

NOTES FOR A PRESENTATION BY

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## INTRODUCTION

The objective of this presentation is to provide an overview of the key elements for the control and monitoring of expenditures of political parties and candidates and to present for further discussion a few key challenges for electoral organizations on this matter, based on our experience in Canada.

## MANDATE

Elections Canada, headed by the Chief Electoral Officer (CEO) is the non-partisan agency responsible for the conduct of federal elections and referendums. Its prime task is to be ready at all times to administer an electoral event.

An important element of this system is the existence of independent officials who are responsible for the administration of the electoral process. The Chief Electoral Officer of Canada, the Commissioner of Canada Elections, and the Broadcasting Arbitrator each have this status.

The office of the CEO was established in 1920. The CEO is responsible for exercising general direction and supervision over the preparation, administration and reporting aspects of federal elections and referendums and the expenses provisions of the legislation.

Since its inception, the post of CEO has been completely independent of the government and free of any interference from organized political parties. The incumbent is appointed by a resolution of the House of Commons and can be removed for cause by the Governor General on joint address of the House of Commons and the Senate.

## THE *CANADA ELECTIONS ACT*

The legislation governing the financing of political parties and candidates is contained in the *Canada Elections Act*. However it is important to note that the right to vote and the right to be a candidate are protected by the *Canadian Charter of Rights and Freedoms*. In 1970, the *Canada Elections Act* was amended to provide for the registration of political parties but there were no requirements governing party spending. Although candidates had to file a statement listing all expenses incurred, no one was responsible for enforcing the law.

Special committees were established to consider the governance of election financing. The recommendations of these committees were adopted in 1974 in the form of the *Election Expenses Act*. It is interesting to note that these major election financing reforms came about in Canada in the aftermath of Watergate.



The recommendations of these committees were based on:

- a recognition of political parties;
- limits on election expenses;
- reimbursements and tax credits;
- disclosure of income and expenditures;
- the necessity of enforcement; and
- an allocation of broadcasting time.

These reforms focused on the following principles:

1. Equality and fairness
2. Transparency
3. Participation

These principles are enshrined in the Act.

### **Key Elements of the Legislation for the Control and Monitoring of Expenditures**

The key elements of the legislation which provide the foundation for the control and monitoring of expenditures and accountability include:

- Registration and nomination requirements for political parties and candidates
- Roles and responsibilities during an election campaign
- Rules governing contributions
- Rules governing expenses
- Public funding of political parties and candidates
  - Tax credits
  - Subsidies and reimbursements
- Disposition of surplus campaign funds
- Reporting and disclosure of information
- Compliance and enforcement programs

### **REGISTRATION OF POLITICAL PARTIES AND CANDIDATES**

The nomination process for candidates and the registration of political parties provide a legal foundation for their regulation and control.

#### **Political Party Registration**

Registration of political parties is a means to establish the legal recognition of political parties and to make them responsible for their actions in raising and spending funds. This status brings with it various privileges and obligations, and



therefore enhances their accountability. For example, a registered political party in Canada can:

- issue tax receipts to donors, thereby enhancing its ability to raise funds
- have the party affiliation shown on the ballot for candidates endorsed by the party
- receive surplus campaign funds from its candidates
- receive a partial reimbursement of election expenses
- receive a certain amount of free broadcasting time from network operators

However, a political party must comply with certain requirements of the Act to remain registered; if not, it could be deleted from the Register of Registered Political Parties.

For example a registered party can be deleted from the Register if it:

- fails to nominate at least 50 candidates
- fails to file the statement to confirm and maintain registration information
- fails to submit financial returns as required by the Act.

### **Nomination of Candidates**

Once an election is called, a candidate must file nomination papers in the electoral district in which he or she intends to be a candidate. The acceptance of these documents results in the candidate being officially recognized under the Act. These nomination papers must include the appointment of an official agent and an auditor.

### **ROLES AND RESPONSIBILITIES**

To ensure control and therefore enhance public confidence, specific roles relating to the financial processes and reporting must be established in legislation.

