PRB 07-50E

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POLITICAL FINANCING

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17 January 2008

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POLITICAL FINANCING

BACKGROUND

The financing of political campaigns has been an important electoral reform issue since at least the early 1970s. It has been the subject of much debate and examination, and prompted a number of studies and reviews by various bodies, including the Royal Commission on Electoral Reform and Party Financing (Lortie Commission). The issue has been driven largely by a growing concern over the cost of election campaigns, campaign spending by political parties and candidates, and the fundraising activities of political parties and candidates. Underlying the push for reform has also been a desire to introduce some degree of financial fairness among candidates and parties.

The 1974 *Election Expenses Act* introduced significant changes to the way election financing is regulated and effectively established a new regime for the financing of federal elections. Greater controls were imposed on election spending, notably in the areas of spending limits; the disclosure of campaign expenses; partial public financing of election campaigns; regulated political broadcasting;(1) and the tax deductibility of electoral contributions to encourage individuals to contribute to parties and candidates.

The work of the Lortie Commission and the various House of Commons committees that were established to study electoral reform laid the foundation for further legislative reforms. A number of important changes to election financing were implemented with the major overhaul of the *Canada Elections Act* brought about by Bill C-2, introduced in the House of Commons on 14 October 1999. The most significant changes to political financing and campaign regulation, however, came about with Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), which took effect on 1 January 2004.(2)

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(1) J.R. Robertson, *The Canadian Electoral System*, BP-437E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, May 2004, p. 9.

(2) J.R. Robertson, *Bill C-24: An Act to amend the Canada Elections Act and the Income Tax Act (Political Financing)*, LS-448E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 June 2003.

Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability (the Federal Accountability Act, or FAA), introduced in the 1st session of the 39th Parliament, has introduced further reforms to the political financing regime under the *Canada Elections Act*.(3)

SOURCES OF POLITICAL FINANCING

A. Contributions

Only individuals who are Canadian citizens or permanent residents may make financial contributions to registered parties, candidates, constituency associations, and leadership and nomination contestants (*Canada Elections Act*, section 404). A contribution is defined as a "monetary" or "non-monetary" contribution (section 2(1)). As a result of the FAA, the maximum amount these individuals may contribute is (section 405):

- $1,000 in total in any calendar year to a registered party;
- $1,000 in total in any calendar year to the electoral district associations (EDAs), nomination contestants and candidates of a registered party;
- $1,000 to the contestants in a leadership contest; and
- $1,000 in total to an independent candidate in an election.(4)

For the sake of clarity, the FAA amended the *Canada Elections Act* so that fees paid by participants at conventions held by political parties are considered contributions to the political party (subsection 404.2(7)). Party membership fees, however, are not considered contributions.

Electoral candidates and nomination contestants of a registered party, as well as party leadership candidates, may contribute an additional $1,000 of their own funds to their own campaigns or nomination contests. The $1,000 limit also applies to contributions by candidates who are not candidates of a registered political party to their own campaigns. These amounts are deemed not to be contributions.

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(3) The amendments to the political financing provisions of the *Canada Elections Act* brought about by the bill took effect on 1 June 2007.

(4) Previously, individuals could contribute $5,000 collectively to a party, a candidate, a riding association and a nomination contestant within the same political family in a calendar year; $5,000 to an independent candidate in an election; and $5,000 to leadership contestants within a particular leadership contest.

The maximum contribution is adjusted annually for inflation (section 405). As a result of the latest inflation adjustment, the maximum contribution in each category of contribution is $1,100.(5) The new maximum in respect of contributions to a registered party, an electoral district association, a nomination contestant, or a candidate is applicable during the calendar year 1 January 2008 to 31 December 2008.(6)

Effective 1 June 2007, unions and corporations are no longer permitted to make political contributions. Prior to the FAA, unions could make modest contributions of $1,000 collectively to candidates, nomination contestants and riding associations, and $1,000 to independent candidates.

