

## **The Province as Proving Ground: Assessing Nova Scotia's Political Finance Regime**

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### *Abstract:*

Often considered a traditionalist and conservative province with a penchant for patronage politics, Nova Scotia is not well known for policy innovation. In recent years, however, this province has become a leader in an unlikely policy area: political financing. In 1969, Nova Scotia became the second Canadian jurisdiction, after Quebec, to introduce political finance regulation. These initial reforms were limited in scope and were, in large part, introduced as a strategy to deflect criticism arising from various political scandals. However, after the gradual introduction of provisions from all four of the common campaign finance areas—expense limits, contribution limits, public funding, and reporting and transparency mechanisms—Nova Scotia's political finance regime is now one of the most highly regulated in the country.

While the regime is comprehensive on paper, it is unclear whether it is effective in achieving the goals for which it was created: equality of opportunity for political and private actors, transparency, and the mitigation of corruption. This paper uses data from recent provincial elections to examine the degree to which Nova Scotia's campaign finance regime achieves these benchmarks. The data reveals that, while certain provisions, such as expense limits, have failed to level the playing field for political actors, the effective use of contribution limits and public funding, as well as a concerted effort by Elections Nova Scotia to improve transparency and enforcement, have enabled the regime to achieve these goals. This paper underscores the potential of studying provinces as laboratories for political finance policy innovation.

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## **Introduction**

Often considered a traditionalist and conservative province with a penchant for patronage politics, Nova Scotia is not well known for policy innovation. In recent years, however, this province has become a leader in an unlikely policy area: political financing. In 1969, Nova Scotia became the second Canadian jurisdiction, after Quebec, to introduce political finance regulation. The initial reforms were limited in scope and were, in large part, introduced as a strategy to deflect criticism arising from various political scandals. However, today, Nova Scotia's political finance regime is one of the most comprehensive in the country with provisions from all four of the common campaign finance areas: expense limits, contribution limits, public funding, and reporting and transparency mechanisms. Yet, it is unclear whether it is effective in achieving the goals for which it was created: equality of opportunity for political and private actors, transparency, and the mitigation of corruption.

This paper uses data from recent provincial elections to examine the degree to which Nova Scotia's campaign finance regime achieves these benchmarks. The data reveals that, while certain provisions, such as expense limits, have failed to level the playing field for political actors, the effective use of contribution limits and public funding, as well as a concerted effort by Elections Nova Scotia to improve transparency and enforcement, have enabled the regime to achieve these goals. This paper underscores the potential of studying provinces as laboratories for political finance policy innovation and highlights the importance of analyzing the historical development of a regime in order to understand present-day outcomes.

## **Why Regulate Political Finance?**

One of the common arguments for introducing legislation is to constrain the rising costs of running political campaigns. While campaigning has always been an expensive endeavor, the cost of running an effective campaign has risen exponentially in the past sixty years. The highly competitive nature of politics, coupled with advances in communication technologies, has placed increased pressure on political parties. Parties are not only expected to run professional campaigns with centralized messages and high-quality advertisements during election periods, but also to maintain their high-cost operations between elections. Parties that are unable to keep up with these demands risk losing their competitive edge. With the increasing costs of professionalized campaigns, traditional fundraising sources have often proved inadequate and not all parties are equally well-positioned to update their fundraising strategies (Fisher, 2011). This problem is exacerbated at the local level where constituency offices and candidates are charged, not only with raising sufficient funds to run efficient ground campaigns during elections, but also with acting as effectual links between the party and citizens between elections—a role which makes their continued operational and financial health vital to the interests of society as a whole (ibid.). Given the integral role political parties play in society, the argument is made that regulation should give all political parties and candidates an equal opportunity to influence politics.

This notion, of course, is premised on the idea that money translates directly into political influence (Ewing, 1992). If money can buy political influence, then parties and candidates with larger purses have an immediate advantage over less affluent actors. Smaller or poorer parties that are incapable of appropriating the funds necessary to be competitive do not have the same opportunity to influence politics. As a result, their supporters also have less political influence (Fisher, 2011). As Ewing (1992) argues, political equality requires that one be granted “the right to participate in government on equal terms with one's fellow citizens” (p. 14). Here, participation

in government means not only granting citizens the right to vote, but also entails the rights of equal opportunity to stand for election and of equal opportunity to secure election (ibid.). While formal barriers to stand for or to secure election may not exist today, many social and economic barriers remain. Informal economic barriers can prevent certain individuals, groups, or ideologies from participating in the political process on equal terms. Political finance regulations aim to remedy this disparity by lessening the financial burden on political actors and leveling the playing field for those less able to raise funds.

Reforms associated with mitigating the effects of the rising costs of politics and the creation of equal opportunity among parties and candidates include various forms of spending limits and public funding. Spending limits, or expense limits, are usually restrictions on the amount of money that parties or candidates can spend during campaigns. These limits reduce the potential disparity between poor parties/candidates and wealthy parties/candidates (Seidle 2011). A particularly wealthy candidate, who might be able to spend more, is now restricted by the spending cap, thus leveling the playing field. Spending limits also help to mitigate the pressures of the rising costs of politics and forces actors to spend strategically. All political actors know that both they and their competitors must abide by a financial ceiling which constrains the political influence of money.

Public funding is also aimed at leveling the playing field and mitigating the costs of politics. Public funding can take many forms, ranging from very small individual reimbursements to large, wide-ranging subventions. Here, the focus is on two forms of public funding, namely, the reimbursement of election expenses and publicly-funded subsidies. Reimbursements of election expenses were included in some of the earliest political finance regimes. Arguably, reimbursements create equal opportunity for individuals and parties with fewer resources to stay in the game and lessen the financial burden associated with operating a political party and running in an election (Seidle, 2011). When used along with spending limits, this form of public funding further reduces the disparity between political actors. Furthermore, reimbursements can allay the debts that candidates and parties incur during election periods.

