



# TRANSPARENT AND LEVEL

MODERNIZING POLITICAL FINANCING  
IN CANADA

MARCH 2018



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## ACKNOWLEDGEMENTS

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## EXECUTIVE SUMMARY

The Public Policy Forum (PPF), in partnership with Elections Canada, hosted a roundtable discussion on political financing on October 11, 2017. The discussions focused on three themes: public and private financing, transparency and campaign spending.

The opening session revealed a basic comfort level among participants with the state's role in regulating the flow of money in politics, both to ensure transparency and to level the playing field among competing political entities. Further to this, it was agreed that the state has a responsibility to finance political competition, through election reimbursements and tax credits, to ensure a healthy democracy and the robust exchange of ideas. However, too much reliance on state funding can be counterproductive as political entities risk becoming distant from and unresponsive to voters. On the other hand, too much reliance on private donors may leave political entities too responsive to their contributors, especially the wealthiest ones. While there is no perfect formula, a balance of public and private sources of funding is ideal. In Canada, the status quo is relatively balanced: parties and candidates receive the bulk of their money through private contributions from individuals, while the government reimburses election expenses during election years and gives tax credits to individual donors. Donations from corporations and trade unions were banned in 2007 and are unlikely to return.

On the topic of transparency, participants expressed the need for more light to be shone on the activities of third parties: individuals and groups that aim to influence voting while not being registered candidates or parties. Third-party participation in elections is a Charter-protected right, but Canadians need to be confident third-party activities are legitimate and transparent and do not undermine a relatively level playing field for all political entities. The fact that third-parties' activities extend beyond elections makes it challenging to distinguish and track their spending and engagement in campaigns, as well as the contributions they receive from donors or by using their own funds. Moreover, there is a growing concern about potential involvement of foreign actors in Canadian democracy and elections, both in terms of untracked donations and other forms of interference in election outcomes. Drawing distinctions can sometimes prove difficult given the open nature of Canadian society and the international nature of corporations, trade unions and NGOs. Disclosure and transparency for all political entities could be improved in a number of ways, such as increased awareness around non-monetary contributions and more clearly tracking the contributions and spending of third parties.

Election campaigns have been transformed in unforeseen ways by the introduction of fixed election dates. Electoral rules must catch up. This is especially true as fixed dates become normalized in both federal and provincial jurisdictions. In the past, both majority and minority government prime ministers and premiers have been guilty of requesting dissolutions at politically opportune times, but now everyone knows the 'schedule' of elections and can 'game' the new system. With fixed dates, campaign activity starts in earnest

well in advance of the dropping of the writ because political players can anticipate the timing of the election. Further, because spending limits apply only during the writ period, there is an incentive for political entities to ramp up spending in advance of the writ drop. For these reasons, the Ontario government is now regulating spending for the six-month period prior to an election. The new law is being challenged in court by the Working Families union coalition on the grounds that the restrictions on third-party spending before and during the writ period constitute an unfair violation of groups' freedom of expression as protected in section 2(b) of the *Canadian Charter of Rights and Freedoms*. Ontario Attorney General Yasir Naqvi has stated his belief that the legislation is Charter-compliant.

The world of political finance has changed significantly since the key parameters of the current regime were first introduced in 1974. Political communication no longer necessarily targets a national audience or geographic subsets; micro-targeted messages via digital channels are being normalized as a cost-effective mechanism to reach highly specific groups based on their online behaviours and preferences. The proliferation of many targeted messages over hundreds of channels aimed at as few as several dozen people make it more difficult to verify the content of messages. Digital mediums are particularly conducive to the rapid circulation of content and, due to the diminution of gatekeepers, the dissemination of fake news. The political finance regime must be equipped to regulate beyond money and to ensure the integrity of Canada's democracy by holding political entities to account for digital content and micro-targeted messages while taking care not to intrude on free speech rights.

In light of the issues, priorities and challenges raised during the roundtable discussions and through our literature review, PPF makes the following recommendations to strengthen political finance regulations in Canada:

1. Allow only eligible voters (i.e. Canadians) to make political contributions.
2. Level the playing field for donations to registered third parties to correspond with those for political parties.
3. Extend campaign-spending limits to kick in six months prior to the fixed election date.
4. Increase transparency around third parties.
5. Maintain the current balance between public and private contributions.
6. Lower the threshold for public reimbursement.
7. Regulate in-kind contributions enforced through administrative penalties.
8. Increase transparency around social media and micro-targeting.

