

Canadian Campaign Finance Reform Since 2000: Path Dependent or Dynamic?

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Introduction

A fervor for campaign finance reform propelled the Canadian Parliament to pass three significant bills in the period 2000-2006. An observer unfamiliar with Canadian elections could be forgiven for assuming the worst: that recent federal Canadian electoral contests had been rife with fraud and corruption or at the very least, that the legislation of campaign finance had been neglected for a prolonged period of time. In fact, neither of these assumptions would be accurate. Good (2007, 247) writes that frequently a “reform is a reaction, occasionally an over-reaction to the failures of the previous reform. Yesterday’s reforms become today’s practices, and today’s practices can become tomorrow’s problems.” The question arises: should post-2000 changes be seen as dynamic or path-dependent?

I adopt the approach of Ewing and Issacharoff (2006) who choose “not to catalogue the rules governing party funding and campaign finance” but rather to “focus on extended analytic assessments.” I meld a public policy framework with the analytic of new institutionalism, a theoretical lens through which changes in rules may be seen as changes in incentives (Ostrom 1986, 6). The first step in the process is to therefore identify whether post-2000 changes have been path-dependent—building or reacting to previous legislation—or dynamic, that is, arising in response to new contextual factors.

Setting the Stage for 2000: Domestic and Global Pressures

The *Royal Commission on Electoral Reform and Party Financing* (the Commission) tabled its report in early 1992. The Commission’s report was a foundational stone in identifying

and defining the policy ‘problem’ of money in Canadian politics and it advocated extensive reform of campaign or election finance.¹ Its overarching goal was the achievement of ‘fairness’ in the landscape of campaign finance. The Commission recommended *no ceiling* on contributions to political parties, candidates or electoral district associations (EDAs) because it found that “*compelling evidence of undue influence being gained through large contributions was lacking*” (Chief Electoral Officer 2001, 91; italics added). Casting the ‘vision’ of the Commission as ‘fairness’² provided an almost impregnable rationale for forays into free expression and third party spending.

Court decisions in the 1990s challenged the new 1993 Canada Elections Act reached appeal court.³ The decision in *Libman v. Quebec* [1997] found that limitation of third party spending was a legitimate policy objective. It also held that Quebec regulations on third party spending were too restrictive and that “in pursuit of a fair political process the legislature may limit the ability of private wealth to dominate discourse.” Constitutional scholar Feasby (2006, 248) argues that this decision led directly to the reforms of the Canada Elections Act in 2000. The study of election law in Canada emerged with major studies by K. D. Ewing (1992), Courtney (1997), and Hiebert (1998) as well as others.

Elections Canada’s advocacy was a key factor contributing both to the pace of campaign finance reform and to its increasingly interventionist nature throughout the 1990s. A 1996 report contained no fewer than 122 recommendations for alterations to the Canada Elections Act. The latter argued that “It is essential to fill the gaps in our electoral legislation . . . There is a *need to empower* the Chief Electoral Officer” (Elections Canada 1997, 3; italics added). The Chief Electoral Officer recommended registration, further disclosure (Elections Canada 2000) and problematized third party expenditures by terming their existence “an anomaly” (Elections Canada 2004, 3). Kingsley, the former CEO, has written that “*Elections Canada has played an increasingly important role in electoral reform.*” (Elections Canada 2003, 3; italics added).

Legislative changes also occurred through the decade. In 1993, Bill C-114 limited partisan advertising by third parties to \$1000 but left unregulated the promotion of “positions on public policy issues” (Elections Canada 2000). This was an attempt to parallel U.S. practice which differentiated between issue advocacy and partisan or candidate advocacy. The ‘line’ dividing issue and partisan advocacy is frequently indeterminate, especially in situations as the 1988 election, where one party supported the Free Trade Agreement. In this case, ‘issue’ advocacy almost entirely overlaps ‘partisan’ advocacy.⁴

Canadian party and campaign finance scholars continued to advocate, almost with one voice, on behalf of policy changes that would increasingly restrict party and third party actor election spending. Although Smith and Bakvis (2000, 28) concede that the effects of third party spending were, at least in the much-disputed 1988 election, less significant than earlier thought, they nevertheless also recommended regulation of third-party expenditure. Stanbury (1996) and Hiebert (1998), as well as other former research contributors to the Commission, continued to push for further regulation of campaign finance.

¹ In this paper I use the term campaign finance because Canadian political parties are most active in election years. I use the term interchangeably with political finance and election finance.

² “The assumption here is that justice as fairness...must temper the unbridled exercise of individual rights and freedoms...fairness may justifiably restrict certain freedoms...”; “Fairness is thus the central value that must inform electoral laws ...” (Royal Commission on Electoral Reform and Party Financing Final Report Vol. 1, 13; 322).

³ *Barrette v. Canada* in 1994 and *Somerville v. Canada* in 1996.

