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Stopping Foreign Big Money Funneling

How Weakly Regulated Donations and Loans Facilitate Secret, Unethical and Undemocratic Foreign Interference in Politics Across Canada, and How to Prevent It

Policy Paper Submitted to the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions

(October 2024)

Table of Contents

1 Summary of How Weakly Regulated Political Donations and Loans Facilitate Secret, Unethical and Undemocratic Foreign Interference

There are significant loopholes and flaws in several federal Canadian laws (and provincial and territorial laws) that have made it legal to date to secretly, unethically and undemocratically interfere in Canadian politics, especially given that enforcement of many of the laws is ineffective. The loopholes are in the elections, political finance, lobbying, ethics, anti-money laundering and border security laws, including loopholes that allow for anonymous, secret online disinformation and misinformation campaigns.

One area in which there are significant loopholes is that existing regulations of political donations and loans are weak and allow for secret, unethical and undemocratic influence in elections and political policy-making processes across Canada. This policy paper sets out details concerning the lack of regulations and loopholes in donations and loans that the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions (the "Inquiry") should address during the Policy Phase because they have been largely ignored during the Factual Phases, and this paper also sets out proposals for key changes to close these loopholes that the Inquiry should strongly recommend in its final report in December 2024, including calling on all federal parties to work together to make the changes as soon as possible, and definitely before the next federal election.

The political finance registration, donation, spending, disclosure and subsidy rules are set out in the *Canada Elections Act* ("the *CEA*")[1] which was most recently amended by Bill C-50[2] and Bill C-76,[3] both of which were enacted in December 2018 (with some provisions of Bill C-76 coming into effect in spring 2019).

While this policy paper addresses only the weak rules concerning political donations and loans, it is important to note that almost all the enforcement entities for all the key laws that protect Canada's democracy from foreign interference lack independence, and are ineffective, underfunded, slow to act, secretive and largely

[1] For details see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapters 3 the loopholes in Canada's political donations and loans rules that allow for secret, undemocratic and unethical influence in federal politics, including by foreign governments and entities and their proxies, and which sets out in Chapters 6 workable, best-practice recommendations for closing these loopholes. Click here to see the thesis on the University of Ottawa's uO Research site.
[2] LEGISinfo, Bill C-50, An Act to amend the Canada Elections Act (political financing), online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8978368> (hereinafter "Bill C-50").
[3] LEGISinfo, Bill C-76 - An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments, online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9808070> (hereinafter "Bill C-76").

unaccountable. Many are also subject to political interference by the ruling party Cabinet which chooses them all through secretive, partisan processes, and most serve at the Cabinet's pleasure.

The enactment of Bill C-70 has only closed some of the loopholes that allow for foreign interference, and it establishes a very weak, ruling-party Cabinet controlled enforcement system, with no requirement that enforcement will be effective, well-resourced, transparent, timely or accountable. Democracy Watch submitted to the Inquiry in mid-September a document entitled "Response to the *Preparatory Document on the Policy Aspect of the Public Inquiry into Foreign Interference*" ("Democracy Watch Response") that sets out the gaps left by Bill C-70. Click here to see Democracy Watch's full submission to the House of Commons on Bill C-70, and click here to see a summary of the submission.[4] To see analyses of Bill C-70 from three law firms that make similar points about the loopholes and weak enforcement system, click here and click here and click here.

It would be very naïve to believe that all, or even many, foreign agents will comply with the provisions of Bill C-70 that require registering and disclosing their foreign interference arrangement and activities, or that they will comply with the provisions prohibiting such activities. What is most likely is that, in response to Bill C-70, foreign governments, entities and individuals will use networks of foreign entities and individuals as intermediaries who will have arrangements with networks of individual Canadians and permanent residents, and the organizations they are involved in, to act as third-party "proxy" foreign agents here. These networks will obscure and make it very difficult to prove that anyone or any organizations is directed by, or has an arrangement with, a foreign government, entity or individual.

The extensive evidence of how the loopholes and weak enforcement systems in Canada's key democracy laws have been exploited by Canadians and Canadian businesses and organizations to secretly, undemocratically and unethically interfere in Canadian politics over the past few decades makes it clear not only that foreign governments and entities have also likely been exploiting these loopholes and weak systems through proxies and intermediaries, but also makes it clear that the only way to stop foreign interference in Canadian political processes, including through disinformation, is to close these loopholes and correct these flaws to prevent it.

