

***Pauline Beange, Ph.D. Canadian Campaign and Election Finance: Regulation by Law and by a Network of Oversight.***

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## **Abstract**

Canadian elections are highly regulated and have been for many decades. This chapter deals exclusively with the set of rules and the enforcement of such rules regarding spending, income and disclosure by political parties and their related entities as well as activities by third parties or non-party actors during election campaigns. The years since 2000 and the five general elections in that period have seen particular turbulence with the introduction and phase-out of a major institutional change—the partial subsidy of political parties through taxes—plus frequent legislative changes and court decisions. The changes since 2000 will be briefly reviewed as a prelude to the discussion of the current set of rules in place for the 2015 election. Canadian party financing rules are perhaps the most broad-ranging and most constraining in comparison with either the British model or the much-maligned American model. Given the strong set of rules and enforcement mechanisms in place, the high level of compliance and relatively infrequent breaches, it is time to move to a more contemporary model of campaign finance that relies less on detailed ceilings on contributions and expenditures and more on real-time, online disclosure by political actors and the Commissioner of Canada Elections.

## **Introduction**

This article outlines the current network of rules at the federal level which governs the financing of parties, candidates, potential donors and other political actors in Canadian elections and in particular the general election of 2015. While the current regime has been successful in containing costs, there is little evidence to suggest that other goals, such as regaining trust, re-engaging citizens in party affairs or voting in greater numbers have been achieved. While fears of Canadian election campaigns becoming too costly and too American-like have often prompted new regulations in Canada, on closer inspection these are undue fears, given the formal differences between the American presidential and Canadian Westminster parliamentary systems and the differences in informal norms surrounding political donations. It is probable that the current regulatory regime is too detailed and that more prompt online disclosure would provide equivalent benefits while lessening the reporting burden of smaller electoral district associations, emerging parties and candidates who are challenging incumbents. Canadian political parties are one of the key conduits between citizens and the state and electoral engagement. Given the crucial role of volunteers as grass-roots activists, even well-intentioned measures which may inhibit or discourage such volunteerism, should be considered carefully.

## **The Current Network of Rules and Enforcement<sup>1</sup>**

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<sup>1</sup> This chapter borrows the organization of “Political Party and Campaign Financing in Canada” by the late Peter Aucoin, OAS Unit for the Promotion of Democracy, 2005. Aucoin’s article provides an excellent summary and

Canadian elections have been regulated in some fashion since pre-Confederation times. In 1867 the Clerk of the House of Commons published a booklet addressing ‘controverted’ elections, the term of the time describing election malpractices (Notman, 1867). The oversight agency of elections, currently Elections Canada, was formed in 1920 and subsequent to 1974 the agency also enforced political finance rules. The principal acts covering campaign activities by political parties, candidates, electoral districts, leader campaigns and third parties are the *Canada Elections Act* and *Federal Accountability Act*.<sup>2</sup> Since the last election, the 2014 *Fair Elections Act* introduced a number of changes to the network of rules governing party financing and their enforcement. The various aspects of campaign finance will be discussed thematically below. The cost of conducting an election, that is, election administration per se, is excluded.<sup>3</sup>

The 2015 election will be the first in which Yves Côté, the Commissioner of Canada Elections,<sup>4</sup> responsible for enforcing national-level political finance rules, will work within the organization of Canada’s Public Prosecution Service rather than within Elections Canada.<sup>5</sup> Information will be shared between Elections Canada and Mr. Côté. The *Fair Elections Act* also strengthened the Commissioner’s ability to begin investigations into suspected violations and removed the statutory limitation on offences.

It is not just one actor or agency however that ensures a high level of integrity in Canadian elections. It is a *strong network of institutions*, as Michael Boda, the Chief Electoral Officer of Saskatchewan, has written, that protects clean elections in mature democracies (2006). These institutions in Canada include the educated and vigilant citizens, a free press, high levels of transparency of party finance, Parliament itself, vigorous social media, charitable organizations, the Constitution and *Charter of Rights and Freedoms*, and competitive political parties, which work independently and competitively to address accountability. As well, political finance rule innovations by the provinces and territories often prompt adoption of similar legislation at the federal level (Aucoin 2005).

