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Stopping Undemocratic Foreign Interests

How Unregulated and Weakly Regulated Third-Party Activities Facilitate Secret, Unethical and Undemocratic Foreign Interference in Politics Across Canada, and How to Prevent These Activities

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

(October 2024)

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1 Summary of How Unregulated and Weakly Regulated Third-Party Political Activities 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 many third-party activities are completely unregulated, and all existing regulations of third-party activities 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 third-party regulations in every jurisdiction across Canada 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.

“Third party” is defined in section 349 of the federal *Canada Elections Act* (CEA) as “a person or a group, other than a candidate, registered party or electoral district association of a registered party.” A third-party campaigner can be any individual, corporation, or other organization that, during a pre-election period or, during an election period, promotes an election-related issue or promotes or opposes a candidate or party.¹

Because many third-party activities are unregulated, or existing regulations have loopholes, no government agency or official has had any power to track, monitor, investigate, prosecute or penalize many unethical and undemocratic foreign interference activities that are allowed to be done in secret. As a result it is, in fact, impossible to determine the extent and effects of foreign interference and influence activities in the past and now – before and during and between the 2019 and 2021 federal elections. This will remain impossible as long as these loopholes and flaws in the laws exist and enforcement remains ineffective.

¹ Elections Canada. June 2021. *Political Financing Handbook for Third Parties, Financial Agents and Auditors – June 2021*.

While this policy paper addresses only the lack of rules and weak rules concerning unregulated and weakly regulated third-party activities, 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 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 in terms of regulating third-party activities, 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.² And to see analyses of Bill C-70 from three law firms that make similar points about the loopholes in the Bill 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.

² 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.

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 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, and lack of rules, for third-party activities across Canada violate one or more of the three principles of the Court's egalitarian model. Part 4 sets out how third-party spending during the 2019 and 2021 federal elections exploited loopholes and flaws in current laws to have secret, unethical and undemocratic influence in the elections. Finally, Part 5 sets out the proposals for key changes needed to third-party 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.³

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.

³ *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 SCR 569, paras. 74-77 ("*Libman*").

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.⁴ The first key principle is that the system should uphold, as much as possible, while taking into account “a broad range of social factors”⁵ and also practical considerations to ensure effective representation,⁶ the fundamental democratic equality principle of one person, one vote⁷ 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.⁸

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.⁹

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 decisions¹⁰ 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.

⁴ *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.

⁵ *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.

⁶ *Reference re: Prov. Electoral Boundaries*, paras. 170, 183-85 and 188.

⁷ *Libman*, paras. 41, 47 and 61; *Harper*, paras. 61-63.

⁸ *Reference re: Prov. Electoral Boundaries*, pp. 183; *Harper*, para. 73.

⁹ *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.

¹⁰ *Libman*, para. 41; *Harper*, paras. 15, 61-63 and 67-70.

3 How Third-Party Statutory Rules Across Canada Violate the Three Principles of the Egalitarian Model and Facilitate Secret, Unethical and Undemocratic Foreign Interference

In addition to the federal government, seven provinces across Canada have implemented third-party spending limits. The federal statutory measures, and the measures in six of the seven provinces, do not comply with the three principles of the Supreme Court’s egalitarian model and, as a result, facilitate secret, unethical and undemocratic foreign interference in Canadian politics. As discussed below, in the seventh province, Quebec, the measures are inconsistent with the egalitarian model in a completely opposite way to the other jurisdictions. As well, Newfoundland and Labrador, Prince Edward Island, Saskatchewan and all three territories do not comply with the Supreme Court’s egalitarian model because they do not require third parties to register, disclose their donors or spending, and do not have third-party spending limits in their election laws.¹¹ This lack of regulation of third parties’ activities violates all three key principles of the egalitarian model, and makes political processes in these jurisdictions wide open to foreign interference.

Quebec very strictly limits third-party spending during elections to a maximum of only \$200 for costs of meetings on issues (meetings to oppose or support a candidate or party are prohibited) and a maximum of only \$300 “without directly promoting or opposing a candidate or party, to publicize or obtain support for the intervenor’s views on a matter of public interest or to advocate abstention or the spoiling of ballots.”¹² In little-noticed rulings in 2010 and 2011, the Quebec courts upheld these spending limits under section 1 of the *Charter* as reasonable limits on freedom of expression and association.¹³ Surprisingly, given these limits clearly violate the third principle of the Supreme Court’s egalitarian model of ensuring adequate information is provided to voters to make informed choices, the Court refused to hear the unions’ appeal.¹⁴

In terms of the violations of the principles of the egalitarian model contained in the statutory measures at the federal level, and in the six other provinces that limit third-party spending, the assertions made below are based on the measures in the federal statute and the six provincial statutes as of September 2024.

¹¹ Elections Canada, (August 2017) Compendium of Election Administration in Canada: A Comparative Overview. Elections Canada, (October 2019) Overview of Major Legislative Changes (September 2017 – June 2019).

¹² *Election Act*, CQLR c E-3.3, sections 401, 402, 404 and 457.2 to 457.21

¹³ *Fédération des travailleurs et travailleuses du Québec c. Directeur général des élections du Québec*, 2010 QCCS 956 (CanLII), paras. 5-6, 21-32, 34-41, 67-73, 105-112 and 118. *Métallurgistes unis d’Amérique, section locale 7649 (FTQ) c. Directeur général des élections du Québec*, 2011 QCCA 1043 (CanLII), paras. 20 and 33-41 and 48-49.

¹⁴ *Fédération des travailleurs et travailleuses du Québec, Syndicat des cols bleus regroupés de Montréal c. Procureur général du Québec et Directeur général des élections du Québec*, 2012 CanLII 700 (CSC).

The first violation is that the statutory spending limits are the same for every type of third party, whether the third party is an individual, a citizen group, a private corporation or a publicly traded business. Allowing one wealthy voter, or a few business executives, to spend as much as a citizen group that has hundreds up to hundreds of thousands of supporters violates both the first principle of the egalitarian model of ensuring equality of participation and influence, and the second principle of ensuring integrity in political processes because it allows one or a few voters to do a significant favour for a candidate or party by spending in support of them. It also makes it easy for a foreign government, entity or individual to funnel a lot of money to just a few “proxy” businesses, organizations and/or individuals in Canada that they spend to influence an election or political process.

