

POLITICAL PARTY AND CAMPAIGN FINANCING IN THE BAHAMAS¹

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I. INTRODUCTION

The laws of The Bahamas does not contain any provisions in its statutes or elsewhere which would directly affect the issue of campaign financing whether from private sources or from the Government itself.

The legislative mechanisms which exist in The Bahamas are patterned on the Westminster model and very closely resemble the organization as structured for Canada in its federal jurisdiction.

The structure is as follows:

A. The Lower House of House of Assembly and membership therein is by election usually at a general election when all seats are open for contest or bye-election when the occasional vacancy does occur. The Constitutional term limit is a maximum of five (5) years and the Prime Minister is of that member of the Lower House who, in the opinion of the Governor-General, enjoys the support of the majority of the Members of the Lower House.

There is an Upper House called the Senate; membership in the Senate is by appointment by Government and by the official opposition and terms of office are the same as for the Lower House.

Most of the questions with which one has to deal in this article will consequently revolve around the Members of the Lower House of House of Assembly because save for purely local government elections, the Lower House of Parliament is the only elected representative body which exists in the country.

The principal piece of legislation which exists on the question of general elections is the Parliamentary Elections Act 1992. This act does not contain any provisions dealing with campaign contributions as such, and neither this Act nor any other Act authorizes the use of Government funds for election purposes of candidates. The nearest that one gets to the issue under the Parliamentary Elections Act is that there is a very strong prohibition against what are called "corrupt practices, bribery at elections, treating and exercise of undue influence with regard to the voters preferences."

On the question of access to the media by candidates for election, that is dealt with by statute, one being the Broadcasting Act, the Television Regulatory Authority and the Broadcasting Rules made under the Broadcasting Act in 1992. These legislative provisions would appear to grant users of that medium a fair measure of public pronouncements of their positions, but no doubt improvement can be made to the laws and of course the very nature of that activity dictates that not everyone is always happy about the uses if their allotted time. Disclosure and accountability is dealt with by the Public Disclosure Act of 1977 and while it does not deal in particular

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

with questions of elections, the spirit of the statute would appear to go some way towards requiring accountability in other circumstances from both members of the Lower House and of the Senate and indeed other non-elected public officials such as senior civil servants.

The enforceability of these laws is problematical in that we have found no clear record of any cases on prosecutions being brought for breach of the aforementioned laws and it may well therefore be the case that more diligence on the part of authorities is called for so that the public are assured that the system is operating as intended by the laws of the country.

II. NATURE OF THE FINANCING OF ELECTIONS

As indicated above, the financing of political campaigns is entirely a private affair between either a political party or individual candidates and the parties' and candidates' efforts in private solicitation of funds. The law regulating the conduct of elections does not deal with the solicitation of campaign funds or contributions and to a certain extent there is perhaps a lack of equitable distribution of opportunities and this may have an impact upon the abilities of parties to compete on an equal basis.

No information or data exists to indicate that the practice of soliciting donations and the receiving of donations affects in any material way the result of an election, but no doubt the inability to fully fund the efforts of a political party are affected by the possible inability to accumulate sufficient funding to wage a strong campaign. This advantage is generally one which is enjoyed more by the incumbent party than by the opposition although there have been occasions in The Bahamas where the incumbent has not fared well because the time had come for a change and this was apparently intuitively appreciated by the donors of funds and the opposition party was more successful at raising funds than the incumbent.

In The Bahamas there exists two principal political parties, one is the Progressive Liberal Party of PLP, and the other is the Free National Movement of FNM. There are other smaller and really inconsequential parties; the term "inconsequential" is advisedly used because in the most recent election where there were several fringe parties, none of them returned a member to Parliament, the successful parties in winning seats were the PLP and the FNM, the PLP having gained enough seats to displace the FNM which was the prior government; it would seem to be obvious, although one cannot be sure of this, the campaign funds flowed more readily towards the PLP which was then in opposition than to the Government which was the FNM, thus there was a change of government.

In researching this matter, the writer personally interviewed the Chairman of the FNM and the PLP to find out what in the nature of funding was needed in the last general election. The writer was told by both Chairmen that each party probably spent about \$5 million but no more precise information was forthcoming.

An example of some of the cost of such a campaign was the estimate given the writer by the Chairmen that the major rallies which involved professional musicians, very heavy expenditure on fireworks, lighting and all other amenities cost each party for each rally a sum in excess of \$60,000 and that there were perhaps between four and six such rallies, each of which required the parties to fund those rallies at the level indicated.

No reports or audited financial data is available and the best which could be achieved was the oral evidence as to costs of certain aspects of the last general election. The writer has substantial personal experience of political campaigns in The Bahamas having previously been a candidate himself, having also been a chairman of a political party (the United Bahamian Party) and having been as well a member of the Upper House of Parliament, that is, the Senate. The estimates given of \$5 million for a general campaign would not appear to be out of line with the writer's knowledge or experience in these matters but because no reporting is required by law of funding received or funds expended in the course of the campaign, the writer is forced to rely upon estimates given which would appear to be more or less accurate as to actual funding and expenditure.

One note the writer should offer is that in The Bahamas because of its geographical dispersion over the territory of The Bahamas, the political campaigns are expensive and the true cost of a general election is not known with any accuracy, but the estimates proffered by the two Chairmen of about \$5 million for each of the major parties is more or less what the cost really is.

There is no reliable evidence to indicate that contributions towards political parties were received from illegal activities or corruption or drug trafficking, although the possibility that some of the funding may have come from such sources cannot be ruled out. For example, one of the successful candidates had, prior to the election, successfully defended himself against a charge for which he was prosecuted involving allegations of involvement in drug-related activities. Further, evidence given before various Commissions of Inquiry do also raise that suspicion but satisfactory proof or evidence does not seem to exist which would satisfy that suspicion.