B. Loans

Loans are seen as increasingly important sources of campaign financing, particularly in light of the reduced contribution limits and the ban on corporate and union contributions resulting from the FAA. Loans to parties, candidates, riding associations, nomination contestants and leadership contestants are permitted under the Act, subject to a number of reporting obligations and approvals by the Chief Electoral Officer, and are not treated as contributions to the political entity that receives them.

1. The Repayment of Loans

Loans are referred to in the Act as "unpaid claims." The reference is found in various sections of the Act. There is an expectation that loans, like all unpaid claims, will be repaid by the borrowing entity. To this end, the Act prescribes specified periods of time within which unpaid claims must be repaid:

- in the case of a *registered EDA*, within six months after the due date of the claim (section 403.3);
- in the case of a *political party*, within six months after the due date of the claim (section 418);

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(5) Elections Canada, *Limit on Contributions*, 28 March 2007, http://www.elections.ca/content.asp?section=fin&document=limit&dir=lim&lang=e&textonly=false.

(6) For leadership contestants the new maximums are applicable in a contest between 1 April 2007 and 31 March 2008. For non-affiliated or independent candidates the new maximums apply to an election for which writ is issued during that period.

- in the case of *leadership contestants*, within 18 months of a leadership contest (section 435.24(1));
- in the case of a *candidate*, within four months after polling day (section 445(1)); and
- in the case of a *nomination contestant*, within four months after polling day (section 478.17(1)).

2. Extension of the Time-period Within Which to Repay Loans

These periods may be extended, however, by the Chief Electoral Officer on the written application of the political entity or a financial agent of that entity, if in the opinion of the CEO there are reasonable grounds for extending the repayment period. The CEO may authorize the repayment over a longer period of time and may impose any terms and conditions such as a fixed schedule for repayment.(7) A judge who is competent to conduct a recount may also extend the repayment period if an extension was refused by the CEO or the unpaid claim was not paid in accordance with the terms established by the CEO when granting the extension.(8)

Failure by a *candidate*, a *nomination contestant* or a *leadership contestant* to repay a loan within the legislatively-mandated period is an offence, unless an authorization to extend the repayment period has been granted by the CEO or a judge. No offence is prescribed in the Act for the failure of an EDA or a political party to repay a loan within the periods prescribed in the Act.

3. The Reporting of Loans

Loans are to be included in the financial returns of all political entities as a "contribution," but only for reporting purposes. They are not otherwise subject to the contribution limits in the Act. In the case of a *candidate* and a *nomination contestant*, a financial agent must provide a financial statement to the Chief Electoral Officer with a statement of contributions, including loans, within four months following an election (sections 451(4) and 478.23(6), respectively). In the case of a *leadership contestant*, the financial return must be

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(7) See section 403.31 for electoral district associations, section 419 for registered political parties, section 435.26 for leadership contestants, section 447 for candidates, and section 478.19 for nomination contestants.

(8) See section 403.32 for electoral district associations, section 420 for registered political parties, section 435.27 for leadership contestants, section 448 for candidates, and section 478.2 for nomination contestants.

provided within six months of a leadership contest (section 435.3(6)). *Political parties* and *EDAs* must provide their returns within six months and five months, respectively, following the end of the fiscal period for those entities (sections 424(4) and 403.35(4), respectively).(9)

A further report is required where there are unpaid claims and an authorization has been granted by the Chief Electoral Officer approving a repayment schedule on unpaid claims.(10)

4. When Unpaid Loans Are Deemed to Be Campaign Contributions

The Act states that claims against a political entity that remain unpaid are deemed to be campaign contributions:

- 18 months after polling day, in the case of a *candidate* (section 450(1));
- 18 months after the selection date (or after polling day in some circumstances) in the case of a *leadership contestant* (435.29(1));
- 18 months after the selection date in the case of a *nomination contestant* (section 478.22(1)); and
- 18 months after the end of the fiscal period in the case of a *political party* and a *registered EDA* (sections 423.1(1) and 403.34(1), respectively).