⁴ I am indebted to Graham White for pointing this out.

Internationally, global discourse over the course of the 1990s, shaped Canadian policy dialogue. Governments increasingly sought greater control of their public services and accountability from public-private partnerships. The 1990s witnessed numerous initiatives undertaken by Canadian governments to create an integrated ‘national integrity system’ or NIS (Transparency International 2001, 3), policies of “no bribe, gift, or inducement,” in Public Works, the importance of “developing shared values and ethics” (Canada, Auditor General 2000, 12-18) and the signing of an international anti-corruption convention, which Canada ratified in 1997 (Transparency International 2001, 7). This discourse fostered policies that emphasized formal, ethical guidelines rather than informal practices based on notions of what constituted ‘public trust.’ There was, implicitly, a presumption that precautionary principles should trump cost-benefit calculations; a presumption that ‘if it can happen anywhere, it can happen here;’ and a presumption that formal rules, *ipso facto*, would produce superior ‘results’ to those provided by informal practices.

2000: Bill C-2 and the Canadian General Election

Parliament passed Bill C-2, widely described as the first overhaul of election finance since 1974, on February 28, 2000. What was new? Provisions of Bill C-2 were wide-ranging and included electoral rights for those incarcerated in federal prisons for less than two years and for voters and Canadian armed forces electors living abroad and new enforcement of regulations by Elections Canada. The Act also repealed century-old acts as well as the existing *Canada Elections Act*. Of greater consequence to both parties and democratic practice, however, were new regulations governing candidate spending⁵, the publication of addresses (not only names) of contributors donating more than \$200 (rather than \$100), audited reports for political party ‘trust funds’ or assets, and reporting details of transfer of funds among the registered party, the candidate, the EDA and trust funds. It is clear that Bill C-2 significantly lessened party autonomy in terms of internal party finance. The new Canada Elections Act also required a blackout of *election advertising* (not including internet or pamphlets, billboards, posters and banners) and a blackout of *election surveys* including entrance and exit polls on election day prior to close of all polls. The regulatory scheme regarding access to broadcast time by parties during the writ period was revised.

Bill C-2 represents a significant turning point in legislative control of third-party spending. Bill C-2 defined ‘third parties’ as a ‘person or group other than a candidate, a registered party, or its electoral district association;’ introduced registration of third parties which spend more than \$500 on election advertising during the writ period; and limited spending by third parties to \$3,000 per electoral district association (EDA) or \$150,000 nationally during election periods.⁶ Third parties also were prohibited from issuing tax receipts or from receiving reimbursement for election-related expenses. Despite the wide-ranging nature of Bill C-2’s

⁵ A candidate would henceforth need to appoint an official agent before incurring any electoral campaign expense. The significance is that expenses incurred before such an appointment would not be eligible for possible reimbursement. As well, candidates previously were reimbursed their nomination deposit depending on the number of votes received but Bill C-2 dropped the vote required and allowed refunding if full reporting requirements were met.

⁶ By contrast, the United States federal limits on ‘hard’ money (that is, partisan rather than issue advocacy) from individuals stood at: \$2000 per candidate per election; \$5000 per political action committee; \$25,000 per party committee. The Bipartisan Campaign Reform Act (BCRA) of 2002 raised the *total donation* on individual donations to parties, candidates and political action committees (PACs) from \$25,000 per year to \$95,000 in a two-year election cycle (Alexander 2005, 12).

provisions, there were critiques that it did not reach far enough. Democracy Watch,⁷ a non-governmental actor, argued for closer congruence of Canadian disclosure with U.S. disclosure, for tighter deadlines on reporting by EDAs and for more online posting.

The first general election following Bill C-2 or the amended Canadian Elections Act occurred on November 27, 2000 and was the first election in which third-party expenditures were regulated. Pursuant to the Canadian Elections Act, *party expenses* were to be reimbursed based on either five per cent of the vote in a specific EDA or two per cent of the national popular vote in order to qualify; *candidate expenses* would be partially reimbursed if either the candidate were elected *or* received at least 15 per cent of the vote in his or her respective EDA. As Feasby (2006, 254) argues, although these thresholds “may at first glance appear to be a small obstacle,” the 2000 election demonstrated that a significant percentage of candidates failed to achieve the necessary threshold because of their failure to attract votes. Five parties received reimbursement, while seven parties did not. Also of significance was that a political party is required to nominate candidates in at least 50 EDAs to obtain and then retain ‘registered’ party status, which confers certain benefits on a party, that is, the right of candidates to issue tax receipts for contributions made *outside the election period* (for example in leadership or nomination contests), to transfer unspent election funds to the party and to list a party affiliation on the ballot. A political party seeking registration must also have at least 100 members and must appoint a leader, a chief agent and an auditor.