Similarly, state subsidies for political parties help to alleviate the strain of long and costly election campaigns. While often determined by the results of the previous election (i.e. per-vote subsidies), public funding can still provide parties with a fairly stable source of income that would not be otherwise guaranteed. This guaranteed income can help smaller or new parties to break into the political arena and may also improve a party's capacity to reach out to members and to develop policy, strengthening democracy and increasing political participation (Seidle, 2011). Public funding may also decrease the reliance of parties on contributions from private sources, whose motivations may be suspect.

The question of unreliable and suspicious contributions leads to another rational for regulation: to reduce corruption and the undue influence of private individuals, corporations, and unions (Clift & Fisher, 2004; Seidle, 2011). The pervasive fear of corrupt political practices involving the questionable exchange of goods or services for government contracts or favours has plagued Canadian politics. While it is understandable that citizens are concerned about the source of political money, it should also be noted that the appearance of corruption can sometimes be as disruptive to the political process as actual corruption. In other words, even though individuals, corporations, or unions might be donating money with the best of intentions, the perception that contributions might be made in return for some favour from the political actor to whom the

contribution was made can lead to distrust of the political system among the citizenry. Thus, knowing the source and amounts of donations has serious consequences for the legitimacy of the political process. Just as political actors should compete on an equal footing, so too should the electorate compete on equal terms by ensuring that all votes have equal value (Ewing, 1992; Fisher, 2011).

The three forms of regulation associated with these issues are transparency (i.e. reporting mechanisms and penalties), contribution limits, and tax credits for contributions. The purposes served by contribution limits are twofold: (1) to ensure individual voters have an equal opportunity to influence politics; (2) to reduce the undue influence of wealthy private entities and to reduce the appearance of corruption. When no limit is placed on private contributions, notably large donations can give rise to a concern about corruption. This is particularly true of corporations and unions, which already have a substantial influence on government, as they are entities that can either boost or stall the economy. However, corporations and unions are entities with a vested interest in elections but they are not voters. Exceptionally large donations by these entities are often viewed with suspicion as possible attempts to buy influence in order to further private interests (i.e. patronage, kickbacks, contracts, etc.). Because of this, some believe that limiting or eliminating union and corporate contributions and limiting individual donations are the best ways to reduce the chances of real and perceived corruption. For this reason, the total prohibition of corporate and union contributions is highly contested and, as a result, contribution limits vary drastically across jurisdictions.

Tax credits for political contributions can also be included under this category of political finance regulation. Much as expense reimbursements for candidates and parties are intended to level the playing field for political actors, tax credits are intended to create equal opportunity for private entities to influence politics. Most tax credit incentive plans have mechanisms to ensure that credits are proportional to the amount donated. In other words, they make certain that there is as much incentive for smaller donations as there is for larger donations. In addition, many regimes have a maximum credit that can be claimed. While such tax incentives serve to give individuals equal opportunity to contribute to and influence political actors, they also serve as indirect subsidies to political actors by encouraging individual contributions. In this way, tax incentives also confer a certain degree of legitimacy on political donations.

The legitimacy of political money, or, at least, the perception that political money has been obtained through legitimate means, is integral to any political finance regime. One way to establish the legitimacy of political contributions and to diminish the chances of corruption is to require more transparency in the political process. Reforms that deal with transparency usually require candidates and parties to report expenses and contributions. Reports can include financial transactions during an election period, annual financial transactions, or both. Some jurisdictions may only require a report after elections, while others require them more frequently. These reports ensure that parties and their candidates have followed the rules concerning political financing. Most political finance regimes require that parties and/or local associations appoint a financial officer who assembles these reports. Furthermore, some jurisdictions have specific bodies, independent from the parties, whose sole purpose is to collect and review these reports, and to ensure compliance (Elections Canada, 2017). Each jurisdiction has penalties for general and specific infractions of electoral laws. Some jurisdictions have penalties and procedures specific to election finance laws. The public availability of the financial return reports, while not always

covered in political finance laws, is also a form of transparency. If reducing real and perceived corruption is the goal of transparency laws, then public scrutiny can be crucial.

As the above discussion demonstrates, there are three reasons for introducing political finance regulation that are often cited in the literature: (1) the mitigation of corruption, (2) equality of opportunity for political actors, and (3) equality of opportunity for private entities to influence politics. Four categories of regulation arose from this discussion: (1) expense limits, (2) contribution limits, (3) public funding, and (4) transparency mechanisms. Regulatory policy outcomes should correspond to the reasons given for their introduction. Figure 2 found in Appendix B shows the regulatory policy outcomes that should correspond to each of the political finance benchmarks. Over time, in any one jurisdiction, new challenges arise and priorities change. These diverging experiences lead to variation in political finance regimes.

### **Why Parties Seek Regulation and Reform**

While the discussion has touched on the desirability of political finance regulation and the reasons for adopting certain policies, it does not explain why political parties in power seek such state intervention in their financial affairs. At first, the idea that a party would introduce legislation that places constraints and conditions on its fundraising and spending might seem peculiar. This is especially true when parties introduce reforms that appear to go against their best interests, raising the question of why parties adopt political financing policies at all. The broad discussion of political finance regulations outlined above cannot, on its own, explain this.