Foreign interference activities will only be effectively prevented if changes are made to all of Canada's key democracy laws to prohibit and penalize all secretive, undemocratic and unethical ways of interfering in and influencing political processes across Canada, and if changes are made to ensure the enforcement of all these

[4] NOTE: Because Bill C-70 was rushed through Parliament, little time was provided to analyze it. As a result, please disregard point #B1 in the submission on Bill C-70 as it was made due to a misreading of one of the Bill's provisions.

laws is fully independent, effective, well-resourced, transparent, timely and accountable.

As in so many areas of public policy, an ounce of prevention in the area of foreign interference is worth a pound of cure. If loopholes are left open or flaws left uncorrected in any law that foreign governments, entities and individuals can exploit to have secret, undemocratic or unethical influence over contestants, candidates, riding associations, party leaders, politicians, and public officials, those loopholes and flaws will likely be exploited. And if enforcement is tainted by political influence and is ineffective, secretive, underfunded, delayed and unaccountable, they will likely be exploited more.

Even if all the loopholes are closed and all the flaws corrected, if the enforcement system is ineffective then likely violators will be let off the hook. A weak enforcement agency that lacks funding and resources will likely only catch a foreign agent violating a law years after they have influenced a political process, and then the agency will likely keep the violation secret, and likely no penalty will be imposed.

There is extensive evidence that weak, secretive enforcement results in violators being let off the hook from the weak, secretive enforcement records over the past two decades by the federal Conflict of Interest and Ethics Commissioner, Commissioner of Lobbying, RCMP and Commissioner of Canada Elections and Elections Canada, as detailed in sections 2, 3, 7 and 11 of Democracy Watch's Response submitted to the Inquiry in mid-September.

In other words, changes must be made to effectively prevent foreign interference activities, and if those changes are not made then the activities will not only occur, but also activities will only be caught long after the interference has occurred, and the process that follows will take years more, with often no one being held accountable.

Part 2 of this policy paper sets out how the three principles of the Supreme Court of Canada's egalitarian model provides a perfect framework upon which the Inquiry should base all of its recommendations for changes to prevent foreign interference in Canadian politics. If the rules in every area of Canadian politics are changed to comply with the three principles (and, again, enforcement is strict and strong), foreign interference will be effectively prevented because it will be clearly illegal for anyone, or any entity, to secretly, unethically or undemocratically interfere in or influence any Canadian political process, including through misleading voters with disinformation or misinformation. In other words, all political processes will be effectively required to offer a substantively equal opportunity for substantively equal participation and influence in the process, and all participation will be effectively required to be honest, ethical, transparent, representative and democratic.

In addition, using the three principles of the Supreme Court's egalitarian model as the basis for the Inquiry's recommendations will ensure that the changes that the Inquiry recommends will comply with Canada's *Constitution*, as the Court's model was developed through court rulings concerning sections 2 and 3 of the *Charter*.

Part 3 of this paper sets out how the rules for political donations and loans violate one or more of the three principles of the Court's egalitarian model, and sets out examples of how the weakness of current laws for donations and loans have been exploited to have secret, unethical and undemocratic influence. Part 4 sets out the proposals for key changes needed to political donation and loan rules to comply with all the principles of the Court's egalitarian model and, thereby, to effectively prevent foreign interference.

2 The Supreme Court of Canada's Egalitarian Model

In its 1997 ruling in the case *Libman v. Quebec*, the Supreme Court ruled for the first time since the *Charter* was enacted in 1982 on the issue of statutory restrictions on political spending, specifically in that case on spending during a referendum campaign period. Mr. Libman challenged the very restrictive statutory provisions in Quebec's *Referendum Act* that allowed only minimal spending by individuals or groups that did not become affiliated organizations of official, registered yes or no "national committees" in any referendum. Only spending up to $600 in expenses for travelling and up to $600 total for events were allowed. The Supreme Court overturned the Québec courts' rulings that the restrictive provisions infringed freedom of expression but were justifiable as a reasonable limit under section 1 of the *Charter*, and instead found that the limits were unreasonably low and, therefore violated the section 1 requirement that restrictions only "minimally impair" *Charter* rights.[5]

In *Libman*, the Supreme Court first set out key factors and principles that form the basis of what came to be called the "egalitarian model" for political processes. One of the factors established by the Court is that the rules and practices in each process are assessed based on the system itself, not based on outcomes that result from the system, such as the result of an election.[6] The first key principle is that the system should uphold, as much as possible, while taking into account "a broad range

[5] *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 SCR 569, paras. 74-77 ("*Libman*").
[6] *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827, 2004 SCC 33 (CanLII), paras. 64 and 95-99 ("*Harper*"). *Figueroa v. Canada (Attorney General)*, [2003] 1 SCR 912, 2003 SCC 37 (CanLII), para. 29.

of social factors"[7] and also practical considerations to ensure effective representation,[8] the fundamental democratic equality principle of one person, one vote[9] so as to ensure that, again as much as practically possible, every voter has a close to substantively equal opportunity to participate in, or influence, the electoral system or the government public policy-making system.[10]

The second key principle is that the public must perceive, and have confidence in, the fairness and integrity of every aspect of the system. To express this in reverse, every aspect of the system must appear to be fair and to have integrity, and actually be fair and have integrity, in order for the public to have confidence in the system.[11]

And the third key principle is that limits on spending cannot be so low as to prohibit expression and participation in the election at a level that is meaningful nor to prohibit the flow of adequate information for voters to make informed decisions[12] and, by extension, information provided to voters must be required to be accurate or they will not be able to make informed decisions.