The Supreme Court of Canada and *Figueroa v. Canada*

It was precisely the issue of registration which had prompted the Communist Party of Canada (CPC) and its leader Michael Figueroa, following the 1993 election, to challenge the existing *Canada Elections Act*. *Figueroa v. Canada* reached the Supreme Court of Canada in 2002. The CPC’s challenge arose from the fact that it had failed to field 50 candidates in the 1993 election. There were two consequences: the party would be automatically deregistered and its assets turned over to Revenue Canada; the CPC had not been listed as a party identifier after its candidates’ name. Additionally, failing to attract 15% of the votes in the election, candidates’ deposits were not refundable. The CPC argued that these provisions of the *Canada Elections Act* constituted a violation of the *Charter*.

In its decision, handed down in on November 5, 2003, the SCC struck down the *Canada Elections Act* requirement that a party run candidates in 50 electoral districts to qualify as a ‘registered party.’ The decision may be considered a comprehensive statement of the Court’s theory of democracy, the role of political parties and the rights of electors. *Figueroa* constitutes the first political finance case adjudicated by the Supreme Court that did *not* involve third-party expenditures (Feasby 2006, 251) and also represents a significant step in the emergence of the Court’s political theory of Rawlsian egalitarian democracy, which was first cited approvingly by the Commission (1991, 326). The Court would further articulate this particular theory in *Harper v. Canada* (2004), where it held that:

The court’s conception of electoral fairness as reflected in the foregoing principles is consistent with the egalitarian model of elections ... This model is premised on the notion that individuals should have an equal opportunity to participate in the electoral process. Under this model, wealth is the main obstacle to equal participation ...

Second, the Court determined that “the state is not inevitably the enemy of freedom of expression” and that “the state may have to act to further the robustness of public debate . . . it may have to allocate public resources . . . *It may even have to silence the voices of some* in order to hear the voices of others” (SCC *Harper v Canada*, n.3 at par. 62; italics added). One further

⁷ Democracy Watch. 2008. *The System is the Scandal!* www.dwatch.ca/Clean_Up_the_System.html

point made by the Court is particularly relevant: the majority held that “participation in the electoral process has an intrinsic value independent of its impact upon the actual outcome of elections” (SCC *Harper v Canada*, par. 29).

It is of the utmost significance that the SCC ‘institutionalized’ a very specific view of the role and contribution of political parties and leaned heavily on the interpretation and positions advocated by the Royal Commission.⁸ This position stands in marked contrast to the historic position of political parties in parliamentary democratic practice and in their ‘brokerage’ or integrative functions in Canada specifically. Feasby (2006, 266) questions whether the egalitarian model “is inconsistent in that it appears to require both a deferential approach [to Parliament] and strict scrutiny.” This ‘dance’ between the SCC and Parliament on issues of campaign finance is reshaping Canada’s institutional structure, potential political actors and the shape and limits of political discourse. Young (2004, 6) states: “By striking down or reinterpreting existing laws—sometimes provoking a legislative response—the Supreme Court is now a central player in regulating elections.”

Scandals as Prelude to Further Change

Roughly contemporaneous with the long-running *Figueroa* case (1993-2003), four specific scandals had emerged in Canada, each of which contributed to the ‘political’ motivation for further campaign finance reforms. The first was the ‘Airbus Affair’ which unfolded in 1994-1994; two scandals, ‘Shawinigate’ and the ‘HRDC Affair’ erupted in the early Chretien-led Liberal majority governments. Whether the latter was due to patronage or mismanagement—or both—was never clearly established. Nevertheless, the case raised public ire and suspicion regarding the use of tax dollars. The “sponsorship scandal” gained prominence in the late 1990s. The Liberal Party paid out several million dollars in government contracts to Quebec-based advertising firms. In turn, the firms ‘donated’ significant sums back to the Liberal party “without being identified as the source” (MacIvor 2005, 37). It would be difficult to overstate the impact of the sponsorship scandal: the scandal highlighted the interweaving of campaign finance issues, public sector professionalism and ethics and trust factors.

Paul Martin won the leadership of the Liberal Party in November 2003 and took office as the Prime Minister at that time. In January 2004, Bill C-24 or the *Act to Amend the Canada Elections Act and the Income Tax Act (Political Financing)* came into effect and the damning Auditor-General’s report was released. Prime Minister Paul Martin in February 2004 announced the formation of a commission of inquiry into the sponsorship affair the results of which were publicized in April 2004 and resulted in the arrest of two key figures.

The Supreme Court of Canada and *Harper v. Canada*

In 2000, the National Citizens’ Coalition, led by Stephen Harper, challenged the legislation, asserting that it infringed clauses of the *Canadian Charter of Rights and Freedoms*. The Supreme Court of Canada (SCC) issued its decision on May 18, 2004 and found that:

The current third party election advertising regime is Parliament’s response to this Court’s decision in *Libman*. In promoting the equal dissemination of points of view by limiting the election advertising of third parties who are influential participants in the electoral process, the overarching objective of the spending limits is electoral fairness. This egalitarian model of elections seeks to create a level playing field for those who wish to engage in the electoral discourse ... The Court of Appeal erred in considering the provisions on third party spending limits globally. *While the regime is internally coherent, its constituent parts stand on their own and the constitutionality of each set of provisions must be considered separately* (SCR 2004, 3; italics added).