Two theories as to why parties seek reform commonly appear in the literature on political financing. The first theory is that of “constitutional engineering,” which argues that institutional change is the result of intentional design by strategic agents (Clift & Fisher, 2004). This theory suggests that reforms are most likely to occur when the institutional rules no longer benefit the dominant actors. It further posits that changes can occur when dominant actors “seek to improve their own interests, possibly at the expense of political rivals” (ibid., p.6-7). While this approach is applied more often to electoral reforms, one of the most influential theories about political finance in the last 20 years, the so-called “cartel theory” (Katz & Mair, 1995), falls into the category of constitutional engineering.

The basis of the cartel thesis is that, at a certain point in the development of a party system, major parties in the system will begin to collude in order to ensure their survival and to block out any new competition. Increased state funding plays a crucial role in this petrification of the party system. As the dominant political parties and the state grow closer, the dominant parties essentially “invade” the state (Katz & Mair, 1995). These parties, then, play a dual role: they are both the distributors and the recipients of state resources. As a result, dominant parties begin to receive subsidies from the state. This creates barriers for new parties trying to gain power, giving the dominant parties incentive to share resources in order to survive together and to wipe out competition. This theory, then, asserts that “the state...becomes an institutionalised structure of support, sustaining insiders and excluding outsiders” (ibid., p.16). In turn, the major parties gain monopolies over the distribution of state subsidies and the means of communication, making them “semi-state agencies” rather than popular policy-making engines (ibid.).

The account of state funding provided by the cartel theory is sobering, to say the least. While the cartelization might come across as an undesirable progression, it has also been argued

that the cartelization of political parties can be viewed as a positive development in that political parties become “public utilities” (van Beizen, 2004; 2008). In this sense, parties can be considered public utilities because they are agencies that perform such vital services for the public that they warrant some degree of state control and regulation, while also being granted certain legal privileges and remaining as private institutions (ibid.).

The cartel party model is a convenient explanation for the introduction of political finance regulation, and public subsidies, in particular; however, it does encounter issues depending on the electoral system in place. For example, in a winner-takes-all system, coupled with a Westminster parliamentary democracy, state funding, in certain forms, tends to encourage rather than discourage competition among parties (Young, 1998; van Beizen, 2004; Katz, 2011). One reason for this is that, when public funding is based on performance in an election (e.g. a certain amount of money for a certain number of votes), it acts as an incentive for political actors to improve their electoral outcomes through increased competition. Furthermore, in a winner-takes-all situation, state subsidies can function as financial proportional representation, thereby allowing smaller or regional political parties greater opportunity to compete with larger, more established parties (Jansen & Young, 2011; Katz, 2011).

The cartel theory is further problematized by Scarrow’s (2004) findings that political actors tend to sacrifice political payoffs before economic gains. Scarrow does not deny collusion as a possibility altogether, but does suggest that when collusion occurs, it does so for different reasons. Using the cases of Germany and Britain, Scarrow finds that the strategic positions taken by political actors depend on the actor’s priorities—either revenue maximization, or the political bottom line—and whether or not external actors (i.e. the courts or independent commissions) become invested in the issue of political finance regulation (p.669). Thus, collusion for political gain is possible, but not inevitable. Notably, this study focuses on the impact of political scandals on the development of political finance policies. Scarrow concludes that public outrage over political scandal on its own has little effect on regulatory outcomes. However, when outside forces, such as the courts or independent commissions make recommendations or demands in response to scandal,<sup>1</sup> parties are more likely to enact reforms, even if they run contrary to the parties’ financial interests.

The discussion of political scandal leads to the next theory of why political parties might seek to regulate their finances. That theory is that parties will introduce reforms when existing “rules no longer confer legitimacy” (Clift & Fisher, 2004, p.7). This theory would suggest that if an institution is discredited in some way, then changes are likely to occur. For example, if an institution were to act contrary to its values, or the values of society, then it is likely to lose legitimacy. Institutional change will likely occur to regain the legitimacy that was lost. While this might seem strikingly similar to the theory proposed by Scarrow, the theories are fundamentally different. Scarrow’s theory is still one of constitutional engineering in that it suggests changes occur when strategic agents seek to maximize the utility of the institution for their own interests, in one way or another.

The theory at hand, however, is founded on a normative, or sociological institutionalist perspective wherein political institutions shape “values, norms, interests, identities and beliefs” in

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<sup>1</sup> Scandal, however, is not a necessary precursor to such demands or suggestions by outside forces.

order to influence behaviour (March and Olsen, 1989, p.17). Patterns of particular behaviours become established dominant institutional values that determine what is and is not appropriate behaviour (Fisher, 2011). Normative institutions use this “logic of appropriateness” to enforce particular values and norms (ibid., p.29). Actions taken by agents working within political institutions are therefore constrained and shaped by these values and norms. When an institution strays from behavior that has been deemed appropriate by society or by the institution itself, then the actions might be deemed a scandal. In order to regain legitimacy, the actors might call for institutional reform. With regards to party financing, appropriate behavior depends on the values of the particular political party attempting to enact reforms, as well as societal standards concerning inappropriate financial behavior. For instance, society might accept political contributions from corporations or unions as acceptable at a certain point in time, but these views might change over time and such contributions might come to be seen as questionable, unfair, or corrupt. If existing practices lack legitimacy, governing parties might seek reform in order to regain legitimacy.

