

DEMOCRACY FOR SALE?



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ENDING BIG MONEY'S
DOMINANCE OF BC POLITICS



CONSERVATION
VOTERS OF BC

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Conservation Voters of BC works on making BC politicians accountable to the strong environmental values of the BC public. We do this by tracking the environmental performance of BC's elected officials, by working on the passage of a progressive policy agenda for BC, and by supporting the candidacy of environmentally minded candidates for office.

EXECUTIVE SUMMARY

- BC shares with Alberta the dubious distinction of employing the fewest safeguards against big money dominating politics
- Between 1996 and October 2003, corporations and businesses put over \$28 million into the BC Liberal Party, accounting for 68% of its donations.
- In that same period, labour put over \$2.7 million into the BC NDP, accounting for 10% of its donations.
- Corporations and unions also spend heavily on third-party election advertising and organizing in BC, with no limits on this activity.
- By allowing donations from economic actors like corporations and unions, we are allowing BC's democracy to be corrupted by an expectation of financial return by non-voters.
- Manitoba and Quebec have banned corporate and union donations, and the Federal government has seriously limited them.
- Five provinces and the federal government have caps on donations – BC has none.
- Every province except BC and Alberta has direct public financing for candidates to level the playing field.
- If BC is serious about fairness in its political system and about strengthening democracy, it will follow other provinces in getting big money out of politics.

Recommendations

1. Allow only individual voters to make political contributions; place an absolute ban on corporate, union, or association donations.
2. Limit the amount that an individual voter may contribute each year to \$3,000.
3. Investigate whether BC's current election spending caps are fair and effective.
4. Implement direct public financing of candidates in BC indexed to support in elections.
5. Reinstate spending controls on third-party campaigning in BC.

INTRODUCTION

In 2002 when a BC Minister was forced to temporarily step aside over allegations of undermining an investigation into a salmon farming company, part of the story was that the same company was a major donor to that Minister's party.²

It's rare to come across evidence of such specific interventions on behalf of campaign contributors, and thankfully even rarer to establish that a direct *quid pro quo* exists that links specific interventions with specific donations. None was established in this case.

Yet, once we allow campaign contributions by economic actors like corporations and unions, we must face up to a fundamental and systemic problem: that even without a specific *quid pro quo* in place, these donors expect a certain pattern of financially beneficial governance, and both the donors and the recipients know that future political contributions depend on this taking place.

In this regard, by allowing corporations and unions to donate to political parties we are consciously allowing the systemic buying of influence in BC politics by big money interests.

Between 1996 and October 2003, corporations and businesses put over \$28.5 million into the BC Liberal party, accounting for a full 68% of that party's donations. Over the same period, organized labour put more than \$2.7 million into the BC NDP, accounting for 10% of that party's donations.³

When Manitoba and Quebec banned corporate and union donations, they not only ended this buying of influence, they also capped donations by wealthy individuals in recognition of another important principle in our democracy – that a voter's wealth should not be the main determinant of political access and influence.

BC not only allows corporate and union donations, but also has no caps on individual donations. Our system is therefore open to abuse by party fundraisers who inevitably feel compelled to keep wealthy donors happy by giving them some kind of return on their investment – better access to politicians than non-donors, for example.

In fact, as this report will show, when we look at the sum total of possible tools used in Canadian provinces to make political financing fairer, BC scores the lowest of any province alongside Alberta in using these tools.

This situation not only means that BC's democracy is open to the buying of influence, but also that we have one of the least level playing fields when it comes to some parties being able to dominate others with money. It is time for BC to catch up to other provinces in strengthening its democracy. It's time for BC to end the dominance of big money in our political process.

THE KEY ISSUES

The debate about getting big money out of politics centres on a few key issues. Three are taken up here: (1) political speech, (2) the appearance of corruption, and (3) corporate and union considerations.

Political Speech

Diverse debate is one of the cornerstones of our democracy. Voters must be given a full range of analysis and opinions regarding BC's political governance, and given clear options to choose from at election time. This diversity of debate about how we govern ourselves is often called "political speech."