## INTRODUCTION AND METHODOLOGY

This report on political financing in Canada stems from a Request for Proposals (RFP) issued by Elections Canada in July 2017. Elections Canada sought an organization with policy experience to plan and co-convene a roundtable on political financing, as well as produce an analytical report of the roundtable. As a result of the roundtable, Elections Canada aimed to be better informed of emerging themes and considerations related to political financing in Canada. Elections Canada would also be in a stronger position to provide sound advice to Parliament and to formulate recommendations following the next general election, as per its mandate under subsection 534(1)(b) of the *Canada Elections Act*.

Good governance and a healthy democracy are core to the mission of PPF. We responded to the RFP and secured the mandate to conduct research and convene a roundtable of experts and practitioners. We asked Lori Turnbull, an associate professor of Political Science at Dalhousie University and a PPF fellow, to lead the process.

Following a literature review, PPF and Elections Canada held a day-long roundtable discussion on the state of political financing in Canada on October 11, 2017. Participants were provided a discussion guide covering the three themes to be discussed: public and private financing, transparency and campaign spending.

Invitations were extended to a number of academics, pollsters, journalists and practitioners who work or have worked in the area of political finance. Sixteen people accepted invitations to participate. The conversation took place in Montreal in both official languages and simultaneous translation was available throughout the day.

The roundtable discussion followed the Chatham House Rule so that participants would feel free to speak candidly. Each of the three sessions was introduced by a scene-setter from among the participants, whose role it was to provide context and background for the theme in advance of the open discussion.

Sessions were co-moderated by Lori Turnbull and Anne Lawson, General Counsel and Senior Director, Legal Services at Elections Canada. Speakers lists were kept so that all participants who wished to comment had the opportunity to do so.

PPF took extensive notes throughout the day, which, along with its literature review, were used in informing this report and its recommendations for reforms to the political finance regime in Canada. Although the recommendations were made with federal elections in mind, they also apply to other levels of government. PPF retains responsibility for the final product.

## OVERVIEW OF EXCHANGES

This section contains an overview of exchanges along with other contextual facts and analysis.

## Public and Private Financing

The purpose of the first session was to consider the nature and implications of the forms of funding available to political entities in Canada, both public and private, and to consider in general terms the appropriate or desirable role of the state in funding political parties. There was a general consensus that, while there is no perfect source of funding, the state has an important and legitimate role to play in financing election campaigns. The state is uniquely suited to provide transparency in the system, to keep it honest, and to create rules that level the playing field among political entities to ensure a fairer competition of ideas. There is a public interest in the existence of a robust exchange of ideas and values and the accessibility of the political system to new and emerging political competitors. The state must ensure that these new and developing political players do not face insurmountable barriers to entry. Some participants articulated the concern that because the co-signing of personal loans is no longer allowed as a source of political financing, new parties and candidates face significant burdens to access to the system.

Though accepted as legitimate, the role of the state in political financing must be carefully defined, and financial contributions to political competition should exist within reasonable limits. There is no justification for having too much money in the system; some participants felt there is a risk attached to state funding that is too lucrative. Political entities could become too comfortable if they receive all the funding they require from public sources. An over-dependence on state funding could have the negative effect of allowing parties and leaders to become remote from current and potential supporters. Some participants also raised questions around the legitimacy of tax credits for donors, an indirect form of subsidy, as it essentially forces all taxpayers to provide financial support for the political preferences of those with the means to donate.

Similarly, there are negative implications of too much dependence on private funding. Private funding is more difficult to predict and plan around, which undermines the financial stability of political parties and their ability to get their messages out. Further, heavy reliance on particular private donors could render political entities beholden to their interests, which would undermine their legitimacy as vehicles of democratic and inclusive representation. This is an issue Canada is seen to have dealt with well. On the other hand, access to private funds, generally relatively small sums from a large number of individual Canadians, can allow a new party or a party previously out of favour to scale up more quickly than would be possible through public subsidies based on prior results. For all of these reasons, a political finance regime consists ideally of both public and private sources of funding with limitations on both, as Canada's regime does.

Roundtable participants discussed the per-vote subsidy, which was a form of public funding to political parties that won at least two percent of the popular vote. The subsidy, introduced in 2004, was phased out completely in 2015. It provided eligible parties with a quarterly allowance of \$1.75 for each vote received in the previous election. This form of direct and automatic subsidy was considered by some participants as



politically unpalatable. Even among those favouring less private and more public financing, there was no enthusiasm for a return to the per-vote subsidy.

With regard to specific sources of private funding, there was a consensus among participants that Canada is past the point of reopening the debate around the legitimacy of contributions from trade unions and corporations. Historically, contributions from these entities were permitted in Canada. They were brought under strict limitations in 2004 and eliminated entirely in 2007. Canada's political culture has come to recognize only individuals who reside in Canada as legitimate political donors and it would be difficult if not impossible to turn back the clock. It is almost unimaginable that a political party today would campaign on reintroducing corporate and trade union donations, as these sorts of donations are widely associated with corruption, unfair access and undue influence for the wealthiest class. Even the relatively small donation amounts currently permitted have attracted attacks in the media. This said, participants tended to agree that there would be little risk in raising the current limit (now \$1,575 and rising by \$25 a year) on individual contributions to political entities, but little compelling reason to do so. Most donations currently come in at below the \$200 mark, so raising the limit is unlikely to fix anything that is broken.