As the discussion below demonstrates, Scarrow’s account is likely the best explanation for the early political finance reforms in Nova Scotia, as politicians made strategic moves to overcome negative attention they received due to failed political projects, petty corruption, and ongoing patronage. Additionally, multi-party committees and independent commissions have played a large role in the introduction of political finance reforms throughout the regime’s 50 years. However, once the initial regime was introduced, it is also arguable that there was a lock-in effect that tied parties to a certain logic of appropriateness embedded in society’s changing visions of political equality. In this way the outcomes and effectiveness of the regime are likely related to the nature of the regime’s development. In other words, the province’s commitment to the regime—encouraging independent review and responding to changing norms—likely influences the degree to which the regime’s provisions achieve the political finance benchmarks discussed above. Different regimes will take different paths, leading to different outcomes. Thus, analyzing the history of a regime is important for understanding present-day outcomes within that regime, and understanding the variety of paths that can be taken can help us understand why different regimes may be more or less effective. Of course, it is important to recognize that the historical path is not overly deterministic—strategic actors still play an important role, as do a variety of other forces such as external pressures (e.g. the present economic climate and pressure from other provinces or the federal government). Thus, a variety of forces will come together to influence the scope and effectiveness of a regime.

### **Historical Context and the Growth of the Political Finance Regime**

In 1969, Nova Scotia became the second jurisdiction in Canada to introduce political financing legislation. An understanding of the socioeconomic context in which the G.I. Smith’s Progressive Conservative government was operating is critical to understanding why it introduced the province’s first political finance reforms. In Nova Scotia in the 1960s, “equality” was a buzzword that pervaded the province’s social and economic spheres. Economically, rural areas on the mainland and in the Sydney-Glace Bay region of Cape Breton, where the majority of coal mines, steel mills and heavy water plants were located, felt that the government had abandoned them in favour of developing the urban centre of Halifax (Sheppard, 1970). These regional tensions, along with the unprecedented success of the New Democratic Party outside of Halifax, led to increasing calls for regional economic equality.

Exacerbating the problems of regional and economic inequality within the province were tense race relations and issues of political corruption in the 1967 general election. Along with the plans for urban renewal in Halifax came an often-overlooked period in the history of Nova Scotia—the destruction of the Black Nova Scotian settlement of Africville. In response to the razing of Africville, and heightened tensions, a number of civil rights groups arose and became prominent voices for equal rights (Sheppard, 1970). Tensions increased during the 1967 provincial election, when a PC candidate openly admitted to a reporter from the *Toronto Star* that “votes are bought for a few dollars or a jug of rum, particularly among Negroes, Indians, and Irish waterfront workers” (Mortimore, 1967). The story quickly spread to other provincial and national newspapers, which expressed disbelief in the fact that the corruption in Nova Scotia not only appeared to be racially and ethnically targeted, but also that any politician would openly acknowledge it.

It was in the midst of these accusations of economic mismanagement, racial discrimination, and electoral impropriety that the government initiated the Royal Commission on Election Expenses and Associated Matters (hereafter, the Green Commission) in 1969. The Commission consisted of members of both the Liberal and PC parties, as well as members of the labour movements and the NDP. With such a composition, the government hoped to avoid complaints that it was ignoring the interests of unions and individuals working in mineral extraction and manufacturing, and of the larger communities that relied on these industries. To be sure, the recommendations set out in the Green Commission’s final report reflected the Commission’s dynamic composition.

While Smith’s PCs did not accept all the recommendations offered by the Green Commission, there is no question that this Commission set the tone for the future of political finance regulation in the province. The main focus of its recommendations was election expenses, the creation of equal opportunity for political actors and the mitigation of corruption. Many of the Commission’s recommendations went unchallenged in the House of Assembly and the resulting bill included modest spending limits, public funding, and transparency mechanisms.<sup>2</sup> When commenting on the bill in the House, PC representative Richard A. Donahoe noted the need for the legislation, acknowledging the reality of corrupt political practices in the province (NS Leg. Ass. 22 April, 1969). Instead of opposing the proposed bill, which could have made them appear “anti-transparency” or even “pro-corruption,” the Liberals gave it their full support. Regan himself said of the bill: “a poor man should have the same opportunity as a rich man to run for office...and, so, this legislation is basically a blow for a better form of democracy” (NS Leg. Ass., 24 April, 1969).

These early reforms, then, were targeted at the creation of equal opportunity for political actors (i.e. parties and candidates). While they did go beyond attempts in other provinces to break down barriers to entry into politics, they did not meet the demands of private actors who were calling for equal influence in the political process. In recognizing political parties as legal entities, however, the reforms also recognized the important role parties play as a link between the state and civil society and in the aggregation of interests. The creation of equal opportunity for political parties was seen by members on both sides of the floor as giving private actors equal opportunity to influence politics via political parties (NS Leg. Ass., 24 April, 1969), but the legislation did

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<sup>2</sup> See appendix for a detailed description of the original and current political finance regimes.



nothing to bring an end to patronage appointments and the undue influence of wealthy individuals, corporations, or unions.<sup>3</sup> Therefore, it is not clear that these reforms were completely sincere. What is clear, however, is that policy changed in response to changing social norms and the questioning of the legitimacy of existing political practices.

In the first 40 years of the political finance regime's existence, only sporadic changes occurred, each in response to scandal and the need to regain legitimacy. First, in 1981, John Buchanan's PC government introduced a tax credit for political donations in the wake of two highly publicized scandals. First, there was the issue of the former PC Treasury Board Chair, Roland Thornhill, who was under investigation by the RCMP for alleged influence peddling. Second, and at the same time, three of the Liberal Party's top fundraisers under Regan were charged with "acting together and with others to seek or accept something in return for exerting their influence on government business" (Landes, 1984, p.385). As these scandals called into question the legitimacy of both the major parties, it is likely that the tax credit reform was pushed through without objection as a means of reassuring the public of their political integrity.

