
Reforming the Canada Elections Act

The electoral process lies at the very root of our democratic way of life. Recently a Royal Commission on Electoral Reform was established under the chairmanship of Pierre Lortie. The Commission is holding hearings across Canada and will make recommendations for changes to the Canada Elections Act. Despite major changes in the Canadian constitution, such as adoption of the Charter of Rights in 1982, the Election Act has not been modified to reflect the new situation. More and more court cases have challenged parts of the Act. The following articles are based on presentations to the Commission by parliamentarians during the first days of public hearings in March 1990.

Make the Act User-Friendly

by Senator Norman K. Atkins

The rules governing the conduct of elections have been of great interest to me over many years. I have been involved in many election campaigns - most recently as the Chairman of the Progressive Conservative Party's national election campaigns in 1984 and 1988. My involvement in federal elections also includes the elections of 1957, 62, 63, 65, 68, 72 and 74. This experience has provided me with some understanding of the current provisions and practical applications of Canada's elections laws, as well as some insight into their strengths and their weaknesses.

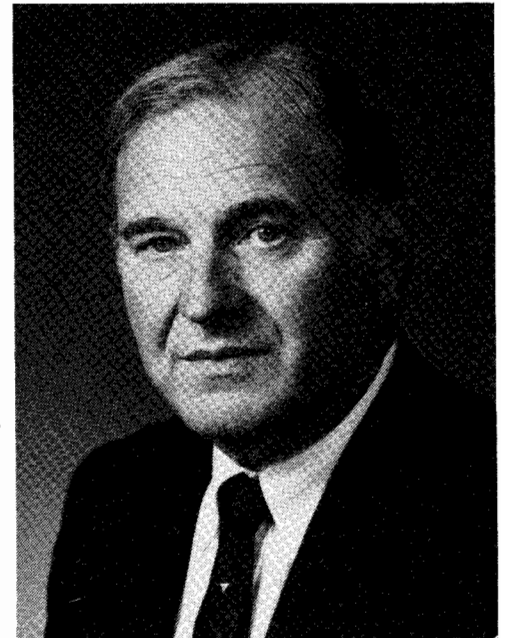
I believe our electoral system to be one of the best in the world. Canadian elections are carried out for the most part in an open and fair way and parties, candidates and election workers make every attempt to govern themselves within both the letter and the spirit of the law. But, I certainly would not want to suggest that there is no room for improvement.

I have spent more of my time and that of my fellow campaign workers, trying to understand and comply with the requirements of the *Canada Elections Act*, than I would have thought possible. When our highest priorities should have been to determine and execute campaign strategy, we spent more hours than I can count, on efforts to determine what we were allowed to do and what effects our doing something or doing nothing would have on our campaign budget, while keeping within the legal limits under the Act. That situation is at the heart of what is wrong with the current system. It is

too vague and imprecise. Therefore, I believe, that central to any reforms, must be a determination to make the rules clear and easy to understand. To make the Act "user friendly".

Election campaign teams are made up of hundreds, thousands, even hundreds of thousands of volunteers, people who are well intentioned and are volunteering their time for all the right reasons. These volunteers are, for the most part, men and women whose normal day to

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day activities are far removed from party politics and election campaigns. They are not familiar with statutory interpretation or with the application of the guidelines of the Chief Electoral Office but they are the strength of every campaign team in every riding, for every candidate, for every party. Their participation is the corner stone not only of election campaigns but of democracy itself. We must encourage that participation. Far too often, our rules and regulations seem to do exactly the opposite.

How often official agents, or chief financial officers or auditors for candidates running for office have told me, "If I had known what was required I never would have agreed to take on the job."

Ask the lawyer, who when asked by a candidate to provide advice, learns that a breach of the act may or may not occur depending on the colour of the file folder a scrutineer uses on election day. That lawyer will also, by the way, tell you that it is difficult even to find relevant sections in the current Act governing particular election practices, let alone tell you what they mean and that the rules, at least in the view of election Canada officials, can change not only from one election to the next, but just before or even midway through a campaign.

Ask communications consultants who are often told that although they are welcome to join a campaign team they cannot do anything remotely related to communications for fear that their voluntary activity will have adverse effects on the campaign budget, and that their time will be assessed against the campaign budget at a "fair market value".

Under our current system, activities of self-employed people who volunteer their services to a campaign must be valued and that value treated as an election expense. This discourages the participation of many individuals with much to offer. This loss of qualified people in many fields, such as computer programming and communications is particularly concerning given the technical requirements of modern election campaigns.

We need a new Act. An Act that encourages volunteerism. An Act that is easy to understand and easy to comply with. Yes, an Act that has fewer regulations rather than more - an Act that does not make criminals out of innocent volunteers. An Act that provides a simple and fair mechanism to resolve questions of interpretation and does not permit an election official to issue directives in a vacuum without consulting affected parties. An Act

that provides for a system for the investigation and disposition of alleged breaches in a speedy, just and inexpensive manner.

The best way to achieve this, is for Parliament to pass legislation that is written in clear and simple terms. I strongly believe that the legislation should abolish the position of Commissioner of Canada Elections and establish a commission in its place. This proposal was contained in Bill C-79 and is, in my view, the key to the improvement of the compliance and enforcement provisions of any new act.

