

TAKING CAMPAIGN FINANCE REFORM TO THE NEXT LEVEL

Tom Kent

Until the campaign finance reform of 2003, a kind of deathbed repentance by Jean Chrétien for the sponsorship scandal, there were virtually no limits on donations to political parties and candidates. Chrétien's Bill C-24 changed that, virtually eliminating corporate donations and limiting individual donations to \$5,000 a year to each party. In return, parties received \$1.75 per vote per year based on their score in the previous election. The Harper government's *Accountability Act* imposes even tighter restrictions, abolishing corporate and union donations altogether and limiting individual donations to all parties and candidates to \$1,000 a year each. Our Founding Editor suggests there is more work to be done, including limiting donations to persons of voting age.

Jusqu'à la réforme sur le financement des campagnes de 2003, par laquelle Jean Chrétien a semblé se repentir du scandale des commandites juste avant de tirer sa révérence, les dons versés aux partis et à leurs candidats n'étaient assujettis à aucune limite réelle. Le projet de loi C-24 a mis fin à cette pratique en éliminant la plupart des dons corporatifs et en ramenant ceux des particuliers à 5 000 dollars annuels pour chaque parti, lesquels recevaient en échange 1,75 dollar par suffrage et par année selon leurs résultats aux plus récentes élections. La Loi sur la responsabilité du gouvernement Harper accroît ces restrictions en abolissant tous les dons de société et de syndicat et en limitant ceux des particuliers à 1 000 dollars annuels pour chaque parti et chaque candidat. Mais il faut aller plus loin, estime Tom Kent, y compris en limitant la possibilité de faire des dons aux citoyens en âge de voter.

“**T**he prime minister and his government are very much on the right track.” So wrote Hugh Segal, in his pre-senatorial days, when the prime minister was Jean Chrétien. The comment reflected growing recognition, in the studies of IRPP and elsewhere, of the yawning deficit in our democracy.

The welcome given on January 29, 2003, was to one major corrective, the Chrétien government's late reaction against the power of corporate money in Canadian politics. Another prime minister is now moving, in his “accountability” legislation, further along the same track. How greatly three years have changed Canadian politics is underlined by the difference in controversy on the two occasions. It should encourage politicians of all parties to consider further reforms. This article will suggest some.

The 2003 legislation came when corporate finance was achieving a new political triumph. The \$12 million then raised by Paul Martin was choking off any competition for the leadership of the Liberal Party. Though defeated in the contest more than a decade earlier, Martin would probably have won in 2003 even if there

had been competitive financing for other candidates. We will never know, however, because in fact the views of the party's members were irrelevant. Its convention met not to make any democratic choice but to anoint the one man who this time had the money and with it had taken control of the party machinery. Corporate funding effectively determined who would be, for a time, prime minister of Canada.

Jean Chrétien's belated counter-stroke was directed both at parties and at candidates for their leadership. It made almost all future donations from corporations and unions illegal, besides sharply limiting personal donations.

It was the most sweeping campaign finance reform since the Levesque government's 1977 *Loi sur la financement populaire*, on which it was modelled.

Nevertheless, the proposal had to overcome choleric opposition from within a party divided by the Martinite camp's impatience to be rid of Chrétien. The then president of the party, Stephen LeDrew, declared the idea to be as “dumb as a bag of hammers.” Business corporations,

he said, are “legitimate and beneficial contributors to the political process.”

Few politicians would now dare openly to assert such a claim. Opinion has moved on. But while there are no shouts against the current legislation, there are plenty of mutterings in the media and among lobbyists, lawyers and the academic outriders of politics. The principal mutterings bow to control of donations as a noble idea but assert, with professed regret, that it will not work; too many breaches of the law will go undetected.

The argument is often on a par with objecting to taxation because some is evaded. The case is not strengthened by suggestions that tighter restrictions on campaign expenses would do more to level the political playing field. Every observer knows that the present expense rules, fussy though they are, can be easily breached. Controls on all the ways politicians can spend money are inherently weaker than limits on its sources, as well as clumsier and more bureaucratic to administer.

The central obstacle to understanding political finance is the confusing of two distinct sources: personal and corporate sources. Political parties are voluntary associations of people sharing some views about public policies. In a free society it is unthinkable that their members and sympathizers should be barred from contributing to their expenses. The issue can be only a matter of degree. Unlimited donations confer an unfair advantage on some individual politicians as well as on the favourite party of rich donors.

This is not to rule out additional spending limits, notably on party leadership campaigns, and more generally on some kinds of expenditure now excluded from control. Later in this article I will suggest one way to make political spending more democratic. But such measures are no substitute for fairness at the sources of political finance. And no legislation will be effective without vigilance. Money always seeks ways to seep through legal barriers. How far it succeeds

depends on whether law enforcement is powered by strong public understanding and public will.