The Act, however, exempts unpaid claims from the deeming provision if the claim:

- is the subject of a binding agreement to pay;
- is the subject of a legal proceeding to secure payment;
- is subject to a dispute as to the amount to be repaid; or
- has been written off by the creditor as uncollectible in accordance with the creditor's usual accounting practices.

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(9) These periods may be extended by the Chief Electoral Officer where there are extenuating circumstances such as illness of the financial agent or an honest mistake of fact. See section 403.41 for EDAs, section 433 in respect of a registered political party, section 435.38 for leadership contestants, section 458 in respect of candidates, and section 478.33 for nomination contestants.

(10) See for example, 435.35 in respect of leadership contestants, section 455 in respect of candidates, 478.3 for nomination contestants. There is no similar provision applicable to registered political parties or EDAs. Presumably, such a provision would be unnecessary since these entities have an ongoing existence and an ongoing obligation to provide financial reports to the CEO.

5. Legislative Reforms Respecting Loans – Bill C-29

The Chief Electoral Officer, in a recent report to the House of Commons Standing Committee on Procedure and House Affairs, commented that unlike the extensive controls imposed by the *Canada Elections Act* on the sources and extent of contributions, there are relatively few controls on the use of loans and no limits on the amount that may be loaned.(11) He recommended that a distinct regime be established in the Act for the regulation of loans. He recommended, among other things, that limits be imposed on the amount that individuals may loan to a political entity and that loans in excess of the contribution limits should only be obtained from financial institutions.

The government responded by introducing Bill C-54, An Act to amend the Canada Elections Act (accountability with respect to loans) in the 1st Session, 39th Parliament on 8 May 2007.(12) The bill was reported back to the House of Commons with amendments on 19 June 2007. It was reinstated in the second session of the 39th Parliament as Bill C-29. The bill proposes a number of changes to the *Canada Elections Act* that would affect loans and loan guarantees, including:

- a ban on loans and loan guarantees by unions and corporations, except banks as defined in the *Bank Act*;
- the amount that an individual may loan or guarantee, combined with any contribution, cannot exceed $1,100;
- more stringent rules for the treatment of unpaid loans;
- limits on the amount that financial institutions and political entities may loan; and
- a requirement that financial institutions provide loans at market rates.

C. The Transfer of Money, Goods and Services

The Act permits the various entities that make up a political organization to transfer funds between themselves with few restrictions. With a few exceptions, these transfers are not considered contributions, and thus are not subject to the contribution limits set out in the Act.

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(11) Elections Canada, *Recommendations of the Chief Electoral Officer of Canada to the House of Commons Standing Committee on Procedure and House Affairs Respecting Specific Issues of Political Financing* (26 January 2007) (hereinafter, Report on Political Financing).

(12) See the legislative summary of Bill C-29, An Act to amend the Canada Elections Act (accountability with respect to loans), http://www.parl.gc.ca/LEGISINFO/index.asp?Language=E&Session=14&query=4961&List=toc.

1. Transfers of Funds

Subject to several restrictions noted below, the following transfers of funds are permitted (section 404.2(2.1)):

- a party may transfer funds to a registered or unregistered EDA, to a candidate (unless the funds come from a trust) and to a leadership contestant;
- a registered EDA may transfer funds to the party, another registered EDA or to a candidate (unless the funds come from a trust);
- a candidate may transfer funds to the party, to a registered EDA, or to him or herself in his or her capacity as a nomination contestant;
- a leadership contestant may transfer funds to a party or to a registered EDA; and
- a nomination contestant may transfer funds to the party, to the registered EDA that held the nomination contest or to the candidate endorsed by the party in that nomination contest.

Some important restrictions, however, are imposed by the Act. Funds from a trust may not be transferred by a party or a registered EDA to a candidate endorsed by that party.

2. Transfers of Goods and Services

In the case of goods and services, transfers are permitted and are not treated as contributions in the following situations (section 404.2(2)):

- from a party to a registered or unregistered EDA, to a candidate, to a nomination contestant and to a leadership contestant (subject to restrictions noted below);
- from a registered EDA to another registered EDA, to a candidate, to a nomination contestant and to a leadership contestant (subject to restrictions noted below); and
- from a candidate to a party, a registered EDA or to him or herself in his or her capacity as a nomination contestant.

