The single continuing concern, or controversy, is the inclusion of so-called “third parties”, that is, individuals or groups who wish to spend money on campaign advertising in election campaigns independently of political parties and candidates. The current regime requires all individuals and groups that spend over a minimal amount to register, disclose contributions and spending, and be subject to a financial limit on their campaign advertising (defined as advertising for or against the election of a candidate or party or on an issue with which a candidate or party is associated). This provision was recently upheld by the Supreme Court of Canada.<sup>4</sup> A 1997 Supreme Court decision respecting a Quebec regulation of the equivalent of “third parties” in referendums had pronounced favourably on the model of a regime that advances fairness as an objective and subjects all participants to spending limits.<sup>5</sup>

## II. NATURE OF THE FINANCE REGIME

In addition to the practical concerns of the leading parties that the escalation of spending, and therefore the demand for contributions from private sources, be kept under reasonable control, the major objectives of the current regime’s provisions for party and campaign finance have been and are fairness in the electoral process, equitable access to elected office, and integrity in the electoral process. The regime has assumed that political parties are “primary political organizations”, as the Royal Commission on Electoral Reform and Party Finance portrayed them.<sup>6</sup>

In the Canadian parliamentary system of government, political parties not only nominate and mobilize support for candidates in single-member constituencies for election to the House of Commons (with 308 members to be elected at the next general election, if the new constituency boundaries set following the 2001 census come into effect by then). They also constitute the organizational mechanism whereby the House of Commons, on the basis of party standings in the House, determines which party leader will form the

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<sup>4</sup> Harper v. Canada (Attorney General) [2004] SCC 33. Provincial superior courts and courts of appeal in Alberta (on more than one occasion) and British Columbia have struck down provisions in federal and provincial laws banning or restricting ‘third party’ spending or advertising, including the current federal provisions.

<sup>5</sup> Libman v. Quebec (Attorney General) [1997] 3 R.C.S.

<sup>6</sup> Canada, *Reforming Electoral Democracy*, Final Report of the Royal Commission on Electoral Reform and Party Financing, Volume 1 (Ottawa: Minister of Supply and Services Canada, 1991).

government as prime minister.<sup>7</sup> Elections in Canada are essentially party elections with the outcome usually determined by three major factors: voters' party identification; voters' evaluations of the party leaders; and, voters' evaluations of the parties' positions on salient issues. The separate factor of a "personal vote" for candidates accounts for only somewhere in the order of five percent of the voters' decisions.<sup>8</sup> Under the single-member plurality voting system, where the candidate with simply the most votes wins the seat, Canadian governments have tended to be single-party majority governments. (In 1997, for instance, the Liberal Party that formed the government won a majority of the seats in the House of Commons (51.5 per cent) with 38.5 per cent of the total national vote; in 2000, it won 57 per cent of the seats on 40.8 per cent of the total vote.)

## **A) REGISTRATION**

Political parties must be registered under the regime, a requirement that, as of the 2003 amendments, extends to the local constituency associations of each registered party (these organizations being primarily responsible for the recruitment and selection of party candidates and for mounting their local campaign). Registration is a prerequisite for the effective administration and enforcement of the regime's provisions respecting disclosure of contributions and expenditures, public funding, and spending limits. Political parties and their local associations are registered on an on-going basis, although they can be de-registered.

The requirements and provisions of party registration have been subject to a recent Supreme Court of Canada decision, and amendments to the law were recently enacted. The court decision rejected the use of a 50 candidate threshold for a party to be registered as unreasonable, especially as it meant denial of access to the principal benefit that comes automatically with party registration, namely, the right to issue income tax receipts to contributors on an on-going basis. With these receipts, contributors may obtain an income tax credit for their financial contributions. Under the new provisions, parties are required to nominate only one candidate; other provisions seek to ensure that access to the tax-credit benefit is used for the intended purpose. Finally, it should be noted that the principle of registration as a prerequisite to effective administration and enforcement extends to "third parties". Candidates, of course, are also subject to a form of "registration" in the sense that they must be qualified to be a candidate and their nomination must be properly sponsored and filed with the local election administrator. Candidates must meet other requirements and conditions to obtain the benefits provided to candidates, for example, partial reimbursements of election expenses.