In Canada’s Westminster parliamentary democracy, the leader of the party which wins the greatest number of seats in the House of Commons in a general election will form the government: if the winning party wins a majority of seats, it holds a parliamentary majority and with party discipline, usually retains the confidence of the House. With less than 50 per cent of the seats, the leading party will form a minority government, a more fragile affair requiring the governing party to seek either a formal coalition with another party to form a majority of seats (extremely rare in Canadian history) or seek common ground in policies. The primary function of the Opposition Party, the party with the second highest number of seats is to constitute a viable future government if a government falls (Bagehot [1872] 1936). Competition, rather than elite closed-door agreements, among parties is one of the distinctive characteristics of

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analysis of the Canadian party finance regime. It may be accessed at [http://www.idea.int/publications/fopp\\_america/upload/Libro\\_completo.pdf](http://www.idea.int/publications/fopp_america/upload/Libro_completo.pdf)

<sup>2</sup> Seidle (2011) and Jansen and Young (2011) offer comprehensive overviews of the Canadian political finance rule network.

<sup>3</sup> Elections Canada reported the 2011 election cost \$289 million or \$12.00 per registered elector. <http://www.elections.ca/content.aspx?section=res&dir=rep/est/dpr2012&document=p3&lang=e>

<sup>4</sup> Commissioner of Canada Elections. [www.cefcce.gc.ca](http://www.cefcce.gc.ca)

<sup>5</sup> The House of Commons Barbeau Committee on Election Expenses in 1966 and the 1991 Royal Commission on Electoral Reform and Political Finance had recommended the organizational separation of party finance administration from electoral administration.

Westminster parliamentary governments and one that safeguards Canadian democracy: it is therefore to be expected that parties and candidates will contend vigorously for money, volunteer resources, endorsements and votes.

How parties and candidates are financed matters not only to competition for power and accountability but also speaks to the viability of dark-horse candidates, the autonomy of local party associations, long considered one of the principal strengths of the Canadian party system, and last but not least, the protection and ability for minority voices to be heard.

## **Registration**

Since 1970, Canadian parties have been required to register and hence to be entities that could be held responsible or legally liable for their activities. This stands in strong contrast to the UK where political parties were not required to register nationally until 2000. In the US, the primary legislation covering political parties exists at the state level: at the federal level, a political party is simply an entity that runs candidates.

A national political party in Canada is an entity that gains either five per cent of the vote in a single electoral district or two per cent of the vote nationwide.<sup>6</sup> A party must register in order to: have the party name listed on the ballot beside the candidate name; be eligible for partial reimbursement of election expenses; and in the period 2004-2015, to be eligible for a tax-funded subsidy, subject to the party earning a certain vote share. Since 1974, registered parties have been permitted to issue income tax receipts to individual donors; donors then earn a tax credit based on the receipt. These are notable differences between Canada on one hand, and the US and UK where parties do not receive subsidies and perhaps more importantly, donations to political parties, candidates and political entities are out-of-pocket expenses to the donor; there exists no special tax treatment.

## **Sources of Funding**

How political parties are funded is a subject of much controversy. The philosophy of tax-based funding of political parties stems from a number of theories, among them, that parties provide a number of public benefits, such as educating and mobilizing voters, providing constituency services as well as parliamentary duties and hence merit tax-based funding. Additionally, subsidies of this sort have been viewed as a means of enabling new parties that lack resources to emerge. However, it is well noted that political parties may pass legislation for tax-based party funding because such subsidies lessen the need to raise funds. The danger is that parties become reliant on such subsidies, with ultimately detrimental effects to democracy. The flow of private donations to a party provides a signal to parties as to how the public perceives them. In this scenario, as parties rely on tax-based subsidies, they become increasingly distanced from voters and private donations. It has also been argued that tax-based funding is more 'neutral' than is funding by individuals, unions, businesses and so on.

However, arguments defending private funding of parties by individuals, small or large businesses, labour unions and other organizations can be based in principle not just expedience. Private financing can be seen as a principal means of holding parties to account; as a means of

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<sup>6</sup> Supreme Court of Canada. *Figueroa v. Canada (Attorney General)* (2003) 1 S.C.R. 912, 2003 SCC 37.

political expression and as a bulwark for parties in their role as mediators between bureaucracy and citizens. When parties receive their principal funding from the state, they may lose their ability to hold the state to account. Alexander (2005) effectively demonstrates that *every* regime of party finance has variable consequences—and has embedded in it ‘political’ consequences. It is important therefore to consider not only the expected outcomes but also the unforeseen consequences of rule changes.

### **Contributions and Contribution Limits**

Canadian political parties currently derive revenue from the following sources: contributions from individuals; quarterly subsidies (ending prior to the 2015 election); partial reimbursement of electoral expenses; and a parliamentary allowance for certain parties in the House of Commons. These will be discussed in turn.