The role of treasurer and auditor are fundamental in the control of expenditures of parties and candidates, including the responsibility for completing financial reports. Penalties for non-compliance with the Act must exist to reinforce the importance of this position.

For example, under the *Canada Elections Act* an official agent, who is appointed by the candidate, is responsible for paying all expenses related to the management or conduct of an election campaign. The official agent acts in the role of treasurer of the campaign and must open a bank account to deposit all moneys received for the campaign and from which payments pertaining to the campaign must be made. In the case of a political party, these financial responsibilities are assumed by the chief agent who is appointed by the party.



This provides a measure of control over campaign spending as well as control over the receipt and deposit of campaign contributions. This control also allows for proper documentation in order to prepare the financial reports required by the Act.

The Act also requires that an auditor be appointed at the same time as the official agent or the chief agent. The task of the auditor in both cases is to conduct an audit and prepare a report on the return respecting election expenses prepared by the official agent or the chief agent. The auditor must also make a report on the annual fiscal returns of registered political parties. The auditor's report is submitted along with the financial return. The audit is conducted in accordance with guidelines published by the Canadian Institute of Chartered Accountants (CICA) which is the organization responsible for establishing accounting and audit standards in Canada.

## **CONTRIBUTIONS**

There is a continuing debate concerning the type of regulation and control that should be implemented for political contributions. Some argue that limits should be established for contributions; others would restrict who is eligible to make a donation. Still others would argue that it is sufficient to have public disclosure of contributors to political campaigns without limiting the amount or the source.

Our current electoral legislation does not limit the amount of contributions but does prohibit foreign contributions as well as anonymous donations.

Contributions can be in the form of monetary contributions or a contribution of goods and services. However, all contributions in excess of \$100 must be disclosed in audited financial returns, including the name of donor, amount, and category of donor (for example, individual, business, trade union).

The average contribution amount to candidates at the 1997 general election was \$232. The average contribution amount to political parties in 1997 was \$227.

## **EXPENSES**

### **Spending Limits**

Although election spending limits serve as a key control feature, they play a primary role in enhancing fairness by reducing the likelihood that candidates and parties with significant access to financial resources would be favoured over those with less. The existence of spending limits also reduces the requirement to pursue excessive contribution amounts from private sources, thus reducing the possibility of undue influence by certain private donors.



The *Canada Elections Act* provides for spending limits on candidate and party election expenses. Candidate spending limits are based on a formula which uses the number of names on the preliminary list of electors at the start of the election period, multiplied by an amount specified in legislation which is adjusted annually for inflation. These amounts are then adjusted upward for geographically large electoral districts and those that are sparsely populated.

At the 1997 general election, the average limit for each of the 301 electoral districts was approximately \$62,000.

The spending limit for political parties is arrived at by multiplying \$0.30 by the number of names on the preliminary lists of electors in those districts where the party is sponsoring a candidate. This amount is also indexed for inflation. At the 1997 general election, the limit for a party sponsoring candidates in all 301 electoral districts was \$11.4 million, based on 18.7 million electors on the preliminary lists.

### **Definitions**

In order for spending limits to be effective, in other words to achieve the objectives of fairness and accessibility, the related definitions must be clear and all-inclusive.

Appropriate definitions also enhance transparency, in that all expenses that could influence the outcome of an election are subject to limits and fully disclosed. Clear definitions also facilitate compliance of the participants, thus enhancing the control and monitoring of expenditures.

### **PUBLIC FUNDING**

Various forms of public funding, both direct and indirect, are provided to parties and candidates primarily to promote electoral participation and to reduce the potential for undue influence.

### **Tax Credits for Contributions**

In the Canadian context, the *Income Tax Act* provides for a rather generous system of tax credits for contributors to registered political parties on an ongoing basis and to officially nominated candidates at an election.

The *Income Tax Act* allows for tax credits for monetary contributions only. The control of the issuance of tax receipts is the responsibility of the chief agent of a registered political party and the official agent of a candidate and reports must be made at various times to Revenue Canada.



To illustrate the importance of the tax credit in terms of public funding, there were 383,000 contributions totalling \$96M to candidates and parties in 1993 (the year of the 35th general election) which resulted in an estimated \$20.6M in tax credits claimed by contributors.