The second violation is that some third-party activities aimed at influencing an election that are not easily identified as being connected to a specific third party are not covered by spending limits. In addition to the costs of producing and placing paid “election advertising” concerning an issue associated with a party or candidate and advertising that opposes or supports a party or candidate (“partisan advertising”), at the federal level the costs of any activities that oppose or support a party or candidate (“partisan activities”) are also covered by the limit, as are the costs of surveys that the third party uses to decide what advertising or other actions to undertake or uses as part of those actions.¹⁵

The costs of the activities of issuing news releases, submitting an editorial/op-ed/column to a media outlet, participating in a debate, doing a media interview, publishing a book that was going to be published even if an election was not held, transmitting an individual’s personal political views on a non-commercial basis on the Internet, transmitting communications and documents by an organization to its members, employees, or shareholders, and making phone calls only to encourage people to vote, are exempt from the Quebec spending limit, and also exempt from the federal limits (*Canada Elections Act*, subsection 2(1)), and from the limits in Alberta (*Election Finances and Contributions Disclosure Act*, clauses 44.1(d) and (g)), B.C. (*Election Act* [RSBC 1996], subsection 1(1)), Manitoba (*The Election Financing Act*, subsection 82.1(2)) and New Brunswick (*Political Process Financing Act*, section 84.1 (except the costs of phone calls to encourage voting are counted in B.C., Manitoba and New Brunswick), Nova Scotia (*Elections Act*, subsection 166(h), which only covers advertising costs) and Ontario (*Election Finances Act*, subsection 1(1)).¹⁶ These exemptions are consistent with the principles of the egalitarian model

¹⁵ *Canada Elections Act* (CEA), subsection 2(1) and sections 349, 349.2, 349.3 and 349.8.

¹⁶ The full citations of each of the six provincial statutes that regulate third-party activities, in alphabetical order, are as follows: Alberta - *Election Finances and Contributions Disclosure Act*, R.S.A. 2000, c. E-2; B.C. - *Election Act* [RSBC 1996], c. 106; Manitoba - *The Election Financing Act*, C.C.S.M. c. E27; New Brunswick - *Political Process Financing Act*, SNB 1978, c. P-9.3; Nova Scotia - *Elections Act*, SNS 2011, c 5; Ontario - *Election Finances Act*, R.S.O. 1990, c. E.7.

as it is relatively easy to identify the third party involved in such activities, and they generally involve being covered by the media, communicating like average individual voters do or communicating with voters who already support the third party.

However, two other activities are also exempt from the federal level limits even though they are not easy to connect to a specific third party because they do not occur in public, namely the costs of communicating directly with party officials, and communicating with candidates. Bill C-70 does not prohibit or require disclosure of such communications. As well, the costs of producing a social media post that may go viral, even though payment is not made to place or distribute it as an advertisement, are not covered. In addition, if a third party is able to secure volunteer labour to produce advertising, it is not required to include the cost of that labour when calculating how much it has spent (*Canada Elections Act*, section 349).

Other than Quebec which, again, has very different limits, the limits in all six provinces that have limits cover the costs of producing and placing issue and partisan election advertising, but also do not cover the costs of communicating with party officials or candidates, or the costs of surveys, or the costs of producing social media posts that are not advertised, or (except Nova Scotia) the market value of volunteer labour (*Election Finances and Contributions Disclosure Act*, clauses 44.1(c) to (e) and subsections 44.1(1.1) to (2)); *Election Act* [RSBC 1996], subsection 1(1), sections 235.081 and 235.1, clauses 235.02(3)(a) and (b); Elections B.C., July 2024, 30-33 and 36-37; *The Election Financing Act*, section 82; *Political Process Financing Act*, section 84.1; *Elections Act*, subsection 166(h); *Election Finances Act*, sections 37.01.1, 37.1, 37.2. Only at the federal level do the spending limits cover the costs of all “partisan activities” and only in Alberta do the limits also cover election activities other than paid advertising, specifically the costs of canvassing and holding events that benefit a party or candidate (*Election Finances and Contributions Disclosure Act*, subsections 44.1(1.1) to (1.4)).

These gaps in the counting of expenses at the federal level and in various provinces mean some third-party activities are not subject to spending limits and/or the gaps give an advantage to third parties made up of individuals that are connected to top party officials or that are supported by wealthy individuals who can afford to volunteer. To have a system that complies with all three of the key principles of the egalitarian system, and effectively prevents foreign governments, entities and individuals from using Canadian front groups or individuals as proxies for foreign interference in Canadian politics, all the costs of these activities, which are all aimed at influencing election results, should be covered by spending limits.

The third set of violations is that the limits for spending in an electoral district have been generally set at very low amounts compared to what candidates are

allowed to spend (except in Manitoba, *The Election Financing Act*, subsection 33(1)), with the limits for candidates in some jurisdictions a range of amounts based on the number of voters in and/or geographical size of their electoral district, while the third-party limit is set at a fixed amount. Table 1 below sets out the limits at the federal level and in the provinces that limit third-party spending (other than Quebec which is addressed above) as of September 2024.

Table 1: Election Candidate Spending Limits Compared to Third-Party Spending Limits per Electoral District Across Canada

Jurisdiction	Candidate Limit	Third-Party Limit
Canada (Elections Canada, Estimated election expenses limits for candidates)	\$98,000 to \$173,000	\$5,166
Alberta (Elections Alberta, Expense Limits)	\$60,800	\$3,700
B.C. (Elections B.C., Expenses Limits)	\$71,294.48	\$3,687.65
Manitoba (Elections Manitoba)	\$47,807 to \$77,750	\$25,000
New Brunswick	\$34,415 to \$52,822	\$1,760
Nova Scotia (Elections Nova Scotia)	\$42,223 to \$99,761	\$2,325
Ontario	\$32,352 to \$170,958	\$4,892

The fourth set of violations is that the limits for third parties have been set at very low amounts compared to what parties are allowed to spend across the jurisdiction (and parties also receive the subsidy of free radio and TV broadcast time during elections). Table 2 below sets out the limits at the federal level and in the provinces that limit third-party spending (again, other than Quebec which is addressed above) to the amount of the limit in the most recent election or upcoming election in the jurisdiction (the amounts usually increase by the annual rate of inflation).

Table 2: Political Party Election Spending Limits Compared to Third-Party Election Spending Limits Across Canada

Jurisdiction	Political-Party Limit	Third-Party Limit
Canada (Elections Canada, September 2021)	Max. \$30,127,504	\$525,700
Alberta (Elections Alberta, 2023, 146 and 167)	\$1.3275 x # of voters = max. \$3,208,127 for 2023 election	\$159,200
B.C. (Elections B.C., Expenses Limits)	max. \$5,037,979	\$184,382.28
Manitoba (Elections Manitoba)	max. \$2,286,367	\$25,000
New Brunswick (Elections New Brunswick)	max. \$ 1,353,797	\$17,599
Nova Scotia (Elections Nova Scotia)	max. \$2,044,038	\$11,626
Ontario (Elections Ontario)	max. \$15,036,596	\$122,300

The fifth set of violations is that, at the federal level, and in all the provinces that limit third-party spending, the limits have been set at arbitrary amounts, as have the spending limits for candidates and parties. As detailed above, the third-party limits are much lower than the candidate and party limits which does not comply with the egalitarian model’s principles of allowing voters an equal opportunity for meaningful participation and influence. If a voter supports a third party instead of a party or candidate, the third party is not allowed to express the voter’s concerns anywhere nearly as much as voters who support parties or candidates.

