



Summary Report

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Panel Theme: Electoral Integrity: Political Financing

Third-Party Spending and the Risks of Foreign Interference in Canadian Elections

Third parties — individuals, corporations, unions, and interest organizations — play a secondary, but vital role in influencing the informational environment of election campaigns. These actors are distinct from registered political parties and candidates, as they are not contesting a seat in the legislature; however, they engage in partisan and issue-based advocacy during the campaign. Third parties' interventions can be targeted at the national or riding level. Legislation introduced in 2003¹ and strengthened in 2006² prohibits corporate, union and interest group donations to candidates and political parties, leaving third party advertising as the only way through which these organizations can expend funds to advertise in election campaigns.

Many jurisdictions – including Canada – have identified third parties as a potential gateway for foreign interference. This submission examines the current regulatory framework for third-party spending, its challenges, and proposals for strengthening safeguards against foreign interference.

Context

Third-party participation in Canadian elections received considerable attention in the aftermath of the 1988 federal “free trade” election. During this election, third parties spent over \$4.7 million on advertisements, equating to nearly 40% of what the three main political parties spent.³ The effects of this spending, both on partisan politics and issue advocacy, raised concerns about the integrity of political advertising and the potential for organizations other than parties and candidates to influence election outcomes. These considerations were addressed in the 1991 Royal Commission on Electoral Reform and Party Financing⁴ (the Lortie Commission), cited as the foundation for Canada’s current approach to regulating

¹ *An Act to amend the Canada Elections Act and the Income Tax Act (political financing)* (S.C. 2003, c. 19), 2003.

² *Federal Accountability Act* (SC 2006, c. 9), 2006.

³ Janet Hiebert, “Interest Groups and Canadian Federal Elections” in F Leslie Seidle, ed, *in Interest Groups and Elections in Canada*, 2d ed (Toronto: Dundurn Press, 1991) at 21.

⁴ *Reforming Electoral Democracy: Final Report*, by Canada, Royal Commission on Electoral Reform and Party Financing (Ottawa: Government of Canada, 1991).



election financing⁵, and in particular, the egalitarian approach to third party participation in elections.⁶ The egalitarian approach holds that (1) spending limits preserve equity between political actors⁷, (2) political parties are the chief participants in elections, and third parties play an important, but ultimately subordinate, role to parties, and (3) balancing free expression and fair participation (creating a “level playing field”) between participants is a valid policy objective.

This approach is domestically focused and only more recently has it contemplated the role of foreign state or non-state actors as having an interest in influencing election outcomes through third party activity.

Contemporary Regulatory Framework for Third-Party Spending

Federal regulations governing third-party activity are found in the *Canada Elections Act* (CEA)⁸ and have been amended through further legislation, including the *Elections Modernization Act, 2018*⁹. These laws outline spending limits, registration requirements, reporting obligations for third parties, as well as mechanisms for enforcement. The Act regulates three types of activities for third parties: (1) election advertising¹⁰, (2) partisan activities¹¹, and (3) conducting election surveys.

Spending Limits: For the 2021 federal election, third parties were limited to spending \$525,700 nationally during the election period, with a cap of \$4,506 per constituency. During the next election cycle, these numbers increase with inflation to \$602,700 nationally and \$5,166 per constituency. The pre-writ period, a key change introduced in 2018, begins four months before an election and is subject to its own spending limits, separate from those of the formal campaign period.¹² At present, there is no limit on the amount of contributions that can be made by domestic contributors.¹³

⁵ Colin Feasby, “Issue Advocacy and Third Parties in the United Kingdom and Canada” (2003) 48:1 McGill LJ 11; Andrea Lawlor & Erin Crandall, “Understanding third-party advertising: An analysis of the 2004, 2006 and 2008 Canadian elections” (2011) 54:4 Canadian Public Administration 509–529.

⁶ *Libman v Quebec (Attorney General)*, [1997] 3 SCR 569; *Harper v Canada (Attorney General)*, [2004] 1 SCR 827; *Somerville v Can (AG)*, 1996 ACA.

⁷ *Report of the Royal Commission on Electoral Reform and Party Financing*, by Pierre Lortie (Ottawa: Government of Canada, 1991) at vol 1.

⁸ *Canada Elections Act* (S.C. 2000, c. 9), 2000.

⁹ *Elections Modernization Act* (S.C. 2018, c. 31), 2018.

¹⁰ Advertising message that promotes or opposes a registered political party or candidate, including by taking a position on an issue with which the political party / person is clearly associated.

¹¹ Activities carried out by a third party that promote or oppose a political party, or candidate – non-issue oriented.

¹² For the pre-writ period, the spending limit was set at \$1,023,400 nationally, with a maximum of \$10,234 per constituency in 2021.

¹³ Elections Canada. N.d. [Political Financing Handbook for Third Parties, Financial Agents and Auditors – June 2021](#), Section 3.



Registration and Reporting: Third parties that exceed the \$500 spending threshold in an election period must register with Elections Canada, appoint financial agents and auditors, and submit detailed financial returns.

Foreign Funding Prohibitions: Section 349.02 of the CEA prohibits third parties from using foreign funds for partisan activity, election advertising or an election survey. Any attempt to circumvent this rule is subject to legal penalties.