⁸ The SCC in *Libman v Quebec (Attorney General)* [1997] referred to the RCERPF no fewer than 14 times.

This is most significant from a public policy standpoint since the Court is introducing a specific type of evaluation. Both the majority and minority statements refer several times to important uncertainties. Despite these misgivings and comparisons to more lenient restrictions on spending in Britain which it cited approvingly, despite its reference to the ‘right to receive information’ enshrined in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1976), and its reference to the American ‘right to receive information,’ (2004, 14) the Court nevertheless upheld the law. The SCC reiterated its adoption of an egalitarian model of democracy. The ruling stated that “Where Canadians perceive elections to be unfair, voter apathy follows shortly thereafter” (2004, 42). The possibility that there could exist alternative reasons for voter apathy remained unaddressed. The Court also explicitly stated its view of political parties: “. . . regardless of their size political parties are important to the democratic process. Nevertheless, *neither candidates nor political parties can be said to be vulnerable*” (2004, 42; italics added).

2004: Bill C-24 Act to Amend the Canada Elections Act and the Income Tax Act

Bill C-24 came into force January 1, 2004; it attempted to merge concerns about party finance *and* ethics in the public service—precisely the issues at stake in the sponsorship scandal. Prior to 2003, reforms and policies regarding lobbying of government personnel, conflicts of interest and other ethical matters for the civil service had had their own trajectory. The ostensible purposes of Bill C-24 were path dependent since the intent was to “reinvigorate the political system” and address “perceptions of undue influence and alleged scandals” (Library of Parliament 2003, 1; 11).

To place Bill C-24 in a theoretical context, campaign finance rules can be seen as controlling the *supply-side* of finance—donations, subsidies and reimbursements—or the *demand side* of finance—controls on funds required by the party, the candidate and/or the electoral district association and the provision of ‘free’ or tax-subsidized advertising minutes. Certain regulations may be considered as *neutral*, vis-a-vis money, but non-neutral with regard to concerns surrounding issues of privacy and freedom of expression. Earlier iterations of campaign finance rules in Canada primarily sought to *limit the demand side* through limits on registered party and candidate spending and the provision of a guaranteed number of tax-subsidized minutes of television broadcasting and price control of the cost of additional advertising minutes for the national parties. The 1974 legislation was *supply-side* regulation only in two provisions: the introduction of income tax credits for political contributions, as a means to “encourage greater public involvement in election and party financing, by providing an incentive for individuals to contribute to the political process” (Elections Canada 2003, 1) and post-election reimbursements to qualifying parties and candidates.

By contrast, Bill C-24 was clearly aimed at altering the *supply* of money to the parties and candidates. The intention was that, for the most part, parties and candidates would henceforth be funded almost exclusively by individuals. Individuals were prohibited from donating more than C\$10,000 annually (in election and non-election years) to any combination of the party, EDA, candidates or nomination contestants. Accompanying this measure was a more generous tax credit on donations of up to C\$1250. By contrast, corporations and trade unions were prohibited from donating to the central party or to leadership candidates at all and could donate no more than C\$1000 annually to a combination of EDAs, candidates or nomination contestants. Quarterly allowances to registered parties that received either two per cent of the national vote *or* five per cent in the EDAs where candidates had been run were implemented to compensate for the loss of corporate and union donations. Reimbursement of

election expenses to parties was raised in percentage terms, the definition of ‘election expenses’ was expanded and the spending limit for parties rose slightly to account for survey expenses.

Further, Bill C-24 also sought to regulate a significantly broader range of activities at both the national and local levels including the annual returns by EDAs, reporting of money transfers to or from the central party or other candidates, limits on EDA spending as well as spending limits and reporting by nomination contestants. At the national level, party leadership contestants would be required to submit an initial report at the time of registering along with further reporting required throughout the leadership campaign and following. Bill C-24 also strengthened enforcement provisions through stiff penalties, up to and including prison terms. Local associations of political parties in Canada have historically been recognized for their independence and vitality and candidate and leadership selection had, in the classic liberal sense, been regarded as matters appropriate to intra-party deliberations rather than electorate-wide. C-24 does therefore not fit within path dependence.

In 2003 and 2004, the media reported that BQ briefed its organizers and candidates prior to the 2000 election on ways to increase the party’s federal reimbursements for election expenses. ‘La Methode ‘In and Out,’’⁹ involving roughly \$150,000, 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. Elections Canada chose not to rule these practices illegal.