In 1991, the PCs, led by Donald Cameron, introduced regulations that would require parties and candidates to disclose the sources of their political contributions. Cameron had been elected to replace John Buchanan as leader of the PCs and as premier earlier that year. He had campaigned on ending patronage and corruption (Finbow, 1998). Cameron's succession came after Buchanan, came under investigation for a breach of fiduciary duty ("Nova Scotia has late start," 1991). At the same time, Roland Thornhill, who had also run in the leadership race, was facing 17 new criminal charges relating to those which had been dropped in 1981 (*ibid.*). As the Tories fell behind the other parties in the polls, Cameron promised to introduce reforms that would prevent future scandals. When the legislature opened in May, the disclosure of contributions was one of the first issues dealt with. Following the established tradition in the province, the new provisions garnered the full support of the opposition.<sup>4</sup>

The next major changes were introduced in 2006 by the Progressive Conservatives under Premier Rodney MacDonald. Following the lead of the federal government, and the governments of Alberta, Manitoba, New Brunswick, and Ontario, the Tories introduced legislation to limit the amount of money that individuals, corporations, and unions could donate to any one political entity in a year to \$5,000. These changes also came after MacDonald was criticized for the secrecy surrounding the financing of his leadership campaign (Finbow, 2013; 2014). According to the minister of finance, the proposed legislation was intended to "increase the transparency and accountability of [the] electoral system" and to "eliminate the appearance of undue influence by any person or organization with financial means, over [the] electoral system" (NS Leg. Ass., 22 November, 2006). The Bill passed with little debate and with the support of both sides of the Assembly.

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<sup>3</sup> The federally commissioned Barbeau Report (1966), referenced in the Green Report, made clear recommendations concerning these issues, such as suggesting that political actors record and report contributions.

<sup>4</sup> It should be noted, however, that the legislation drew a great deal of criticism from NDP leader Alexa McDonough, who criticized the government for introducing "popular legislation" to boost the party's ratings, similar to the Tories' criticisms of a private members bill on contributions limits that she had attempted to pass just four years earlier (Cox, 1991).

The regime was not touched until the election of the province's first NDP government, under Premier Darrell Dexter. In 2009, the government introduced legislation which banned political contributions from corporations and unions, and the use of parties' "held assets" (i.e. trust funds) for political purposes. The explicit reasoning for this change, as stated by the minister of justice, was that it would "level the playing field by having one set of rules for everyone" (NS Leg. Ass., 22 October, 2009). However, as in other instances in Nova Scotia, the legislation followed the realisation that the NDP had received \$45,000 in "questionable donations" from a "group of unions" during the general election campaign just a few months earlier ("N.S. voters pick NDP," 2009).

In 2011, the NDP introduced further reforms, replacing the former *Elections Act* with the *Elections Act, 2011*, which introduced limits on third party advertising and a per-vote subsidy for parties. It also called for the dissolution of party trust funds and increased public funding and spending limits for candidates. While the 2007 reforms had led to an uproar among Liberals, the 2011 changes were accepted more readily. In 2013, organizations were further banned from buying tickets to political fundraisers. Instead of stemming from scandal, these reforms appeared to be a natural progression from earlier reforms, as well as a result of external pressures from a national dialogue around pay-for-access fundraising.

### **The Regime and Political Finance Benchmarks**

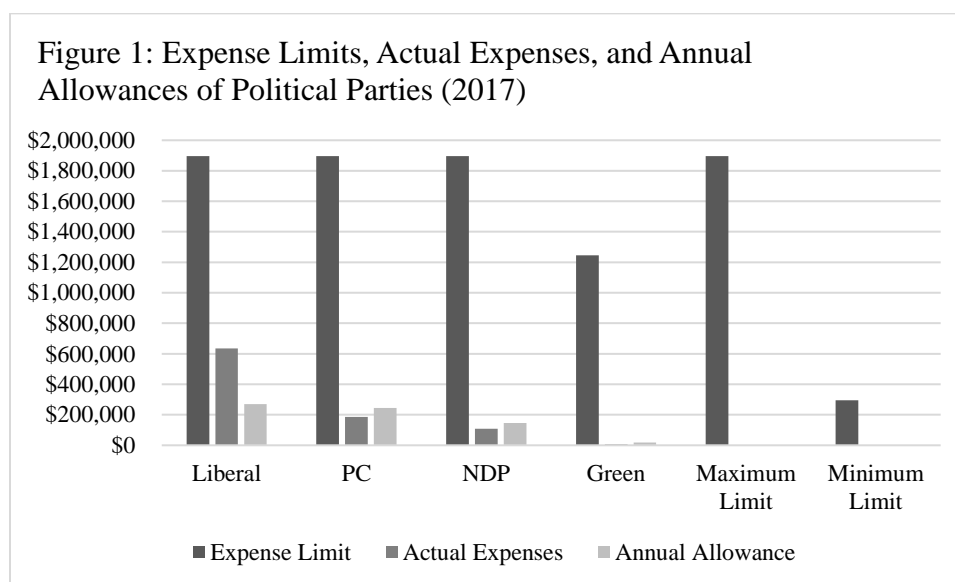
Nova Scotia's political finance regime has a fifty-year history and has changed substantially over the years, becoming more comprehensive over time, while maintaining original core of the regime. Equality of opportunity for parties, candidates, and voters, has been a pervading theme throughout the years. The mitigation of corruption has also been an implied, and often explicit, goal of the regime from its earliest days. As the above discussions reveal, the nature of Nova Scotia's political and socioeconomic environments, as well as the changing circumstances in the province's party system, at first led the province to introduce innovative legislation, but later created a difficult road to reform. Nevertheless, reform, when introduced, often enjoyed near-unanimous or unanimous support. This section will analyze the current legislation, given the historical development of the political finance regime, using the aforementioned goals, or benchmarks of political finance regulations: equality of opportunity for political entities, equality of opportunity for private actors to influence politics, and openness and the mitigation of corruption.