## **B) PUBLIC FUNDING**

The Canadian regime is often described as establishing a 'level playing-field' for the election 'contestants' – political parties and candidates. While the metaphors may be confusing, it is also said that the regime provides a 'floor' and a 'ceiling' to restrict the impact

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<sup>7</sup> The Canadian Parliament includes an appointed Senate, based on regional/provincial representation, but the Senate does not partake of the formation of governments or their defeats.

<sup>8</sup> Qualified citizens can be nominated and run as independents (or as the non-identified candidates of unregistered parties), but precious few are ever elected, and the few who have been elected are invariably former Members of Parliament who have split from their former party.

of money in the electoral process, including (since 2003) nominations for party candidacy and party leadership-selection contests. The “floor” is public funding; the “ceiling” is spending limits (and now contribution limits as well). Public funding or funding from the public treasury comes in essentially three forms:

- the partial reimbursement of election expenses to qualifying candidates and political parties;
- annual grants to qualifying political parties; and
- tax credits for contributions to candidates and registered political parties (and their local associations).

Partial reimbursement of election expenses has been in existence since 1974, although the provisions have been amended in some respects. Under the current regime, candidates and parties must receive a minimal percentage of the votes cast to qualify (10 per cent for individual candidates; 2 per cent of the national vote for parties or 5 per cent of the total vote in the constituencies where they nominated candidates). The definition of “election expenses” is now inclusive of all significant campaign spending (including all advertising, public opinion polling and research, leaders’ tours, staff salaries) and all expenditures must be disclosed. Given the reimbursement regime, candidates and parties have an incentive to disclose all spending. In the most recent election (2000), parties collectively spent roughly \$35 million and were reimbursed \$7.7 million; candidates collectively spent \$38 million and were reimbursed \$16 million. The provisions were changed in the 2003 amendments and the reimbursement to both candidates and parties will be more generous (almost double for parties).

Annual grants for political parties were introduced by the 2003 amendments, in compensation for the imposition of a ban on corporate and union contributions to the national parties. Beginning in 2004, the qualifying parties (that is, parties that received, in the previous election, 2 per cent of the national vote or 5 per cent of the total vote in the constituencies where they nominated candidates) will be granted an annual allowance based on \$1.75 per vote obtained in the previous election. This grant is expected to cost the public treasury in the order of \$22 million per year.

Tax credits for political contributions are a form of indirect public funding. The tax credit is an incentive for individual taxpayers to make political contributions since it is the taxpayer who receives the tax credit against the amount of income tax that they would otherwise pay. For their part, the political participants (candidates and parties) receive the benefit of the assumed increase in the number and levels of such contributions. And, for its part, the public treasury forgoes the income-tax revenue it would otherwise have collected. The scheme was designed in 1974 to give the greatest incentive and benefit to small contributions in the hope of increasing the extent to which parties obtain revenues from many small donors rather than a few major donors. The intended effect has been realized, although the number of citizens who contribute has never been more than 3 per cent of the population. The 2003 amendments increased this incentive and benefit (75 per cent credit for up to \$400, with a cap on the maximum credit set at \$650), virtually doubling it at the lower end, again to reflect the new ban and limits on corporate and union contributions.