As is clear from the above, ensuring rules for all political processes comply with these three principles will ensure that all political processes will be effectively required to offer a substantively equal opportunity for substantively equal participation and influence in the process, and all participation will be effectively required to be honest, ethical, transparent, representative and democratic. This will actually prevent foreign interference. In contrast, half-measures that leave open loopholes and flaws will facilitate ongoing secret, unethical and undemocratic foreign interference activities.

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[7] *Figueroa v. Canada (Attorney General)*, [2003] 1 SCR 912, 2003 SCC 37 (CanLII), paras. 24 and 108 ("*Figueroa*"), citing *Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 SCR 158, pp. 181 and 184.
[8] *Reference re: Prov. Electoral Boundaries*, paras. 170, 183-85 and 188.
[9] *Libman*, paras. 41, 47 and 61; *Harper*, paras. 61-63.
[10] *Reference re: Prov. Electoral Boundaries*, pp. 183; *Harper*, para. 73.
[11] *Harper*, paras. 23-24, 63, 79, 82-83, 91-92, 97, 99, 101-104, 108-109, 120, 122, 142 and 146; *Libman,* paras. 41, 52 and 84.
[12] *Libman*, para. 41; *Harper*, paras. 15, 61-63 and 67-70.

3 How Political Donation and Loan Rules Violate the Three Principles of the Egalitarian Model and Facilitate Secret, Unethical and Undemocratic Foreign Interference

Under the *CEA*, a "contribution" (i.e. donation) can be monetary (money or a loan or loan guarantee) or non-monetary (property, use of property, and services) and includes money from a contestant's or candidate's own funds.[13] Non-monetary transactions or contributions are required to be at fair market value[14] and including contributions of cryptocurrencies which must be valued based on the exchange rate at the time the contribution is received (it is not clear whether all digital/intangible assets are covered by this requirement as interpreted and applied by Elections Canada).[15] Transfers and loans between the party, its electoral district associations, and its candidates are not included under the definition of "contribution".[16] In other words, the *CEA* targets most "money being transferred from the private to the political domain" but not transfers within the political domain.[17]

The following are the weaknesses in the federal political donations and loans system that allow for secret, unethical and undemocratic influence in elections, including by foreign governments, entities and individuals. To be clear, foreign donations and loans are illegal under the *CEA*, but the weaknesses in the regulatory system mean that foreign governments, entities and individuals can easily flow significant amounts of foreign money into Canada's federal political system without being detected:

a) **A large majority of donors donate only $75 annually to any of the main federal parties.** But the federal individual donation and loan limit under the *Canada Election Act* (*CEA*) of $3,450 (in 2024, which increases by $25 annually) to *each* federal party and its electoral district associations (EDAs). This allows those who can afford it to donate or loan up to 45 times what most donors donate to *each* party, making top donors/lenders very valuable to parties. Wealthy donors who donated more than $1,000 annually (which only 5% of donors do) provided on average 30% of the average total amount raised by the 5 main federal parties each year from 2016 to 2023. Click here to see Democracy Watch's infographic webpage that summarizes how Canada's political finance system is undemocratic, unfair and corrupting.

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[13] *CEA*, subsections 2(1) and 364(1).
[14] Elections Canada, Interpretation Note 2017-06 (July 2017): Contributions and Commercial Transactions, online: <https://www.elections.ca/content.aspx?section=res&dir=gui/app/2017-06&document=index&lang=e> (hereinafter "Interpretation: Contributions and Commercial Transactions").
[15] Elections Canada, Interpretation Note 2018-10 (March 10, 2019): Cryptocurrencies, online: <https://www.elections.ca/res/gui/app/2018-10/2018-10_e.pdf>.
[16] *CEA*, subsections 364(2)–(4), 373(5).
[17] Although some transfers within the political domain are prohibited – see Elections Canada, Interpretation Note 2020-07 (February 2021), online: <https://www.elections.ca/content.aspx?section=res&dir=gui/app/2020-07&document=index&lang=e> (hereinafter "Elections Canada, Interpretation Note 2020-07").