#### *Equality of Opportunity for Political Actors*

Equality of opportunity for political actors has been central to the Nova Scotia political finance regime since its creation. The inclusion of the NDP in the Green Commission, and the absence of a threshold for a political party to receive public funding in the original legislation suggests that creating equality of opportunity for parties beyond the two dominant parties was a central concern. Moreover, the inclusion of candidate election expense reimbursements highlights that there was also concern about leveling the playing field for individual political actors. Thus, it is clear that the foundation of the Nova Scotia political finance regime was the equality of opportunity for political actors and that this direction was heavily influenced by the inclusion of the NDP in the process. This initial decision proved to be a guiding light for future legislation in this area.

The current legislation is similarly concerned with the equality of opportunity for political actors. Spending limits and public funding are in place for both parties and candidates. Figure 1 shows party expense limits, actual expenses of parties, and annual allowances for the 2017 election, as well as the minimum and maximum expense limits that were possible in the election. Expense limits for a party depends on how many electors there are in the ridings in which the party fields candidates. This means that, if an official party is unable to run candidates in every riding, then it is better off running its candidates in more populous constituencies. For example, in 2013, if a party were to run a candidate in each of the 10 least populous ridings, then it would have a spending limit of \$294,673.<sup>5</sup> If a party were to run a candidate in each of the province's 51 ridings, then it would have an expense limit of \$1,730,949.39, seven times the limit for a party running candidates in the 10 least populous ridings. In this way, the limits create an equal playing field for parties that field candidates in every riding, but not for those who run fewer candidates.

However, the central idea of this provision is not simply that all parties should have the same spending limit, but rather that every party should be able to spend the same amount per elector in the ridings in which they field candidates. Furthermore, in 2017, there was not a single party that came anywhere close to their spending limits. In fact, the net total expenditures for the four official parties only totaled \$934,999, \$961,150 short of the spending limit for a party with 51 candidates.



In addition, parties in Nova Scotia now receive an annual per-vote subsidy in an attempt to give all official parties an equal footing. At \$1.53 per valid vote cast for a party, this allowance is quite generous when compared to how much each party spends in an election. In 2017, the PCs received enough votes to receive an annual allowance of \$243,845.16, while their total expenditures for the election only totaled \$185,186 (ENS, 2018a). This means that the party received a surplus of almost \$60,000 in the first year, before private contributions. Similarly, the Greens came out with a \$13,515 surplus, and the NDP ended up with a \$37,481 surplus. The Liberals, on the other hand, came out with a \$365,676 deficit on election expenses after the annual

<sup>5</sup> Calculations are based on figures provided in the Chief Electoral Officer's report on Financial Information and Statistics (2014).

allowance. Considering that this is an annual allowance, and that contributions have not been included in the calculations, public funding makes up for a large proportion of each party's election expenses. The returns would not be so great, on the other hand, if each party actually spent to its maximum limit.

The situation for candidates is not so clear cut. With the thresholds outlined above, the disparity between spending limits in the most and the least populous ridings should be less. This is important because candidates' campaigns are focused in their own constituencies and in order for candidates to have an equal opportunity to inform voters of their messages, they should have similar spending limits. The riding with the greatest number of electors in 2017 had 21,574 electors. The spending limit for candidates in this riding was \$112,231. The riding with lowest number of electors had 10,292 electors and a spending limit of \$59,263. This means that the disparity between these spending limits is almost \$53,000. However, when one looks at these figures based on the number of electors, it works out to \$5.20 per elector in the most populous riding and \$5.75 per elector in the least populous, a difference of 55 cents per elector.

Geography is one factor not taken into account in these calculations. In 1969, the Green Commission recommended that geography not be taken into account, but since that time, the discrepancies between the urban and rural areas have increased substantially. When the electoral boundaries were redrawn in 2012, the main focus was giving every vote the same weight, and, thus, the urban ridings became geographically smaller, while rural ridings became larger (Carbert, 2016). For example, in 2013, the most densely populated riding had 3,224.2 electors per square kilometer, while the least populous riding had a population density of 1.92 electors per square kilometer. This is an incredible discrepancy given the distance one must travel and the time required to meet with constituents in an expansive rural riding as compared to a smaller urban riding. The issue, then, is that while the boundaries were redrawn to give votes equal weight, expense rebates were not amended to take into account the vast differences in geographic size.

Here, however, is where public funding can play a role in remedying the situation. If expense reimbursements for candidates are similarly based on the number of electors in a riding, then it may aid in closing the gap between spending limits in both more and less densely populated ridings. Nova Scotia does, indeed, have such a provision for expense reimbursements. Based on the 2017 figures, a candidate in the riding with the lowest population (a large, rural riding) would be eligible to receive a reimbursement of \$16,263, and in the most populous riding (a relatively small, urban riding) a candidate could receive a reimbursement of \$33,762 (ENS, 2018a). Assuming that all candidates spend to their limit and all qualify for reimbursement, the former candidate would have an expense deficit of \$43,156 before private contributions and the latter candidate would have an expense deficit of \$78,469 before private contributions. Due to the fact that the reimbursement has a flat per-electors rate, while the spending limit has three thresholds, the candidate in the more sparsely populated riding ends up with a greater proportion of his or her expenses reimbursed, thus remedying the geographic disparity in a small way.