2004: Election and Early Assessments of Reforms

Prime Minister Martin called an election for June 28, 2004. However, the Liberals won only 135 seats in the House of Commons, forming the first minority government in almost 25 years. It was the first election in which the centre-left Liberal Party was confronted by a united centre-right party in more than a decade¹⁰ and it was the first election to be contested under the new rules.

Assessing the impact of the new rules is proving difficult. Young (2004, 8) writes that “The calling of an election so soon after the new funding arrangements came into place has made it difficult to discern the impact of the new regulations [but] there are already indications that [they] too will have profound implications for the conduct of elections and the nature of party organization in Canada.” There is the possibility too that the legislation was *not* primarily about correcting the “iniquities of politicians” (Heard 1960, 1) but instead “*the symbolic expiation of sin*” (1960, 10; italics added). Was there indeed a “logic of appropriateness” (Olsen 2007) on which the legislation was modelled? Jansen and Young in 2005, using the metaphor of hurricane damage, seek to examine the relationship between the NDP and organized labour “in the aftermath of this legislation” (Jansen and Young 2005, 1). They (2005, 16) find first, that *in anticipation of Bill C-24’s* passage, the NDP received union donations of over \$5 million in 2003, sufficient for the NDP to purchase an Ottawa office building. As a result of the new data availability, Eagles et al (2005, 14; italics added) find that “there was *not* an enormous or general problem in the experience of local nominations that necessitated the extension of the regulatory umbrella to encompass this pre-campaign activity.” They nevertheless conclude that “in a minority of cases these intra-party campaigns can become quite heated” which, paradoxically, the authors argued legitimated the extension of regulation (Eagles et al 2005, 14).

Aucoin (2005) offers a more nuanced judgement. He argues first that the 2004 limits on contributions “constitute both a *political response* to a public perception of undue influence and

⁹ National Post, 1 April 2003

¹⁰ Preston Manning established the Reform Party of Canada in 1987 as a right-of-centre alternative to the Progressive Conservative Party of Canada.

what might be judged a *politically prudent precaution* against any increased interest in exercising undue influence by private-sector executives ...;” secondly, he adds a comparative, empirical critique that “By international standards ... *the Canadian experience, at least over the past two decades, is one of a very limited number of substantial contributions to parties or candidates* (Aucoin 2005, 8; italics added). Aucoin seems to be downplaying the notion of a real ‘policy problem’ having underlain the 2004 legislation and to be highlighting, by contrast, the ‘political.’ Aucoin suggests that a dynamic political culture is the ‘wild card.’

Over the past two decades there has been a significant decline in public respect, trust and confidence ... 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* (Aucoin 2005, 8; italics added).

Aucoin thus puts his finger on one of the paradoxes of campaign finance reform: even as its advocates recommend further encroachments on parties and candidates in order to raise ‘public trust,’ public trust cannot then be used as an indicator to evaluate the success or failure of the reforms. Not least of the problems, from a public policy perspective, is the fact that “increased public expectations of what constitute appropriate behaviour” (Aucoin 2005, 8) mean that the measuring stick of ‘appropriateness’ in public office is constantly evolving. The problem of campaign finance policy-making is somewhat akin to the problem of designing highways: no matter how far into the future traffic is forecast, knowledge that the highway will be built draws more traffic, so that when the highway is complete, it will still require additional capacity.

Alexander (2005, 17) argues, in a comparative perspective, that Canadian *contribution and spending limits are much more severe than those in the U.S. ... These contribution limits allow considerably less private money into the system than do the U.S. contribution limits. Canada has not had a history of soft money or other means than direct hard contributions* (italics added).

Clarkson in 2005 predicts that “The interdictions placed by Bill C-24 on corporate, union, and third-party participation in elections have made the political parties even more dominant as the principal institutions connecting citizens to their lawmakers” (Clarkson 2005, 278). These observations constitute a tantalizing challenge to the student of campaign finance public policy.

2006: The General Election and Bill C-2 Act to Amend the Canada Elections Act & the Income Tax Act (Federal Accountability Act)

The minority Liberal government fell to a non-confidence vote in the House of Commons on November 28, 2005. The Conservative Party of Canada made political finance one of the major planks of its platform, framing the issue as accountability. The January 23, 2006 election produced a Conservative minority government which introduced Bill C-2, an Act to Amend the Canada Elections Act & the Income Tax Act (Federal Accountability Act, S.C. 2006) in the House of Commons on April 11, 2006. Whether the government’s purpose was to make good on its election platform or to damage the Liberal party, whose finances had been decimated by 2004, returns us to what must be a central theme in campaign finance. Does the source of change affect the outcome? The literature has typically regarded Canadian campaign finance changes as idea-driven rather than partisan-driven—an approach that is roughly the reverse of that seen in the U.S. literature (LaRaja, 2008).