### C) SPENDING LIMITS

Spending limits for political parties and candidates, introduced in 1974, are considered by many to be the cornerstone of the Canadian regime. They are the provision that, in principle, speaks most directly to fairness and equitable access in the electoral process. Their importance in these regards is underscored by the extension of the spending limit regime, as noted above, to “third parties”, that is, those who want to spend money on advertising independently of candidates and political in order to influence the outcome of the election of candidates and thus parties. The extension means that all ‘participants’, and not only the contestants (parties and candidates), are encompassed by the regime. As a result of the 2003 amendments, the regime now also applies to those contestants seeking the nomination of a political party, an amendment long favoured by those who have sought to enhance the access of women to elected office, the party nomination process being the major hurdle in many instances. Finally, one of the continuing criticisms of the regime is that spending limits have not been extended to encompass leadership selection in political parties, where money has been a significant factor in several recent leadership selection contests.

Spending limits for candidates and political parties have broad public support. They have not been challenged in court on the grounds that they infringe unreasonably on constitutional rights, especially freedom of expression. As noted, the Supreme Court of Canada is on record to the effect that the pursuit of fairness in the electoral process is a highly laudable objective and that limits on spending are an essential method in realizing this objective.

Political party and candidate spending limits in Canada are set at a level that is sufficiently high for robust electoral campaigns between the major parties. The limits were raised as a result of the broader definition of election expenses introduced by the 2003 amendments. Elections, as noted, are party elections; candidates in winnable constituencies are normally able to secure sufficient revenues to mount serious campaigns; their national party organization has a vested interest in ensuring that they do. The national party limits presumably could be lowered without reducing the robustness of the campaign, at least from the point of view of adequate voter information, given the character of most radio and television advertising, on which a significant proportion of campaign money is spent.

Spending limits for candidates and parties are considered effective in securing a measure of fairness in electoral competition. The definition of the “election expenses” that are limited is clear and comprehensive, especially now that it encompasses public opinion polling and surveys. The political culture encourages compliance. Contrary to what has been periodically implied, if not claimed, by a few foreign commentators – invariably opponents to the very idea of spending limits, the limits do not “leak” in any major way.

Spending limits for “third parties” come in the form of limits on spending on advertising. Once an individual or group spends over \$500 independently of a candidate or party, they must register as a “third party”. They are then subject to two sets of advertising-spending limits: \$3000 for a local constituency election; \$150,000 nationally in total. The objective of “third-party” spending limits is to ensure that the objective of fairness, and thus the integrity of the candidate and party spending limits, is not comprised or undermined by

individuals or groups spending independently of candidates and parties to influence the outcome of an election, that is, to promote or oppose the election of particular candidates and parties. These limits do not apply to individuals or groups who advertise their position in an election campaign on “issues” that are not associated with particular candidates or parties.

As noted, “third party” limits were recently upheld by the Supreme Court of Canada as reasonable infringements of certain constitutional rights, in particular, freedom of expression. These limits have consistently been supported by citizens in polls and surveys, but not at the same high level as support for the limits on contestants. As might be expected, they are generally opposed by the media, although Canada’s pre-eminent national newspaper, *The Globe and Mail*,<sup>9</sup> has endorsed the principle of “third party” spending limits (thus reversing an opposing view in earlier editorials, albeit editorials on provisions which were much more stringent than the current limits). At least three of Canada’s major parties (the Liberal Party, the Bloc Quebecois, and New Democratic Party) have consistently supported these limits. The Progressive Conservative Party waxed and waned in their support; the Canadian Alliance (and its predecessor, the Reform Party) consistently opposed them. (In 2003, the latter two parties joined as the Conservative Party.)

Spending limits for constituency nomination contests are new with the 2003 amendments. As noted, their adoption was strongly supported by those who seek to enhance the access of women to elected office. The limit is set at 20 per cent of the limit established for candidates in each constituency in an election (a limit that varies with the number of voters in a constituency, with added special provisions for geographically large and remote constituencies).