b) **Allowing large annual donations facilitates the secret funnelling of large amounts of money from foreign governments and entities through Canadian proxies/intermediaries to contestants, candidates, EDAs and parties**, as only a few proxies and their family members are needed in order to donate tens of thousands of dollars. As well, one person can hold a fundraising event for a contestant, candidate, EDA or party, with dozens of guests each donating the maximum amount allowed, or send out an email to dozens of people who each donate the maximum, and their identity is allowed to remain secret under the *CEA* even though they have raised tens of thousands of dollars. Click here to see a summary of the funnelling that has occurred at the federal level and in every province that has limited donations.

c) **Anyone who claims that such large donations do not influence politician's decisions is saying politicians are not human.** Click here to see a summary of the clinical studies conducted worldwide that show that even small gifts and favours influence the decisions of the recipients, and larger gifts and favours have more influence.

d) **Other big money donation loopholes in the *CEA* are that nomination contestants are allowed to donate $1,000 to their own campaign, election candidates $5,000 to their own campaign, and party leadership contestants $25,000 to their own campaign.**

e) **Another donation loophole is that anyone or any entity is allowed to offer anything, benefit or advantage (including a job)** to anyone who is exploring being a nomination contestant or leadership contestant, or has won a nomination contest but has not yet registered as a candidate, to attempt to induce them not to run.

f) **Another donation loophole is that employers are allowed to offer paid leave to employees who want to run as nomination contestants and election candidates**, which makes it easy for a foreign-owned or controlled business or organization in Canada to fund a nomination contestant or election candidate.

g) **Another donation loophole in the *CEA* is that volunteer labour is unregulated**, and the identities of volunteers is not required to be disclosed, no matter how many favours they do for a contestant, candidate, EDA, party or politician. This facilitates foreign governments and entities secretly funding and using proxies to do unlimited favours.

h) **Another donation loophole in the *CEA* is that donations are allowed to nomination contestants, EDAs and candidates from outside the electoral district.** This facilitates foreign interference by allowing funnelling of donations to any district in the country, as happened in 2015 and 2016 when donors from B.C., some of whom were formerly connected to China's government, donated large amounts to a riding in Ontario and to Prime Minister Trudeau's riding in Quebec.

i) **Other donation loopholes in the *CEA* are that anyone and any entity** (including a foreigner or a foreign-government or foreign-entity funded Canadian citizen, permanent resident or entity) **can pay an unlimited amount of the expenses** for "care" or litigation of a nomination

contestant, election candidate or party leadership contestant, an unlimited amount of the personal expenses of a nomination or leadership contestant, and up to $5,000 to compensate an election candidate's representatives at polling stations, as well as give a secret gift worth up to $500 to a candidate.

j) **Another loophole in the donation limits in the *CEA* is that a business, organization or individual (including a foreign business, organization or individual) can provide products and/or services to contestants, candidates, EDAs and parties and payment does not have to be provided for 3 years after the product or service is provided.** So while direct loans cannot be made by businesses or organizations, and while direct loans from individuals are limited to $3,450 annually (which is, as described above in (b), much too high an amount), a business, organization or individual can "loan" products and/or services worth an unlimited amount of money to contestants, candidates, EDAs and parties for 3 years. Under Ontario's election law, payments for products and services must be made within 30-60 days or the non-payment will be considered to be a donation or loan subject to the donation and loan limit.

k) **Another donation loophole is that, by decision of Elections Canada (i.e. not in the *CEA* as a statutory provision), a celebrity who usually charges for public appearances can appear at a nomination or leadership contest or candidate or party campaign event for free and, unlike every other contributor or supplier, it is not counted as a contribution or an expense** (including a foreign celebrity or foreign-government or foreign-entity funded Canadian citizen or permanent resident who is a celebrity) (NOTE: Only their costs of travelling to the event are counted as a contribution (or an expense if the campaign pays the costs)). This loophole is connected to the loophole in the *CEA* that allows foreign governments, political parties, businesses, unions, organizations and individuals are allowed to try to induce voters to vote, not vote, or vote in a specific way. Subsection 282.4(1) of the *CEA* prohibits foreigners doing this, but then clause 282.4(2)(a) exempts any action that does not involve expenses and 282.4(3) (together with section 330) allows three ways that would be the most usual ways a foreigner would try to influence a voter in Canada, including through online disinformation (as section 330 only applies to broadcasting). Provisions 282.4(2)(a) and 282.4(3) should be repealed, and 282.4 changed to prohibit attempting to do what the section prohibits.