If a party or an EDA provides funds, goods or services to nomination contestants or leadership contestants, these must be provided equally to all contestants, unless, in the case of a leadership contest, the funds come from a directed contribution where the contributor has expressed a wish to direct the money to a particular leadership contestant (section 404.3(1)). The amount of the directed contribution is deemed to be a contribution made by the contributor.

D. Public Funding

Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), also increased and extended the level of public financing of political parties and candidates.

1. Reimbursement of Electoral Expenses

Parties are entitled to reimbursement of 50% of their electoral expenses provided that candidates endorsed by the party received at least 2% of valid votes cast in an election or 5% of valid votes cast in constituencies in which the party endorsed a candidate (section 435).

Individual *candidates* are also entitled to reimbursement of electoral expenses if they receive 10% or more of the valid votes cast. The maximum amount that may be reimbursed is the lesser of 60% of the candidate's paid election and personal expenses, or 60% of the maximum the candidate is allowed to spend in an election under section 441(3) of the *Canada Elections Act* (section 464).

2. Annual Allowance for Political Parties

Political parties are entitled to an annual allowance of $1.75 for each vote received by the party in the previous election, provided that candidates endorsed by the party received at least 2% of the valid votes cast in that election or 5% of valid votes cast in the constituencies in which the party endorsed a candidate. The $1.75 allowance for each vote is paid in quarterly instalments of $0.4375 and is adjusted annually for inflation (section 435.01).

A challenge to the threshold vote requirements for the granting of an annual allowance was recently brought by a number of smaller registered political parties. The challenge was based on sections 3 (voting rights), 2(*b*) (freedom of expression), 2(*d*) (freedom of association) and 15 (equality rights) of the *Canadian Charter of Rights and Freedoms*. In the Superior Court of Justice for Ontario, the applicants succeeded in obtaining an order that section 403.01(1) of the Act breached the voting rights guarantee in section 3 of the Charter. The Court ordered that the parties who brought the application were entitled to the annual allowance retroactive from the date section 403.01 came into force on 1 January 2004.[13]

(13) *Longley* v. *Canada (Attorney General)*, 2006 CanLII 36358 (ON S.C.).

The Court of Appeal for Ontario reversed the lower court's ruling.[14] It held that while the provision violates the broad-based electoral rights – including voting and electoral participation rights – that make up section 3 of the Charter, as articulated by the Supreme Court of Canada in *Figueroa* v. *Canada (Attorney General)*, [2003] 1 S.C.R. 912, the limits on those rights are reasonable and justifiable in accordance with section 1 of the Charter. The Court described the objective of the thresholds as "preserving the integrity of the Canadian electoral process and its public funding mechanisms by guarding against the misuse of public funds."[15] The Court considered the thresholds to be an integrity measure intended to ensure that public funding for political parties is preserved for legitimate public discourse. The Court accepted that there are legitimate concerns about organizations becoming involved in the political process for purposes unrelated to promoting genuine political discourse, such as promoting a lifestyle or commercial interests, using public funds.

The Court found no violation of sections 2(*b*), 2(*d*) or 15 of the Charter. There was no "substantial interference" with a fundamental freedom protected by sections 2(*b*) and 2(*d*). A reduced ability to convey a political message or to associate would not be sufficient to constitute a breach of the Charter.[16]

3. Tax Credits for Contributors

The *Income Tax Act* provides incentives for individuals to contribute to political parties, registered electoral district associations (EDAs) and candidates in the form of tax credits. Contributions to leadership candidates, nomination contestants, and unregistered parties and EDAs are not eligible for a tax credit. The amount of the tax credit is scaled to the amount contributed as follows: 75% of the first $400; 50% of the next $350; and 33.3% of an amount over $750.

SPENDING LIMITS FOR POLITICAL ACTIVITIES

A. Political Parties

Limits on spending by *political parties* during an election are determined by multiplying $0.70 by the number of names on the registered list of electors for constituencies in which the party has endorsed a candidate (*Canada Elections Act*, section 422).