## Transparency

The dialogue in this session focused on the importance of transparency in political financing rules and the possible existence of gaps or weaknesses in the current regime. Transparency — and enforceability — is what keeps the system clean. Effective rules are necessary to foster and maintain public confidence in the political system. Transparency is about shining light on what political entities do; only by doing so on matters of relevance to free and fair elections can Canadians be confident that the raising and spending of money is done in a manner consistent with the rules.

The primary concern expressed about the current regime was that it does not sufficiently capture third parties. A third party is a person or group, other than a candidate, registered party or electoral district association, that conducts election advertising. Third parties have to register with Elections Canada once they incur \$500 in election advertising expenses. Several participants noted that the activities of third parties are subject to different and less stringent rules than are the activities of political parties. For example, spending limits exist for third parties only during the election period and only for advertising; electoral activities such as polling, phone canvassing, using social media and organizing volunteers are not covered. Further, the election activities of third parties are more difficult to monitor, as many of these organizations serve multiple, complex purposes beyond politics, and their communications and financial activities go far beyond the business of election advertising and activities. Research and consulting firms, and even partisan or ideological think tanks, tend to reinforce messaging from, and often have clear ties to, political parties. But as third parties, they can accept unlimited donations and their dollars go farther due to more lenient rules on what they can spend in an election. It may be challenging to achieve full transparency

around the financing of third-party election activities, as this would require them to separate these activities from their other communications spending.

The election activities of third parties have been the subject of debate and litigation for decades. In 1974, legislation prohibited third parties from spending any amount of money in promotion of or in opposition to a political party or a candidate. This approach suggests that third parties are not equal players in political competitions and should leave elections to parties and candidates. In *Libman v. Quebec* (1997), the Supreme Court ruled that third parties do have a right to engage in electoral competition through spending and that the activities might actually help to level the playing field among political entities overall by promoting views that might otherwise not be widely disseminated..

In 2002, following a challenge to caps on third-party spending by then-National Citizens Coalition president Stephen Harper, the Alberta Court of Appeal ruled that spending limits imposed on third parties by the *Canada Elections Act* were unconstitutional. However, in *Harper v. Canada* (2004), the Supreme Court ruled that limits on third-party spending are indeed constitutionally valid and are integral to ensuring both a level playing field and informed participation: "Without spending limits, individuals or groups can dominate the discussion and prevent opposing views from being heard."

Contributions to third parties from foreign donors were of growing concern to the roundtable participants. Third parties are prohibited from receiving foreign contributions for election advertising purposes, but they are not prevented from using their own funds on hand at the time of the writ drop, irrespective of their source. Concerns have been expressed, for instance by Senator Linda Frum in the form of a Senate bill, because foreign funds can be "intermingled" with Canadian funds and therefore could be spent on election advertising – in addition to non-regulated uses – because the money was collected prior to the writ drop and was not specifically given for election advertising.<sup>1</sup> In addition, registered third parties are only required to report contributions received for election advertising purposes in the six months prior to an election call, not before. Media reports indicate that complaints regarding the activities of third parties increased "nine-fold" in 2015 over the previous election. Commissioner of Canada Elections Yves Côté confirmed that his office received 105 complaints concerning third-party election activities in 2015.<sup>2</sup>

The *Canada Elections Act* prohibits collusion among third parties attempting to circumvent the spending limits that apply during campaign periods and further states that "no person who does not reside in Canada shall, during an election period, in any way induce electors to vote or refrain from voting for a particular candidate." However, there were complaints after the 2015 campaign that a number of Canadian registered

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<sup>1</sup> Standing Senate Committee on Legal and Constitutional Affairs. 2017. [Controlling Foreign Influence in Canadian Elections](#).

<sup>2</sup> MacCharles, Tonda and Alex Ballingall. 2017. [Complaints of foreign influence on third-party advertising in 2015 federal campaign soar](#). *The Toronto Star*.

third parties received significant amounts of funds from U.S. donors and that activists, supported by foreign organizations, targeted specific candidates in specific ridings.

The quagmire within third-party funding is how to regulate the co-mingling of foreign contributions. Many third-party corporations, unions and NGOs transcend national borders. Foreign contributions to support the work of such organizations may be legitimate if they normally operate within Canada and therefore have a stake in its policies. But it is a small step to foreign entities using their financial resources to unduly attempt to influence Canadian electoral outcomes.