### **Direct Subsidies**

As the *Canada Elections Act* does not provide for direct subsidies to political parties between elections, the tax credit regime is critical to a political party's ability to raise sufficient funds for ongoing activities as well as for election expenses.

However, the legislation does provide for a partial reimbursement of election expenses for both parties and candidates who meet certain criteria.

### **Registered Political Parties**

Registered political parties are entitled to receive a reimbursement of 22.5 percent of their election expenses as declared in their audited financial report, if they have obtained 2 percent of the valid votes cast nationally or 5 percent of the valid votes cast in those districts where the party sponsored candidates. At the 1997 general election, 5 of the 10 registered political parties qualified for a reimbursement. Reimbursements to parties totalled \$7.5M. Political parties together incurred \$34.9 million in election expenses for the 1997 general election.

### **Candidates**

Candidates are entitled to be reimbursed 50 percent of their eligible expenses paid if they have received at least 15 percent of the valid votes cast or if they were elected. At the 1997 general election, 801 out of 1,672 candidates or 48 percent qualified for reimbursement of 50 percent of their election expenses. The average reimbursement was \$21,000 per candidate for a total of \$16.8M. The total spending of all candidates at the 1997 general election totalled \$46M.

### **DISPOSAL OF CAMPAIGN SURPLUS**

Public financing of candidates is intended to encourage participation and reduce the potential for undue influence of a few important contributors. However, it is not intended to result in personal financial benefit for candidates. Therefore, a key element in the control and monitoring of expenditures (and accountability) is to ensure that any campaign surplus remaining at the conclusion of a campaign is disposed of appropriately.



The *Canada Elections Act* requires that a candidate's campaign surplus be remitted to the political party who endorsed the candidate or the local association of such a party in the candidate's electoral district.

For independent candidates not sponsored by a registered political party, these funds must be remitted to the government treasury.

## **PUBLIC DISCLOSURE**

Public disclosure of election financing information is one of the cornerstones in maintaining the transparency of the process. It is an essential element in the control and monitoring of expenditures and in ensuring accountability for the financial affairs of participants in the political process.

It also serves to discourage undue influence on elected officials as well as to enhance public confidence in the integrity of the process. The public has the right to know who is financing the participants in the electoral process, not just because public money is involved, but because it concerns governance. And finally, it is an essential element in enforcing compliance with the legislation as well as in determining entitlement to and amounts of public subsidies.

The *Canada Elections Act* sets out the disclosure requirements for candidates and registered political parties concerning contributions, loans and expenditures. It also specifies the obligation of the Chief Electoral Officer to publish in newspapers across the country a summary of contributions and expenses of candidates in each electoral district.

To meet the objectives of disclosure, financial information must be timely, accessible and in a format that facilitates review and analysis.

It has been argued that to achieve the objectives established for public disclosure of information, it is necessary to make this information available as quickly as possible during and after a campaign and to make it available in electronic form.

Within the next week we should have available on our Internet site full details of contributions and expenses of all 1672 candidates at the last general election. This is a milestone in our efforts to improve transparency of the process.

## **Financial Returns of Parties and Candidates**

The candidates' financial returns must be filed within four months after polling day and as public documents, are available for viewing in the electoral district for the following six months. Registered political parties must file annual fiscal returns on contributions and expenses as well as a separate election expenses return within six months after polling day.



## COMPLIANCE AND ENFORCEMENT PROGRAMS

How do we make the system work? How do we control and monitor expenditures and ensure accountability in the process?

Our primary objective is have all participants voluntarily comply with the legislation. To support this objective we have established a number of programs aimed at educating and informing parties, candidates, official agents and auditors of the requirements of the *Canada Elections Act*.

### Documentation

First of all, we provide an information kit to all candidates as they present their nomination papers. This kit contains forms, guides, instruction manuals and other material relating to their obligations.

### Telephone Support Network

Secondly, we have established a special toll-free number in order to respond to questions on election financing during and after the election campaign. We track the type of call received (by topic) in order to identify where our information or the legislation is unclear so that we can make improvements at the next election.