Whatever the reasons—and these will be explored in field research—the provisions were at least as wide-ranging as those contained in the 2004 legislation. Bill C-2 represents an historic attempt to bring together in one piece of legislation the challenges facing the integrity of governance as a whole. Its scope is breathtaking. It introduced several new offices, amendments to at least seven Canadian statutes covering privacy, audits and access to information

significantly amended the *Lobbyists Registration Act (LRA)*,¹¹ renaming it the *Lobbying Act (LA)* to reflect its broader functions in order to implement numerous recommendations of the Gomery Commission. The primary change was one of purpose: whereas the LRA sought to *monitor* the activities of lobbyists via registration the new LA seeks to *regulate* such activities.¹²

Further restrictions on the supply of money can be seen in new, lowered contribution limits, where a contribution is defined as both ‘monetary’ and ‘non-monetary.’ The ceiling on contributions by individuals to a party, EDA, candidate and nomination contestant of the same ‘political family’ was dropped from \$5000 to \$1000; donations to an independent candidate and to a leadership contestant also dropped from \$5000 to \$1000. Union or corporate donations to the party had been eliminated in 2004; however there had been a \$1000 ceiling (in total) on donations to an EDA, candidate or nomination contestant and a \$1000 limit on donations to an independent candidate. The 2006 legislation eliminated *all* business and union donations.

Bill C-2 also regulated the flow of goods and services and money among “political entities” (Library of Parliament 2006, 21) that is, *intra-party* cash flows. This again can be seen to be a significant departure from prior practice. A more general regulation of trust funds featured prominently in Bill C-2. A trust fund is understood to be a source of funds (to a party or candidate) *not stemming* from current contributions, allowances or reimbursements and had been identified by Stanbury (1996), for example, as representing a threat to the campaign finance regime. Loans prior to Bill C-2 had not been regulated in any sense, although accounts payable had been. Bill C-2 *permits* loans to parties, candidates, EDAs, nomination and leadership contests but they are subject to reporting requirements. Loans must be reported in the financial returns of all political entities but *are not* considered as contributions *unless* they remain unpaid after a specified time, per the chart below. Application for an extension of the loan repayment period may be made. Failure to pay by a nomination contestant, leadership contestant or candidate is considered an offence. *Failure to pay by a party or EDA is not an offence.*

The Liberal Party in 2007 was the first to hold a leadership convention under the new rules. Following the leadership contest, the eleven candidates owed a total of C\$3,932,700.¹³ These amounts are over and above the widely-cited estimate of Liberal party indebtedness of C\$5-6 million following the 2006 election.¹⁴ Since the 2006 reforms specified that leadership contestants had 18 months to repay outstanding loans, the next several months would prove vital to party sustainability.

A second ‘test’ of the 2006 reforms involved the Conservative Party. Elections Canada refused to allow certain expenses associated with the 2006 election and claimed by Conservative EDAs as ‘local’ expenses. The expenditure in question involved ads developed by the national party but edited to include the name of the local candidate and claimed as an expense by the local candidate. Elections Canada alleged that this practice violated the current statute. This case is before the courts at the time of writing.

2008: More Churning

Repercussions of the 2004 and 2006 reforms developed into a maelstrom. In March 2008, only two leadership candidates had repaid their loans, and that only because of a court decision “which allowed the Liberal party to refund the \$50,000 deposits paid by each of the 11

¹¹ For an excellent summary and analysis of the LRA, see Michael Rush (1994).

¹² So numerous were the implementation problems that the LA did not come into force until July 2, 2008.

¹³ Canadian Press Newswire. 12 March 2008. “Bob Rae first of top Liberal leadership contenders to become debt-free.”

¹⁴ The Hill Times. 6 February 2006. “Martin will try to shed Liberal Party’s massive debt: Liberals.”

leadership contenders.”¹⁵ Elections Canada had ruled that such an intra-party movement of funds was illegal and it further announced that it would extend the period of loan repayment for Liberal Party leadership candidates who had thus far been unable to comply. At the time of writing several leadership candidates still owed significant accounts to lenders. Allegations that that Elections Canada was acting in an unduly generous and perhaps even partisan manner arose. The question raised by these actions is whether the spending and contribution limits for leadership contests are in fact viable for the long term.

In June 2008, Elections Canada opened itself to new criticisms of partiality. Accompanied by the Royal Canadian Mounted Police (RCMP), Elections Canada officials visited—or raided—the national office of the Conservative Party and seized boxes of documents. This action must be interpreted in light of Canadian political culture, in which involvement of the RCMP invariably stigmatizes the non-state actor. Litigation costs for Elections Canada in this and a related investigation against the Conservative Party reportedly had exceeded \$1 million by late-2008.¹⁶

Prime Minister Harper called an election for October 14, 2008. Fundraising in the post-2006 environment was critical for all parties. The quarterly allowances for parties introduced in 2003 played a crucial role: although the Green Party had won no seats in either the 2004 or the 2006 election, it collected almost \$2 million in allowances due to its share of the popular vote in the 2006 election. This enabled the Greens to mount a nation-wide campaign. Similarly, the Liberal Party survived principally because of allowances since it had seen the size of its average donation drop approximately 30% from 2004 to 2007.