The sixth, related violation of the principles of the egalitarian model is that none of the spending limits across Canada have been set based on studies of the actual costs of informing voters plus the annual costs of operating as a party or third party, plus the election costs to run an election campaign as a candidate, party or third party. As a result, it is not clear whether any of the limits have any relation to the amounts needed to inform voters, let alone persuade them.

The seventh, related violation is that the thresholds that have been set across Canada that trigger the requirement for third parties to register and disclose their donors and spending were also initially set arbitrarily and also have not been assessed to take into account the fact that the costs of reaching voters have decreased due to the lower cost of emails, video production and social media posts and advertising compared to the past costs of sending letters, producing TV and radio ads, and TV and radio advertising. As a result, it is possible that a third party could reach tens or even hundreds of thousands of voters by spending much less than the registration and disclosure threshold of, for example, \$500 at the federal level and in New Brunswick, Nova Scotia and Ontario (*Canada Elections Act*, subsections 349.6 and 353; *Political Process Financing Act*, section 84.3; *Elections Act*, sections 278 and 280; *Election Finances Act*, sections 37.5 and 37.8), let alone less than the \$2,500 threshold in Manitoba (Elections Manitoba, Third Parties). Registration before any spending occurs is only required in Alberta (*Election Finances and Contributions Disclosure Act*, section 9.1, subsections 44.201(4) to (6)) and B.C. (*Election Act* [RSBC 1996], section 240).

Voters would, therefore, be denied information about the third party's backers which, again given the very low costs of social media advertising that can reach thousands of voters, violates the egalitarian model's third key principle of ensuring voters receive adequate information. Knowing that a third party is advocating a policy that is similar to the position of a candidate or party, or explicitly supporting a candidate or party, is key information for voters to know before they decide who to support. This is also key to preventing foreign government, entity or individual from using businesses, organizations and/or individuals in Canada as proxies to interfere in and influence Canadian political processes.

The eighth set of violations is that at the federal level, and in all the provinces that limit third-party spending, the disclosure requirements have a loophole that allow a third-party to spend its "own" money without disclosing the source of the money. At the federal level, as long as a third-party organization never explicitly solicits contributions for the regulated pre-election and election ads, activities or surveys, and instead only solicits contributions in between elections to support its general activities, it can accumulate the funds it raises in its bank account and then, when an election happens, transfer them into its "third-party" campaign account as its "own funds" and use those funds to pay for pre-election and election activities, and never have to disclose the identities of the contributors of the funds.¹⁷

The rules have the same "own funds" loophole in Alberta (*Election Finances and Contributions Disclosure Act*, section 44.21); B.C. (*Election Act* [RSBC 1996], section 235.04, and clauses 235.071(6)(a) and 245(1)(c)); Manitoba (*The Election*

¹⁷ Elections Canada. June 2021. *Political Financing Handbook for Third Parties, Financial Agents and Auditors – June 2021*. *Canada Elections Act*, clauses 349.91(4)(d), 357.01(4)(d) and 359(4)(c).

Financing Act, clause 88(2)(d)); New Brunswick (*Political Process Financing Act*, clause 84.6(2)(h)); Nova Scotia (*Elections Act*, clause 282(4)(c), and; Ontario (*Election Finances Act*, clause 37.12(4)(c)).

A ninth, related set of violations is that donations to third parties are unlimited at the federal level and in three of the six provinces that have spending limits (again, not including the special case of Quebec), and donations can come from citizens, permanent residents and Canadian corporations, unions and organizations (in Ontario and, in Manitoba, also from foreign individuals and entities). This also allows organizations to donate to a registered third party, with only the donating organization identified as the donor, not the actual sources of the donated funds. Of the two provinces that limit donations to third parties for election advertising, in B.C. the limit is \$1,200 annually to each third party plus the rate of inflation (the limit for 2024 is \$1,405.82 – *Election Act* [RSBC 1996], sections 235.01 to 235.08),¹⁸ and only individuals who are residents of B.C. or Canadian citizens or permanent residents are allowed to donate. In Nova Scotia the limit is \$5,000 annually combined total to all third parties (*Elections Act*, subsection 236(4)) by any individual resident in the province. And in Alberta the limit is, as of July 11, 2024, a combined annual total of \$34,400 to all third parties, increasing each year by the rate of inflation, and only individuals who are resident in the province are allowed to donate (*Election Finances and Contributions Disclosure Act*, subsections 44.2(1) and section 44.201). However, given the “own money” loophole, the donation limits in Alberta and B.C. do not apply to individuals who register as third parties, as they are allowed not only to donate the limited amount to pay their advertising costs, but also use an unlimited amount of their “own” money to pay these costs. These loopholes make it easy for a foreign government, entity or individual to funnel a lot of money to just a few “proxy” businesses, organizations and/or individuals in Canada that they donate to third parties to spend to interfere in and influence an election or political process.

A tenth, related violation of the principles of the egalitarian model is that at the federal level and in all of the six provinces, unlimited loans to third parties from financial institutions are allowed to pay for election activities (*Canada Elections Act*, subsection 357.01(6); *Election Finances and Contributions Disclosure Act*, section 44.4); *Election Act* [RSBC 1996], section 235.021; *The Election Financing Act*, clause 88(3); *Political Process Financing Act*, clause 84.6(2)(f)); Nova Scotia (*Elections Act*, clause 282(4)(c)). The laws in Nova Scotia and Ontario do not even mention loans to third parties which, presumably, means that the loaned funds are considered to be the third party’s “own funds”. In addition, in B.C., Nova Scotia and Ontario, the lender is not required to be disclosed by the third party in its reports on its election advertising.

¹⁸ Elections B.C. Guide for Third Party Advertisers and Campaigners: 2024 Provincial General Election. July 2024, pp. 36-37.

These are significant loopholes in the rules that violate the egalitarian principle of ensuring that voters have adequate information to decide what parties, candidates and policies they support, because these loopholes mean most third parties in any election, especially snap elections, will not be required to disclose the identity of donors who funded their election influence activities, nor how much each donor contributed. Many citizen advocacy organizations solicit contributions regularly for their general advocacy activities, some receive a significant amount of their funding from only a few donors, or from other organizations or businesses, and some obtain loans. As a result, they have funds already in their bank accounts when the pre-election and election period begins and, therefore, have no need to solicit funds for pre-election or election activities, ads or surveys. As well, if a snap election is called, citizen organizations rarely have time to solicit donations specifically for their election activities, ads or surveys -- they just use their own funds that they raised in the past for their general advocacy activities.