The values associated with meaningful political speech – both freedom and diversity – are protected explicitly in the *Canadian Charter of Rights and Freedoms* and in subsequent interpretations of the *Charter* by the Supreme Court of Canada.

Section 2 of the *Charter* protects freedom of expression and association, while Section 3 has been interpreted to protect "meaningful participation" of voters in elections, including the right to be adequately informed of all viewpoints, and not having any one dominate the debate.

The Supreme Court has recognized that the rights in Sections 2 and 3 must be reconciled, and in so doing has established the primacy of electoral fairness, upholding reasonable limits on expression where those limits serve that objective.

Despite this clear direction from the Supreme Court, BC has few safeguards on the fairness of political speech. BC allows its political parties to be heavily dependent on financing from entities that have no standing in its elections – corporations and unions – with the result that the political viewpoints of those non-voting entities dominate BC's political debate.

This dependence on corporations and unions is misplaced since,

The democratic interest in citizen participation in the electoral process lies solely with voters. Corporations, trade unions, foreign entities and other organizations or associations have no such protected interest. There is no compelling democratic or legal reason why these groups should be permitted to participate as independent spenders.⁴

British Columbians often lament the wild swings in their political cycle. A leading reason for these swings is allowing corporations and unions to have such a dominant financial role in the political process. There is no reason for these entities to have a direct financial role in the process, and, as we shall see below, there are good reasons to ban their funding of parties and candidates altogether.

Electoral fairness also extends to whether wealthy individuals are allowed to buy more political speech than others. If "one person, one vote" is to be meaningful, any one person must not be able to unduly influence the votes of others by the funding of advertising and other means of persuasion. Caps are therefore needed on the donations of individuals.

The challenge of political speech in modern society, however, is that it's expensive. Not only are there tens of thousands of voters in any given riding, but the means to reach them effectively – media, paid organizing, etc. – costs a good deal of money.

For this reason, in order to have diverse political speech in order to have informed voters and meaningful elections, public financing is necessary. This will be taken up below.

Appearance of Corruption

Political speech is most important during election time when voters pay attention to their political choices, but the role of big money in politics is perhaps most important during those times in between elections when the business of the province is done.

Even though the U.S. Supreme Court has interpreted free speech provisions more aggressively than our Supreme Court has in Canada, even the U.S. Supreme Court recognizes the need to prevent 'actual or apparent corruption' in politics through limits on political contributions.

The problem begins as soon as any economic interest – a corporation or a union – is allowed to make political donations.

The word "corruption" is usually reserved for those situations where a specific donation is tied to a specific act of government that is in the donor's interest. Those situations are, thankfully, very rare, but the fact remains that donors give money based on the expectation of a certain pattern of governing. So,

The dividing line appears to permit contributions based on predictions of official behaviour, but forbids contributions designed to affect official behaviour. The difficulty, of course, is that a contribution given as a prediction will not be repeated unless the officeholder's behaviour is consistent with the prediction – and both the donor and officeholder know it.⁵

So, while donations by economic actors are rarely "corruption" in the narrow sense of the word, it is nonetheless true that the overall system has been *corrupted* by their financial participation.

Under such a conception of corruption, not a word need be exchanged about a link between money and official action, as long as the financial system rewards an official for behaving one way, and punishes her for acting another.⁶

For this reason, even the U.S. Supreme Court is willing to limit political donations by economic actors in order to uphold the appearance of integrity of the system. The fact that BC's political financing is so dominated by economic interests should give British Columbians great concern regarding the perceived integrity of our system.

December 2002

"Dumb as a bag of hammers."

– Federal Liberal Party President Stephen LeDrew on the impending federal law that would ban corporate and union donations.

Corporate and Union Considerations

It is clear that from the perspective of strengthening democracy that corporate and union donations to political parties should be banned, but there are also complementary arguments from the perspective of the people that these bodies are supposed to serve – shareholders and union members.

In the case of corporations, directors and executives have a “fiduciary duty” to shareholders to act in such a manner as to pursue the objectives of the corporation and to avoid conflicts of interest.