Foreign Interference

Recently, the focus of third-party regulation has shifted from concerns of domestic fairness to risks this avenue of participation may pose for foreign interference. Foreign entities may exploit third-party channels to influence Canadian elections either through direct financial contributions via domestic intermediaries or by promoting narratives that favor specific candidates or policies. Complex digital financial arrangements may permit third parties to obscure the source of their funds. The rise of digital media has exacerbated the risk of interference, as foreign actors can now influence elections indirectly through online platforms performing a role akin to third parties without registering as such.

Transparency in reporting is central to the mitigation of these risks. Reports provided by third parties to Elections Canada, now on an interim and final basis, include information about contributors to and expenses by third parties. These returns provide insights into which citizens have supported the work of the third party but remain vulnerable to incomplete or inaccurate reporting. Importantly, those knowingly circumventing rules will not be caught by transparency requirements. Further risks in the third party finance regime include:

Use of a third party's "own funds": Third parties are permitted under the CEA to use their own funds to supplement contributions that are explicitly made for the purpose of the election. The fungibility of money means that it is difficult, if not impossible, to delineate whether an organization's own funds contain foreign donations.

Loans: Organizations can provide loans to candidates and parties with a three year repayment schedule. Source funds for these loans may be opaque.

Nominations: Third parties are not regulated in their contributions to nomination contestants and in party leaderships.

Digital threats: Social media is often pinpointed as a source of misinformation. Increasingly, however, there is evidence that foreign actors may attempt to set up legitimate-appearing temporary media sites that would be exempt from having to register as third parties.

Disclosure timelines: Interim reports must be filed by third parties 21 days and 7 days prior to election day. Technically, this permits large contributions to be made in the days



immediately preceding election day that would not be transparent to voters. Here, however, we must consider some balance between administrative burden and transparency.

Partisan activities: The *Canada Election Act* allows third parties to conduct partisan activities which means that any foreign influence occurring through third parties will enable some shaping of the vote. To be clear, that third parties can participate in partisan activities is not necessarily corrosive to the election environment; rather, it is a political choice that requires careful balancing against the risk of foreign interference.

Legislative Responses and Bill C-65

To address these concerns, the Canadian government has introduced additional measures through Bill C-65, which aims to close loopholes in the third party finance regime. Key provisions include:

Enhanced Definition of Foreign Entities: The bill broadens the definition of foreign entities to include those that do not carry out primary business activities in Canada.

Stricter Controls on Financial Contributions: The bill prohibits the use of certain financial instruments, such as crypto assets and pre-paid gift cards, which can obscure the source of political contributions.

Increased Transparency in Donor Disclosure: Enhanced disclosure requirements around contributions¹⁴, and third-party expenditures financed through 'own funds' must meet stricter scrutiny to ensure compliance with the foreign funds prohibition.¹⁵

Recommendations to Strengthen the Regulatory Regime

While Bill C-65 is a step in the right direction, additional measures could further insulate third party finance from foreign interference:

1. **Nomination Contests:** Consistent with recommendations elsewhere, third party expenses should be regulated in party nomination and leadership contests. This includes limits on spending, transparency around reporting in advance of selection dates and potentially tightening up the timeline of loan repayments to organizations.

2. **Increased Disclosure Requirements/Own Funds:** Third parties should be required to disclose all donors before the final days of the campaign to prevent last-minute donations, which may have foreign origins from going undetected until after the campaign.

¹⁴ *An Act to amend the Canada Elections Act*, 2024, s 57.

¹⁵ *Ibid*, s 54.



3. Localized Donation Limits: Consideration could be given to imposing limits on third-party donations for constituency-based spending based on residency in that riding, ensuring that contributions for riding-specific campaigns come from local sources.

4. Contribution Limits: Legislating contribution limits lower than those of contributions limits to parties and candidates may be a useful direction for future third party regulations. Similarly, the use of own funds could be changed to be proportional to contributions as a proxy for public support.

5. Stronger Enforcement Mechanisms: As enforcement is key to compliance, measures to strengthen the investigative powers and resources of the Commissioner of Canada Elections to pursue claims of foreign interference may be warranted.

Risk of Overregulation

Before concluding, a cautionary note is warranted. Careful and considered regulation of our campaign finance regime is an essential step in securing Canadian elections against foreign interference. That said, I urge careful reflection in the regulation of election expenditures of third parties for two reasons. First, free speech is the bedrock of a democratic system and political expression, as noted by our own high court, is central to the functioning of a democratic system. I do not equate “money” with “speech” as is sometimes done in other jurisdictions but believe that completely excluding third party actors from the campaign may do more harm than good absent an entirely reconfigured election finance regime. Second, as my colleague, Dr. Young has noted, the hydraulic theory of finance suggests that money will find a way into politics. While Canada does have stronger lobbying legislation than some jurisdictions, shuttling money solely through this channel will obscure the relationship between corporations, unions and interest groups and legislators even further for the average citizen.

Conclusion

Canada’s current legislative framework offers a strong foundation for the protection of the third party finance channel from foreign interference. Moderate additional measures, particularly those focused on transparency and closing loopholes, may assist in ensuring that third parties do not serve as conduits for foreign actors. While the egalitarian framework should continue to undergird our system of third party participation, enhanced transparency and strong enforcement are also at the core of balancing free expression and fair participation.