The sources of a third party's "own funds" – whether donations or loans – may well have influenced the positions it takes or the candidates or parties it supports. As a result, these loopholes in effect allow a third party to hide the fact that they are actually a "front group" for another individual, organization or business (or a foreign government or entity or foreigner). This violates the egalitarian principle of ensuring integrity in elections. In addition, businesses receive payments for products/services and possibly also transfers from their parent company or subsidiaries, and unions receive dues and possibly transfers from other unions or international union associations, and so they never have to solicit contributions in order to have their "own funds" in their bank account already for pre-election and election period activities, ads or surveys.

The eleventh set of violations is that disclosure of the identity of donors and amounts donated, and disclosure of details of spending, are not required until months after the election in Manitoba, New Brunswick and Nova Scotia. At the federal level and in the three provinces that require intra-election period disclosure, there are gaps that mean some donors and spending remains hidden from voters until after the final third-party report is required to be disclosed, also months after election day. As well, all the jurisdictions allow the identities of lower-level donors (who donate less than \$200-250) to be kept secret. A total of 95 per cent of all contributors to third parties during the 2011, 2015 and 2019 federal elections gave \$200 or less, which means voters have been denied information about the identities of almost all contributors.¹⁹ These secrecy loopholes facilitate secret foreign interference activities.

¹⁹ Elections Canada, (March 2022) *Third Party Report – A Comparative Look at Third Party Information from the 2011, 2015 and 2019 Federal General Elections*.

Disclosure of donors who donated more than \$200, and disclosure of spending details, are required before election day only at the federal level after raising or spending \$10,000, and again one week before the election (*Canada Elections Act*, sections 349.91 to 349.93, 357.01 and 357.02). Disclosure only of donors who donated more than \$250 is required in Alberta weekly during the election period (*Election Finances and Contributions Disclosure Act*, section 44.81), and in B.C. after a third party spends more than \$10,000 (*Election Act*, [RSBC 1996], section 243.01). Disclosure of spending only is required in Ontario each time after spending an amount of \$1,000 or more (*Election Finances Act*, section 37.10.2). The gaps in these disclosure rules violate the egalitarian model's principle of ensuring voters have adequate information to make an informed vote. Allowing third parties to keep the identity of most of their donors secret also violates the model's principle of ensuring integrity because it facilitates funneling of donations from one source through "straw person" donors in violation of the rules that prohibit donations of other people's money, which again facilitates secret foreign interference.

The twelfth set of violations is that at the federal level, and in most of the provinces that limit third-party spending, the spending limits generally only apply during elections or, at most, also during a pre-election period of a few months (only if the general election occurs on a fixed date, or if a by-election is called well in advance). The federal government limits spending on advertising that opposes or supports a candidate or party ("partisan advertising") and on partisan activities and surveys only from June 30th on for a 58- to 77-day period depending on what day exactly the fixed-date election is called (*Canada Elections Act*, subsection 2(1), sections 349, 349.2, 349.3 and 349.8). However, the limits of \$700,000 for third parties nationally multiplied by the inflation rate since 1992 (which equalled just over \$1 million for the 2019 pre-election period, the only election so far for which the pre-election limits have applied), as well as \$7,000 multiplied by that inflation rate in a single electoral district (which equalled just over \$10,000 in 2019),²⁰ are meaninglessly high because it is highly unlikely that a third-party would spend those amounts during the summer before an election (as is made clear below in Part 4).

Manitoba limits spending by parties, candidates and third parties during a 90-day pre-election period (*The Election Financing Act*, section 58, subsection 83(2) and section 115). Alberta limits spending during a 4-month pre-election period, with the limit being the same as the election period amount limit (*Election Finances and Contributions Disclosure Act*, clause 44.11(1)(a)(i)). B.C. requires registration by third parties that do partisan advertising during a 60-day pre-campaign period, but does not limit third-party spending during this period.

²⁰ Elections Canada, (October 2023) Limits on Expenses Incurred by Third Parties – 43rd General Election.

Possibly, depending on how the Supreme Court rules in a current appeal,²¹ Ontario will have a spending limit on third-party “political advertising” that opposes or supports a party leader, party or candidate in an election-related way (including by opposing or supporting their position on an issue) during a 12-month pre-election period of \$24,000 in any electoral district and \$600,000 across the province, with a requirement to disclose donors each time \$1,000 or more is spent (*Election Finances Act*, subsections 1(1) and 37.10.1(2), and section 37.10.2; Elections Ontario, January 2024, 31-33). Alberta does not limit third-party spending between elections before its pre-election period, but does require third parties that do paid advertising outside of an election campaign period that promotes or opposes a party, the leader of a party, a member of the legislature, a nomination or party leadership contestant or an election candidate (“political advertising”) to register and disclose their donors each quarter if they spend or raise more than \$1,000. As mentioned above, Alberta also limits donations to third parties and, unlike for donations for election advertising which only Alberta residents are allowed to make, donations for political advertising are allowed from citizens, permanent residents, and Canadian corporations and unions (*Election Finances and Contributions Disclosure Act*, sections 9.1 and 44.82, clause 44.1(1)(g), and subsections 44.2(2) and 44.201(2) to (9)).²²

However, overall no jurisdiction limits third-party spending on advertising and political activities that are specifically about policy-making processes between elections. If it makes sense to ensure wealthy interests cannot use spending to dominate policy debates during elections, it also makes sense, and complies with the Supreme Court’s egalitarian model, to ensure they cannot spend to dominate policy debates between elections, and cannot hide the source(s) of their funding. The lack of regulation of third-party spending during political processes also makes it easy a foreign government, entity or individual to funnel a lot of money to just a few “proxy” businesses, organizations and/or individuals in Canada that they spend to interfere in and influence a policy-making process. For example, in September 2024, an investigation by media outlets revealed that a lobbying firm, Crestview Strategy, was the secret creator of several websites it had set up on behalf of its clients to try to influence several policy-making processes.²³

The thirteenth set of violations of the principles of the egalitarian model is that at the federal level, and in all the provinces that limit third-party spending, the spending limits do not apply during nomination contests or party leadership contests. At the federal level, while nomination contestants are prohibited from colluding with a

²¹ *Attorney General of Ontario v. Working Families Coalition (Canada) Inc., et al.*, 2023 CanLII 103780 (SCC).

²² Elections Alberta, Political TPAs.

