Chapter 6

Canada

By Mr. Stephane Perrault
Deputy Chief Electoral Officer, Regulatory Affairs Elections Canada

This case study reviews the Canadian Elections Act, the primary legal framework for funding and oversight of political parties, candidates and campaigns. It also discusses the role, mandate and practices of the Office of the Chief Electoral Officer of Canada, and the challenges presented going forward.
Overview of the mandate and political finance legislation

The Office of the Chief Electoral Officer, commonly known as Elections Canada, is an independent, non-partisan agency that reports directly to Parliament. Its mandate is to be prepared at all times to conduct a federal general election, by-election or referendum. Elections Canada also:

- administers the political financing provisions of the Canada Elections Act (CEA);
- monitors compliance with electoral legislation;
- conducts public information campaigns on voter registration, voting and becoming a candidate;
- conducts education programs for students on the electoral process;
- provides support to the independent commissions in charge of adjusting the boundaries of federal electoral districts following each decennial census in each province.
- carries out studies on alternative voting methods and, with the approval of parliamentarians, may test alternative voting processes for future use during electoral events; and
- provides assistance and co-operation in electoral matters to electoral agencies in other countries or to international organisations.

The political financing provisions can be found in part 18 of the CEA. These provisions regulate the financial activities of federal political entities. These include nomination contestants, candidates, registered political parties, electoral district associations (EDAs) and leadership contestants. The Act also regulates election advertising undertaken by third parties. While candidates must submit their nominations to the returning officer, all of these other entities must register with the Chief Electoral Officer and are subject, as the case may be, to contribution limits, disclosure requirements, public funding and spending limits.

As part of its mandate, Elections Canada also issues guidelines and interpretation notes on the application of the provisions of the CEA to political entities, as well as formal written opinions on the application of any provision of the Act to an activity or practice that a political entity proposes to engage in. Guidelines and interpretation notes can be issued at the request of a registered party or at Elections Canada's own initiative. These are maintained in a Registry and published on the Elections Canada website.

To ensure compliance with the Act, Elections Canada has a wide offering of training programs for political entities including live information sessions, online tutorials and brochures. A Help Line is also operated to supplement those trainings.

The Canada Elections Act, and other related information can be found on the website at www.elections.ca. Specific sections on the web have been devoted to Political Financing and Political Participants.
Political finance rules

In order to promote a fair political competition, the CEA provides restrictions on spending, and sources of funding received.

Limits on expenses

Although there are no limits on spending for the periods between elections, the Canada Elections Act provides for limits on expenses incurred by political parties and candidates during an electoral period. This is intended to facilitate a level playing field among political participants. The limits apply to the total of all election expenses, whether paid, unpaid, or accepted as non-monetary contributions or transfers. The limits on expenses are different for political parties and candidates. Limits are based on the number of names on the list of electors, and vary depending on the length of the election period, the electoral district and the number of electoral districts in which a political party is sponsoring candidates. In the last general election, the highest election expenses limit for a party was CAD 21 025 793.23 and the highest election expenses limit for a candidate was CAD 134 351.77.

The Act also provides for limits on the amount of election advertising expenses that a third party may incur to promote or oppose a registered party or the election of a candidate, including by naming them, showing their likeness, identifying them by their respective political affiliation, and taking a position on an issue with which the registered party or the candidate is associated.

Other entities such as nomination contestants, leadership contestants and electoral district associations, are not subject to expenses limits.

Sources of funding

Sources of funding received are broken down into three categories: private funding, indirect public funding and direct public funding.

Private funding- or contributions- is defined as monetary contributions (amount of money provided that is not repayable) or non-monetary contributions (commercial value of a service, other than volunteer labour, or of property of the use of property or money to the extent that they are provided without charge or at less than commercial value).

Only a Canadian citizen or permanent resident can make a contribution to a political entity. Corporations, trade unions, associations and groups cannot make political contributions. In addition, the CEA provides for limits on contributions and loans.1

The 2015 annual limit is CAD 1 500 to each registered party; CAD 1 500 in total to all the registered associations, nomination contestants and candidates of each registered party; CAD 1 500 in total to all leadership contestants in a particular contest. The limits will increase by CAD 25 on January 1st in each subsequent year. There are no limits on the contributions that a third party may receive.

In addition to these amounts:

- a nomination contestant is permitted to give an additional CAD 1 000 in total per contest in contributions, loans or loan guarantees to his or her own campaign;
a candidate is permitted to give a total of CAD 5,000 in contributions, loans and loan guarantees to his or her campaign

a candidate is also permitted to give an additional CAD 1,500 in total per year in contributions, loans or loan guarantees to other candidates, registered associations and nomination contestants of each party. (This includes contributions to the registered association in the candidate's electoral district and contributions to the candidate's own nomination campaign);

a leadership contestant is permitted to give a total of CAD 25,000 in contributions, loans and loan guarantees to his or her campaign; and

a leadership contestant is also permitted to give an additional CAD 1,500 in total per year in contributions, loans or loan guarantees to other leadership contestants.