Canadian law since 1993 has prohibited parties from accepting foreign political contributions. The 2014 *Fair Elections Act* specifies that only Canadian citizens and permanent residents may donate to political entities. Prior to 2003, there had been unlimited contributions by individuals, corporations and unions in Canada. While this sounds generous, in fact corporate donations, even from the five large Canadian banks rarely exceeded \$75,000 and such donations were usually made in relatively equal amounts to the Progressive Conservative and Liberal parties; unions gave exclusively to centre-left parties such as the New Democratic Party. Legislation introduced by the Chrétien Liberal government in 2003 limited corporate and union donations to \$150,000 annually per political party. In 2006, Parliament passed the Conservative-introduced *Federal Accountability Act*, which prohibited all corporate and union donations to leadership candidates, local candidates, electoral district associations, party conventions or to the party itself.

As of January 2015, individuals may contribute up to \$1500 per year—regardless of whether it is an election or non-election year to each of:

- a particular registered party;
- in *total* in any calendar year to the registered associations, nomination contestants and candidates of a particular registered party;
- in *total* to a candidate for a particular election who is not the candidate of a registered party; and
- in total to the leadership contestants in a particular leadership contest.<sup>7</sup>

Thus, assuming an individual wishes to make the maximum contribution possible in 2015, the combined contribution ceiling is \$4500 (\$3600 in 2011) with another \$1500 (\$1200 in 2011) should there be a leadership race.

There has been no comparable change to the tax credit. Thus for 2015, there is a 75 per cent credit on the first \$400 of political donations; a 50 per cent credit on donations between \$401 and \$750; and a final 33.33 percent on donations between \$751 and \$1200 with a maximum tax credit of \$650.00. The tax credit for political donations is more generous than that for charitable

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<sup>7</sup> *Canada Elections Act* Section 80.

donations.<sup>8</sup> Donors to both political parties and charities, and there is a strong correlation (Yörük 2011), face a stronger incentive to give a ‘small’ political contribution: the after-tax or out-of-pocket cost of a \$200 political donation is \$50 while the net cost of a \$200 charitable donation is \$170.

Contestants in a nomination contest to be candidate for a party may donate up to \$1000 of their own funds, without this being counted as a contribution. Official candidates may spend up to \$5,000 of their own money in their campaign, outside the official contribution limits. A contestant for party leader may spend up to \$25,000 of personal funds, outside the official contribution limit.

There is significant variation in both number of contributions and the total value from year to year. Peaks occur in election years, with the annual total since 2008 ranging between \$30-35 million for all parties combined.<sup>9</sup>

**[Insert Table 1.0 approximately here]**

**Table 1.0** shows the number of contributions and the total value of contributions for the first nine months of 2014 for Canada’s five largest political parties. The number of contributions should not be confused with the number of contributors since some donors make more than one contribution in a year. In the US, early reports in the 2008 presidential election were confused on this matter, suggesting that Barack Obama had attracted record number of donors, when in fact the actual number of donors proved significantly lower due to individual donors giving multiple times (Malbin 2009).

From 2004 to 2011, a tax-funded quarterly subsidy also contributed to the revenue of registered parties, based on the number of votes cast for that party in the previous election; the amount was inflation-adjusted each year. The Conservative government in its 2011 budget document proposed phasing out the subsidy by 2015 and this phase-out began following passage of the budget. The Conservatives had proposed this phase-out while still a minority government in 2008 but it was successfully opposed by other parties in the House of Commons.<sup>10</sup> The final quarterly installment of the subsidy will occur in January 2015. In 2011 the five largest parties received the following amounts from the subsidy: the Bloc Québécois, \$2.3 million; the Conservatives, \$11.2 million; Greens \$1.5 million; Liberals \$6.5 million and the NDP \$7.1 million. Total party revenues in 2011, comprised of the subsidy, reimbursed expenses and contributions varied strongly among the parties as did their ability to attract donations. Of total revenue,<sup>11</sup> private contributions contributed the following share to party fortunes: 13.7 per cent

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<sup>8</sup> The exception is the tax credit available to persons qualifying for the First Time Donor Super Credit. Aside from this super credit, for the first \$200 of charitable donations, the federal income tax credit is 15 per cent; above \$200 the tax credit is 29 per cent (including provincial income tax credits) on donations valued at up to 75 per cent of annual net income.

<sup>9</sup> Data from years prior to 2008 include political donations from corporations and unions. Contributions before the prohibition in 2006 may have been recorded in 2007 due to fiscal year-ends.

<sup>10</sup> The 2011 budget precipitated the coalition crisis, in which the Bloc Québécois and Liberal parties agreed to form a governing coalition.