#### **D) CONTRIBUTION LIMITS**

Before the 2003 amendments, the law prohibited contributions by persons who are not citizens or permanent residents, non-Canadian corporations or unions, and foreign governments or their agents or foreign political parties. The 2003 amendments introduced:

- a ban on contributions from corporations and unions (and unincorporated associations) to political parties and contestants in party-leadership selection contests;
- a \$1000 annual limit on contributions from these three sources to candidates, nomination contestants and local party constituency associations;
- a \$5000 limit on contributions from individuals to parties, constituency associations, candidates and nomination contestants;
- a \$5000 limit on contributions to independent candidates;
- a \$5000 limit on contributions from individuals to party-leadership contestants;<sup>10</sup> and,
- a \$10,000 limit on contributions from candidates to their own campaigns.

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<sup>9</sup> *The Globe and Mail*, “Free Expression During a Campaign”, 23 December 2002, p. A18.

<sup>10</sup> In addition, there is a ban on contributions from Government Corporations or corporations that receive more than 50 per cent of their revenues from Government; and a ban on anonymous contributions of over \$200.

As noted, public opinion strongly supports limits on who can give and how much can be given. In particular, there are concerns at the national level about the influence and access of business corporations to political decision-makers. By international standards, as noted, the Canadian experience, at least over the past two decades, is one of a very limited number of substantial contributions to parties or candidates; and, the limited number of cases of real or alleged undue influence from contributors has primarily involved those who are not among the top contributors. The new limits constitute both a political response to a public perception of undue influence and what might be judged a politically prudent precaution against any increased interest in exercising undue influence by private-sector executives from a corporate sector where ethical standards are perceived to have slipped in recent years.

### **E) REGIME EFFECTS IN CONTEXT**

The regime promotes fairness between the contestants and equity in access to elected office (in addition to transparency in contributions and expenditures, and integrity in election administration and enforcement, as discussed below). And, there is general agreement that the regime is reasonably effective. Election campaigns are robust contests at the national level, although the Liberal Party, in office since 1993, has faced a divided and fractured opposition, especially on the conservative end of the political spectrum since the collapse of the Progressive Conservative Party in the 1993 general election. At the local constituency level, competition is usually high by international standards, with generally high rates of turnover encouraged by the combination of the single-member plurality voting system and the number of serious contending parties across the country.

Over the past two decades there has been a significant decline in public respect, trust and confidence in politicians and political parties and a significant increase in public suspicion of the undue influence in the political process on the part of political-finance contributors. These two developments illustrate the limited extent to which even a well-designed and administered regime can counter broader and more persuasive influences on public opinion and political culture.

At the same time, a major diminution in public deference to political authority accounts for much less public tolerance of political patronage, let alone corruption, as well as for increased public expectations of what constitute appropriate behaviour. The effect has been to enhance public support for measures that seek to reduce the role of money in the electoral process. On the other hand, there is a greatly diminished acceptance of any major role for private money in the electoral process; it is seen as corrosive almost by definition. Not surprisingly, the changes in 2003 substantially enhance the public funding of political parties and elections, to the point where the vast majority of funds either come directly from the public purse or indirectly by way of public subsidy through the income-tax credits.

At present there is no major challenge to the regime, even as newly amended. But current public attitudes towards politicians and political parties do not bode well for public support of the public funding provisions of the regime, even though these provisions clearly diminish the prospects of undue influence in the political system. Nonetheless, so long as public support for spending and contribution limits stays strong, any diminution in public



funding would not likely increase significantly the prospects of increased undue influence unless contributions were to enter the system illegally (or through a major breakdown in the integrity and thus effectiveness of the law's provisions that govern contribution limits.)

### III. ACCESS TO MEDIA

Access to the mass media is critical for contestants and other participants in the Canadian electoral process. In particular, media advertising, especially on television and radio, constitutes the most important means of electoral communications. Print advertising, including in newspapers, is declining in importance. The telephone and the internet, and to some extent direct personal mail, have become increasingly more important, especially for certain types of strategic campaigning for particular groups or categories of voters. The mass media of television and radio are still most important for the major political parties. They need these media to communicate their message efficiently and effectively. For candidates, on the other hand, television and radio are not nearly as cost-effective for their electoral communications, at least not given the level of spending limits within which candidates must operate. In the 2000 election, for instance, all parties spent approximately 70 per cent of their advertising expenses on radio and TV (39.6 per cent of all expenses); all candidates, by contrast, spent only approximately 15 per cent of their advertising expenses on radio and television (8.4 per cent of all their expenses).