Several roundtable participants expressed the view that any third party participation is undesirable, as these groups are not sponsoring candidates and therefore do not constitute direct and legitimate players in the electoral contest. However, the Supreme Court has acknowledged that third-party election activity is legitimate and protected under the Charter.

Privacy was another issue that arose during this session. With the help of communications technologies, political parties have gotten to know voters better as individuals. It is the norm for large political parties to maintain databases filled with information about potential supporters. In addition to names and addresses, these databases include information such as whether an individual or household has ever posted a lawn sign during a campaign, social media activity that would indicate political preference, occupation, income and education levels, and anything else that parties deem relevant in painting our political portraits. This information helps them to design messages that respond and connect to the individual identities and values of potential supporters. Though this makes for smart strategy, it comes at a cost for privacy and transparency, not to mention security in the event of a cyberattack. Political parties are not subject to privacy laws, which means individuals do not even know the full extent of the information held about them. This information is particularly helpful to political parties' fundraising efforts, which are increasingly carried out via email and social media.

Participants expressed the concern that not all election-related activities are reported, which could undermine the integrity of the transparency process and upset the levelling of the playing field within the political system. Specifically, some participants suggested that non-monetary contributions to political entities are severely underreported and are very difficult to track. In addition, many of the activities of third parties are in-kind in nature, such as door knocking, polling and providing backdrops for political leaders during public events. If these activities go unreported and are undetected by the political finance regime, the transparency required to ensure fairness is compromised.

Several participants noted that, under the current rules, we know very little about contributions of \$200 or less to political parties, candidates and riding associations, as information about these contributions is not released publicly. Because many of the political contributions made in Canada fall into this category, the lack of transparency around these donations leaves the media, as well as other Canadians, ill-equipped to

understand general trends related to political contributions. That said there may be value in protecting a space where Canadians can make donations without fear of exposure. For example, a public servant might wish to make a contribution to a local candidate or to a political party without having her or his political preferences made public.

A further consideration was that the current rules were written before the advent of social media; therefore, the reporting requirements would benefit from an update to reflect the fundamental shift in the nature, style and speed of political communications. Many participants felt that reporting of contributions must be timelier — and that technology enables this — so as to increase transparency during campaign periods.

Several participants commented that, in order to be effective, transparency rules must both inform the public and influence behaviour. Rules must be seen to have teeth. Only if political entities understand the rules to be meaningful, legitimate and enforceable will they feel real pressure to abide by them. Otherwise, these players might be inclined to do an end-run around the spirit (or letter) of the rules in pursuit of their objectives, as the perceived likelihood of getting caught for non-compliance is low. Therefore, the breadth and scope of transparency rules and the capacity to enforce them must be consistent.

## Campaign Spending

The adoption of fixed date elections in Canada has had the effect of creating a permanent campaign period. Political entities do not constrain their advertising and campaign activities to the official writ period; instead, they continuously tap donors for money and attempt to sway opinion and support. The constant campaign is a perhaps unintended consequence of fixed election dates. (We see a similar phenomenon in the United States, where election dates are set in stone and are never out of mind for candidates and parties. This situation is aggravated by open-ended contribution and spending rules, which in turn have induced candidates to spend increasing amounts of time on fundraising.) The constant campaign also manifests itself in continuous small-scale fundraising appeals, often online. Participants observed that these often appeared to be orchestrated with parliamentary tactics (the tail of money wagging the dog) and that they tend to be aimed at the most militant of party activists, feeding polarization and possibly hollowing out the centre of Canadian politics. It was also observed that the line between advertising and news, particularly with disinformation campaigns disguised as news, is blurring – a huge issue for regulators intent on steering clear of free expression confrontations.

Roundtable participants noted that fundraising activities and campaigns have changed considerably over the years, to the point where virtually anything that a political actor says or does can be used as a focal point for fundraising. Advertising is much more complex and nuanced than it used to be.

Participants noted that political entities are no longer taking a traditional “pros and cons” approach to advertising; virtually all messaging is aimed at building and maintaining political support in the form of votes

and contributions. Social media and email has allowed for political entities to recruit donations more cheaply and quickly than ever before. This allows political players to reach out to large numbers of potential donors on a regular basis.