   NOTE: Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.8 to 3.13 the above-noted loopholes and flaws that facilitate using donations and loans as a means of foreign interference, and details in Chapter 6, section 6.5 how to close these donation and loan loopholes and flaws.

l) **Another donation loophole in the *CEA* is that the identity of donors who donate less than $200 are not required to be disclosed.** This also facilitates the secret funnelling of donations from foreign governments, entities and individuals.

m) **Unlike for contestants in party leadership contests in which disclosure is required during the contest, it remains a secret who is bankrolling contestants, candidates, EDAs and parties until months after voting day**, and EDAs only disclose their donors annually, and parties only quarterly. This facilitates secret foreign interference via donations and loans through the entire pre-election and election periods and beyond, and between elections. Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.22 to 3.25 the loopholes that allow for this secrecy, and details in Chapter 6, sections 6.9 and 6.10 how to close these secrecy loopholes.

n) **Contestants, candidates, EDAs, parties and third parties are allowed to choose their own auditors for their expenses**, which allows them to choose a "friendly" auditor who may not bring a high level of scrutiny to bear on questionable expenses. Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.22 to 3.25 and 3.29 the flaws that allow for this self-enforcement, and details in Chapter 6, sections 6.9, 6.10 and 6.14 how to correct these flaws.

3.1 Quebec has the only political finance system in Canada that prevents foreign interference

The provinces and territories across Canada have similar loopholes that allow for big money donations that are kept secret from voters on voting day, except for Quebec which has the world-leading system that prohibits donations from businesses, unions and organizations and limits individuals to donating $100 annually (and another $100 during an election year), and if an individual donates more than $50 the donation must be sent to Elections Quebec which verifies that the donor is donating their own money before sending it on to the party.

Newfoundland and Labrador, Saskatchewan and the Yukon have the most inegalitarian, undemocratic and unethical political donation and loan systems that are wide open to foreign interference as they not only have no limits on donations from businesses, unions, other organizations and individuals, they also allow donations from outside the jurisdiction, including from foreign businesses, entities and individuals.

But the other provinces have set up a charade by prohibiting donations from businesses, unions and other organizations and limiting donations from individuals to donating more than $1,000 annually to each party (which is much more than the average voter can afford). As set out above, every jurisdiction that has banned business, union and organization donations but allowed individuals to donate more than $1,000 has seen examples of funnelling of donations through executives or employees of businesses or other organizations. Such a system only hides the

sources of big money donations as it makes it difficult to connect individual donors to the businesses or other organizations they work for or have a connection to through a family member working there or serving on the board.

All jurisdictions across Canada also allow unlimited "volunteer labour" in secret without public disclosure, which makes it easy for foreign governments, entities and individuals to have "proxies" secretly volunteer for parties, EDAs, candidates and contestants to interfere in and influence elections and political processes.

B.C. has the best system of the rest of jurisdictions across Canada as its annual limit on donations from individuals is $1,405 combined total to each party and its nomination contestants, candidates and EDAs (section 186.01 of *Election Act* [RSBC 1996] – as in most jurisdictions, the donation limit amount increases automatically each year by either a set amount or the inflation rate) and the same amount to each contestant in a political party leadership contest. However, B.C.'s system still allows big money donations because $1,450 is much more than an average voter can afford, and it still facilitates funnelling of significant amounts of money because if a business or organization has 10 board members and executives and their spouses all give the maximum, the business/organization will donate $28,100 total to a party which is a very significant and valuable amount for any party.

The Northwest Territories (NWT) and Nunavut are next to B.C. in terms of lower-level donation limits. NWT only allows donations during the election campaign period, and limits donations to $1,500 to each candidate (there are no parties in NWT). However, it allows a candidate to donate up to $30,000 to their own campaign, and it allows donations not only from individuals who are resident in NWT (even if they are foreigners) but also from businesses and other organizations that are resident in NWT (even if they are foreign-owned), and there is an exemption to the donation limit for non-monetary contributions of transportation services or the use of office premises (sections 238-239 of *The Elections and Plebiscites Act*). Nunavut has the same rules as NWT (and also has no political parties) but with a limit of $2,500 (sections 168-169 of the *Nunavut Elections Act*). However, as with B.C., both these jurisdictions still make it easy for foreign-governments, entities and individuals to flow tens of thousands of dollars through only a few "proxies" to a candidate.