Following the election, which yielded another Conservative minority government, the government delivered an economic statement in November 2008 in which it stated its intention to reduce quarterly allowances to political parties in its upcoming budget. Again, motivation was suspect. Was the reduction included as a philosophical issue, because the Mr. Harper, prior to becoming Prime Minister, was on record as having opposed the subsidies?¹⁷ Was it a politically strategic move to cripple the finances of the other parties? Part of a cost-cutting budget responding to the severe recession? A Conservative strategy to ‘flush out’ suspected manoeuvrings by the Liberal and NDP parties to bring down the government and form a coalition government? Whatever the case, this feature (in combination with other aspects of the speech) unleashed a firestorm of debate in the House of Commons. Despite the fact that the Conservative party would lose the greatest amount, in absolute dollars, the allowances comprise a far greater percentage of total revenue for the opposition parties. The vigorous debate mounted by parties in the Commons demonstrates the growing dependence on subsidies.

Conclusions

This paper has examined the ‘topography’ of campaign finance governance in Canada since 2000. Ideas, institutions and interests have each played a role. With respect to the first, ideas generated by scholars in the field of political parties and scholarship published by the Royal Commission on Electoral Reform and Political Finance in 1991 provided the intellectual capital for ongoing change. This paper has also demonstrated that legislative initiatives as well as SCC decisions clarified and entrenched certain notions about the role of political parties and the

¹⁵ Canadian Press Newswire. 12 March 2008. “Bob Rae first of top Liberal leadership contenders to become debt-free.”

¹⁶ The Globe and Mail. 22 December 2008. “Costs soaring in Tories’ legal action.”

¹⁷ Vancouver Sun. 12 December 2008. “Public funding of political parties is progressive.” In 2003 Harper, representing the Canadian Alliance stated that the reforms of Bill C-24 represented “a disturbing shift in the sources of political party contributions from voluntary acts of free citizens to mandatory imposition on all taxpayers.”

Court's understanding of the relationship among the concepts of freedom of expression, equality and access to the political arena. Elections Canada has played no less a role in its vigorous advocacy of reforms and its uneven interpretation and application of the reforms. The course of campaign finance has been significantly altered by 'interests,' both by individual actors such as Prime Ministers Chretien, Martin and Harper and by parties' strategic responses to the changed landscape.

However, the central question remains: have the post-2000 changes been path-dependent or dynamic? Within the realm of ideas, authors such as Carty, MacIvor, Young, Bakvis and Smith, Seidle continue to call for more intervention, as they did in earlier work. Their collective scholarship continues to evaluate campaign finance according to normative institutionalism, which primarily seeks to evaluate current legislation against normative democratic standards as opposed to evaluating current campaign finance policy against empirical outcomes. Young (2004, 7), for example continues to "hope that new voices will be able to sustain themselves long enough to mount serious ... challenges, opening up the political process," despite the fact that in 1993, 14 parties contested the national election. Recent scholarship continues in the pattern set by the Lortie Commission in implicitly accepting the West European standard—specifically German—whose political parties are regarded as more policy-oriented, more participatory and hence more representative. Despite passage of the Bipartisan Campaign Reform Act (BCRA) in the U.S. in 2002, the U.S. model of political finance of the United States has been overwhelmingly rejected by Canadian scholars. One of Hiebert's (2006) works was partially titled *More at Stake than an Unfettered Right to Advertise*. Excesses of American campaign finance are deemed to be at high risk of being imported to Canada, despite Canada's long history of its fundraising being more strongly mediated by parties than is the case in American politics. Similarly, the institutional difference in the length of the election period between Canada and the U.S. is also ignored. Little if any reference has been made to Britain where Parliament passed the landmark Political Party and Election Reform Act (PPERA) in 2000. This absence is particularly notable since the similarities of Canada's and Britain's Westminster parliamentary democracies and the exigencies it places on parties is unacknowledged.

The idea of political parties as public utilities (Van Biezen 2004)—entities generating public goods—has been implicitly accepted and again stands in the tradition of the Royal Commission. Autonomy of political parties from state intervention, in the form of direct or indirect subsidies, or regulation, cannot be seen in the literature as desideratum, nor is the ascendance of regulation and subsidy perceived as a threat. The notable exception is Massicotte (2006) who, in his review of Quebec electoral finance reforms, demonstrates empirically the rapid decline of private donations following the introduction of direct subsidies and points to evidence of attempts to mask illegal donations as additional income for 'donors.'