### Training Seminars

We also conduct training seminars on election financing across the country. These seminars are designed to help parties, candidates, official agents and auditors understand and comply with the financial provisions of the *Canada Elections Act*. At the last election, 36 sessions were given in 23 locations across the country.

### Electronic Candidate's Return

Another key component in our education and information program is a software program known as the electronic candidate's return. We consider this an important tool to encourage compliance because the software is designed to help the official agent follow the rules and prevents most of the errors. Our objective in developing this software was to improve the efficiency of the process - both for Elections Canada and for the official agents, to improve compliance and disclosure of information. This was first implemented at the 1997 general election and the results have been very positive. As an example, the time required to load an electronic file to our central system is 15 minutes versus four hours to data enter the average candidate return that was completed manually.



## Advisory Committee with Registered Political Parties

And finally, the Chief Electoral Officer has created an advisory committee which includes representatives of the 10 registered political parties as a way to further communications and share information on electoral matters.

## Programs to Identify Potential Non-Compliance Situations

In order to control and monitor expenses and to identify potential non-compliance with the financing provisions of the Act we have established an audit process to review the returns of candidates and political parties.

In addition to helping us assess compliance, the audit also serves to determine entitlement to and the amount of reimbursements to candidates and parties, the auditors' subsidy, the amount of campaign surplus, if any, as well as identification and follow-up on missing items, items incorrectly reported, as well as errors and omissions.

Where there is a campaign surplus, an estimate of this amount is sent to the official agent. This estimate is based on the information contained in the return as well as our reconciliation of the cash position of the candidate. The *Canada Elections Act* requires that the surplus be disposed of within certain time frames and that a report of this disposal be filed with Elections Canada immediately thereafter.

In terms of how we conduct the audit, we have developed an audit program as part of our automated system that contains all the candidates' returns. This has greatly facilitated the audit process, improved documentation, and further standardized the process.

The full automation of this information has also allowed us to make this data available electronically on the Internet, which as I mentioned previously, will significantly enhance the transparency of the process, and increase public awareness of the electoral process.

When a situation of potential non-compliance is identified as a result of our audit of the returns, the file is referred to a special committee within Elections Canada which is the primary group responsible for the application of the financing provisions of the Act. This committee includes the CEO, the Director of Election Financing, the Director of Legal Services, among other staff.

The criteria used to refer a case to the Commissioner of Canada Elections for his consideration includes the nature of the non-compliance within the context of the entire file, and whether or not the information contained in the return meets the spirit of the legislation (e.g. full disclosure).



## Enforcement

The Commissioner of Canada Elections is the official responsible for ensuring that the *Canada Elections Act* is complied with and enforced. He is appointed by the Chief Electoral Officer under section 255 of the Act.

Independence is integral to the Commissioner's role. The Commissioner must be free to act without influence from political parties or the government. This independence is an essential aspect of maintaining and promoting the exercise of fundamental democratic rights in the electoral process.

The first priority is to obtain compliance with the provisions of the Act. Where this fails, a decision must be made to investigate or to proceed with prosecution based on whether the public interest will be served, where there is reasonable expectation of success and based on the seriousness of the offence.

Possible penalties include a fine, imprisonment, and for certain types of offences, could in addition to any other penalty for that offence under the *Canada Elections Act*, lose his or her right to vote or be a candidate in a federal election for a period of five years. If that person is already a member of Parliament (MP), that person will not be able to sit as an MP for five years and will not be able to hold any office where appointment is made by the Crown or by Governor in Council. In the case where a person is found guilty of a corrupt practice, the period is increased to seven years.

## CHALLENGES

In Canada, we have travelled down a long road to arrive at where we are today in terms of effective election financing legislation. However, much remains to be done to improve the control and accountability framework, and I will conclude my presentation with a brief overview of some of the challenges facing us - challenges that the Chief Electoral Officer has brought to the attention of parliamentarians, the media and the Canadian public.