The central obstacle to understanding political finance is the confusing of two distinct sources: personal and corporate sources. One is essential to democracy. The other is inherently undemocratic.

Political parties are voluntary associations of people sharing some views about public policies. In a free society it is unthinkable that their members and sympathizers should be barred from contributing to their expenses. The issue can be only a matter of degree. Unlimited donations confer an unfair advantage on some individual politicians as well as on the favourite party of rich donors. Democratic fairness clearly calls for some limit. Democratic participation requires that the limit not feel restrictive to most of the people wishing to be involved in public affairs. What compromise is reasonable? And to what extent should donations be encouraged, as they now are, by tax deductions — which are in effect subsidies provided by taxpayers

who don't make political donations to those who do?

There is, regrettably, a further consideration, unrelated to the merits of donations made genuinely from pockets and purses. Supposedly personal donations may be a laundering of money from richer people or corporate funds. If substantial personal donations are legal, the incentive for such cheating is strong and detection difficult; a few participants from senior

company ranks may then be enough to assemble a significant contribution.

In this respect, Prime Minister Harper is making a welcome improvement on the 2003 legislation. Not only are corporate donations completely barred. Personal donations are more closely regulated, so that putting together a disguised large contribution will require more participants and carry a greater risk of whistle-blowing.

The political uses of money will remain, however, a powerful sucking force for illegal donations. For a time at least, finding weaknesses in the barriers will have the appeal of a sporting challenge for old legal hands in politics and business. Some corporations and persons may try for a long time somehow to hold on to the sense of importance they have been accustomed to enjoy by satisfying the monetary appetites of politicians. Harper's tightened measures can work, but they need the company of other defences against law-breaking, some of which will be suggested here.

The main obstacle to effective policing is, paradoxically, a legal fiction. It is the pretence that corporations are persons. Without that, their political role would never have won the wide acceptance that still confers some respectability on white-collar crime.

Corporate business was made possible by the limited liability of shareholders. The worst that can happen to them individually is to lose what they have put in. Beyond that, the corporation as such must be held responsible for its liabilities. It must be able as a unit to own property, make contracts, sue and be sued. It is in such respects like a person.

“Like” is not, however, “the same as.” Identification of the corporation with the person is no more than a convenience for commercial law. Or rather, that is how it began. It became a convenience also for enlarging the role of the corporation.

One person has the same rights as another. If a corporation is a person it can have political opinions, express them, and back them by donations to parties and politicians; and the exercise of such rights can be an expense of its business.

How such an arrant invention won so much acceptance for so long has become, fortunately, of merely historic interest. Canadian law on political finance now accords with reality.

A corporation is not a citizen, not a political entity with opinions. Any opinion that comes from a corporation is simply the opinion of its chief executive officer, of an individual like other individuals. George Orwell long ago summed up how political principles are perverted: "All animals are equal, but some animals are more equal than others." Democracy means more than universal suffrage, one vote per person. It means that everyone has the same right as the next person to promote the candidate or party or policy he or she likes. That equality of opportunity is mocked if corporate funds are diverted to politics. Some people are then more equal than others. Simply because they are corporate executives, they can back their political preferences not only with their votes, not only with their own money, not only with their volunteer work, not only with their own powers of persuasion, but also with funds entrusted to them for another purpose.

Business corporations are licensed by law to conduct particular enterprises for the benefit of their investors. The only legal reason for their executives to give away the shareholders' money is that the gift will advance their business. Political donations are never admitted, by the recipients or openly by the donors, to be so motivated. But if they are not, they are an illicit diversion of money from its due

use. Corporations are licensed to run their own affairs, not to intervene in the nation's business.

The ban on corporate funding must apply equally to trade unions, and it does. While union members may have more say about the use of their money than do most shareholders, the principle is the same. Union officials disbursing their members' money to politicians thereby have an influence in public affairs not open to people

The current accountability legislation will help to advance democratic equality. There is more to be done. Some of it is now practicable. Much of it is tidying up within the new structure. In such housekeeping the virtue, not the devil, is in the details. An example, brought to light in the Liberal leadership campaign, is the need to define precisely who are the persons entitled to make donations. The common sense provision surely is that they be the same, in citizenship and in age, as persons entitled to vote in federal elections.

who bring only their votes and their personal abilities.

What is at stake is equality. Barring political donations is in no way an attack on the virtues of businesses and unions. The reason is simply that they are not citizens. They are not on the voters' lists. To admit their money to politics is to give their officers a privileged political role that has no legitimacy.