The Canadian regime has long provided free-time broadcasts (first with radio, and then radio and television) to political parties, but not candidates. It continues to do so. It requires that all the publicly- and privately-owned radio and television stations, services and systems (all but pay-television and community-cable channels) provide free time to the parties. These broadcasters are *not* reimbursed by the state for the time that is provided. They are required to provide the time as a condition of their public licenses to broadcast.

The amount of total time to be provided is established in the electoral law (396 minutes in the 2000 election), with the total time allocated to the parties by a Broadcast Arbitrator, an impartial official appointed by the politically independent Chief Electoral Officer, using a formula provided for in the law. All registered parties get two minutes and the rest of the time is allocated on the basis of: the percentage of the seats won by each party at the previous election; the percentage of the popular vote obtained by each party at the previous election; the number of candidates nominated by each party at the previous election. The allocation is meant to be fair but also a reflection of demonstrated public support and degree of participation by the party in the electoral process. No party may have more than 50 per cent of the total time.

These same broadcasters are also required to make time (390 minutes) available for purchase (paid-time broadcasts) by political parties during "prime time" in the so-called "election period" (from the official commencement of the election to the midnight on the second day before election day). The price charged to parties for this time must not be manipulated either up or down; it must be the lowest rate charged to regular commercial sponsors or users. The time is allocated on the basis of the criteria outlined above for the free-time broadcasts.

Parties are practically restricted in their purchase of broadcast time, both absolutely and strategically, by their national spending limits. As a result of a court decision striking down a prohibition against parties purchasing beyond their allocated time from a broadcaster, parties may purchase beyond their limit, if they have room within their total spending limit from one or more broadcasters, although a broadcaster who sells additional time to a party must be willing to sell to any other party that wishes to purchase the same amount of time. Given the overall spending limits on parties, the allocated time is more than sufficient, even for the major parties.

Candidates and “third parties” may and do advertise, using various media, including television and radio, but their access to these media is not provided for under special provisions of the election law. They purchase time, or space, under normal media practices. Candidates, like parties, have spending limits that affect how much they purchase; given their other election-campaign costs, they have little room for media advertising, especially on television. “Third parties” have advertising-spending limits.

All advertising, including media advertising, by election participants (parties, candidates, and “third parties”) must be fully transparent in respect to its sponsor.

Television and radio broadcasts of election debates between political party leaders and between candidates at the local level (the two principal debate formats in Canada) are conducted entirely on a voluntary basis. They are arranged and presented by one or more broadcasters and contestants themselves. There is no election-law provision for, or regulation of, such debates. Nonetheless, party-leaders debates have become an important feature of election campaigns. The usual practice is two nationally broadcast debates during a campaign; one in each official language. The debates are conducted with only the party leaders of the major parliamentary parties participating. Minor party leaders are not normally pleased by their exclusion. The broadcasters in question resist including them, for fear of diminishing the appeal of the debates to national audiences. This concern is magnified by the fact that normally the debates are broadcast without commercial sponsors. Broadcast debates at the local level are rare, at least on the major stations and services.

The publication of public opinion polls and surveys is regulated. Published polls and surveys must be accompanied by essential information on methods, samples, dates, questions, and sponsors. The requirements have been modeled on media best practices. No polls or surveys may be published on election day since it would be impossible for interested parties to check the validity of the poll or survey results and respond. Exit polls, by definition, are thereby not permitted, until after voting has been completed nationwide; the election period, with its regulations, is then finished.