The *Canada Elections Act* sets the date of the election, but the prime minister alone controls the length of the official writ period. Only the prime minister can request the dissolution of Parliament, triggering the dropping of the writ and commencing the official election campaign. There is a minimum writ period of 36 days, but no maximum, though the minister of Democratic Institutions has indicated legislation could be introduced to this effect. Some participants argued that a long writ period could provide an advantage to the parties with the most money to spend; in 2015, spending limits were raised to accommodate the longer writ period. That said, money is not the only determinant of political outcomes. Moreover, long campaigns might also provide smaller parties the time required to build political momentum, including fundraising. Given that governments have the capacity to use public funds to advertise their good works prior to the writ drop, the longer period could disadvantage them in relative terms. Several participants expressed a desire to return to shorter campaigns than the one in 2015. Either way, a number of participants expressed support to extend the period in which campaign spending is limited, in effect a lengthening of the practical writ period. There was some debate as to whether the optimum period to regulate pre-writ spending would be six months or one year prior to a fixed election date, but it was felt the latter option might not stand up to a constitutional challenge as a reasonable limit.

When looking at campaign spending, some participants questioned whether the system has the "right amount of money in it." If political entities are flush with cash, there is an incentive to find ways around spending limits so that they can make use of the full force of their financial resources. Conversely, if political entities are cash-strapped, there could be an incentive to collude with third parties. In the 2015 campaign, the length of which may make it atypical, only a handful of candidates spent their maximum legal amount, which suggests that candidates have no incentive to circumvent spending limits. The major political parties came closer to spending the maximum amount but still remained under it. In 2008 and 2011, the major political parties spent closer to their maximum limits; for example, in 2011, the Liberals, Conservatives and New Democrats all spent more than 90 percent of their maximum limit, but only the Bloc Quebecois spent the full amount. Even in more typical campaigns that are just over a month in duration, parties tend to approach but not reach their limits.

For the most part, third parties did not spend to the limit either. Ninety-five percent of them spent less than \$100,000. However, the election activity of third parties increased considerably in 2015, to the extent that its effect on electoral outcomes is alleged to be demonstrable in certain ridings, according to a complaint submitted to the Commissioner of Canada Elections by Canada Decides.<sup>3</sup> The spending limit only applies to

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<sup>3</sup> National Post. 2017. [Millions in foreign funds spent in 2015 federal election to defeat Harper government, report alleges.](#)

election advertising, which means that many election activities, including telephone calls, emails, texts and content posted on websites, fall outside of the realm of regulated expenses for third parties, which for other political entities are expenses that need to be regulated and reported. Therefore, third parties' reported election spending does not show a complete picture of their election-related activities.

Roundtable participants expressed strong concerns about the transformation of the content of campaigns and the proliferation of “fake news.” This is happening against a backdrop of bona fide news organizations often being unable to afford the high costs of traveling with leaders and providing “gavel-to-gavel” coverage of their national tours.

Campaigns that are based on false information and manipulation are usually targeted at specific segments of the population; this ‘filter bubble’ effect makes it less likely that false information will be challenged. Electoral integrity requires protecting voters from untoward activity as much as possible, whether it be bribery, undue influence, unfair access, fraud or false information. Participants acknowledged there is an emerging need to protect voters from increased circulation of manipulative campaign information, though it was not clear who should take on this responsibility or how. A distinction was drawn between paid messages, which more easily fall under existing electoral law, and “fake news” and the attendant dangers of encroaching on free speech while arbitrating truth and falsehood.

While recognizing these dangers, the participants remained concerned about the potential repercussions of false news during election campaigns. They saw a role for the state to play in protecting the integrity of democracy, but also a need to avoid the possibility of state censorship. Some participants expressed support for the idea of a public repository for advertising campaigns, where all advertisements could be stored and would be accessible to the public on a timely basis. This would provide some means for the public, media and researchers to challenge and verify content.

## HOW TO MODERNIZE POLITICAL FINANCING IN CANADA

In light of the issues, priorities and challenges raised during the roundtable discussions and through our literature review, PPF makes the following recommendations to legislators and regulators to strengthen the political finance regime in Canada:

### **1. Allow only eligible voters to make political contributions, eliminating foreign money in the process.**

A financial contribution to a political entity is an important and legitimate expression of the right to register one's political preference and to indirectly influence the choices of fellow citizens. It is a way of supporting political competition and trumpeting the issues and arguments that matter most to the individual. Therefore, it stands to reason that **only individuals who are eligible to vote ought to be**

**able to contribute money to the political process, whether via political parties, candidates or to third parties.** There is no more place for foreign money in the political process than for corporate or union contributions. This principle already exists in multiple jurisdictions, including Quebec.

## **2. Level the playing field for donations to registered third parties by imposing the same limits as for political parties.**

Since 2007, trade union and corporate donations have been banned for political parties, leadership and nomination contests, election candidates and riding associations. Individuals are entitled to contribute up to \$1,575 per year (as of Jan. 1, 2018) to each registered political party and another \$1,575 in total to all candidates for party nominations, leadership contestants and riding associations. In stark contrast to these strict limits on money for competitors for political office, businesses, unions and other organizations based in Canada can make unlimited contributions to third parties, which only face spending limits during the actual writ period. And unlike candidates, third parties are not prohibited from using their own money to finance campaigns. This makes for neither a consistent philosophical approach nor does it produce a level playing field.