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(14) *Longley* v. *Canada (Attorney General)*, 2007 ONCA 852 (hereinafter, *Longley* ONCA).

(15) *Longley* ONCA, at para. 49.

(16) *Longley* ONCA, at para. 109. The section 15 challenge was dismissed largely on the basis that there is no differential treatment of the smaller parties on the basis of "personal characteristics." The differential treatment is based on the number of votes received by the parties. See para. 96.

B. Candidates

Limits on spending by a *candidate* in an election are $2.07 for each of the first 15,000 electors in the constituency; $1.04 for each of the next 10,000 electors; and $0.52 for each of the remaining electors. This amount is increased if the number of electors per square kilometre of a constituency is less than 10 (section 441).

C. Nomination Contestants

Limits on spending by *nomination contestants* are 20% of the spending limit established for electoral candidates, not including some personal expenses such as travel and living expenses (section 478.14).

D. Leadership Contestants

No spending limits are imposed on *leadership contestants*. They are required, however, to provide the following to Elections Canada: a statement of leadership campaign expenses; disclosure of the terms of all financial loans and the name of the lender; the name and address of each contributor who contributes more than $200; and a declaration of the total amount of contributions (section 435.3). Contestants are also required to register with Elections Canada in order to accept contributions or incur expenses (section 435.05).

E. Proposed Reforms

There have been periodic calls on Parliament to impose limits on leadership campaign spending. The Chief Electoral Officer, in his 2001 report to Parliament, *Modernizing the Electoral Process*, maintained that leadership contests are not private matters of a political party.(17) They are an integral part of the democratic process, and as such, Parliament has an interest in regulating such contests and imposing campaign spending limits.

The CEO renewed his recommendation to impose spending limits on leadership contests in his recent mini-report to Parliament on political finance.(18) He maintains that limits would help to ensure a level playing field for contestants and prevent contests from becoming exclusionary or prohibitive for contestants who lack access to large sources of funding.

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(17) Elections Canada, *Modernizing the Electoral Process – Recommendations from the Chief Electoral Officer of Canada Following the 37th General Election*, Recommendation 8.1.4, November 2001, p. 131.

(18) Report on Political Financing, p. 33.

REGULATION OF POLITICAL FINANCING

The *Canada Elections Act* contains rigorous requirements on the management of the finances of a party, an electoral district association, a candidate, a leadership contestant or a nomination contestant. Typically, the Act imposes restrictions on who may accept contributions, incur expenses, enter into contracts, and generally deal with the finances of the political entity.

A. Candidates

In the case of a candidate, the Act requires that an official agent be appointed to handle all the financial transactions of the candidate's campaign (section 436). The official agent must establish a bank account in the agent's name with the title "official agent" shown next to the name (sections 437(1) and (2)). The agent must be appointed and the bank account established before the candidate may accept contributions or incur expenses. All financial transactions involving the receipt or payment of money for the electoral campaign must be deposited into or paid from that account (section 437(3)). The account must be closed following the election once any unpaid claims and surplus funds are dealt with in accordance with the Act (section 437(4)).

The official agent is the only individual authorized by the Act to do the following on behalf of the candidate (section 438):

- accept contributions
- incur expenses
- issue tax receipts
- enter into contracts
- pay the candidate's personal expenses.

The official agent is required, within four months following polling day, to submit to Elections Canada a comprehensive financial report that includes a detailed electoral return and an auditor's report on election expenses (sections 451 and 453). The electoral campaign return must include, among other things (section 451(2)):

- a statement of election expenses
- a statement of unpaid claims
- a statement of contributions received
- the number of contributors
- the name and address of contributors who contributed more than $200 to the candidate's campaign.