The publicly-owned television and radio media in Canada (the Canadian Broadcasting Corporation-Radio Canada) have been established by legislation that requires them to be politically impartial and neutral. They do not editorialize; they attempt to provide fair and balanced reporting and coverage. They are periodically criticized for being biased, but the criticism is just as likely to come from the government and governing party as it is from any of the opposition parties. There is not major public dissatisfaction with these media in these respects; they are viewed as professional and politically independent broadcasters.

Privately-owned television and radio are also subject to government regulation, although they are not required to be politically neutral in the same way that the publicly-owned broadcaster is. Newspapers are not regulated in respect to political content in any sense. Freedom of the press is taken seriously in Canada by the media and by the courts which have the powers to strike down laws that unreasonably infringe on this constitutional freedom.

There are no major criticisms respecting obstacles in access to the media from a partisan point of view for the major contenders, although minor parties regularly claim that they do not get the coverage or attention they deserve. At the same time, there are complaints concerning the stereotyping and poor coverage of women, visible minorities and other minority groups. There is also public and expert concern about the superficial and sensationalized coverage provided by the mainstream media. And, on a related front, there is public and expert criticism of the increasingly vacuous and negative character of political advertising in the media by the election participants, especially the parties, although these criticisms are directed at the participants themselves and not the media who carry their advertising. Some privately-owned media themselves, especially in the form of their radio or newspaper commentators, primarily at the conservative end of the political spectrum, have begun to engage in what are essentially negative attacks on those political participants whom they do not favour. In most of these respects, Canadian media (as well as parties and “third parties”) are seen as following the lead of their American counterparts, although Canadian tendencies in most of these respects are usually viewed as less extreme in comparison.

#### **IV. DISCLOSURE AND ACCOUNTABILITY**

Disclosure encompasses all contributions to and expenditures by candidates, nomination and party-leadership contestants, registered political parties and their registered local associations, and “third parties”. The disclosure regime is clear, coherent and comprehensive. It assumes that transparency is an efficient and effective mechanism to deter attempts to exert undue influence in the political process by way of contributions, to distort fairness in election campaigns by the use of undisclosed contributions and the undisclosed spending of money, and, more generally, to promote a more informed campaign discourse as well as a more informed vote in elections.

The definitions of contributions and election expenses for the purposes of regulation and thus disclosure have been, to some extent, a ‘work in progress’. The 2003 amendments are a case in point. The disclosure regime was extended to local constituency associations – previously labeled the “black holes” of the Canadian political finance regime; party-leadership contestants – especially important even if only periodic events where contestants’ unequal access to unregulated and undisclosed money not only has been a major feature in some recent contests but where allegations invariably surface about undue influence on party leaders who then became prime ministers; and, party-nomination contestants – where unregulated and undisclosed money has been prominent in the relatively small number of highly competitive constituency nomination contests.

In addition to comprehensive coverage, the information disclosed must be disclosed in detail; the regime insists on disaggregated or itemized information, and the disclosure provisions have been improved in these respects over the past decade. For contributions, recipients cannot accept anonymous contributions above \$25, and contributions over \$200 require the full identification of the contributor. This last threshold is very low, especially given that contributions at this level are extremely unlikely to have any undue influence on anyone elected to the House of Commons, let alone selected to be a government minister. It is low by international standards because of the tradition of full disclosure, now firmly established in the political culture.

The disclosure of contributions to candidates and parties is not timely in respect to elections: candidates and parties report after the election four months and six months respectively. As a result of the 2003 amendments, parties that qualify for annual allowances will report their contributions quarterly (beginning January 1, 2005) and party-leadership contestants will have to report weekly in the final four weeks before the party selects its leader. These reforms may well lead to pressures for more timely disclosure by parties and candidates in the election campaign.

Publication of reports after they are made is disclosed quickly and effectively by the Chief Electoral Officer who heads Elections Canada, the agency responsible for administering the entire political-finance regime. The reports are well publicized by the media and easy to access, including on the internet. The reports are also easy to comprehend for media reporting and academic research. The reports, as presented by Elections Canada, are deemed credible by those who pay attention to them.