As the Supreme Court has stated, third parties often have legitimate issues to raise in an election campaign, some of which may not be aired by political parties and may be essential to maintaining a robust electoral competition of ideas. While these third parties need to be constrained so they do not become more lightly regulated proxies for political parties, the principle at play is to create a more level playing field, not to outlaw third party expression. There is a public interest both in enabling their ability to participate and ensuring they do not overwhelm parties and candidates.

The current situation is unfair as it accords third parties extra rights and creates an unintended yet real incentive for individuals, groups and organizations with an interest in particular electoral outcomes to donate heavily to third parties where they are limited from doing so with political parties or candidates. To maintain a level playing field, **we recommend extending the principle in Recommendation #1 that only individuals who are eligible voters be permitted to make donations to third parties. In addition, any such donations should be capped at the same total of \$1,575 a year per eligible voter, as applies to parties and candidates.**<sup>4</sup>

Along with our first recommendation, this change would add further impetus to removing foreign funds from Canadian election campaigns, while still allowing permanent Canadian branches of foreign-based organizations (whether corporations, NGOs or trade unions) to register as third parties and operate with money raised from Canadians.

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<sup>4</sup> [A similar recommendation](#) was put forward in 2016 in the Ontario context by journalist Andrew Coyne.

It would also reduce the possibility of third parties splitting themselves into multiple parts with the purpose of circumventing limits on advertising expenses by limiting the pool of money available to them and thus removing any incentive to do so.

### **3. Extend campaign-spending limits for political entities to kick in six months prior to the fixed election date.**

Currently, political entities are subject to spending caps only once the writ is dropped. Though the 78-day 2015 election was a recent exception, since 1997 the writ period has normally been around 36 days. Because of the brevity of campaigns and the pre-writ spending caps, it is common to see political entities increase their spending prior to an anticipated election call. Amendments to the *Canada Elections Act* passed in 2007 have had the effect of prolonging the duration of pre-election campaign activity since political players can more accurately peg the timing of the election and squeeze in spending before limits take effect.

In December 2016, the Ontario government decided to extend statutory spending limits to match the reality of a longer de facto campaign period. The new legislation requires that spending limits for all political entities take effect six months prior to the scheduled election date. The 2018 election will also mark the first time third parties in Ontario will have limits imposed on campaign spending. Third parties will be able to spend up to \$100,000 on election advertising during the six-month period and up to \$4,000 in a specific riding. Political parties are permitted to spend up to \$1 million in the six months prior to an election.

We recommend the same approach at the federal level: that **the regulation of the spending of all political entities kick in six months before the fixed election date**. Current limits only kick in after the campaigning horse has left the barn. They fail to account for new realities.

Of course, it remains the prerogative of a prime minister to advise the governor general to dissolve Parliament at an "off schedule" time so the six months could be effectively shortened. This would allow for election spending to be telescoped into a shorter period, an outcome any individual organization can achieve in any case depending on its own strategy.

### **4. Enhance regulation, transparency and disclosure around third parties.**

Insufficient transparency is yet another reason legislators, journalists and political experts are chronically concerned about third parties. The electoral activities of third parties are more difficult to track and regulate than those of other political entities because many third parties typically engage in a wide range of activities beyond election activities, whether they be unions, non-profits or businesses. Since expenditures can serve both normal business purposes and political ones, it becomes difficult to unbundle them. Therefore, an appropriate balance has to exist between



regulating the election activities of third parties while not unduly restricting their capacity to engage in normal advocacy related to their core mandates. In light of this, we recommend a three-pronged approach to enhance regulation, transparency and disclosure around third parties:

- **All electoral communications spending of third parties, other than regular ongoing expenses for salaries, membership relations and the like, must be reported and limited, not just their advertising as at present.** With this broader regulation, the threshold at which they must register with Elections Canada should kick in once election spending hits \$5,000, rather than the current threshold of \$500 in election advertising spending. Registration is not itself a limit on expression, merely illumination of who is spending on political persuasion during a writ period. The \$5,000 threshold would have the effect of acknowledging two classifications of third parties: those with the capacity and desire to influence the national debate and local and regional debates, and those that are operating in a less overtly political manner, for example by educating voters, or promoting the candidacies of women and other under-represented groups. In either case, the third party would be allowed to spend at least the \$150,000 limit (for a 37-day writ period) currently in place. This figure should be reconsidered in light of the six months prior the fixed elections date. Elections Canada should focus its resources on the former and lighten the administrative burden on the latter. Spending limits on all third parties' election activities with the potential to affect the tone and substance of the campaign would immediately put them on a more level playing field with political parties, and reduce incentives to use them as convenient places to make contributions that cannot lawfully be given to political parties. The threshold for registration and reporting in any individual riding should be set at \$3,000 in order to catch third-party activity directed at a specific candidate. Spending limits should be reviewed by Elections Canada, in light of the fact that they would apply to a wider range of activities.
- **Third parties should be required to open separate bank accounts into which contributions for election purposes would be deposited and out of which election activities would be funded.** This would enable more effective tracking of these expenses as part of audit procedures and help address concerns about the intermingling of funds.
- **The threshold for auditing for third parties should be consistent with the threshold at which spending requires third parties to register with Elections Canada.** We would maintain an audit requirement at \$5,000 so that officials charged with enforcement could concentrate on more significant players and so that small spenders, such as community groups, are not unduly encumbered. At the riding level, third parties should be audited once election spending hits \$3,000.

## **5. Maintain the current balance between public and private funding.**

It is not desirable for political entities to rely too heavily on either public or private funding. Too great a reliance on the former could create too much distance between parties and their potential supporters. It also disadvantages new parties and parties that have done poorly in past elections. Meanwhile, too much reliance on private funding could render political entities overly responsive to donors and less representative of their supporters, particularly those lacking the means to make political contributions.

Public funding is appropriate to maintain a robust competition of ideas and a broadly level playing field among political entities that is in the public interest. Private contributions, likewise, are legitimate and important expressions of political preferences and values, as the Supreme Court of Canada has stated. Canada's mix of these two sources of revenue is an appropriate one. A balance between public and private contributions represents the best-case scenario for Canadian elections.

We see no reason to adjust limits on either spending or contributions. Figures from 2015 show that only a handful of candidates and parties hit the spending ceiling. In shorter campaigns in recent years, parties come closer to their maximum limits but still tended not to reach them.

There are three ways of bringing more money into the system, none serving any noticeable public interest: increase the limits on individual contributions; introduce a form of direct state funding, like the per-vote subsidy; and allow trade unions and corporations to get back in the game. The first of these is unlikely to change much of anything, as most donations come in at around \$200 or less. Therefore, raising the contribution limit would benefit only the wealthy donors capable of making bigger donations – and, of course, those to whom they donate. There was no enthusiasm from roundtable participants to introduce a new form of direct state funding or return to the per-vote subsidy. Finally, a return to corporate and trade union donations is not feasible from a political perspective and would upset the balance between public and private contributions that roundtable participants defined as healthy. For these reasons, **spending and contribution limits ought to be left alone.**

## **6. Lower the threshold for public reimbursement.**

The larger share of finances at the disposal of political parties comes from private contributions. However, during campaign years, private contributions are supplemented with the reimbursement of 50 percent of their election expenses, so long as the party receives two percent of the national popular vote or five percent of the vote across the ridings in which they endorsed candidates.

Candidates who receive at least 10 percent of votes cast in their riding are eligible for reimbursements of up to 60 percent of their election expenses.

We recommend that **the 10 percent threshold for election expense reimbursement for individual candidates be lowered to 5 percent**. This is more in line with the limit established for political parties, and it reduces the financial risk for candidates. Currently, if a candidate wins nine percent of the votes, they are not eligible for reimbursement, even though nearly one in 10 voters supported them. The 10 percent threshold therefore puts secondary but non-fringe candidates, who add to the vibrancy of democratic debate, at an unnecessary and unfair disadvantage.

### **7. Regulate in-kind contributions enforced through administrative penalties.**

Regulating money is easier than regulating non-monetary or in-kind contributions. Money leaves a trail, but in-kind contributions are harder to track. The *Canada Elections Act* recognizes non-monetary contributions as donated property or services; they "count" towards contribution and spending limits as much as monetary contributions do. The amount of a non-monetary contribution is calculated according to its commercial value, which is the lowest amount charged at the time the service or property was provided.

Full transparency around non-monetary contributions is difficult to achieve. If political entities were breaking these rules by accepting non-monetary contributions without recording them, how would it be known? Detection depends to a large extent on whistleblowing, which might be effective in some cases but certainly not all.

Given the complexities around detecting non-reported in-kind contributions, **we recommend that Elections Canada engage in educational measures to raise awareness around the penalties for non-compliance**, which can include fines, imprisonment, and community service, and that **the *Canada Elections Act* be amended to introduce administrative monetary penalties (AMPs) in addition to criminal sanctions**. After the 2011 election, former Conservative MP Dean Del Mastro was found guilty of violating the *Canada Elections Act* by overspending and was sentenced to 30 days in jail and four months of house arrest. This kind of case could be used as an example to draw people's attention to the fact that there are serious consequences if one is found guilty of knowingly exceeding the legal limits on election spending.