²³ Zak Vescara, “Campaign against North Vancouver chlorine plant secretly funded by competing company,” (September 11, 2024), Investigative Journalism Foundation, online: <<https://theijf.org/keep-north-vancouver-safe>>. Madison MacLauchlin and Carly Penrose, “Influential Canadian PR firm linked to more online campaigns with hazy origins,” (September 27, 2024), Investigative Journalism Foundation, online: <<https://theijf.org/pr-firm-online-campaigns>>.

person or entity in order to exceed their contest expense limit (*Canada Elections Act*, subsection 476.68(2)), there is no prohibition on a contestant colluding with a third party, including by sharing information, and no limit on third-party spending in support of a nomination contestant, and no registration or disclosure requirement for third-party activities in support of nomination contestants.

The lack of rules for nomination and party leadership contestants is the same in six of the seven provinces that limit third-party spending, which violates all three of the principles of the egalitarian model. Given that several nomination contests take place during the pre-election period, and some even during the election period if it is a snap election, and given that party leadership races elect the most powerful politician in a party, these are significant loopholes that can allow third parties to have secret, significant and undue influence over who becomes an election candidate or party leader. As mentioned above, only in Alberta are there any rules that apply to third parties that do paid advertising between elections that, among other purposes, opposes or supports a nomination contestant or party leadership contestant (*Election Finances and Contributions Disclosure Act*, subsections 44.201(1) to (3) and section 44.82).²⁴ It should be noted that, again if the Supreme Court upholds Ontario's 12-month pre-election third-party advertising rules, it is possible some advertising that relates to a nomination contestant or party leadership contestant may be subject to the rules. This is possible because the list of factors that Elections Ontario is required to consider when deciding whether advertising is covered by the rules includes whether the content is similar to the advertising of a nomination or party leadership contestant (*Election Finances Act*, subsections 1(1) and 37.01(i)).²⁵ The lack of regulation of third-party spending during nomination and party leadership contests makes it easy for a foreign government, entity or individual to funnel a lot of money to just a few "proxy" businesses, organizations and/or individuals in Canada that they spend to interfere in and influence these processes.

²⁴ Elections Alberta, Political TPAs.

²⁵ Elections Ontario. Election Financing: CFO Handbook for Third Parties 2024. January 2024, pp. 31-33.

4 How Third-Party Spending in the 2019 and 2021 Elections Reveal the Loopholes and Flaws in Third-Party Rules

The 2019 and 2021 federal elections offer several examples that highlight most of the thirteen parts of third-party spending rules detailed above in Part 3 that violate one or more of the three principles of the egalitarian model, and how the lack of regulation and/or loopholes in regulations make it easy for foreign governments, entities and individuals to funnel money to third-party “proxies” to interfere in and influence elections in Canada.

The fall 2019 federal election is the only election so far for which pre-election spending limits have applied to third parties because the limits only came into effect at the end of June 2019 and the election was held on the date fixed in section 56.1 of the *Canada Elections Act*. The 2021 election was non-fixed date election (a “snap election”) so the pre-election limits did not apply. The national pre-election period third-party spending limit of about \$1 million before the 2019 election was so high as to be almost meaningless. The limit was set by the federal Liberal government through Bill C-76 without any pre-study of what amounts third parties would likely spend, and clearly little consideration that it is very unlikely that any third party would want to spend \$1 million during July and August because research shows that about half of Canadian voters consistently vote for the same parties (so pre-election ads won’t change their vote), but also because in the undecided category about one-third of all voters do not make their decision about which party to vote for until the election campaign period has started, and an additional approximately 14 percent do not decide until election day.²⁶ These statistics point third parties, especially third parties with limited funding, in the direction of waiting to spend their funds until well into the election campaign period, during the run-up to election day.

An analysis of Elections Canada statistics from the 2019 election (October 2023b) show that only 51 (33.77 percent) of the 151 third parties that registered during that election spent any money during the pre-election period. In total they spent \$3,190,112.97; on average they spent only \$62,551.23, and; the median amount was only \$4,809. A few top-spending third parties skew the total amounts and average significantly upwards. Only two third-party organizations spent more than \$500,000, and when the top six pre-election spenders that each spent more than \$150,000 are removed from the calculation, the total amount of pre-election spending by the remaining 45 third parties decreases to \$769,679.97, the average decreases to \$17,103.99, and the median reduces to \$4,056.²⁷

²⁶ Robert M. McGregor, (2012) “When voters decide: Causes, correlates and effects of the time-of-voting-decision.” Electronic Thesis and Dissertation Repository. Alisa Henderson, Steven D. Brown, David Docherty, Barry Kay and Kimberly Ellis-Hale, (2006) “Voter Dealignment or Campaign Effects? Accounting for Political Preferences in Ontario.” *36 (4) American Review of Canadian Studies* 36(4): 612-626, at pp. 615 and 620-621.

²⁷ Elections Canada, (October 2023) Third Party Financial Returns for the 43rd General Election.

Elections Canada's March 2022 report on third-party spending during the 2011, 2015 and 2019 election campaign periods provides further evidence of how the current limits are so high that they don't limit spending much at all. In the 2011 and 2015 elections, 84 percent of third parties spent 25 percent or less of the total amount allowed, with 16 percent in 2011 and 10 percent in 2015 registering but not spending any money.²⁸ In the 2019 election, 86 percent spent 25 percent or less of the election period national limit amount of \$511,700 (which was again, due to the arbitrary change made Bill C-76, more than double the 2015 limit), with 26 percent registering but not spending any money.²⁹

In 2011, only seven percent spent more than 50 percent of the limit, only 5 percent in 2015, and only 9 percent in 2019. In 2011, only 4 percent spent more than 75 percent of the limit, and 4 percent in 2015, and 4 percent in 2019.³⁰ The report also documents how the number of third parties is increasing each election – in 2011 there were 55 registered; in 2015 there were 115, and in 2019 there were 151.³¹ This provides a good reason, to ensure, sooner than later, that the third-party spending rules are egalitarian. As well, the report revealed that, in the 2019 election when various types of spending were regulated and required to be disclosed, of the close to \$11.7 million spent by third parties during the pre-election and election periods, \$3.3 million (29 percent) was spent during the pre-election period and \$8.3 million (71 percent) was spent during the election, and of those amounts \$2.5 million (22 percent of total spending) was spent on partisan advertising during the pre-election period, and \$6.4 million (55 percent of total spending) on ads during the election period, for a total of 77 percent of total spending.³²

These spending patterns show that, despite the options for spending on various activities under the blanket limits, advertising is by far the most dominant spending category. Of the total amount spent on ads in the pre-election period, as far as Elections Canada could determine, 39 percent of that amount spent on TV ads, 12 percent on radio ads, 9 percent on mailouts, 8 percent on social media, 11 percent on other, 10 percent on design and placement (which instead could be counted as part of ad category spending), 5 percent on signs, 4 percent on content boosting and only 2 percent on print ads.³³ During the election period, design, production and placement costs accounted for 45 percent of the total costs (likely a significant portion attributable to TV ads, but it is unclear from the third parties' reports), with all the other categories below 10 percent.³⁴

²⁸ Elections Canada, (March 2022) *Third Party Report – A Comparative Look at Third Party Information from the 2011, 2015 and 2019 Federal General Elections*, pp. 29-30.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*, p. 11.