<sup>11</sup> A final source of tax-funded revenue, the parliamentary allowance, is reserved for those parties which win a minimum of 12 seats in the House of Commons. The allowance is to further parliamentary functions of elected parties and parties are prohibited from using the allowance for constituency-based or election-related expenses;

for the BQ; 30.7 per cent, NDP; 38.4 per cent, Liberals; 40.7 per cent, Greens; and 52.1 per cent, Conservatives.

## **Leader Campaigns**

Since 2006, when legislation restricted the funding of leadership campaigns, the Liberal Party in particular has suffered: a number of its leadership contestants from 2006 still have unpaid loans. After a lengthy process, the Chief Electoral Officer declared in 2013 that the existing legislation was insufficiently precise to prosecute the offenders. To address future unpaid leadership loans—which in essence are a breach of the contribution limits—the 2014 *Fair Elections Act* made parties liable for any such unpaid loans. It is unlikely that any party will have a leadership contest prior to the 2015 election.

## **Loans and Trust Funds**

Any loans taken out by candidates or leadership contestants must now be documented, must demonstrate that a ‘fair market rate of interest’ be charged and that no security other than the individual’s personal assets is pledged as collateral. Loans in prior contests had often eluded scrutiny or regulation because of a violation of at least one of these provisions. Use of money in trust funds was prohibited in 2006.

## **Transfers of Funds Within a Political Party**

Political parties act strategically to win power and hence may wish to direct more funds to campaigns in electoral districts where either the candidate or the party’s electoral district association has too few funds to run an effective campaign. For the 2015 election, transfers of money, goods and services within parties, for example from the party to an electoral district association are permitted, or from one electoral district to another, without those transfers being considered as contributions. No expenses may be transferred among units of the same political party.<sup>12</sup>

## **Spending Limits**

Spending limits have been in place for decades for nomination contestants, parties and candidates. The expenditure limits for both parties and candidates are set by statute, are based on the number of electors and are adjusted by an inflationary factor that is not announced until the day the election is called. However, 2015 spending limits for candidates can be estimated, based on the expense ceiling for nomination candidates in a given electoral district. In Toronto Centre, for example, the ceiling for spending in a nomination contest is set at \$16,826.67, which at 20

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hence it is not considered part of election financing. The House of Commons Board of Internal Economy in 2012 investigated allegations of misuse of the allowance by BQ leader Gilles Duceppe but found that the term ‘parliamentary functions’ was too open to interpretation to censure Mr. Duceppe; the Board subsequently clarified the definition. In 2014, the Board found the NDP had misused the allowance to further constituency-based services in Quebec and ordered the party to refund the money (House of Commons, Board of Internal Economy Minutes, June 2, 2014).

<sup>12</sup> Elections Canada. Political Financing Handbook for Candidates and Official Agents (EC 20155). <http://www.elections.ca/content.aspx?section=pol&dir=can/man/ec20155&document=tb&lang=e#a4>

per cent of the candidate's expense ceiling, results in a candidate spending limit of \$84,133.35.<sup>13</sup> Based on the 88,810 registered electors in Toronto Centre in 2011, spending per elector is limited to approximately \$.94 per elector—not a great deal to effectively communicate with a multicultural electorate.

Crucial to party strategic planning are permissible expenses as well as expenditures that may be excluded for purposes of reimbursement and reporting. New for 2015 is that neither expenses for election surveys nor fundraising activities are considered to be election expenses. Polling is a significant expense for parties and helps them evaluate policy priorities and response by the electorate. Fundraising in Canada by political parties, as for charities, is often conducted around food—frequently a barbeque or dessert evening and on occasion, a black tie event. For fundraising events, the amount of the monetary contribution to be reported is the difference between the ticket price and the fair market value of the event. For example, if the ticket price is \$75 and the meal provided is worth \$25, then \$50 must be reported as the political contribution. All contributions of more than \$20 must be receipted, with the donor name and address reported. Where anonymous donations of less than \$20 are accepted, details of the date, event and total amount of such donations must be reported. If funds are inadvertently accepted from prohibited sources, the designated reporting agent must refund the money or send an equivalent amount to Elections Canada within 30 days of the discovery.<sup>14</sup>

These amounts involved are relatively modest given the variation in size of electoral districts: some are densely populated with voters living in condos and apartments, where access for canvassers is challenging. In other cases, the geographic spread or multiple languages within the electoral district offers challenges of a different nature. As well, the expenditure limit does not take into account seasonal variation in costs: television advertising time was more costly in the seasonally high period of October for the 2008 election than in the seasonally low period of January for the 2006 election. Variation in fuel prices—a major expense in leader tours which involve aircraft, buses and extensive travel—has wrought havoc on many campaign budgets given that expenditure limits are adjusted only for broad inflation, not specific factors relevant to political party and candidate campaigning.