In the report from the Chief Electoral Officer following the 42<sup>nd</sup> General Election, then-CEO Marc Mayrand recommended the inclusion of AMPs in the parts of the *Canada Elections Act* that address political financing and communications. His rationale was that AMPs provide an alternative

compliance regime to the criminal enforcement model, which is more onerous and expensive to enforce and confers a greater stigma on actors who are accused or found guilty of breaking the rules. AMPs encourage compliance by applying a monetary penalty for noncompliance.

While AMPs provide a reasonable course of action, it is worth noting that their use by other agents of Parliament, including the Conflict of Interest and Ethics Commissioner, has been met with some criticism for amounting to little more than a slap on the wrist. Then again, the real punishment in an AMP regime is not the fine so much as the political cost that comes with being identified as non-compliant.

## **8. Increase transparency around social media and micro-targeting.**

Political advertising and campaigning has changed dramatically in recent years. Digital technology is changing the previous mass media model. The prime-time television ad was long considered the most effective instrument for communicating with voters. Increasingly, political actors are choosing instead to target hundreds or thousands of carefully tailored messages at small segments of voters. Political entities can use micro-targeted campaigns to tailor messages specifically to the interests, preferences and behaviours of the target audience, based on data extracted from their online – and sometimes offline – interactions.

But these narrowly targeted messages are more opaque than classic forms of advertising, making it more difficult to hold political players to account for the content of messages. Who is buying the ad? Who are the messages targeted at? What are the messages and to what standard of truth are they being held? Micro-targeting detracts from transparency and compromises accountability. There is a serious risk that false information and fake news could undermine people's ability to participate in democracy in an informed way. At its heart, this issue is not about money; it is about maintaining the integrity of elections by protecting voters from misleading and false content in advertising, or at least making the misleading nature of this content apparent. In essence, technology has extended the field of play while making it less even between traditional and digital media. Therefore, regulators must catch up.

**We recommend the following measures to increase transparency in digital-age campaigns: political entities be required to disclose to Elections Canada a daily log of micro-targeted messages, the intended target for each specific ad, where the ad has been placed and the purchaser of the ad. Further, Elections Canada should be required to make this information public and searchable within 24 hours, if not in real time, so that claims can be verified and challenged in the course of the campaign.** This would not prevent political actors from using

targeted messaging, an idea that may seem tempting but is heavy-handed and unlikely to survive a Charter challenge. But awareness, transparency and accountability would be improved during election campaigns, the most sensitive moments in our democratic life.

**PPF recommends that Elections Canada invest in research into both the paid as well as unpaid information that travels through the modern concourses of political information,** to understand developments within the media ecosystem and become equipped to respond and recommend policies to address emerging issues.

These recommendations will go a long way towards modernizing electoral finance rules by increasing transparency and leveling the playing field. Elections are moments of truth for democratic societies and it is incumbent on governments to ensure that election officials have the means to enforce rules and keep up with the evolving environment.

## CONCLUSION

As with everything else in contemporary society, technology is changing private capabilities and public expectations. The world moves more quickly. Borders are more porous. Some things are automatically more transparent, others more opaque. Values shift.

The online world furnishes new organizational tools and supports greater empowerment for individuals and groups. It has become a new public square to which political debate gravitates. This both opens the potential for broader participation in democratic discourse and introduces new risks to the integrity of such participation, as seen by the propagation of hate against individuals and groups and the concerted and covert dissemination of falsehoods intended to misinform and confuse voters. It eases the way for foreign participation and influence in domestic campaigns.

Election regulators need to be responsive to these trends in order to retain their high levels of relevance and legitimacy, especially in an era of declining public trust.

Money in politics is both a necessity — campaigns cannot be mounted without it; ideas cannot be communicated — and a potential distortion to fairness. Free and fair elections represent the ultimate expression of our democracy. New risks regularly arise to the integrity of the process and therefore to the precious right of citizens to make fully informed choices. It is the job of governments and regulators to assure these risks are continuously reviewed and expeditiously addressed. A transparent and level playing field must always be the objective.

The recommendations contained in this report are intended to keep Canada at the top of the class internationally in the integrity of our elections. The first line of defence is transparency, the second is the fairness that comes from having a level playing field, or at least one not tilted in favour of third parties. As circumstances evolve, more serious threats may require more robust responses. In some areas, particularly those concerning new risks from fake news, which raises sensitive questions around free speech, there is more research and consideration to be done. In other areas, this report sets out immediate pathways for action, both in the run-up to the federal general election scheduled for 2019 and beyond it.

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