³² *Ibid.*, p. 33.

³³ *Ibid.*, pp. 34-35.

³⁴ *Ibid.*, p. 36.

Elections Canada’s report also highlights the “own funds” loophole in the Canada Elections Act that allows third parties to hide the actual source of their pre-election and election period spending. In the 2019 election, 92 per cent of the amount spent by unions, 46 per cent of the amount spent by a group with a governing body (i.e. a citizen group), and 28 per cent of the amount spent by a charity were from their “own funds”.³⁵ Elections Canada’s report also contains statistics concerning contributions to third-party citizen groups, but they are inaccurate because of the high percentage of “own funds” used by these groups that obscures both the number of contributors and amounts contributed.³⁶

As well, the 2019 federal election revealed another loophole that allows donors to third parties to remain unidentified. The Manning Centre for Building Democracy (a non-profit citizen advocacy organization, which changed its name July 1, 2020 to the Canada Strong and Free Network) raised money from unknown donors solely to pass on to the national organization Canada Strong and Proud and four other “Proud” third-party organizations in four provinces to spend on election advertising, and then the organizations only disclosed the Manning Centre as the sole source of their funds.³⁷ Democracy Watch filed a request for an investigation with the Commissioner of Canada Elections into whether the Manning Centre should either be required to register as a third party and disclose the donors of the funds, or the groups that received the donations should be required to disclose the donors.³⁸ The Commissioner finally ruled on the scheme on April 27, 2022 stating that the CEA “requires third parties to identify certain contributors, but there is no legislative requirement for third parties to identify the sources of funds of their contributors, nor is there a requirement for contributors to third parties, such as Manning Centre, to identify their sources of funds.”

A few other examples of third-party spending from the 2019 election also highlight other ways in which the rules violate egalitarian principles by allowing third parties supported by a small number of wealthy individuals, and businesses that only represent their few executives who decide to spend the money, to have an unequal capacity to influence the election, loopholes that all facilitate foreign interference. One individual, Walter Schroeder, contributed \$700,000 to his own policy institute (Schroeder Policy Group Inc.) to pay all the costs of its advertising and survey

³⁵ Ibid, pp. 23-25.

³⁶ Ibid, pp. 15-23.

³⁷ James Keller and Kelly Cryderman, (October 15, 2019) “Manning Centre won’t disclose source of donations to third parties for attack ads on Liberals.” *Globe and Mail*.

³⁸ Democracy Watch, (October 17, 2019) “News Release: Democracy Watch calls on Commissioner of Canada Elections to investigate Manning Centre and five “Proud” groups it funded for possible third party election disclosure and collusion violations”.

activities.³⁹ The group Canada Growth Council Inc. spent a total of just over \$293,000 (\$98,532 of which was spent during the pre-election period), with \$193,550 (66 per cent) of that total coming from only 63 individuals (for an average donation of \$3,072) and \$70,900 (24 per cent) coming from only 27 businesses (for an average donation of \$2,626), and \$50,000 coming from another group called Shaping Canada's Future, and several of the donors had ties to other organizations.⁴⁰ Further, \$149,500 of the total (51 per cent) was donated by only 18 individuals for an average donation of \$8,305 each.⁴¹ Canada: Powered by Women Inc. spent just over \$311,000 (\$92,471 of which was spent during the pre-election period) of the \$339,836 it raised. Of the total amount it raised, \$290,350 (85.4 per cent) came from only 37 businesses (that also \$12,310 in non-monetary contributions (i.e. products and services) for an average donation of \$7,847.⁴² And the True North Strong and Free Advertising Corp., which spent \$59,960 on advertising during the pre-election period, was funded entirely by a \$60,000 donation from Bassett & Walker International Inc., a company that specializes in the international trade of animal proteins & dairy products in more than 55 countries.⁴³

Again, while the federal rules require interim reports disclosing donors and spending during the pre-election and election period after \$10,000 is spent, this does not mean that voters are informed of the fact that a few wealthy donors are backing any specific third party. For even a portion of the electorate to be made aware of this information, they would have to search Elections Canada's databases on their own, or the media or watchdog organizations would have to report it prominently. Another example from 2019 of how easy it is to hide the funders of a third party is the group Fairness Works, which spent just over \$616,000 funded by the Canadian Labour Congress (CLC) entirely.⁴⁴ However, because it was registered as Fairness Works, its advertising was not required to mention that the CLC was the actual sponsor.

An analysis of Elections Canada's statistics from the 2021 federal election⁴⁵ revealed some different spending patterns first because, again, when a snap election is called like the 2021 federal election, the pre-election spending rules do not apply and so pre-election spending by any third parties is not required to be disclosed. Second, likely because a snap election call prevents third parties from planning spending, booking advertising slots etc., the number of registered third parties decreased from the 2019 total of 151 down to 97 in the 2021 election (seven of

³⁹ Elections Canada, (March 2022) *Third Party Report – A Comparative Look at Third Party Information from the 2011, 2015 and 2019 Federal General Elections*, p. 19. Elections Canada, (October 2023) *Third Party Financial Returns for the 43rd General Election*.

⁴⁰ Emily Leedham, (May 11, 2022) "Members of a Controversial and Secretive Religious Sect Funded Third-Party Group Behind Anti-Trudeau Ads," *PressProgress*.

⁴¹ Elections Canada, (October 2023) *Third Party Financial Returns for the 43rd General Election*.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Elections Canada, (July 10, 2024) *Third Party Financial Returns for the 44th General Election*.

which were individuals, and two of those people didn't spend anything, nor did two of the organizations registered). And third, likely for the same reason of lack of notice, an analysis of Elections Canada's statistics shows that total election campaign period spending by all third parties decreased from the 2019 total of \$8.3 million down to \$5.12 million, with 70.5 percent of the total spent on advertising.

An analysis also shows that, in the 2021 snap election when the national spending limit was \$543,200, and \$4,656 in any electoral district,⁴⁶ the overall average spending was \$52,834, and the median was \$17,856.52. If the top six spenders are removed from the calculation, the total spent decreases by almost half to \$2,526,053.62 and the overall average spending of the remaining 91 third parties also decreases by almost half to \$27,758.83. Only three of the 97 third parties spent more than 75 per cent of the spending limit total, and only eight spent more than 50 per cent of the limit.