Presumably, when directors or executives give money to political parties instead of paying that money out to shareholders, they do this not out of personal support for a party (which would be conflict of interest), but because they believe that there will be a greater financial benefit to shareholders in making the donation than the shareholders would have received by getting that money.

If this is true, it confirms the fact that democracy is corrupted by economic entities that are paying for self-interested financial outcomes from political parties.

But, it must also be said that many shareholders may not believe in the wisdom of the business strategy. By its very nature democracy means anyone can win at election time. Is the corporation therefore not incurring business risk by backing one party and not another?

For example, Teck Cominco is the single largest contributor to the BC Liberal Party, donating about \$3/4 million over the past 9 years.⁷ Teck shareholders could ask tough questions about the disclosure of business risk associated with a Liberal loss. Couldn't a non-Liberal government view Teck as a “Liberal” company whose potential misfortunes weaken their political opponent?

Likewise, labour unions have at their core a function – workplace rights and benefits – that is different from the support of one or another political party. What if union members support a different party from the one his or her union donates to? Some unions allow members a choice as to whether his or her dues contribute to political action. This is a good step for democracy within unions themselves. Meanwhile, for our larger democracy to work properly, both corporate and union donations to political parties should be banned.

November 2004

“I see the whole new financing regime as something that is absolutely going to drive things more towards the grassroots.”

– Federal Liberal Party vice-chairman Daryl Freidhandler on the impact of the new law.¹

FAIRNESS TOOLS

BC shares with Alberta the undesirable distinction of having the least fair election financing system, as measured by employment of potential legal tools. Here, fairness does not equate with transparency – BC does a good job of making political donations part of the public record.

When we look across the country,⁸ there are five main tools that provinces and the federal government use to make their systems fair:

1. Banning corporate and union donations
2. Placing limits on individual donations
3. Implementing election spending caps
4. Direct public financing of candidate's campaigns
5. Third-party controls

Of these five measures, BC employs only one – caps on election spending, and even these caps can be viewed as irrelevant since they are so high. Provinces other than BC and Alberta have a combination of at least two or more of these provisions.

	Ban Corporate and Union Donations?	Donation Limits on Individuals?	Spending Caps?	Direct Public Financing?	Third Party Controls?	Score out of 5
BC	X	X	✓	X	X	1
Alberta	X	✓	X	X	X	1
Sask	X	X	✓	✓	X	2
Manitoba	✓	✓	✓	✓	X	4
Ontario	X	✓	✓	✓	X	3
Quebec	✓	✓	✓	✓	X	4
NB	X	✓	✓	✓	X	3
NS	X	X	✓	✓	X	2
PEI	X	X	✓	✓	X	2
Newf	X	X	✓	✓	X	2
Federal	X	✓	✓	✓	✓	4

Banning Corporate and Union Donations

Manitoba and Quebec have banned corporate and union donations outright. Other provinces have capped these (and individual) donations. BC does neither, with the result that corporations and unions dominate political financing in BC even though they have no vote.

The federal government almost banned corporate and union donations starting in January 2004. The federal bill originally proposed an outright ban on corporate and union donations, but was changed to allow the \$1,000 amount, probably to placate Liberal backbenchers and party officials concerned about the loss of funds.⁹

But, by capping individual donations at the higher level of \$5,000 a year, the Canada Elections Act implicitly acknowledges that there is a qualitative difference between voters and non-voting entities, and that voters take precedence.

This \$1,000 compromise, however, not only undermines the principle of campaign finance reform, but is also logistically awkward to implement. It leads to a situation where officials are "using dollars to chase nickels," because significant staff resources are used to try to verify that corporate subsidiaries, for example, are not being used to violate the \$1,000 rule.¹⁰ A clean ban is easier to implement.

Donation Limits on Individuals

Limits on donations of voters level the playing field, not allowing any one voter to be able to buy access or influence.

For Manitoba and Quebec who ban corporate and union donations, contributions from individuals are also limited to \$3,000 per year. New Brunswick, Ontario, and Alberta also cap individual donations along with union and corporate donations.¹¹ As seen above, the federal cap is \$5,000 for individuals.