Four other trends under the umbrella of ideas can also be identified. First, over the past century, there has been a shift in strategic rationale or framing of reforms: earlier reforms stressed the eradication of corruption. Post-2000 reforms continued the post-Charter tradition in which 'fairness' and 'access' have been the key framing terms that have shaped dialogue. Secondly, there has been a significant shift from norm-based to rule-based structures to determine appropriateness of political finance activities; this may have evolved as a consequence of governance dialogue throughout the 1990s and the recognition of the 'partnerships' between the state and the voluntary sector. Third, there has been a shift from empirical testing of political finance public policy outcomes to a post-positivist, qualitative assessment of outcomes. What is particularly striking is the incongruence between rationales for proposed legislation—for example the citing of lack of trust in political or declining voter turnout as a factor to propel

reforms—yet the apparent refusal then to use these indicators *ex post* in empirical tests of the effectiveness of the reforms. Fourth, there is a relative absence of evaluation of the outcomes of earlier reforms and there is considerable conceptual fuzziness as to what might be considered ‘evidence’ of either success or failure. While the use of normative institutionalism is laudable in intent, it is demonstrably difficult to prove anything except ‘failure’ when current practice is contrasted only with an ideal. What is particularly noteworthy from a public policy perspective is the growing elusiveness of the goals and measuring sticks of performance of campaign finance reforms. However, as goals become less concrete—as well they may as democracies mature—so policy outcomes become commensurately more difficult to measure. ‘Undue influence’ and the ‘*perception* of undue influence’ remained and hence ‘success’ and ‘failure’ were unlikely to be measured.

Also continuing path dependence were works by authors such as Meisel and Mendelsohn (2001) who argued for further campaign finance reform because of public cynicism and declining voter turnout rates. Yet these variables depend not only on attitudinal factors but also to structural factors (Blais, Massicotte and Dobrynska 2003, 2); it is unclear what might be termed achievement or non-achievement. As well, despite massive changes in campaign finance rules, the Canadian public may pay either insufficient attention to campaign finance reform or resiliently hold to attitudes of mistrust. It is important to keep these limitations in mind as each wave of reform is discussed.

What is new, or dynamic, is that in the past decade, reforms dealing with money in politics have merged two previously separate fields: that of ethics in the public sector or civil service and that of ethics or propriety on the part of elected officials. The Federal Accountability Act included reforms regulating behaviour by both. It may be wondered whether the plenary nature of these reforms, covering all private use of money in the political arena, may indeed invoke greater suspicion and less trust in politics by the Canadian electorate. As Heard noted in 1960 “one must guard against forgetting that money at work in politics is not, per se, deplorable.”

Institutionally, Elections Canada throughout the post-2000 period has maintained a high profile stance in advocating for more reform and its role can be seen as path-dependent. What may be changing is that given the new level of detail specified in the legislation permitting greater scrutiny and regulation of intra-party activities, Elections Canada’s interpretations and applications of the new regulations may increasingly be attacked as partisan and uneven, perhaps tarnishing its stellar reputation.

Also on the institutional front, SCC decisions have demonstrated an evolution in the philosophy and understanding of political parties and democratic theory (Feasby 2006). One of the key differences between political parties and interest groups noted in the literature is that the former seek to govern; the latter seek to be involved in politics more generally. Therefore, the Supreme Court’s judgement in *Figuroa* that ‘ability to govern’ is irrelevant to registration as a party is critical: no comparative differences between parties and interest groups are articulated or implied. As well, the Green Party morphed from interest group to political party specifically because of the 2004 introduction of tax-funded subsidies (Lambert). Massicotte (2006, 177) also notes that an interest group or entrepreneurial politician may seek to become a registered party neither to govern nor to engage long-term in political activity but merely to acquire public funds to finance an otherwise unpopular cause. Changing strategies of ‘interests’ may be the most dynamic aspect of the post-2000 period.

However, the election of minority governments in 2004, 2006 and 2008 leads to the interesting research question of whether campaign finance reforms have the fundamental

characteristic of altering other institutional practices and outcomes.¹⁸ More specifically, can a causal relationship be drawn between the dramatic restructuring of campaign finance in 2004 and 2006 and the election of minority governments in Canada? Finally, even a superficial reading of the fortunes of the four major national parties following the reforms indicates the widely differing responses and ability to respond to the strictures of the new legislation. This variability stands in sharp contrast to general adaptability of parties to earlier reforms. Recent rule changes seem to have had the underlying assumption that parties would uniformly be able to adapt quickly to the demands for small individual donations and this in fact does not appear to be the case. Whitaker (1977, xxiv) argues that parties are highly adaptive institutions and Clarkson (2005, 278) writes that “interdictions placed by Bill C-24 on corporate, union, and third-party participation in elections have made the political parties even more dominant. These sanguine predictions are testable propositions.

On balance, ideas in the post-2000 period have demonstrated strong path dependence stemming from earlier reforms and the Royal Commission report. Activities by institutional actors including Elections Canada, the courts and the parties have revealed a mix of both path dependence and dynamic response while the role of interests—both interest group and partisan—have demonstrated the highest degree of creative, strategic response.

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