As in the 2019 federal election, there are examples of third-party spending in the 2021 election that highlight other ways in which the rules violate egalitarian principles by allowing third parties supported by a small number of wealthy individuals, and businesses that only represent their few executives who decide to spend the money, to have an unequal capacity to influence the election, and to allow third parties to hide their actual funders. For example, with all figures rounded to the nearest dollar, interest group Rights 4 Vapers spent \$107,459 but had only two businesses as donors (TDaawg Labs and Dvine Laboratories Inc.) which donated 87 per cent of the funds spend. And, using a different scheme than it used in the 2019 election, Canada Strong and Proud raised and spent just over \$94,000 itself on election advertising and activities with \$70,000 of that amount (along with just over \$8,588 in non-monetary contributions) coming from another citizen advocacy organization called the Modern Miracle Network.⁴⁷ In other words, the Modern Miracle Network, which did not register as a third party for the 2021 election, contributed 83.6 percent of the amount that Canada Strong and Proud spent, but who donated those funds to the Modern Miracle Network was not disclosed.

Other examples from 2021 in which the rules allowed third parties to obscure their funding are as follows:

- Canadians United for Change, a coalition of locals of the International Union of Operating Engineers that donated \$533,010 of which \$480,954 was spent;
- One Earth, One Vote, which was a coalition of 11 environmental groups that spent \$138,533, of which \$128,598 was donated by two other organizations, the McConnell Foundation (\$40,000) and the Strathmere Group (\$86,598);

⁴⁶ Elections Canada. Third Party Expenses Limits.

⁴⁷ Elections Canada, (July 10, 2024) Third Party Financial Returns for the 44th General Election.

- Let's Build Canada, with donations totalling \$248,742 from a few unions providing most of the \$348,790 it spent;
- Fairness Works, which spent just over \$525,427 and received, as in 2019, almost all of its funding from donations totalling \$510,257 from the Canadian Labour Congress (CLC), and;
- Climate Proof Canada, which received all of the \$21,234 it spent from the Insurance Bureau of Canada.⁴⁸

As well, the “own funds” loophole was again exploited by some third parties, which possibly hid who actually funded their activities. For example, a total of \$104,206 of Let's Build Canada's funds came from its own money; the Canada's National Firearms Association (NFA) spent \$275,855 of its own funds; the Canadian Coalition for Firearm Rights spent \$244,226 of its own funds; the Canadian Medical Association spent \$157,475; Cooperation Canada spent \$38,902; Protect Our Winters Canada spent \$20,403, and; Vote Family spent \$19,276 of which \$10,746 came from its own funds.⁴⁹

In addition, several businesses and business associations, which arguably only represent the few executives who head up the businesses, spent relatively large amounts of their own funds. A single company, TekSavvy Solutions Inc., spent \$284,179; the Canadian Association of Petroleum Producers spent \$327,628; the Grain Farmers of Canada spent \$182,238; The Canadian Real Estate Association spent \$135,600; the Competitive Network Operators of Canada (CNOOC) spent \$79,312; the Chicken Farmers of Canada spent \$55,539; the Canadian Chamber of Commerce spent just under \$64,000, and; the Saskatchewan Industrial and Mining Suppliers Association Inc. spent just under \$39,000.⁵⁰

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

5 How to Make Third-Party Spending Rules Egalitarian and Prevent Foreign Interference by Third-Party “Proxies”

Parts 2 to 4 above provide details concerning how and why almost all the current third-party spending rules in laws across Canada 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. Part 3 above provides several examples of how the gaps in the federal rules have allowed some third parties to participate and have influence over the 2019 and 2021 federal elections that is undue, inequalitarian and secretive. Such an analysis would likely produce similar examples of third parties exploiting gaps and loopholes in provincial rules to have undue, inequalitarian and secret influence over elections. And, of course, given no jurisdiction in Canada currently restricts or fully regulates third-party spending between elections (as detailed above in Part 3, there are only a couple of rules in Alberta, B.C. and, depending on how the Supreme Court rules in the ongoing appeal, Ontario), third parties are fully allowed to have undue, inequalitarian and secret influence over policy-making processes across Canada.

All of these loopholes and flaws make it easy for foreign governments, entities and individuals to funnel money to third-party “proxies” to interfere in and influence elections and political policy-making processes across Canada. Listed below are key changes needed to make the current third-party rules across Canada egalitarian for all political processes and, thereby, to prevent foreign interference in Canadian politics using third-party “proxies”. Given the details set out above in Parts 2 to 4, only a summary of the reasons for each proposed change is set out below, other than for proposed changes #s 6-7 and 16-18) which are addressed in more detail:

1. A comprehensive study should be undertaken by a fully independent commission to determine the actual cost of informing voters as the basis for setting third-party spending limits. The spending limits should be closer to the amounts that candidates and parties are allowed to spend than the current limits are, given it is entirely democratically valid for voters to choose to express themselves politically through supporting a third party instead of a candidate or party.
2. Third parties should be required to register their activities for all political processes, including policy-making processes between elections, nomination contests and political party leadership contests.
3. The spending limits for third parties in each electoral district and across the jurisdiction should be set as an amount per voter and should be based on the actual voter support each third party has, with a very low limit for an individual third party or small citizen group and a multiple of that amount for a citizen group that has hundreds or thousands or more supporters. If

a third party colludes or coordinates its activities with any other third parties (including by sharing information on strategies and tactics), it should be required to disclose this coordination and their spending limits should be combined into one global total that takes into account overlaps in their members/supporters.

4. Third parties should be prohibited from colluding or coordinating their activities (including by sharing information on strategies and tactics) with anyone involved in or associated with a nomination contestant, party leadership contestant, election and by-election candidate, electoral district association or political party.
5. Third-party spending limits should not only cover election and by-election periods but also nomination contest periods, political party leadership contests, and policy-making process periods between elections (the longer the policy process, the more a citizen group would be allowed to spend).
6. Given they do not vote, and that their executive, shareholders and employees can speak for themselves as voters, and given that a business corporation is, legally, only one person,⁵¹ businesses should be prohibited from spending money as third parties in ways aimed at affecting policy or elections, in the same way that businesses are prohibited from making political donations and loans. Research shows that many shareholders invest only to make money (to the extent that can be determined) and, in any case, trying to determine which shareholders are invested for political reasons would be logistically very difficult, in part because research also shows that many shareholders likely wouldn't indicate either way even if asked.⁵² As well, the *Charter* specifies that only individuals have the section 3 right to free and fair elections and, based on court rulings, corporations likely also don't enjoy section 15 equality rights.⁵³ As for subsection 2(b) expression rights, the Supreme Court upheld a statutory prohibition on business TV ads aimed at children because of the public purpose of protecting the children from being influenced by the ads.⁵⁴ By analogy, it is justifiable to prohibit businesses (and associations of businesses) from spending to speak as third parties for the public purpose of protecting the meaningful participation rights of citizens, and the overall fairness and integrity of political processes and, again, because businesses don't represent their employees or shareholders. Executives of businesses would still be allowed to participate in all of the ways not

⁵¹ *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 (CanLII), para. 47.