Enforcement of disclosure requirements, among other provisions of the regime, is conducted by the Commissioner of Canada Elections, an impartial officer appointed by the Chief Electoral Officer, with independent authority to investigate, seek injunctions, conclude compliance agreements, and prosecute. The enforcement process is respected by participants as strict and fair.

## **V. ENFORCEMENT**

As noted, the Canadian regime is established almost entirely under one major statute, the *Canada Elections Act*. The Act establishes an effective enforcement structure under the jurisdiction of the Chief Electoral Officer, an officer of Parliament and not the Government. The Chief Electoral Officer is appointed by the Governor-in-Council (the Cabinet) following a resolution of the House of Commons and can only be removed for cause on a joint resolution of the House of Commons and the Senate. As noted above, the Chief Electoral Officer appoints a Commissioner of Canada Elections to ensure compliance with the Act and to enforce it. Prosecutions can be undertaken only with the consent of the Commissioner.

The separation of the responsibility for the general direction and administration of elections and related political finance matters under the Chief Electoral Officer and the responsibility for enforcement is considered especially critical in terms of public confidence in the integrity of the regime. The commissioner has independence as an enforcement

officer, especially in respect to the initiation of a prosecution and the conclusion of compliance agreements.

The Chief Electoral Officer/Elections Canada structure has long been an established and respected institution in the electoral process. Their independence of government and impartiality in respect to partisan politics is universally accepted, or at least as nearly universal as can be in a partisan-political environment. The staff of Elections Canada is professional and technically competent.

Finally, there is little in the way of corrupt behaviour in the electoral process. There is also a culture of voluntary compliance. A very large part of the enforcement regime, it might be noted, was built on the basis of reform measures to counter the highly partisan and, by today's standards, highly corrupt practices that were developed and refined in the latter part of the nineteenth century and the first few decades of the twentieth. Although there are always new dubious or suspect forms of behaviour as participants seek to stretch the law to the limits in a highly competitive environment and with a great deal often at stake, the Chief Electoral Officer and Elections Canada staff have become adept at identifying those practices that need to be brought to the attention of Parliament as candidates for further reforms.

## VI. CONCLUSIONS

Canada has just finished a major round of reform. The changes to the regime build on the landmark reforms introduced in 1974 that brought the Canadian political finance regime to the forefront of the Western liberal democracies. The 1974 reforms were based in part on independently commissioned research conducted for the Barbeau Committee on Election Expenses (1964-66). The 2003 reforms were based in part on the research done for the Lortie Royal Commission on Electoral Reform and Party Financing (1989-1991).<sup>11</sup> This commission sponsored and conducted perhaps the largest political-finance research program ever undertaken anywhere, a good part of it being comparative research, encompassing the Canadian provinces with their different regimes as well as selected foreign experiences. In addition to the work of parliamentary committees and the staff work of Elections Canada in developing the regular reports presented to Parliament by the Chief Electoral Officer, Elections Canada has begun to commission a good deal of independent research itself. In this area of public policy and law, there is a great deal that can be learned from empirical research, including research on comparative experiences. Canada has benefited to the extent that decision-makers have paid attention to the lessons learned here and elsewhere.

If there is one significant lesson that might be drawn from the Canadian experience it is that spending limits are critical to the effective regulation of money in pursuit of fairness between contestants, equitable access to elected office, and public confidence in the integrity of the electoral process. Spending limits not only limit what can be spent, they also reduce the demand for money. The spending limits must be low enough to be meaningful in each of these respects. Contribution limits by themselves will not do much to promote fairness or equity, and, without spending limits as a ceiling for the incessant demand for money, they

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<sup>11</sup> The Royal Commission published twenty-three volumes of peer-reviewed research.

may very well induce participants both to go around the law in various ways to obtain funding and to challenge it in the courts or before regulatory boards to render its various provisions ineffective. Further, without spending limits, the floor of public funding is much less effective in promoting fairness or equity.