The campaign expenses of parties are also affected by Canada's long-term policy of television networks being required to provide a limited number of broadcast minutes at no cost to the parties;<sup>15</sup> and their obligation to provide additional broadcast minutes at the lowest cost in their rate schedule. This stands in contrast to the US where all broadcast minutes must be purchased<sup>16</sup> and to Britain where no political broadcasting is permitted at all.

There has been partial reimbursement of election expenditures to parties and to candidates for several years. Permissible expenditures, for the purpose of claiming the reimbursement, are tightly regulated under the *Canada Elections Act*, as amended by the *Fair Elections Act* of 2014.

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<sup>13</sup> Elections Canada. *Limit for Nomination Campaign Expenses* (20% limit) (CEA, Paragraph 478.14(b)). <http://www.elections.ca/content.aspx?section=pol&document=index&dir=limits/limitnom42&lang=e>

<sup>14</sup> The following terms are used: chief agent for the registered party; financial agent for the registered electoral district association; official agent for the candidate, nomination or leadership contestant.

<sup>15</sup> There are no provided 'free' minutes of broadcast time for candidates or electoral district associations.

<sup>16</sup> The 1934 *Communications Act* states that if an American broadcaster chooses to provide cost-free time to candidates, such consideration must be extended to all candidates.

Allowable expenses during an election period include certain *personal* expenses such as childcare, costs related to disabilities, travel and living expenses during the writ; audit fees not otherwise reimbursed. Allowable designated *election* expenses include (but are not limited to) the cost of: advertising material, broadcast time, payments to staff and election surveys and polls. Submitted expenses are evaluated by Elections Canada staff before political entities receive the partial reimbursement. This process has in some cases made it difficult for electoral district associations, for example, to predict cash flow and hence to repay loans which were predicated on receipt of the expense reimbursement cheque. In the 2011 election, the Conservative, Liberal and New Democratic parties each spent about \$20 million on their campaigns; the BQ \$5.3 million and the Green Party \$1.9 million; each party was reimbursed 50 per cent of their allowable expenses.<sup>17</sup>

The current expenditure limits may be evaluated from two perspectives. On one hand, if parties and candidates were permitted to spend more, it is possible they could mount more effective advertising, and more effective get-out-the-vote campaigns, resulting in a more knowledgeable electorate and higher voter turnout. While emails and social media at first appeared to be ‘cheap’ alternatives in reaching the electorate, a successful social media campaign is in fact costly to develop and intensive in its demands for quick and accurate responses. On the other hand, the strict expenditure limits may be acting as an incentive for parties to continue to recruit volunteers. The high level of volunteer hours that go into Canadian election campaigns is considered a notable strength. Volunteers are such a familiar feature of elections in Canada, the US and Britain that this characteristic is often taken for granted yet it stands in marked contrast to European parties, which maintain much larger paid staff (Fisher 2009).

Changes in the *timing* of advertising expenditures may occur in 2015, the first fixed-date election to occur following legislation in 2007. There are limits on spending for both political parties and third parties in the 36-day writ period but no limits on pre-writ spending for either group. Hence with the knowledge of the date, political parties and groups may choose to begin campaigning in the pre-writ period.

### **Third Party Activity in Canadian Elections**

Activities by third parties are strictly regulated in Canadian elections. Third parties are comprised of non-political actors, that is individuals or groups who are not running for office either as an independents or as part of a registered party yet wish to advertise. The traditional Canadian rationale for such regulation is that if political parties’ expenditures are regulated then so must they be for non-party actors.

In the 2011 election, a third party could spend nation-wide just 1.3 cents per voter and a mere 0.8 cents per registered elector (potential voter) during the 36-day writ period in order to stay within the regulatory limit specified in the *Canada Elections Act*.<sup>18</sup>

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<sup>17</sup> Elections Canada. [http://www.elections.ca/content.aspx?section=fin&dir=pol/remb&document=table1\\_11&lang=e](http://www.elections.ca/content.aspx?section=fin&dir=pol/remb&document=table1_11&lang=e)  
See also Elections Canada, Political Financing Handbook for Registered Parties and Chief Agents, July 2014.  
[http://www.elections.ca/pol/pol/man/EC20231/pdf/ec20231\\_e.pdf](http://www.elections.ca/pol/pol/man/EC20231/pdf/ec20231_e.pdf)

<sup>18</sup> Calculations based on 2011 permitted third party spending of \$191,400 nationwide; total electors of 25,337,735 and total number of voters 14,823,408 (Elections Canada).