⁵² Evaristus Oshionebo, "Shareholder Proposals and the Passivity of Shareholders in Canada: Electronic Forums to the Rescue?" (2012) *Queen's Law Journal* (2012) 37(2) 623-662 at 646-648. Bryce C. Tingle, "Two Stories about Shareholders," (2021) *Osgoode Hall Law Journal* 58(1) 57-108. Bryce C. Tingle, "Expressive Voting and Irrational Outcomes in Corporate Elections," (2021) *McGill Law Journal* 67(1) 71-118.

⁵³ *Canada (Attorney General) v. Hislop*, 2007 SCC 10 (CanLII), [2007] 1 SCR 429, paras. 72-73.

⁵⁴ *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927.

covered by the third-party spending restrictions in the *CEA* – issuing news releases, holding news conferences, making public statements, etc. – and would be allowed to continue to advertise, but the advertising could not cross the line into either issue or partisan advertising.

7. To prevent businesses from setting up citizen groups to act as fronts for the business, citizen groups should be required to raise the funds they intend to spend on third-party advertising, surveys and political activities only from individuals. Sections 52-60 and 86-87 of current federal [Bill C-65](#) propose changes to somewhat close the “own funds” and “transfer funds” loopholes, but leave key loopholes open that will continue to make foreign interference through third-party “proxies” easy to do. The sections propose to prohibit third parties from using any funds that were not donated by Canadian citizens or permanent residents to pay for pre-election and election expenses, and to require third parties to disclose the identity of anyone who donated a total of more than \$200. This will not stop foreign governments, entities and individuals from funneling large sums of money through a few Canadian “proxies” who then donate to front “proxy” citizen groups that are actually only supported by those proxies. As set out above in proposed change #3, the way to stop this is to limit third-party spending based on the number of voters who support each third party. In addition, the measures in Bill C-65 have the following two exemptions that will also make it easy for foreign governments, entities and individuals to continue to use third-party “proxies” to interfere in Canadian politics:
 - i. If less than 10% of the third party’s total revenue (not including government grants or contributions) during the previous fiscal or calendar year came from donations, then it can use its “own funds”. This essentially means unions that receive almost all their revenue from union dues, and businesses and any organization that receives more than 90% of their revenues from sales of products and services, will still be able to use their “own funds” and also transfer funds between them. This will allow foreign governments, entities and individuals to fund and use businesses in Canada as foreign agent proxies. As detailed above in proposed change #5, the way to stop this is to prohibit businesses from spending as third parties, and;
 - ii. Subsections 54(5) and 59(5) exempt individuals who act as third parties from the “own funds” prohibition. This will allow foreign governments, entities and individuals to fund and use individual Canadians and permanent residents as foreign agent proxies. As set out above in proposed change #3, the way to stop this is to

only allow individuals to spend a very small amount, given that they only represent themselves.

8. The requirement for a third party to register after spending \$500 should be lowered given thousands of voters can be reached on social media for much less than \$500. In contrast, ignoring egalitarian principles, the federal Chief Electoral Officer (CEO) has proposed increasing the threshold to \$1,000 to reduce the burden on smaller third parties.⁵⁵
9. As the CEO has recommended,⁵⁶ given unpaid social media posts can go viral and reach many voters, the costs of producing all posts and materials (paid and unpaid) should be counted as part of a third-party's expenses, including the cost of purchasing supporters for a social media account.
10. CEO's report also recommends⁵⁷ text messages should be added to the voter contact calling services (i.e. robocalls) registry that is administered by the CRTC so that the content and reach of text messages sent by third parties and other political entities can be tracked.⁵⁸
11. Third parties should also be required to count the costs of all their activities other than news releases and other media engagements and (for organizations) sending a message to supporters, including communicating with candidates and party officials, canvassing, holding partisan events, conducting surveys etc.
12. Third parties should be required to identify with legible text their major funders in all posts and ads or, if space does not allow that, to provide a legible hyperlink that says "See who funds us".
13. Third parties should be required to disclose in an online, public database the identity of anyone who donates to their third-party activities, and details about their spending: (a) before voting begins in a nomination contest, election, by-election, party leadership contest, and; (b) regularly during a policy-making process and before the final policy decision(s) are made.
14. Make Elections Canada the auditor for third parties.
15. 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,

⁵⁵ Elections Canada. June 2022. *Meeting New Challenges: Recommendations from the Chief Electoral Officer of Canada following the 43rd and 44th General Elections*, p. 20.

⁵⁶ *Ibid*, pp. 11-13.

⁵⁷ *Ibid*, pp. 32-33 (Rec. 5.3.1).

⁵⁸ *CEA*, *supra* note 79, at sections 348.01 to 348.19.

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.

16. Another related loophole is that there are no clear rules in the *CEA* to prohibit businesses, organizations and individuals (including foreign governments, entities and individuals) from establishing online “media” outlets inside or outside of Canada that are actually third-party advocacy outlets aiming to influence political processes and elections, including through disinformation, and are possibly funded by a foreign government, entity or individual. [Click here](#) to see an article, and [click here](#) to see a second article, and [click here](#) to see a third article, about the recently exposed example of Russian-funded Tenet Media that has intervened as a pseudo-media outlet, but really as a partisan third-party advocacy organization, in Canadian and U.S. politics in the past several months. The definition of “third-party” in the *CEA* needs to be changed so that the prohibitions, spending limits and disclosure requirements that apply to third parties clearly apply to these pseudo-media outlets. As well, as the U.S. once had, a Fairness Doctrine should be enacted that requires media outlets to give equal space to opposing points of view on all issues.
17. Another loophole is there are no clear rules in the *CEA* to prohibit businesses, organizations and individuals (including foreign governments, entities and individuals) from establishing a survey company that uses very questionable survey techniques that are not statistically valid, and then promoting the results on social media and Internet sites and with media releases to try to influence voters. The Supreme Court of Canada ruled in 1998 that surveys are a benign source of information. However, that was at a time when surveys were reported mainly by mainstream media outlets which have codes of conduct concerning accuracy and fairness. Since then, the reach of the Internet and social media sites has grown exponentially, and the sites all self-regulate in Canada in terms of the accuracy of information posted (other than being covered by libel laws). Survey results being transmitted just before election day should be prohibited to prevent voters from being misled as they go to vote.

If all of the above changes are not made, it will remain easy for foreign governments, entities and individuals to funnel money to third-party “proxies” 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.