As summarized below, the rest of the provinces and territories allow more than $3,000 to be donated or loaned annually by an individual to each party and/or its EDAs, candidates and contestants, which makes it even easier for a foreign government, entity or individual to funnel money through just a few "proxies" to donate or loan tens of thousands of dollars to parties, EDAs, candidates and contestants:

- Alberta – $5,000 combined total annually to each party and its EDAs, election candidates and leadership contestants, plus $4,600 combined

total annually to nomination contestants (with donations allowed by any individual who is resident in the province, even if they are a foreigner – sections 16-17 of the *Election Finances and Contributions Disclosure Act*);

- Manitoba – $6,000 combined total annually to each party and its EDAs, election candidates and nomination contestants, plus $3,000 combined total to party leadership contestants (with donations allowed by any individual who is resident in the province, even if they are a foreigner – sections 32-38 of *The Election Financing Act*)
- New Brunswick – $3,000 combined total annually to each party and its EDAs (plus another $3,000 to an independent candidate, plus another $3,000 to each nomination contestant and another $3,000 to each party leadership contestant – sections 39 and 39.1 of the *Political Process Financing Act*);
- Nova Scotia – $5,000 combined total annually to each party and its EDAs (with donations allowed by any individual who is resident in the province, even if they are a foreigner – section 236 of *Elections Act*), with no limits or disclosure requirements for donations to nomination contestants or party leadership contestants;
- Ontario – $3,375 annually to each party plus another $3,375 to the EDAs and nomination contestants of each party plus another $3,375 combined total to the election candidates of each party during an election campaign period, plus $3,375 to each contestant in a party leadership contest (all increasing each year by the rate of inflation – section 18 of the *Election Finances Act*), plus an election candidate is allowed to donate $10,000 to their own campaign (subsection 18(4)), and a leadership contestant is allowed to donate $50,000 to their own campaign (subsection 18(5)), with donations allowed by any individual who is resident in the province, even if they are a foreigner (subsection 29(1.1));
- Prince Edward Island – $3,250 annually to each party and its EDAs and candidates (with donations allowed by any individual who is resident in the province, even if they are a foreigner – sections 11 to 12.1 of *Election Expenses Act* – NOTE: there appear to be no limits on donations or disclosure requirements for donations to nomination contestants or party leadership contestants).

As is clear from the above summary of the rules across Canada, Quebec is the only jurisdiction that has a system that actually prevents big money from being funnelled through “proxies” and, as a result, is the only jurisdiction with a system that effectively prevents foreign interference.

4 How to Make Political Donation and Loan Rules Egalitarian and Prevent Foreign Interference Through Donations and Loans

Parts 2 and 3 above provide details concerning how and why current political donation and loan laws do not comply with the three key principles of the egalitarian model of ensuring, in all political processes: close to equal opportunity for close to equal participation and influence; the appearance of, and actual integrity, of the process, and; adequate information for voters to make informed choices, all of which facilitates foreign interference, and provide several examples of how the gaps in the federal rules have allowed donations and loans to be used to have unethical, undemocratic influence in politics.

These weaknesses make it easy for foreign governments, entities and individuals to funnel money through "proxies" to contestants, candidates, electoral district associations and parties to interfere in and influence elections and political policy-making processes across Canada. Listed below are key changes needed to make the current political donation and loan rules egalitarian and, thereby, to prevent foreign interference in Canadian politics by flowing money through "proxies". Given the details set out above in Parts 3 and 4, only a summary of the reasons for each proposed change is set out below:

1. A comprehensive study, by a fully independent commission made up of people with no ties to political parties, and not chosen by political parties, should be undertaken to determine the actual annual cost of reaching, connecting with and informing voters in all provinces and territories (and in their sub-regions and EDAs with distinct characteristics), and operating parties and EDAs, in years between elections, and in election years including during pre-election and election campaign periods, to provide solid evidence as the basis for changes to the spending and public subsidies areas of Canada's political finance system.
2. Decrease the annual limit for contributions of money (including cryptocurrencies, NFTs and other digital/intangible assets), property, use of property or services to all parties combined to $75 (adjusted annually based on the increase/decrease of Canada's median income), to match Quebec's low, egalitarian limit.
3. Depending on the results of the study of the annual cost of reaching and informing voters and operating an EDA proposed in Proposal #33, the *CEA* should be changed to decrease the annual limit for contributions of money, property, use of property or services to all EDAs combined to $75 (adjusted annually based on the increase/decrease of Canada's median income) to match Quebec's low, egalitarian limit, or this contribution category should be eliminated.