We have made recommendations to improve the reporting and disclosure of financial information. This includes:

- 1) Introducing financial reporting requirements that are more closely aligned with generally accepted accounting and auditing principles and standards;
- 2) Requiring more timely reporting from political parties;
- 3) Implementing electronic filing of financial information for political parties and candidates;



#### 4) Improved audit procedures and reports.

We have also made recommendations on improving the effectiveness and efficiency of the compliance and enforcement provisions of the legislation. However, the key challenges that I would like to bring to your attention include areas that have the potential to fundamentally undermine the principles of election financing legislation as it relates to the control and monitoring of expenditures and accountability of the participants in the electoral process.

These include:

- 1) Control and monitoring of independent or third party electoral groups
- 2) Lack of consistency and clarity in definitions, e.g., election expense
- 3) Areas where disclosure is clearly lacking for various political organizations:
  - Local Constituency Associations of Political Parties
  - Political Party Leadership Campaigns
  - Trust Funds

#### Third Party Intervenors

Any limit on free speech must be prescribed by law reasonable and demonstrably justifiable in a free and democratic society (section 1, *Canadian Charter of Rights and Freedoms*).

The legislation which attempted to limit advertising expenditures by those other than parties or candidates to \$1000, was found not to meet this test. However, in a recent decision related to the Quebec *Referendum Act*, the Supreme Court of Canada ruled that spending limits on third parties would preserve the fairness of the electoral system. According to the Court: "the spending limit system would lose all its effectiveness if independent spending were not also limited."

At issue is to strike a balance between freedom of speech and the regulation of election spending, which must include maintaining the basic principles of fairness, accessibility, and transparency of the electoral process. It is within this context that the Chief Electoral Officer has recommended registration, disclosure, and spending limits for third party intervenors.



## Definitions

Currently, a number of important campaign-related expenditures, including public opinion polling, are not considered election expenses. To resolve the ambiguity surrounding what constitutes an election expense, clarification is needed. As a result, the CEO has recommended that the *Canada Elections Act* be amended to provide for a more comprehensive definition of election expenses.

## Areas Where Disclosure is Lacking

### Local Associations

At present, the *Canada Elections Act* does little more than acknowledge the existence of local constituency associations. They are not required to be registered, or to file any reports or financial returns with Elections Canada, even though they handle funds which are at least partially from the public purse and ultimately flow to elected officials. The Royal Commission on Electoral Reform and Party Financing believed that this lack of disclosure was a major flaw in the electoral system, and made recommendations in this regard. The CEO has also recommended a system of registration and disclosure for local associations.

### Leadership Campaigns

The absence of any legislation governing the financial activities of party leadership candidates is a significant omission in the regulatory framework as there is a lack of transparency in the process, and often public money is involved in the form of tax receipts for contributors.

This lack of transparency threatens the public's perception of the degree of fairness and integrity of these contests.

### Trust Funds

At the present time, various trust funds exist for the purposes of supporting candidates or parties. These funds run counter to the principle of transparency in election financing. Because trust funds can have positive impacts it may be preferable to ensure that they are open to public scrutiny rather than prohibiting them. Therefore, the CEO has recommended that the financial disclosure provisions be extended to include reporting by trust funds that exist for the purpose of supporting candidates or political parties.



## **CONCLUSION**

### **Summary of Key Elements for Control and Monitoring**

The key elements relating to the control and monitoring of expenditures for political parties and candidates include:

- Registration and nomination requirements for political parties and candidates
- Roles and responsibilities during an election campaign
- Rules governing contributions
- Rules governing expenses
  
- Public funding of political parties and candidates
  - Tax credits
  - Subsidies and reimbursements
- Disposition of surplus campaign funds
- Reporting and disclosure of information
- Compliance and enforcement programs

### **Challenges**

Although the legislative foundation for election financing in Canada is fundamentally sound, there are certain key aspects that must be improved.

These challenges include:

- Improved audit procedures and standards and more comprehensive and timely financial reporting for parties and candidates, including electronic filing of information
- Regulation of third parties
- Improved clarity of definitions
- Where disclosure is lacking: local constituency associations, leadership campaigns, trust funds.