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Loans are a grey area, recently made conspicuous by the British government's creation of lordships for

lenders. Canadian parties have been habitual borrowers. Prohibition would be unreasonable, both for them and for candidates. The public interest is to ensure that the borrowing is transparent and on commercial terms. Otherwise the loans, whether made by individuals or by corporations, may be disguised donations, in part or even entirely, if the repayment terms are prolonged or unenforced. The simple, fair requirements are that the source of all borrowing, by a party or by a can-

didate, be a recognized financial institution, and that it be on terms no more favourable than the institution's prime rate.

Another murky area is the fundraising event, commonly a dinner. It became popular because lobbying and legal firms, among others, paid for their luminaries and staff to be seen by politicians. Individuals digging into their own pockets will be less keen to over-pay for a meal in order to combine it with listening to a political speech. In theory the donation involved can be attributed to the individual by deducting the per capita cost of the affair from the ticket price. In practice the trouble involved may make few such events worthwhile. If they were killed off, by a simple requirement that the whole ticket count as a donation, almost everyone might quietly sigh with relief.

Party conventions present a different problem. They are expensive necessities for the operation of the party. Any fees paid by the delegates are contributions to party costs, fully

equivalent to personal donations. That is equally true whether the fees add up to more or less than the costs, or are cleverly just in balance. Sizeable fees are in any event a discouragement to poorer members. Parties would be wise to avoid them, mounting instead fund-raising drives to cover convention costs. But it should be clear that, if fees are charged, delegates who pay them are thereby making political donations.

A further problem is the tax status of organizations designed in large measure to exercise political influence. In the regulation of personal income tax, there is theoretically a sharp distinction between donations for charitable purposes, which are fully credited, and donations to causes directed to influencing government, which are not. The rules err on the side of unduly restricting individual support of some causes. Corporate tax is in sharp contrast. Businesses are able to deduct, as necessary expenses, payments to institutions and associations that are active in lobbying on public policies. This is a channel for circumventing the intent of democratic reform. It could be a widening channel, unless firm rules are established soon.

The public disillusion with federal politics runs deep. There is no panacea for it. The vitalization of democracy requires a combination of practicable reforms, big and small. More effective political participation by individuals across the land is the substance of a strong democracy. Our political parties have grown increasingly unfriendly to participation. Reforms that begin to reverse the trend are urgently needed.

It is no surprise that clarifications and adjustments are needed. There has been a revolutionary change in political financing. Changes in the details of practice are bound to take time. Other examples could be discussed. More important, however, are a few points of principle.

Making it harder to cheat is not enough. Effective policing also requires appropriate penalties when

cheating is nevertheless attempted. Prison sentences are not to be taken seriously. They are not appropriate and the courts will rarely impose them. But the alternative fines now provided by the legislation are too small to be an effective deterrent to attempts at major evasions. The donor, responding to political greed for money, is not the sole offender. The recipient party or politician should share the blame. It would be appropriate to impose, equally on both parties to the offence, a fine that is a significant multiple of the offending donation.

It is also important that the identification of offences should not depend on whistle-blowing, journalistic enterprise, or complaints by rival parties or candidates. The electoral commission should have sufficient staff to initiate independent probes and, if its suspicions are confirmed, sufficient power to impose fines, on both donor and recipient, of, say, five times the offending amount. There would be, of course, appeal to the federal court; which could be empowered to impose larger fines in some cases..

The 2003 reform was pushed through a reluctant Liberal Party

only thanks to compensation for lost corporation funding by overly generous public funding. Cancelling this is not at present in the political cards, but its worst feature could be corrected.

The one virtue of corporate finance was that at least a little of it went to the constituency associations that used to be at the heart of politics, from which both policy ideas and

strong personalities emerged. Public funding, however, is all provided to the party as such, to its headquarters. It is therefore accentuating the deterioration of democracy within political parties. Less than ever are they voluntary associations of actively participating members. More than ever are they political machines run by autocratic leaders surrounded by massive staffs of political manipulators.

The damage can be undone. Amended legislation could provide that an annual vote of a party's registered members will determine how its public funding is directed. A good deal, no doubt, would usually be voted to head office. But the membership could develop a formula, suited to the party, for allocating part, perhaps a large part, to constituency associations. Again, the membership might determine that there be defined finance for particular agencies, such as a policy research unit to service the constituency associations.

The public disillusion with federal politics runs deep. There is no panacea for it. The vitalization of democracy requires a combination of practicable reforms, big and small. The suggestions made here could be significant for any renewal of the Liberal Party. They could equally be appropriate for the Conservative government if, when his short-term agenda is discharged, Mr. Harper wishes to make a nation-wide appeal to the "we want in" spirit that has in the past driven reforms not only from the West but also from Quebec and the Maritimes. More effective political participation by individuals across the land is the substance of a strong democracy. Our political parties have grown increasingly unfriendly to participation. Reforms that begin to reverse the trend are urgently needed.

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