The problem, of course, is that not all candidates qualify for reimbursement because of the 10% threshold. This threshold means that any candidate who, regardless of other circumstances, fails to receive 10% or more of the popular vote in their riding is ineligible for reimbursement. The message being sent with such a threshold is that the province only supports equality of opportunity for candidates to a certain point. In practice, such a threshold is counterintuitive to the purpose of

expense rebates. While reimbursements are supposed to encourage people of limited means to become candidates, the threshold might discourage people from smaller or new parties from participating. The inclusion of a high threshold may not only discourage candidates from running, but it may also indirectly undercut new parties by thwarting their chances of running a sufficient number of candidates to qualify as an official party. A high threshold, then, can undermine the entire scheme for creating equality of opportunity for political actors.

It is important to note, however, that this threshold existed in the original 1969 legislation. While this analysis shows that there could be an issue with a 10% threshold, history has shown that even 15% did not stop the rise of the NDP in Nova Scotia or the transformation of the two-party system into a three-party system. With the addition of the Greens as an official party, this may change. In 2017, 29% candidates were ineligible to receive reimbursement due to the 10% threshold, whereas in 2006, when the threshold was 15%, 35% of candidates failed to meet the threshold (ENS, 2018a). This was certainly an improvement, but it fails to explain why there is a threshold for public funding for candidates, but not for political parties. More pointedly, it questions the purpose of having a threshold at all.

#### *Equality of Opportunity for Private Actors*

While political finance regulations are concerned with creating a level playing field for political actors, they are also concerned with the equality of opportunity for private actors (i.e. non-political actors) to influence politics. This has certainly been a feature of the Nova Scotia regime for quite some time. The first political finance legislation in Nova Scotia purported to be concerned with giving individuals and different elements of society equal opportunity to influence politics—the Green Commission and politicians on both sides of the floor noted the importance of this goal. However, nothing in this legislation addressed this issue. Therefore, while claiming concern, the government took little action to right inequalities.

The explanation for this inconsistency is likely quite simple. Although both the government and the opposition were under criticism for their political and economic practices, which allegedly favoured particular regions, industries, and racial groups, they were also under pressure from those favoured groups to continue business as usual. Rather than introducing contribution limits or contribution disclosure laws, the government opted to re-establish some semblance of legitimacy to the political system by introducing legislation that gave political parties and candidates greater legal standing, and, thus the air of legitimacy. This, they hoped would give Nova Scotians faith in the political process. Evidently, this did not work, as minor political scandals, patronage, and favorable treatment continued to plague politics in the province. Incremental changes in the 1980s and 2000s shifted attention toward a level playing field for private actors, first through the introduction of tax credits, then through the limiting of private contributions, and culminating in the ban on corporate and union donations in 2009 and the ban on organizations buying tickets to political fundraisers in 2013.

The 2009 and 2013 changes suggest that the influence of individuals on the political process was now considered more important than that of corporations or unions. It is not clear, however, that this sentiment is actually shared by the politicians in Nova Scotia. During the debates on the 2011 overhaul of the *Elections Act*, one Liberal MLA noted that a number of the province's corporations and unions had been involved in the consultation process for the legislation and argued that the Sobeys Group should also have been included (NS Leg. Ass., 29 November 2011).

It appears that even without the ability to contribute funds to political actors, corporations and unions continue to influence the direction of the political finance regime.

It is also worth noting that there are fewer individuals who can actually afford to spend the contribution limit of \$5000 than those who can. An examination of the contribution disclosure reports for 2013 revealed that there were over 2000 individual donations of over \$200 between the four major parties (ENS, 2018b). Of these donations, only four were contributions of \$5000. The average donation amount across the four major parties was only \$650. Of the hundreds of donations made to candidates in 2013,<sup>6</sup> only seven were contributions of \$5000 divided among just four candidates. Electoral districts were lucky to receive any contributions in 2017 and none received a donation over \$200. The low occurrence of large donations, and the fact that the median household income in Nova Scotia is only \$60,764,<sup>7</sup> suggests that a limit of \$5000 is more than the average Nova Scotian can afford. The lack of large donations in 2017 may also signal a larger shift in attitudes toward political donations—in 2013, there were 22 donations of \$5000 given to the major political parties (ENS, 2014). This means that even those who previously contributed large amounts of money are now contributing less. While this limit is not really limiting, over-donation

### *Openness and Mitigation of Corruption*

Of great concern in the Nova Scotia political system over the years had been the granting of patronage appointments or of government contracts on the basis of financial political support. Until the contribution disclosure regulations were introduced in 1991, it was almost impossible for the public to hold the government accountable in this regard. The disclosure requirements were a huge step toward transparency by allowing Nova Scotians to see exactly where political actors were getting money. This made it easier to scrutinize government appointments and contracts tendering. In the same vein, the prohibition of corporate and union contributions in 2009 was also intended to reduce both corruption and the appearance of corruption. By getting rid of these contributions altogether, parties and candidates could no longer be accused of favouring certain entities over others because of contributions that had been made.

In 2011, the government went one step further and introduced spending limits and reporting requirements for registered third parties. Creating spending limits ensures that a third party cannot have undue influence over the political process and also ensures that any single third party cannot have considerably more influence than another. Contributions to third parties are similarly regulated as they are for political parties. This prevents individuals, corporations, or unions from circumventing the political contribution regulations by over-contributing to a political actor, thereby having unfair influence. Similar to political actors, third parties are also required to report their expenses and disclose contributions.

Requiring parties and candidates to report their expenses and to disclose their contributions is meaningless, however, unless there is a way to enforce the rules. Nova Scotia's enforcement mechanisms are not considerably different from those in other jurisdictions. There are penalties for noncompliance and mechanisms to remedy errors in reports. However, penalties for breaking political finance laws are relatively low—\$500 and temporary prohibition from sitting in

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<sup>6</sup> Detailed contribution lists for candidates for the 2017 election were removed from the Election Nova Scotia website and were not made available upon several requests.