The FAA introduced new rules respecting the receipt of gifts or advantages by a candidate.(19) These are now expressly prohibited under the Act where they would appear to a reasonable person to have been given for the purpose of influencing the candidate in his duties as a member of Parliament should the candidate be elected. Candidates must provide a statement to the Chief Electoral Officer of all gifts or advantages whose value to the candidate exceeds $500, received during a prescribed period beginning from the time the candidate becomes a candidate and ending on the day he or she becomes a member of Parliament or polling day, if he or she is not elected. It is an offence for a candidate to accept a prohibited gift or advantage or to fail to provide the required statement within the required period of time (four months after polling day). If the offence is committed knowingly, the Act prescribes more severe punishment than if the failure or omission was inadvertent.

B. Political Parties

For political parties, it is the chief agent who is responsible exclusively for administering the financial transactions of a registered party and reporting on them (section 415). Only the chief agent or one of the party's registered agents may (section 416):

- pay the party's expenses
- incur expenses on behalf of the party
- accept contributions to the party.

The party's chief agent must submit a detailed report to Elections Canada covering the fiscal period (section 424(1)), within six months following the end of a fiscal period (section 424(4)). The fiscal period for a registered party is the calendar year (section 364).

(19) See newly enacted sections 92.1 to 92.6 of the *Canada Elections Act*.

The report must contain a financial transactions return, an auditor's report on those transactions, and the chief agent's declaration concerning those transactions (section 424(1)). The financial transactions return must contain, among other things (section 424(2)):

- the total contributions received by the party and the number of contributors;
- the names and addresses or all contributors who contributed more than $200 to the party, the total amount and the amount of each contribution by the contributor;
- a statement of revenues and expenses;
- a statement of loans or security received by the party;
- a statement of the commercial value of goods and services provided and funds transferred by the party to electoral district associations and candidates; and
- a statement of the commercial value of goods and services provided and funds transferred to the party from its registered associations, candidates, leadership contestants and nomination contestants.

C. Electoral District Associations

Only the electoral district associations (EDAs) of a registered party that are registered with Elections Canada may benefit from the various provisions of the Act relating to political financing (section 403.01). These benefits include:

- accepting contributions;
- providing goods or services and transferring funds to a candidate, a party or another registered association; and
- accepting surplus campaign funds from a candidate, a leadership contestant or a nomination contestant.

The financial agent of an EDA is responsible for administering its finances and reporting on them to Elections Canada (section 403.27)). As is the case with the chief agent of a political party and the official agent of a candidate, only the financial agent (as well as an electoral district agent designated by the EDA) of an EDA may accept contributions, pay and incur expenses, and accept and make transfers of goods or funds on behalf of the EDA (section 403.28).

The EDA's financial agent must submit a financial transactions return and an auditor's report to Elections Canada within five months following the end of the EDA's fiscal period (section 403.35(4)). The calendar year is the fiscal period for an EDA (section 403.06). As with the financial transactions return for a political party, an EDA's financial transactions return must include, among other things (section 403.35(2)):

- a statement of contributions received by the EDA and the number of contributors;
- the name and address of each contributor who contributed more than $200 in the fiscal period to the EDA including the total amount contributed and the amount of each contribution;
- a statement of revenues and expenses;
- a statement of the commercial value of all goods, services and funds transferred by the EDA to the party, another EDA or to a candidate;
- a statement of the commercial value of all goods, services and funds transferred to the EDA by the party, another EDA, a candidate, a leadership contestant or a nomination contestant; and
- a statement disclosing the details of all financial loans for the purpose of campaigning, including a repayment schedule.

D. Leadership Contestants

Rules for the conduct of leadership campaigns have been in force since 1 January 2004 (Part 18, Division 3.1, of the *Canada Elections Act*). Prior to this date, campaigns were unregulated.

Once a leadership campaign is called by a registered party, the party must notify Elections Canada. Candidates are deemed to be candidates upon acceptance of a contribution or the incurring of a campaign expense, at which time they are required to register with Elections Canada.

The leadership candidate's financial agent is responsible for the financial transactions of a leadership contestant's campaign and for reporting on those transactions (section 435.2). The financial agent must open a bank account for the exclusive purpose of the leadership contestant's campaign and all transactions related to that campaign involving the receipt of money must be paid from or to that account. The account must be closed at the end of the leadership contest after surplus funds and unpaid claims have been dealt with in accordance with the Act (section 435.21).