There is a question of what the amount of the cap on individual donations should be in order to be meaningful. The \$3,000 cap of Manitoba and Quebec seems reasonable for BC also, since this would represent almost 10% of the average annual salary in BC – an amount that the very politically concerned could in theory still donate. Beyond that amount, the wealthy begin to dominate.

As the quotes from federal Liberal Party executives on the pages before show, getting big money out of politics – whether corporate, union, or individual – leads to parties paying more attention to the grassroots, and by definition to voters themselves. That is good for democracy.

Spending Caps

In theory, spending caps on election spending level the playing field by not letting any one party or candidate so outspend another as to skew the political discourse with money.

Caps on election spending is the only fairness measure that BC employs in its election financing. Spending caps are only meaningful, however, if they are set at an appropriate level.

The spending caps across the country are difficult to characterize quickly, but they generally depend on various formulas multiplying numbers of voters by an allowed expenditure per voter.

BC falls somewhere in the middle of the provinces in the amount it allows parties to spend spent per registered voter – \$1.25. There are also limits per electoral district. In 1996 the BC Liberals spent \$2.4 million under a \$2.6 million cap, and the BC NDP spent almost the same. In 2001, the cap was \$2.7 million, yet the Liberals spent \$2.1 million (despite having much more to spend), and the BC NDP spent \$1.8 million. In 2005, the cap could be higher than \$3.8 million.¹²

While in 1996 the cap seemed to have kept the two major parties within sight of one another, there is still a question as to whether it was fair to other parties. Then, in 2001 the cap seemed to play little role in spending, and appears ready to take a large jump in 2005. It would be worth investigating whether BC's spending formula is a fair one.

Direct Public Financing

A well functioning democracy requires investment from its participants. If the public wants political speech to be equal, diverse, and fair, then public financing is required to achieve these goals.

For those who argue that taxpayers should not pay for the political process, they need to know that taxpayers already do. Currently in BC those who donate to political parties can claim back much of their donation (if it is in the hundreds rather than thousands of dollars) at tax time. This is clearly already a public investment in our political process.¹³

While this tax incentive encourages public investment in the political process, it is flawed in three key ways:

1. There is no necessary connection between the expenses of candidates running for office and where the public investments end up.

2. Tax incentives for parties reinforce the gatekeeper function of political parties in the BC political process.
3. There is no assurance, even for a candidate receiving much of the popular vote, that investment is forthcoming from voters.

The alternative – implemented in every province other than BC and Alberta – is to directly finance the campaigns of candidates for office. The federal process also directly funds candidates. The Canada Elections Act refunds 60 percent of election and personal expenses for candidates who received at least 10 percent of the votes in their riding, thereby allowing individual candidates to make a realistic run for office.¹⁴ Federal parties are also allowed to recoup 50 percent of their expenses if they receive at least two percent of the overall vote, or else five percent in the ridings where they ran.¹⁵

Controversially, the federal law also makes provisions for a quarterly allowance to parties who meet the threshold above. For Canada, this ends up being the largest pot of public financing, reaching \$24.1 million per year divided between the qualifying parties based on the number of votes received.¹⁶

This concentration of resources in parties rather than with candidates reinforces concerns about the function of parties as gatekeepers of the political process. When direct public financing of election campaigns is targeted predominantly at candidates, this contributes towards the public's desire to lessen the dominance of political parties.¹⁷

Third Party Controls

If corporations and unions aren't exerting their influence directly through BC's political parties, this desire for influence will seek other avenues. Already in BC, groups like the BC Business Council and BC Federation of Labour routinely run parallel advertising or organizing campaigns before or during elections in order to influence the vote.

While these actors have a right – and some would say a duty – to express themselves in a democracy, the same principle of electoral fairness regarding this kind of speech applies, namely that wealth should not be the main determinant of speech. Indeed, the Supreme Court's clearest ruling on electoral fairness has come via its ruling upholding limits on third party spending during elections.