Third party activity, under the act, is measured by expenditures, which must be reported as either candidate-based or issue-based. Contributions to third parties must be reported by amount and must identify the donor including those by individuals. Thus expenditures and contributions directed toward advertising within the 36-day writ period are covered; advertising is covered under the act if it is either issue-based or directed at a specified party or candidate. Thus, using American terminology, both express advocacy (partisan) and issue advocacy (non-partisan) are restrained by the act.

Lawlor and Crandall (2011) analyze third party expenditures in the 2004 and 2008 elections. Total expenditures by corporations stood at \$25,000 nation-wide in 2004 and rose to just over \$200,000 in 2008; businesses (smaller establishments) spent a total of \$11,236 in 2004 and \$126,164 in 2008. Only eight businesses and corporations in engaged in third party activity in 2004 and seven in 2008. The number of unions engaged in third party activity doubled from 7 to 14 and the amount spent more than tripled from \$197,433 in 2004 to \$669,453 in 2008.

### **Disclosure, Reporting, Enforcement and Penalties**

Overall, the *Canada Elections Act* specifies a highly detailed level of reporting by political parties, candidates, and nomination contestants and this has been in place for decades. Reporting of contributions and expenses of leadership contests and electoral district associations did not begin until 2004. Somewhat problematic is the lag permitted between the event and its reporting to Elections Canada and a subsequent lag between Elections Canada's receipt of information, decision on the permissibility of expenses and so on, and subsequent publication of reports on its website. By contrast, the Federal Election Commission in the US commits to online publication of received data within 48 hours.

Compliance levels with political finance rules are well above 90 per cent as reported by Elections Canada. However there have been some notable cases of litigation reaching the Supreme Court of Canada or the Federal Court in the past two decades, some contesting the broadcasting rules, some third party spending, one challenging the definition of political party and other suits contesting interpretations of the act by the Chief Electoral Officer of Canada or by the Commissioner of Canada Elections. There were a variety of outcomes, some favouring Elections Canada, one forcing a change in the *Canada Elections Act* and some which ended in agreed statements between Elections Canada and the alleged violator. Equally interesting are violations which, although investigated by Elections Canada, did not result in formal charges: two examples are the expenditure violations by Liberal Party candidate Wajid Khan and the 'in-and-out' scheme of the Bloc Québécois.<sup>19</sup>

Inadvertent violations of the *Canada Elections Act* are considered regulatory offences, are dealt with through administrative compliance measures, carry minor penalties and are not referred to the Commissioner of Canada Elections.<sup>20</sup> Violations of the act, if proven to be with intent, are

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<sup>19</sup> The BQ plan in 2003 essentially was the payment to previously unpaid volunteers, their spouses or companies, for 'work' on the BQ campaign or 'work' on election day; these same people then 'contributed' the money back to the BQ. The plan generated invoices "for campaign expenses that would otherwise not have been generated ... As well, BQ organizers and supporters received a federal tax credit of up to \$500 for their donation to the candidate" (*National Post*, April 2, 2003).

<sup>20</sup> Elections Canada. *Political Financing Handbook for Parties and Chief Agents*. July 2014.

considered to be criminal in nature and may result in a fine or a prison term of up to five years. The 2014 *Fair Elections Act* stiffened penalties. If the election expenses incurred exceed the maximum amount that is allowed, the reimbursement of such expenses is reduced on an increasing scale. The maximum fine for summary conviction of individual violations rose from \$2,000 to \$20,000; from \$5,000 to \$50,000 upon conviction. The maximum fine for strict liability offences was raised from \$1000 to \$2000. For registered parties, the maximum fine moved from \$25,000 to \$50,000 on summary conviction for strict liability political financing offences and from \$25,000 to \$100,000 on summary conviction for political financing offences that are found to have been committed intentionally. Individuals or groups who fail to register as third parties may be fined up to \$50,000 for strict liability offences; up to \$100,000 for offences that are committed intentionally. For broadcast offences, the maximum fine rose from \$25,000 to \$50,000 (Parliament of Canada, 2014).