The commission would be charged with the responsibility of issuing guidelines making rulings with respect to the interpretation and application of the act. I would further suggest that advance rulings, similar to those available for income tax matters, should be available in order that one could apply in advance for a ruling, and know, with certainty, what effect specific actions would have.

The commission would also be responsible for the conduct of investigations, hearings and the determination of appropriate remedies. I believe that technical breaches of the *Elections Act*, should not be investigated by the RCMP and prosecuted in the criminal courts. I would further suggest expanding the powers of the commission to deal with such matters as recounts and applications to have elections set aside. Overall, procedures must be streamlined and simplified.

The question remains however, "What else should this simple and easy to understand legislation say?". I do not propose to provide an exhaustive list of questions let alone a list of answers. I do not have all the answers or even all the questions. I would, however, like to raise a few issues, which deserve examination. One is the question of how political parties and candidates should be able to raise funds. Whether there should be limits on the amounts of contributions or regulations on who should or should not be able to contribute.

This will no doubt include an examination of the appropriateness of donations by labour unions, corporations, special interest groups and other associations. Personally, I do not object to donations of this kind so long as there is public disclosure of them. The strength of the current system, when it comes to contributions, is the requirement for public disclosure. I would caution against introducing new limits which may prove to be impractical in the real world of election campaigns and party financing. Limits may be desirable but they must not be looked at in isolation. One cannot consider contributions without also looking at questions relating to expenses, both during election periods and otherwise. Political parties serve an important function

in a democracy not only during election campaigns but on an ongoing basis.

They must be encouraged and allowed to flourish and if they are to do so in a country as large and as diverse as ours they must have access to sufficient resources to allow them to operate effectively. If political parties' sources of revenues must be limited, let us look at alternative ways for parties to be financed. Increased public financing directly or through tax credits, including perhaps a check-off system, are possibilities, but they are possibilities with real cost and they must be examined carefully.

Any limits must reflect the practical reality of the costs of running campaigns and the differences in the regions and ridings of the country. I do not think the present system has enough flexibility to accommodate the extremes of geographic and demographic differences which exist in Canada. Any system of limits must also provide a mechanism for such limits to be adjusted regularly, so that they can keep pace with the costs of conducting campaigns. These adjustments could also be under the jurisdiction of the commission which would have authority to consider not only overall inflation rates, but also unusual increases in certain campaign costs such as were experienced in advertising and transportation costs prior to the last election.

I do not believe it is either necessary or desirable to vastly expand the kinds of expenses that are subject to limits, as this would unduly interfere with a party's ability to conduct itself in non-election years and with respect to matters that do not directly affect the electorate. Take for example the conducting of public opinion polls. I do not believe that a campaign's expense limits should be affected by a decision to conduct polling or not. I suspect that some who advocate that this expense be included in the expense limits are more interested in having such expenses partially financed by the public, or in having those who are more inclined to conduct such polling put at a disadvantage, as compared to them, than they are interested in providing a fair and reasonable system of limits. What we need is clarity - not a widely expanded list of prohibited or limited activity.

On another matter related to public opinion polling, I should mention briefly the desirability, in my view, of standards relating to the publishing of such polls so that the public knows the details of how and when a poll is conducted. This information is essential in the interpretation and understanding of published results. This is particularly important during elections. Published polls, even if they are inaccurate, as we experienced with the Gallop Poll two weeks before the last election, have the potential to affect campaigns.

A newspaper publishing the results of a public opinion poll can affect a campaign. So too can activities by others, who are neither candidates nor political parties, nor individuals acting on their behalf - the so called "third parties". In the last federal election campaign Canadians saw a lot of publicity paid for by third parties. Much of this was related to the free trade agreement. Some of it was in favour of the agreement and some of it was against. Some was related to other issues such as that which was directed against the Prime Minister and paid for by postal unions. I am not sure whether, in the final analysis, it helped or hurt our own campaign or whether it had any affect at all. I do believe, however, that if we are going to limit the activities of candidates and political parties, a way must be found within the limits of the *Charter of Rights and Freedoms*, to regulate the activities of third parties as well. Such regulations might include the registration of third party groups, the imposition of publicity "blackouts" as currently imposed on candidates and parties, and the requirement for public disclosure of sources of funds. There should not be a blackout for political parties for the last two days of an election campaign. Perhaps a blackout at the end of the campaign should only apply on election day itself.

A new act must deal with a number of other issues, including the question of splinter parties nominating and fielding candidates, the enumeration process, the length of election campaigns and the hours of voting. While I believe that our electoral system must be accessible, individuals should be discouraged from activities that detract from the integrity of the process. I therefore feel that increases in candidates' deposits should be considered, with appropriate rebates based on electoral results.

I urge consideration of the enumeration process to make it easier and more accessible. The provisions in Bill C-79 expanding the period for revision and also expanding proxy voting, went a long way in this regard. However, we should be moving towards the establishment of a permanent voters list, perhaps in co-operation with the provinces and even the municipalities. This might also allow for the shortening of federal election campaigns, to say 30 days, a desirable objective in my view. Federal election campaigns in this country under the existing act are simply too long. I further believe that adjustments to polling hours across the country should be considered, so that all Canadians can feel that their vote is as important as that of all other voters.Ⓢ