Indirect public funding comes in the form of tax credits for eligible monetary contributions to parties, candidates and registered EDAs. The maximum tax credit one can receive is CAD 650. The cost of these credits is estimated to be at CAD 25M in an election year.

Direct public funding includes registered party election expenses partial reimbursement (50% of eligible expenses), candidate election expenses partial reimbursement (60% of eligible expenses) and audit subsidies. Other entities such as nomination contestants, leadership contestants, electoral district associations and third parties do not receive partial reimbursements.

**Transparency and accountability**

The CEA requires political entities to file, within specific deadlines, financial and campaign returns. These returns serve to meet reporting requirements for the disclosure of all incoming and outgoing funds. Included in these returns is information in regards to contributions and contributors, expenses related to elections, leadership and nomination contests, loans and any conditions on them, and unpaid claims. Event-based political entities must respect reporting requirements for the specific event in which they have participated. Ongoing political entities, such as EDAs, also have yearly reporting requirements to fulfill. Entities must submit a signed paper return. An electronic filing system may be used, but a signed paper copy must also be submitted. Third parties that engage in electoral advertising must be registered with Elections Canada if a total amount of advertising expenses incurred is CAD 500 or more. Every registered third party must file an election advertising report.

These returns are verified by Elections Canada through a compliance audit process. This process ensures that appropriate administrative requirements, systems, procedures and practices are in place to properly record, verify and report information concerning compliance with the financial provisions of the CEA. The process also validates information concerning receipts for contributions for the purposes of the Income Tax Act. The electoral and financial performance of a political entity and compliance with reporting requirements under the CEA determine eligibility for certain disbursements, such as payments and reimbursements from the Consolidated Revenue Fund. In addition, the external auditor appointed by each party must also perform a compliance audit review of the party's financial returns.
The disclosure of information is a key feature in monitoring compliance with legislative provisions. As required by the Act, the Office of the Chief Electoral Officer publishes financial and campaign returns of various political entities, including personal information of contributors, in the manner that the Chief Electoral Officer considers appropriate. As such, even though all contributors who contributed CAD 200 or more are required to provide their full name and full address, only the contributor's full name, city, province and postal code are published on the Elections Canada Web site. In addition, in order to access this information, a requestor must individually click on each contributor name, which opens a separate window. The partial address of each contributor is not available in a downloadable database format, in hopes to prevent bulk access and data mining of this information. The rest of the contribution information, i.e. the amount contributed, the entity to which it was made and its party affiliation is downloadable in a plain text version of the search results.

Alternatively, the CEA provides for transparency of information included in returns by allowing for public inspection of returns and all other reports and statements, other than electoral documents. Upon request, one can inspect these documents at Elections Canada premises during regular business hours. In addition, on payment of a fee, copies of these documents can be obtained.

**Compliance**

The financial reports submitted by federal political entities and third-party election advertisers undergo an audit to ensure they are in compliance with the financial provisions of the CEA. Instances of non-compliance are addressed in a manner that reflects the seriousness of the non-compliance and its impact on the integrity of the political financing regime, possibly requiring a referral to the Commissioner of Canada Elections (the Commissioner).

The Commissioner is part of the Office of the Director of Public Prosecutions and is responsible for ensuring that the CEA and the Referendum Act are complied with and enforced. The Commissioner acts independently of the Chief Electoral Officer. He decides in what manner complaints and referrals will be handled, what investigation are to be carried out, the cases to be referred for possible prosecution and the charges to be recommended.

The CEA contains a long list of offences, most of which relate to political financing. However, only a small proportion of these offences relate to misconduct that directly threatens the core values of the regime—fairness, transparency and preventing the undue influence of money. These core offences relate to:

- **Ineligible contributions** - instances where an agent of a political entity does not return an ineligible or excessive contribution or returns it past the prescribed deadline. In total, 8% of non-compliance cases relate to the acceptance of illegal funds into the regulatory system through ineligible or excessive contributions that are not returned in a timely manner.

- **Spending violations** - instances where a candidate registered party, nomination contestant or third party advertiser exceeds the expenses limit in a general election, by-election or nomination contest. In total, 1% of instances of non-compliance relate to the exceeding of spending limits as prescribed by
the CEA- either by a candidate, a registered party, a nomination contestant or a third party advertiser.