## Conclusions

Canada therefore has a robust network of political finance rules, strong penalties in place, transparency, effective enforcement and broadly speaking, a political culture that is highly compliant with the rules. Although not a campaign finance issue, an example of the strength of enforcement can be seen in the case of Michael Sona, who was convicted for issuing ‘robocalls’ or automated phone calls with information misleading voters as to their polling station in the 2011 election. In 2014, Mr. Sona was sentenced to nine months in prison.<sup>21</sup>

The Canadian network of rules governing campaign finance is perhaps the most comprehensive in the Anglo-American democracies since it limits contributions by individuals, prohibits contributions by unions and corporations, limits spending by political actors, governs intra-party transactions, sharply limits political expenditures by non-party actors, all accompanied by strong enforcement. By contrast, Britain, also a Westminster parliamentary democracy, maintains a high level of compliance, transparency and similar measures of public confidence yet does so with fewer rules, more generous spending and contribution limits and a cautious approach to burdening the volunteer nature of its political parties with excessive reporting.

Many policy goals have been articulated for campaign and party finance rules. Among them have been objective, measurable goals such as the elimination of *quid pro quo* transactions. Implicit goals have been to render Canadian politics and political parties more inclusive and representative of visible minorities and of minority political opinions. Most scholars of campaign finance have postulated that greater controls on campaign finance, including higher levels of disclosure and transparency overall, would raise public trust and potentially raise levels of voter turnout and participation in political parties. Taken together, these factors—as well as political motivations—account for the overall tightening of rules surrounding the financing of campaigns.

There are often-repeated concerns about fairness in matters of election finance: specifically that those with more money may drown the voices of minority actors or interests. However, political finance scholar Pinto-Duschinsky makes the following argument: a political party that is able to craft an appealing platform, accompanied by a competent and well-received leader, is likely to attract more money and volunteers than a party that fails to do these things. He goes on to state,

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<sup>21</sup> “Prosecution service to challenge Michael Sona’s sentence,” *Canadian Press*, December 15, 2014.

“If this is accepted, it follows that it is just and fair for a party to outspend its rivals, provided that its financial advantage derives from a large number of small donations and not from a small number of large ones. In order to establish that a system of financing political parties is unfair, it is necessary to show not only that a party has more money than its opponents but also that its superiority reflects the wealth and not the number or the enthusiasm of its followers” (1981, 285).

Partisan and intra-party motivations, dating back to at least Prime Minister Lester B. Pearson in the 1960s, have also contributed to Canada’s detailed campaign finance regime (Beange 2012). Prime Minister Jean Chretien’s introduction of the ceilings on political contributions by unions and corporations in 2003-4 was largely a measure to counter his scandal-ridden tenure as prime minister and to foil Paul Martin’s bid to become his successor as leader of the Liberal Party (Beange 2012). Similarly, clauses in the *Federal Accountability Act* of 2006 which prohibited union and corporate contributions to parties were seen in part as a means of consolidating the Conservative Party’s advantage in raising small donations from individuals and as a way of implementing the party’s ideology.

Numerous changes to Canada’s network of campaign finance rules have been triggered by the fear of Canadian elections becoming too much like those of the US, characterized by frequent, negative television ads, excessive levels of spending, actual or suspected undue influence by large donors and third party actors. As political science scholar Nelson Wiseman has observed, Canadians are the “world’s longest-continuing anti-Americans” (2007). This is perhaps nowhere more evident than in Canadian campaign finance rules. Fear of American-style campaigns has motivated numerous Canadian party finance rules, with limits on party expenditures and limits on advertising by third parties coming at the top of the list.

Seldom mentioned however are inherent differences that mitigate the risk of Canadian election campaigns becoming like those in the US. For example, American presidential election campaigns begin approximately two years prior to the election, with the ‘invisible’ primaries for party leaders (Hershey 2014). By contrast, a Canadian election is just 36 days in length, even shorter than Britain’s 44-day election period. Second, the separation of powers in the presidential system enables and encourages personal ‘branding’ of candidates for Senate and Congress — often separate from their party or presidential candidate—which in turns triggers greater spending. Third, there are more elected positions in the US and there are more positions being voted on, on each ballot. As well, electoral districts in the US are much larger than in Canada: with 435 members in the House of Representatives, each candidate is attempting to reach 511,211 potential voters, on average.<sup>22</sup> By contrast, each candidate for Member of Parliament seeks to reach 78, 760, on average.<sup>23</sup> It must also be recalled that in the US, no advertising minutes are provided either free-of-cost to parties or candidates nor are broadcasters mandated to provide low-cost minutes to American political parties or candidates. Last, public policy scholar Leslie Pal asserts that the “Canadian parliamentary system has fewer access points for interest groups than the American congressional system” (2014, 111).

