



Second supplementary submission of the Accountability Round Table

to the **Joint Standing Committee on Electoral Matters**

Inquiry into the funding of political parties and election campaigns

We wish to take up the invitation extended to us by the Committee to address issues that arose at the hearing in the course Associate Professor Coghill's evidence on 10th August.

1. Can a ban on donations by corporations and unions be effective?

The Hon. Mrs Bishop MP raised the question of whether such a ban could be easily circumvented by unions asking all members of the union to agree to make individual and personal donations and all agreeing to do so. In discussion, the issue was also raised as to how you could stop a board of directors passing a motion suggesting that employees of a company should in fact make donations to a particular party.

We submit in response that

(a) it should not be beyond the skills of parliamentary counsel to draft provisions anticipating such conduct and making it illegal.

(b) the risk of breaches would be drastically reduced if the sorts of reforms introduced in Canada were introduced in Australia, thereby removing the pressure and the incentives that presently drive the pursuit of private donations.

Mrs Bishop sought a guarantee. The reality is that no one can guarantee that any law will not be broken. But if our politicians are concerned to guarantee compliance with the law, they can go a long way to achieving that by not only passing the laws needed but making it clear that such

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conduct is not acceptable and by setting an example by acting with integrity in performing their duties.

2. Payment for access --Breaches of the Criminal Code and the drawing of inferences?

Referring to the inference issues raised by the Chair in discussion with Assoc Prof Coghill, we submit that a distinction needs to be drawn between questions of the interpretation of s 141 and the drawing of inferences from evidence led in a prosecution brought under that section.

- (a) Interpretation of s 141. The section does not yet appear to have been interpreted authoritatively by a superior court of record. While the Electoral Commission appears to have accepted an interpretation of the “gifts” provisions in its legislation that they do not apply to payments-for access functions, and therefore do not have to be disclosed, those are provisions in different legislation directed to different purposes. Further there is, in any event, a serious question as to whether its interpretation is correct.
- (b) Drawing of evidentiary inferences. In drawing inferences relevant to the proof of the criminal element required under s 141 of “dishonesty”, what may be accepted among political parties, or for the matter, the Electoral Commission for disclosure purposes, is not the test. The test is what the ordinary person would regard as dishonest conduct.

If the fair and reasonable conclusion on these issues is that the law is unclear on whether payments for access are illegal, we submit that the Committee should recommend that it be made illegal. We submit that the community would expect no less than that.

3. Canadian provisions for public funding.

In the course of the public hearing, certain aspects of the Canadian provisions were raised.

In this supplementary submission we present information which clarifies those provisions and proposed amendments to them.

Details of the Canadian provisions are outlined in Young & Jansen 2011. Table 1.1 on the next page shows a summary of these provisions.¹ This indicates that the Canadian regulatory regime includes allowances that do not exist under the Australian regime. The quarterly allowances paid to political parties are among these.

¹ Young, L. and H. Jansen, Eds. (2011). *Money, Politics, and Democracy*. Vancouver, ubcpress, p.6

TABLE 1.1

Summary of regulation of party and election finance in Canada

Transparency

- Reporting names of all contributors over \$200, including contributions to nomination and leadership contestants
- Reporting party, candidate, nomination candidate, and leadership candidate election expenses
- Reporting contributions to registered third parties
- Reporting expenditures by registered third parties
- Reporting assets held by electoral district associations

Spending limits

- Candidates' election expenses (based on number of electors in district)
- Registered political parties' election expenses (based on number of candidates running for party)
- Registered third-party election expenses (\$3,666 in an electoral district; \$183,300 nationally)
- Candidate nomination expenses (20% of election spending limit for electoral district)

Public funding

- Political Contribution Tax Credit (75% credit on contributions up to \$400, sliding scale on larger contributions)
- Election expense reimbursements:
 - 60% for candidates winning at least 10% of popular vote
 - 50% for registered parties (winning 2% of national popular vote or 5% of vote in districts where the party ran candidates)
- Per-vote quarterly allowance to registered political parties winning 2% of national popular vote or 5% of vote in districts where the party ran candidates

Contribution limits

- Only Canadian citizens/permanent residents can make political contributions, in the following amounts:
 - Maximum \$1,100/annum to each registered party
 - Maximum \$1,100/annum in total to various entities of each party (registered association, nomination contestants, candidates)
 - Maximum \$1,100/annum to each independent candidate in a particular election
 - Maximum \$1,100 in total to leadership contestants in a particular leadership contest

Note: All dollar amounts are indexed to inflation; they are adjusted annually.

Source: Young, L. and H. Jansen, Eds. (2011). *Money, Politics, and Democracy*. Vancouver, ubcpress, p.6

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The Canadian Governor-General indicated in the Throne Speech at the Official Opening of Parliament following the recent election that:

Our Government will reintroduce legislation to restore fair representation in the House of Commons. It will take steps to phase out direct taxpayer subsidies to federal political parties over the next three years.²

In the Budget speech on the following Monday, 6th June 2011, Finance Minister Jim Flaherty announced that the Government “will gradually phase out the quarterly allowances for political parties”.^{3,4}

It was also reported that the “\$2.04 yearly allowance that parties get for each vote they received in the previous federal election will be cut by \$0.51 a year until the subsidy is completely gone in 2015-16.”⁵ Annual allowances are paid in quarterly instalments,⁶ hence the Minister’s reference to quarterly allowances.

No indication has been found on the public record that the Canadian Government proposes to amend any other provisions of the electoral regulatory regime affecting the funding of political parties and election campaigns and expenditure limits.

² Throne Speech (2011) Retrieved 19 August 2011 from 3rd June 2011
<<http://www.speech.gc.ca/eng/media.asp?id=1390> >

³ Flaherty, J (2011) Retrieved 19 August 2011 from
<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5081248&Language=E&Mode=1&Parl=41&Session=1> > at (1610)

⁴ Canada, Government of (2011) Updates to Budget 2011. Retrieved 19 August 2011 from
<http://www.budget.gc.ca/2011/plan/chap5-eng.html>

⁵ National Post (2011) Retrieved 19 August from < <http://news.nationalpost.com/2011/06/06/budget-brings-end-to-federal-party-subsidies/> >

⁶ Elections Canada (2011) Information Sheet 8. Annual Allowances for Political Parties. Retrieved 19 August 2011 from http://www.elections.ca/res/loi/inf/fs08_e.pdf