4. The *CEA* should be changed to decrease to $75 (adjusted annually based on the increase/decrease of Canada's median income) the limit on contributions of money, property, use of property or services to all nomination contestants in a contest, all election candidates in an election, or all leadership contestants in a contest, to match Quebec's low, egalitarian limit.
5. Decrease to $75 (adjusted annually based on the increase/decrease of Canada's median income) the limit on loans to all parties, nomination contestants in a contest, all election candidates in an election, or all leadership contestants in a contest.
6. Prohibit financial institutions from making loans. If a comprehensive, independent study shows that individual donations of $75 annually will not provide enough funding for parties and EDAs to inform voters and operate between elections and in election years and in contests, then large loans should be made available through a public fund, with the amount of the loan limited by the actual number of voters who are members and donors of the party, EDA, contestant or candidate.
7. Prohibit anyone or any entity from offering anything, benefit or advantage (including a job) to anyone who is exploring being a nomination contestant or leadership contestant, or has won a nomination contest but has not yet registered as a candidate, to attempt to induce them not to run. As well, potential nomination contestants, candidates who have won nomination contests, and potential leadership contestants, if they do not actually register to run in the contest or election, should be required to return the remaining amounts of any monetary contributions they received, and within 30 days to disclose the total amount/value of all contributions they received of money, property, use of property, services, gifts, benefits or other advantages (including job offers or work of any kind) to the elections agency which should be required to make them public immediately in an online, searchable database.
8. Prohibit employers offering paid leave to nomination contestants and candidates. Instead, while anyone who wants to run should still have the right to take leave from their employment, public subsidies should be provided to both employed and unemployed contestants and candidates to compensate them for any lost income or opportunities to seek employment, as this is a more egalitarian way of supporting people running for office that prevents leave being used by a foreign-owned or controlled business or organization as a way of interfering in politics.
9. As in Ontario, prohibit a party, EDA, contestant or candidate to obtain a product or service from a business or other organization, or an individual, unless it has the funds or knows for sure that it will soon have the funds to pay the cost (i.e. within a few months). In contrast to the federal rules,

Elections Ontario considers that if a product or service is purchased from a supplier that is a corporation, union or other organization, and the invoice is not paid within a normal time period (which would be 30-60 days), then it will be considered an illegal contribution or loan (as it comes from "an ineligible source" given donations and loans from businesses and other organizations are prohibited under Ontario's election finance law).[18]

10. Prohibit individuals and entities from purchasing any product or service on behalf of a party, EDA, contestant or candidate.

11. To prevent funnelling, as in Quebec, require donors donating $35 or more to submit the donation to the elections agency so that it can be verified that the donation is legitimately being made by an individual donor.

12. Also to prevent funnelling, prohibit giving to a nomination contestant, candidate or leadership contestant anything more than one very low value gift or courtesy or hospitality (no more than a combined total of $30 per contest or election should be allowed from everyone (as a combined total) who is connected to the same business, organization, family or lobbying effort). This rule should apply to gifts, courtesy or hospitality even from a relative or a friend if the relative or friend is lobbying or has dealings (or has lobbied or had dealings) with the federal government, and it should also apply to prohibit inheritances if the person who made the testamentary gift is connected with a lobbying effort happening at that time or during a time period that a contestant or candidate was in public office.

13. Prohibit anyone or any entity from compensating nomination contestants, leadership contestants and election candidates as this favours those who are supported by wealthy donors who donate enough for them to be paid. Instead, public subsidies should be used for compensation, but only to equalize the opportunity for everyone to run by correcting systemic or personal disadvantages.

14. Prohibit anyone or any entity from paying the care expenses of a contestant or candidate. Instead, these expenses should be paid from a public fund.

15. Prohibit anyone or any entity from paying the other personal expenses of a contestant or candidate. If any of these other types of expenses can be

[18] Elections Ontario, *CFO Handbook for Leadership Contestants* (March 2022), online: <https://www.elections.on.ca/content/dam/NGW/sitecontent/Compliance%20Documentation/English/Leadership%20Contestants/CFO%20Handbook%20for%20Leadership%20Contestants.pdf> at 29 and 50. The same statements also appear in Elections Ontario's *CFO Handbook for Political Parties* (March 2022, at 38 and 77), *CFO Handbook for Constituency Associations* (March 2022, at 35 and 55), *CFO Handbook for Constituency Associations of Independent Members* (March 2022, at 30 and 45), *CFO Handbook for Nomination Contestants* (March 2022, at 26 and 34), and the *CFO Handbook for Candidates* (March 2022, at 31 and 49), which can all be accessed through the links online at: <https://www.elections.on.ca/en/political-entities-in-ontario.html>.

shown to present a systemic or personal disadvantage for any contestant or candidate, then these expenses should be paid from a public fund.