<sup>7</sup> The third lowest in Canada (NS, 2017).

legislature for failing to submit an expense report, and \$50,000 for a party and \$5,000 for a candidate that fails to comply with contribution disclosure regulations. No penalties exist for third parties, other than general offenses under the Act. The fact that current legislation requires financial reports be made available online is likely one of the most valuable enforcement measures. When reports are made readily available to the public, it means that political actors and third parties are open to greater scrutiny. Elections Nova Scotia [ENS] is efficient at keeping these reports and the reports of the Chief Electoral Officers up to date and easily accessible, barring technical glitches. The names and addresses of those who contribute over \$200 are made available and the reports are user-friendly. In fact, after the 2013 election, ENS made a concerted effort to lower the reading level required to understand political finance reports. A reading level of 14.7 means that an individual would need high school and three years of post-secondary education to understand a given report. ENS reduced the reading level required to understand its reports from 15.4 in 2013 to 9.7 in 2017. This effort makes political financing reports more accessible to broader segments of the population. However, not all political actors submit their reports on time for the publication of the summary reports, however, which can make it hard to find information.

Enforcement is the most problematic aspect of this regime. The fact that the Chief Electoral Officer is the only person who can initiate an investigation puts a terrible onus on the CEO. While the CEO's staff reviews the financial reports, it is still only the CEO who can initiate investigations. Official investigations, however, are rare. In fact, it was not until the controversy over a contribution made to the NDP in 2009 that a party was actually made to answer for non-compliance, and it was for this reason that the non-compliance agreement was introduced into the regime. The hope was that non-compliant political actors and third parties would come forward and enter into an agreement. After the 2013 election, however, the CEO reported that, even though there were a few third parties that entered into such agreements, there were major concerns with this process and recommended that it should reassessed before the next election (ENS, 2014). One could argue that the lack of investigations is a good sign—that it shows the rules are being followed. However, the concerns expressed by the CEO, suggests that this is not the case; rules are being broken, but ENS simply lacks the power and resources to enforce them. Yet, unlike other similar regimes in Canada, Nova Scotia has been able to successfully prosecute individuals for non-compliance in recent years, suggesting that the regime is, indeed, relatively successful.

## **Conclusion**

Nova Scotia's political finance regime was slow to develop, but over the past five decades, it truly has become one of the most comprehensive regimes in the country. Initiated on the recommendations of an independent commission in the wake of economic troubles, accusations of discrimination and improprieties, the development of the regime has been marked by countless scandals and heated controversies. Over the years several politicians and their political parties have taken advantage of political finance legislation to legitimize their authority and to restore the public's faith in the political system. However troublesome or long the road to the current legislation has been, it has not been for nothing. While the analysis in this paper has pointed out flaws or potential problems in the regime, it is undeniable that the regulation of political finance has had an impact on the political process.

The first legislation did come during a politically, economically, and socially tumultuous time, and, while it might have been a political maneuver by the dominant parties to reduce the appearance of corruption, it was, nevertheless, innovative and has had a lasting impact on the

political system in the province. The fact that the 1969 legislation allowed for the official recognition of political parties was, on its own, revolutionary, but the fact that the threshold for official party status was set low enough to allow for competition in the system set in motion the reshaping of the province's party system. Public funding and expense limits opened the political process up to individuals and political parties previously unable to participate, thus, giving at least the appearance of a less elite political system. Contribution limits, bans and disclosure, and expense reports did, in fact, help reduce vote buying, improper tendering processes, patronage appointments, and other questionable activities. The regime has not been able to eradicate all these problems, but not all such activities can be fixed solely by political finance laws.

The development of a comprehensive and relatively effective political finance regime in a province notorious for political scandal is not inconsequential. Recent developments have bucked or have been ahead of the national trend (i.e. public funding, third-party regulations, banning corporate and union donations and participation in fundraisers), suggesting the province has locked into the regime and is now willing to experiment more with policy innovation. While this is just a single case, it does highlight the possibilities for studying provinces as laboratories for political finance regulation. Furthermore, it underlines the importance of analyzing the historical development of a political finance regime in order to understand present-day outcomes. A combination of factors—internal societal pressures, external political and economic pressures, norms of equality, and strategic action—interact to shape a jurisdiction's political finance regime and will have an impact on its scope and effectiveness. The Nova Scotian case demonstrates that an evaluation of such factors in other jurisdictions could be invaluable for understanding the vast differences between political finance regimes, not only within Canada, but also beyond.



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## Appendix A

Table 2: Provisions of the Initial and Current Nova Scotia Political Finance Regime

	<b>Expense Limits</b>	<b>Contribution Limits</b>	<b>Public Funding</b>	<b>Transparency</b>
<b>Initial Legislation</b>	Candidates: \$1.00 x first 5000 electors; \$0.85 x next 5000 electors; \$0.75 x number of remaining electors  Parties: \$0.40 per elector	—	Candidates: \$0.25 per elector (15% threshold)	Expense reports  Other: public disclosure, penalties, fines
<b>Legislation as of 2017</b>	Candidates: \$5.72 x first 5000 electors; \$4.86 x next 5000 electors; \$4.29 x number of remaining electors  Parties: \$2.51 per elector	Individual: \$5,000  Corporate & union: prohibited	Candidates: \$1.43 per elector (10% threshold)  Parties: annual per-vote subsidy (\$1.53/vote)	Expense reports, contribution disclosure  Other: public disclosure, penalties, fines

**Appendix B**

Figure 2: Categories of Regulation and the Political Finance Benchmarks