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<sup>22</sup> Based on the voting-eligible population of 222,381,268 in 2012. United States Election Project. <http://www.electproject.org/2012g>

<sup>23</sup> Based on number of electors in 2011 on lists maintained by Elections Canada. <http://www.elections.ca/content.aspx?dir=turn&document=index&lang=e&section=ele>

There are also numerous factors in political culture that render it unlikely that spending in Canadian elections, even with higher contribution ceilings, would approximate American elections. Research by Yörük for example finds that levels of charitable donations are correlated to political donations (2011). Americans not only donate more money in total but also as a percent of the population than do Canadians to charity and this pattern has prevailed for several years (MacIntyre and Lamman 2013). Thus, with American contributions to charity being higher than Canadian contributions, American political contributions continually outpacing Canadian political contributions should come as no surprise. In combination with the fact that Canadian political donations, despite the reward of a tax credit, still lag their American counterparts to such a significant degree, suggests that a lightening of the Canadian regulatory burden would be unlikely to result in an outpouring of Canadian political donations.

Thus, an increasingly evidence-based evaluation to campaign finance rule changes, as Bowler and Donovan (2013) and Jansen and Young (2011) have adopted, must replace the earlier, overly optimistic suggestions that more detailed campaign finance rules would yield significant positive changes in democratic practices. Similarly Loewen and Blais find that trust in parties, measured by Canadian voter turnout, had not responded to the introduction of the subsidy (2006). Using campaign finance rule tweaking to reduce public suspicion of party and election finance may be doomed from the start: while laws, including those of disclosure, may reduce the actual number of acts of deceit or malfeasance, “no law can stop human beings from having suspicions about money” (Rodney A. Smith 2006).

Parties and candidates must have sufficient funds to perform effectively in their role as agents of representation; as the interface between government and citizens through constituent services and other functions; and to keep citizens informed in a world dominated by the noise of the internet. Information and advertising by third parties are needed also. Canadian scholar Paul Pross observes that the current Canadian third-party spending regime may have “virtually eliminated the opportunities that elections are meant to provide for public deliberation of issues” (2013). The amounts of money contributed to and spent in campaigns may be of less importance than outcomes: whether there is a regular alternation of parties and persons in power, as there has been in Canada. Democratic legitimacy may be achieved through accountability, transparency and ensuring no particular group of interests is permanently institutionalized (Cain 2014). In Canada, the rate of incumbency, or retention of elected office for long periods, is nowhere nearly as strong as in the US, implying there is less to fear if the spending and donation ceilings for Canadian political parties were raised. The amount actually needed for a successful campaign that reaches new immigrants and various language and demographic groups remains as elusive as how much constitutes ‘excess’. Elections are, after all, the one time that citizens “consciously or subconsciously ... decide what things are most important to them” (Heard 1960).

What do these findings imply for Canada? Simply put, while a rigorous set of rules and their enforcement are crucial to clean elections, further campaign finance rule changes may have little marginal positive impact but may impose undue costs on electoral district associations and nomination campaigns which rely heavily on volunteers. Second, in an age of online disclosure, it may be time for procedural changes. For example, the time line for reporting expenditures and contributions could be brought closer to real time; publication or release by Elections Canada on its website could be posted within a fixed one- or two-day period with subsequent verification rather than prior verification. If the publication of contributions to the campaign of a nomination

contestant, a candidate or party were available within a few days of their occurrence, this might allay fears of ‘dark money’ or undue influence. Third, although criminalization of campaign rules violations under the *Canada Elections Act* clearly sends a message that such violations are to be taken seriously, research by Beange (2012) suggests that fear of inadvertently violating such rules has taken a toll on volunteers for the role of agent in campaigns.

In sum, we must never forget that in a free society such as Canada’s, the *network* of democratic oversight—traditional media, blogs, alternative online news sources, competitive parties, authors and organizations—means that it is not rules alone that shape election practices. For 2015, the Canadians can expect highly competitive, innovative campaigns that require money to inform and persuade, campaigns that may be marked by some outlier behavior, but equally campaigns that must abide by a complex set of rules and face a skeptical electorate.

**Table 1.0 Five Largest Canadian Political Parties, Number and Value of Monetary Contributions**

**January-September 2014**

	BQ	Conservative	Green	Liberal	NDP
Number of Contributions	2,923	102,803	22,922	102,170	67,290
Amount of Contributions	\$0.2 million	\$13.5 million	\$1.5 million	\$9.9 million	\$5.8 million

Source: Elections Canada. Registered Party Financial Transactions Return. [www.elections.ca](http://www.elections.ca)

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