- **Filing a false or misleading** document - instances where an agent of a political entity files a financial transactions return that contains a materially false or misleading statement or does not substantially set out the required information outlined in the CEA. Overall, 1% of non-compliance cases relate to the filing of a false or misleading document.

- **Late and non-filers** - instances of not filing a financial document as required by the CEA and of late filing over the prescribed deadline. In total, 19% of all non-compliance cases are related to not filing a financial document or late filing over the prescribed deadline, therefore compromising an important core value of the political financing regime; that timely financial information regarding regulated political entities be made available to the public.

Other political financing offences in the CEA are of a less serious nature and may generally be considered “accessory” in that they concern requirements of the CEA that serve to support fundamental objectives of the system. These requirements include the opening of a bank account, the appointment of an official agent for a candidate and the issuing of a receipt for a contribution.

The vast majority of contraventions are instances of minor regulatory non-compliance that do not imperil the integrity of the political financing regime and as a result the criminal justice system is ill-equipped to deal with them.

In 2010, Elections Canada developed with the Commissioner an *Administrative Compliance Policy for Political Financing.* Pursuant to that policy, matters of a less serious nature are treated through administrative educational measures, rather than a referral to the Commissioner. Further to the recent separation of the Commissioner of Canada Elections from Elections Canada, as a recent of the coming into force of the Fair Elections Act in 2014, this policy is currently under review.

For cases that are not dealt with through the administrative compliance policy, depending on the gravity of the offence, penalties can range from a member of parliament being unable to vote or sit as a member, an individual not being eligible to be a candidate at future elections, fines up to CAD 100 000, or imprisonment.

**Integrity**

Canada's public service as a whole must follow the Values and Ethics code for public servants, as well as the Policy on Conflict of Interest and Post-Employment. Moreover, lobbyists (individuals who are paid to communicate with federal public office holders) are bound by the *Lobbying Act* and code of conduct to ensure transparency and accountability in order to increase the public's confidence in the integrity of government decision-making.

In addition, the Public Service Commission is responsible for safeguarding the political impartiality of the public service and public servants' involvement in political activities, including:

- Providing guidance with respect to involvement in political activities;
- Granting permission and leave for candidacy in federal, provincial, territorial and municipal elections; and
• Investigating allegations of improper political activities and taking corrective action when they are founded.

Elections Canada employees must also commit to a specific additional Code of conduct that highlights the environment employees of Elections Canada face as a result of the unique mandate of the Chief Electoral Officer in Canadian democracy. In following this code, employees must conduct themselves in a way that the public confidence and trust in the integrity, objectivity and impartiality of the electoral process is preserved and enhanced.

Election administrators ( Returning Officers, Assistant Returning Officers and Additional Assistant Returning Officers) are required by law to comply with a code of professional conduct issued by the Office of the Chief Electoral Officer, which highlights that they have an obligation to act in a manner that will bear the closest public scrutiny. The obligations in this code extend to all acts and transactions performed by election administrators during their tenure of office, whether or not in the course of the performance of their duties as election administrators.

There is currently no code of conduct for political parties and their entities. Historically, the assumption was that political parties would regulate their own behaviour, and, if they crossed ethical lines, the remedy resided in the electoral and wider political process. In 2014, the Chief Electoral Officer recommended to Parliament that the establishment of a code of conduct for political parties be considered.

Challenges and risks

Canada’s electoral regime has seen the introduction of a complex, sophisticated and detailed regulatory framework over the years seeking to enhance accountability and transparency of political entities. The complexity of this system has become one of the most significant challenges given that political campaigns are largely conducted by volunteers. In carrying out its responsibilities to provide guidance to entities in regards of the political financing provisions, Elections Canada has developed a number of administrative tools and delivered training programs to help political entities understand the statutory requirements and facilitate their compliance.

Another challenge relates to the fact that, while candidates, nomination contestants and leadership contestants are all required to provide supporting documentation for their reported expenses, registered parties have no similar obligation. This has been partly compensated for in recent legislation by adding external compliance audits the election expenses returns submitted by political parties. However, the transparency of political party finances, and the ability of the Chief Electoral Officer to monitor compliance with the rules remains very limited, despite the fact that election expenses of political parties are heavily subsidised.

Finally, the Canada Elections Act can be enforced only through the criminal courts, not administrative penalties, even for purely regulatory matters. As a result, only a very small portion of non-compliances ever get sanctioned. A list of major Court Cases Relating to the Federal Electoral Legislation can be found in the resources section of the Elections Canada website.
Notes

1. Limits to contributions and loans apply to: total contributions, the unpaid balance of loans made during the contribution period and the amount of any loan guarantees made during the contribution period that an individual is still liable for. The sum of these three amounts cannot at any time exceed the contribution limit.

2. The Administrative Compliance Policy for Political Financing is on Elections Canada’s website.