Although our laws do not directly regulate campaign funding or donations, the Parliamentary Elections Act (which is annexed hereto) by Sections 96, 97 and 98 does not create offences for corrupt practices, illegal practices and exercising undue influence on voters. For example, Section 96 prohibits bribery at elections and the wording of that section spells out in great detail the prohibitive act or behavior which involves the use of money or promises or other benefits to either deter someone from voting at an election or voting in a particular way; Section 97 creates the offence of treating, which prohibits providing meat, drink, entertainment or other amenities to voters to influence how they vote, and Section 98 creates the offence if undue influence at or near a polling place or elsewhere.

Of particular interest, Section 98 can also be used to prosecute a body of persons, corporate or unincorporated who commits such an offence.

III. ACCESS TO THE MEDIA

Access to the media is in a substantial but limited way regulated by provisions of the Parliamentary Elections Act, the Broadcasting Act and Broadcasting Rules made under the Broadcasting Act.

The Parliamentary Elections Act, inter alia, creates the Electoral Broadcasting Council to oversee the permitted use of broadcast time by candidates and parties. The details of such use are contained in the Broadcasting Rules. Parties and their candidates and independent candidates as well have access to the broadcast medium both during an election period and for a party which has formed the government or

the official opposition party they can have access during non-election periods. All of these periods of use are restricted and several examples are set out for your information, but please see the Rules which are also annexed hereto.

For example, during a general election, each political party may during the election period purchase for use during that period six 15-minute programmes of airtime on the radio and an equal number of such programmes on television.

In a non-election period, the political party or coalition of parties forming the government may, in any year, purchase four 15-minute programmes or airtime on the radio and an equal number of such programmes on television. The political party in opposition to the government may, in a non-election period, in any year, purchase two 15-minute programmes of airtime on radio and an equal number of such programmes on television if such party has one-third or more of the seats in the House of Assembly. Should it have less than one-third of the seats in the House of Assembly, that party may purchase only one 15-minute programme of airtime on radio and on television.

Any material used on such programmes must be submitted 48 hours in advance to the General Manager or Assistant Manager of the radio station. A case or two has arisen where a great dispute has flowed from the officials of the radio station refusing to allow a candidate or member of the Government of the House of Assembly from presenting the material as it was submitted and a requirement had been made that any such objectionable material be amended.

The above applies to the publicly-owned or government-owned radio stations and television stations, but it is quite doubtful whether any of the rules and other restrictions applies to the six privately-owned radio stations. With these choices in the broadcast medium open to parties and candidates, it can be said with some truth that there is free access to the media in the political sense.

The print media is all in private hands and there seems to be no great difficulty in having access to that part of the media. Indeed, in the Annual Survey of Press Freedom 2002 published by Freedom House, The Bahamas is listed in the "Free" category of countries (please see attached copy of that survey) and further, on page 21 of the survey there is this statement regarding The Bahamas, "the present government, unlike its predecessors, has not made use of the strict libel laws to restrict the news media. There are three daily and several weekly privately-owned newspapers. They provide diverse views on public issues, as do the State-run radio stations and five privately-run radio stations have been accused by critics of favoring the ruling party."

The writer feels that given an endorsement of that type plus the laws which for the most part are obeyed, in relative and perhaps even actual terms, The Bahamas does have and does practice freedom of expression through the media.

IV. DISCLOSURE AND ACCOUNTABILITY

An act of Parliament called the Public Disclosure Act, 1977 sets up a Public Disclosure Commission to receive from Senators and members of the House of Assembly annual declarations of their personal financial affairs. These declarations are subject to strict rules of privacy and confidentiality and it is not therefore possible to say more about this mechanism than that it exists and appears to be functioning.

The Act also applies to public officials such as senior civil servants and one final note should be stressed and that is that no record exists of any action being taken against anyone who has a duty under this Act for breach of the statute.

Finally, this act does not appear to extend to electoral activities by any party or candidate for office.

V. EFFECTIVE APPLICATION OR ENDORSEMENT OF POLITICAL FINANCING SYSTEMS

Little can be offered in the way of a constructive answer to any of the subjects included in this part mainly for the reason that we have no legislation regulating direct funding for electoral campaigns whether involving a party or its candidate or independent candidates.

One must concede that a regulatory regime dealing with these issues if desirable and The Bahamas should therefore have such mechanisms as part of its arsenal of protection against corruption and corrupt practices but they do not at the moment exist and beyond that, the writer can say very little.

VI. OTHER REFERENCES FOR ANALYSIS IN EACH OF THE THEMATIC CHAPTERS

In all candour, the writer must say with regard to this item that little, if any debate or concern or activity is in evidence regarding any of the matters of this report.

Perhaps rather than ascribing such failure to sheer indifference, it may well be that Government's agenda as well as the agenda of other interested parties such as NGOs is focused elsewhere at this time and one can suggest with a great degree of accuracy that the attention of the Bahamians generally are on matters such as negotiation of the various trading agreements which are now under way (WTO, FTAA, Revised Treaty of Chaguaramas, COTONU) and in addition to all of these, there is generally great concern about events in Haiti which is expected to lead to substantial infiltration of The Bahamas by Haitian citizens. Again, in all candour, the writer can say that better regulation of campaign finances are necessary and should be adopted and perhaps suggestions from organizations such as the OAS could nudge the Government in that directions.

Certainly, gentle pressure of that type can do little harm and perhaps a lot of good.