Only leadership campaign agents and financial agents, (who are considered campaign agents), are permitted to accept contributions and pay expenses in respect of a leadership campaign (section 435.22(1) and (3)). Only the financial agent or the leadership contestant may incur expenses in respect of a leadership contest and pay the personal expenses of the leadership contestant (section 435.22(4) and (5)). A contract involving a leadership campaign is only enforceable if entered into by the leadership contestant or by his or her campaign agents (section 435.25).

The financial agent must provide Elections Canada with a detailed financial report within six months after the leadership contest (section 435.3(1) and (6)). The report must include a campaign return (section 435.3(1)). The return must include the following:

- a statement of campaign expenses;
- the total contributions received and the number of contributors;
- a disclosure of all financial loans including a repayment schedule and the name of the lender;
- the names and addresses of contributors who contributed more than $200 to the contestant, the total and the individual amount of the contributors' contributions; and
- a statement of the commercial value of the goods and services provided or funds transferred by a leadership contestant to the party or to an EDA.

An auditor's report on the campaign return must be filed if the leadership contestant has accepted contributions totalling $5000 or more or has incurred campaign expenses of $5000 or more (sections 435.3(1)(b) and 435.33(1)).

In addition to the return that is to be filed under section 435.3 within six months following the leadership contest, financial agents are required to file periodic reports on the amounts and sources of donations (section 435.31), including one report covering the period that begins on the first day of the contest and ends four weeks before the conclusion of the contest; and one report for each of the three weeks leading up to the leadership contest.

E. Nomination Contestants

Prior to Bill C-24, nomination contests were unregulated. As of 1 January 2004, nomination contests are subject to special rules provided for in the *Canada Elections Act* (Part 18, Division 5).

Within 30 days after the date on which a nomination contest is held, the constituency association must report the holding of the contest to Elections Canada (section 478.02). A nomination contestant is deemed to be a contestant upon acceptance of a contribution or the incurring of an expense (section 478.03). Nomination contestants may not accept contributions and incur expenses unless a financial agent has been appointed.

The financial agent is designated by the Act as the principal person responsible for administering the financial transactions relating to the nomination contestant's campaign (section 478.11). The financial agent must establish a bank account in his or her name exclusively for the contestant's campaign (section 478.12). All financial transactions related to the campaign that involve money must be conducted through that bank account.

The financial agent is the only individual permitted to accept contributions to the nomination contestant's campaign or *pay* the contestant's expenses (section 478.13(1) and (3)). The nomination contestant or the financial agent may *incur* expenses associated with the campaign (section 478.13(4)).

The financial agent is required to file a campaign return with Elections Canada in essentially the same form and with the same information as is required for leadership contestants and candidates (section 478.23) if contributions or expenses exceed $1,000 (section 478.23). An auditor must be appointed if the contestant spends or receives contributions in excess of $10,000 (section 478.25).

The reporting obligations arise after the completion of the nomination contest (unlike leadership campaigns, in which the contestants must provide reports during the campaign). Nomination contestants must file a financial return, if required, within four months after the completion of the nomination contest (section 478.23(6)). If the nomination contest occurs during an election period, the return may be filed within four months after election day.

LIMITS ON THIRD PARTY ELECTION ADVERTISING

A third party is defined as an individual or a group that is neither a candidate nor a political party (section 349). Third parties play an increasingly significant role in election campaigns by supporting or opposing, through advertising or other expenditures, individual candidates or parties. A third party is required to register with Elections Canada if it spends $500 or more in election advertising, but it may not register before the issue of an election writ (section 353(1)).