16. Prohibit anyone or any entity from paying the litigation expenses of a contestant or candidate. Unless the litigation is due to a clear violation by the contestant or candidate of the election law (for which they are being prosecuted), the expenses should be paid from a public fund.
17. Prohibit anyone or any entity from paying a candidate's costs of having representatives at polling stations. If it can be proven that parties and candidates cannot raise enough to pay these costs, then these costs should be paid from a public fund.
18. Count the appearances by celebrities who normally charge for appearances toward either a celebrity's $75 annual donation limit, or as an expense.
19. Prohibit donations to nomination contestants, candidates and EDAs from outside the electoral district, and to parties from outside the jurisdiction.
20. Require nomination contestants, leadership contestant, and candidates to disclose, before voting begins, a summary of any type of paid work they have done in the year before the contest or election campaign period began, including the list of anyone who has paid them, in an online, searchable database on Elections Canada's website.
21. Require nomination contestants, leadership contestant, and candidates to disclose, before voting begins, a list of business sectors in which they have had investments in the past five years; whether they own a home or other residential properties, and; a list of businesses or other entities for which they have worked or lobbied in the previous five years, in an online, searchable database on Elections Canada's website.
22. Require nomination contestants, candidates and leadership contestants, to disclose, before voting begins, all gifts they have received or been promised to be given during the contest or election campaign period, and during the pre-contest and pre-election period, in an online, searchable database on Elections Canada's website.
23. Require nomination contestants, election candidates, EDAs, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website, any contributions or loans (of money, property, use of property or services) they have received, including promises or pledges to contribute anything in the future, during the exploration/preparation pre-contest/pre-election period, and to make this disclosure when they register for the first time, or register for a contest or election.

24. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website, and a few days before advance voting begins (including a few days before mail-in ballots are required to be mailed), and then again a few days before the main voting day, any contributions or loans (of money, property, use of property or services) they have received, including promises or pledges to contribute anything in the future, during the contest/campaign period. For EDAs and parties, the disclosure must be of all contributions received since their last required disclosure. For candidates, if their campaign receives a transfer from their EDA or party, their disclosure must include identify the donors who donated to the EDA/party or cross-reference to the EDA/party disclosure of those donors. The same rules should apply if a candidate receives a transfer from another EDA.

25. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website and before voting begins, the identity of anyone who fundraised for them, either through solicitations or by organizing or holding fundraising events, during the exploration/preparation pre-contest/pre-election period and contest/election period. People who do fundraising should be identified including any current or recent work they have done for anyone or any business or entity, and the fundraising disclosure should include details about how much was raised and how it was raised.

26. Require party leaders, Cabinet ministers, and all MPs who run in a nomination contestant, election or party leadership contest to disclose all of their travel and their associates' travel in an online, searchable database on Elections Canada's website, to ensure that MPs do not use funds provided to them under the federal travel allowance program for their campaign or their party's campaign.

27. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website and before voting begins, the identity of anyone who worked for them for pay or any other benefit or advantage during the exploration/preparation pre-contest/pre-election period and contest/election period, including for each worker any current or recent work they have done for anyone or any business or entity. Low-level workers would be disclosed only to Elections Canada.

28. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website and before voting begins, the identity of anyone who volunteered for them during the exploration/preparation pre-

contest/pre-election period and contest/election period, including for each volunteer any current or recent work they have done for anyone or any business or entity. Low-level volunteers would be disclosed only to Elections Canada.

29. Require Elections Canada to disclose publicly after each election or contest the total number of workers and volunteers on the campaigns of each party and its EDA candidates, and averages per EDA, and also for contestants, to allow tracking of the level of citizen volunteer participation in campaigns, which could inform future policy decisions concerning how to equalize the opportunity to run for all contestants, candidates and parties based on their actual level of voter support.
30. Make Elections Canada the auditor for nomination contestants, election candidates, EDAs, parties and leadership contestants.
31. Another related significant loophole in the *CEA* is that foreign governments, parties, businesses, unions, organizations and individuals are allowed to try to induce voters to vote, not vote, or vote in a specific way. Subsection 282.4(1) of the *CEA* prohibits foreigners doing this, but clause 282.4(2)(a) exempts any action that does not involve expenses and 282.4(3) (together with section 330) allows three ways that would be the most usual ways a foreigner would try to influence a voter in Canada, including through online disinformation (as section 330 only applies to broadcasting). Provisions 282.4(2)(a) and 282.4(3) should be repealed, and 282.4 changed to prohibit attempting to do what the section prohibits.

If all of the above changes are not made, it will remain easy for foreign governments, entities and individuals to funnel significant amounts of money to "proxies" to donate and loan it to nomination contestants, election candidates, electoral district associations, parties and party leadership contests to interfere in and influence elections and political policy-making processes across Canada. However, again, even if all the changes listed above are made to close all the loopholes and correct all the flaws in the regulation of third-party activities across Canada, if enforcement is tainted by political influence and is ineffective, secretive, underfunded, delayed and unaccountable (as the enforcement agency that will be established under Bill C-70 will likely be) then likely violators will be let off the hook.