BC has its own history with regards to controlling third party political speech. In 2000 BC's law governing third-party advertising was struck down,¹⁸ but in 2004 the Supreme Court of Canada ruled¹⁹ that governments can indeed pass third-party limits. Unfortunately, since the Supreme Court of Canada ruling BC has yet to reinstate its third-party spending provisions, even though it can now do so with legal precedent on its side.

The Government of Canada limits third party election advertising to \$3,000 in any given riding, and to \$150,000 for the entire country.

We need, however, to control the full range of potential third party political campaigning. A narrow definition that governs only paid advertising with media outlets will not capture the paying of canvassers to distribute leaflets, for example, even though this may reach just as many voters.

As long as an entity is attempting to sway an election, its full range of expenditures must be included in reasonable expenditure caps that prevent other political speakers from seeing their viewpoints overwhelmed through sheer force of money.

RECOMMENDATIONS FOR BC

BC and Alberta share the dubious distinction of having the fewest measures in place that promote fairness in political financing. It's time for BC to catch up to other jurisdictions that have strengthened their democracies by implementing the following fairness measures:

1. Allow only individual voters to make political contributions; place an absolute ban on corporate, union, or association donations. Also add provisions banning "indirect contributions," the circumventing of the ban through organized employee giving or in-kind contributions, for example.
2. Limit the amount that an individual voter may contribute each year to \$3,000 in order to remove the ability of wealthy voters to exert greater influence over candidates or parties.
3. Investigate whether BC's current election spending caps are effective – that is, whether they serve the objective of levelling the playing field, or whether they are too high as to be irrelevant.
4. Implement direct public financing of candidates in BC, indexed to support achieved in elections. If direct public financing of parties is needed, ensure that this amount is the minor portion of overall public financing when compared to direct candidate support.
5. Reinstate controls on third-party campaigning in BC. Establish a spending cap for third party campaigns that includes not only advertising expenses, but also paid grassroots organizing expenses.

Endnotes

¹ Ottawa Citizen, 15 Nov 2004, pA5; cited in Aaron Freeman and Craig Forcese, *The Laws of Government: the Legal Foundations of Canadian Democracy*, Irwin Law, forthcoming, chapter 3.

² See: http://www.cbc.ca/disclosure/archives/030204_salmon/politics.html

³ See <http://www.elections.bc.ca/fin/finance.htm>

⁴ W. Cross, "Regulating Independent Expenditure in Federal Elections," (1994) 20 *Canadian Public Policy* 253 at 258, cited in Freeman and Forcese, chapter 3.

⁵ "The Four Models of Campaign Finance Reform," Burt Neuborne, 1998, Brennan Center for Justice, p. 12.

⁶ Neuborne, pp. 12-3

⁷ Teck contributed \$747,591 from 1996 to October 2004. See <http://www.elections.bc.ca/fin/finance.htm>

⁸ For a more complete comparative analysis of election financing laws across Canada, see "Compendium of Election Administration in Canada," available on the Elections Canada website at www.elections.ca

⁹ Freeman and Forcese, forthcoming, chapter 3.

¹⁰ Freeman and Forcese, forthcoming, chapter 3.

¹¹ These are the caps: New Brunswick - \$6,000/year; Ontario \$7,500/year; Alberta \$15,000/year (\$30,000 in election years).

¹² Figures from the reports of the Chief Electoral Officer for 1996 and 2001, and from personal communication with Elections BC.

¹³ The BC Government's Budget and Fiscal Plan – 2005/06-2007/08 estimates the cost of the political contribution tax credit at \$2 million.

¹⁴ Canada Elections Act, ss. 464 and 465.

¹⁵ Canada Elections Act, s 435.

¹⁶ Freeman and Forcese, forthcoming, chapter 3.

¹⁷ "There is a groundswell of opposition in this province to the current imbalance of power between voters and parties. Indeed, some of the submissions we received called for banning parties on the grounds that they so dominate electoral politics that local representation is undermined by party discipline and practise, and voter choice is stifled." – Citizen's Assembly Final Report, p. 2

¹⁸ *Pacific Press vs. BC*, BC Supreme Court, 2000.

¹⁹ *Harper*, 2004, SCC, 2004.



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