Third parties may not incur more than $150,000 in total election advertising expenses (section 350(1)). Of that amount, no more than $3,000 may be spent on supporting or opposing the election of one or more candidates in an individual constituency (section 350(2)). With respect to a party leader, the $3,000 spending limit applies only to his or her candidacy in a particular constituency (section 350(3)). These amounts are adjusted for inflation. If an election writ were issued between 1 April 2007 and 31 March 2008, the spending limits would be $179,400 and $3,588, respectively.(20)

These limits were challenged as an infringement of the right to free speech in the *Charter of Rights and Freedoms*. The Supreme Court of Canada in *Harper* v. *Canada (Attorney General)*, however, in a majority judgment, upheld the challenged provisions on the basis that they promoted electoral fairness.(21)

Third parties that are required to be registered must file a report with Elections Canada within four months following an election (section 359(1)). The report must contain a statement of contributions received and expenses incurred during an election (section 359(2)). The report must also provide the names and addresses of contributors who contributed more than $200 to the third party, as well as the amount and date of contribution, during the period beginning six months before the issue of an election writ and ending on polling day. If the contribution is from a numbered company, the name of the president or chief executive officer of the company must be reported (section 359(4)).

Attempts to regulate the activities of third parties during election periods have continued. Bill C-79, An Act to amend the Canada Elections Act (third party advertising), introduced in the House on 23 November 2006, was one such effort. The bill, however, died on the Order Paper with the dissolution of Parliament on 29 November 2006. The bill sought, generally, to limit a third party's ability to use, for election advertising purposes, contributions received during a period commencing six months before the issuing of an election writ and ending on polling day ("the designated period"). The bill essentially attempted to link the maximum amount a third party could spend for election advertising to the contributions received by the third party from individuals and entities. Another important feature of the bill was its attempt to place limits on contributions to third parties for the purpose of election advertising, though not for other purposes, and only if the contributions were received during the designated period.

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(20) Elections Canada, *Limit on Election Advertising Expenses Incurred by Third Parties*, 28 March 2007, http://www.elections.ca/content.asp?section=fin&document=limit_tp&dir=lim&lang=e&textonly=false.

(21) [2004] 1 S.C.R. 827.

The bill proposed that a maximum of $5,000 from the contributions of an individual could be spent by the third party on election advertising if the contribution was received from the individual within the designated period commencing six months before the date an election writ was issued and ending on polling day. A $1,000 spending limit would have been imposed in respect of contributions received from persons other than an individual (organizations) during the same period.

The bill would also have imposed a limit of $150,000 on the amount an individual or an organization could contribute to a third party during the designated period for the purpose of election advertising in a general election. A contribution limit of $3,000 was proposed if the individual or entity intended his or her contribution, made in the corresponding period, to be used for election advertising to oppose or support the election of candidates in a given electoral district in a general election. The $3,000 contribution limit was also proposed for election advertising in a by-election.

Finally, the bill would have required third parties to disclose the names and addresses of individuals who contributed more than $5,000 during the designated period described above, and the amount that the third party paid out of, or incurred as expenses from, that contribution for election advertising. Similar disclosure requirements were proposed for contributions of $1,000 or more from other persons or entities.

ENFORCEMENT OF POLITICAL FINANCING RULES

The *Canada Elections Act* prescribes a long list of offences for breach of political financing rules, including circumventing or conspiring to circumvent the rules that limit political donations, failing to report a contribution or an expense, and spending in excess of the prescribed limits (section 497).

Prior to the FAA, the limitation period for initiating prosecutions was 18 months from the date on which the offence came to light, with an absolute limit of seven years from the time the offence occurred. Section 514 of the *Canada Elections Act* now provides that a prosecution under the Act may only be initiated within five years from the day on which the Commissioner of Canada Elections becomes aware of the facts giving rise to the prosecution, with an absolute limit of 10 years from the date the offence was committed.

The FAA has also resulted in the division of responsibility for the investigation and prosecution of offences between the Commissioner of Canada Elections and the newly created Director of Public Prosecutions. The DPP is now responsible for initiating and conducting prosecutions of offences under the Act on behalf of the Crown. The Commissioner of Canada Elections continues to investigate possible offences under the Act, on the recommendation of the Chief Electoral Officer, and can refer the matter to the DPP, who will decide whether to initiate a prosecution.