



Political Reforms in Canada: Strengthening Representative Government¹

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Draft: This is a work in progress. It will be revised in light of additional comments and additional thought.²

1. INTRODUCTION

The purpose of this paper is to propose a number of reforms to the way government operates in Canada and the manner in which it relates to the citizenry. Our focus is on the institutions and processes of the federal government, though we believe the proposals we're forwarding also have direct relevance to provincial governments as well.

We believe that this is a critical juncture in the history of this nation. The three oldest political parties in the country are all at various stages of selecting new leaders. Such times are typically pivotal in the consideration of new approaches to leadership and public policy and in attracting public attention to such matters.

We believe that any political party – or individual candidate for national leadership – which wants to impress the electorate with its vision for the future of this country, needs to address the fundamentals of how this nation is governed and the role citizens can play in the governing.

We believe a series of reforms should be implemented as soon as possible because we believe that Canada has been in the throes of a crisis of legitimacy with respect to its political institutions and processes for some years (see Simpson, 2001). There is considerable evidence that an increasing number of people are being “turned off” by politics and have “lost faith in the system.” As we note below, Canadians’ traditional respect for government has declined notably over the past decade. A

¹ This paper has been submitted to the conference called “Searching for the New Liberalism,” organized by Tom Axworthy on September 27-29, 2002 in Toronto. See Cosgrove (2002). We have benefited greatly from the thoughtful and sometimes provocative comments by David Marley and Gordon Gibson. Even when we did not make a change they suggested, we often modified a point or tried to improve our explanation. In short, their advice has been invaluable.

study for the Canadian Policy Research Networks (2002) found that Canadians rank the matter of democratic rights and participation first among nine quality of life indicators, that between 1990 and 2000 their willingness to vote declined,³ and so did their satisfaction with the electoral process and their belief that citizens have input into what government does.

Political reforms such as those proposed below are not usually what pollsters call “top of mind” issues with many Canadians: but we believe they are more important than has yet been realized by most politicians.⁴ And by any objective measure, they are, in fact, very important.

The substantive content of public policies and the ways in which they are created and implemented are in large part a reflection of the design of the political system. The reforms proposed below are intended to make substantial changes in the system. We are confident that by changing key characteristics of the system it is likely that the federal government will be more representative and more responsive to citizens – those in whose name the system is supposed to work. It is also likely that the federal government will become more efficient and effective because of improvements in the ways of holding it accountable.

In preparing the proposed list of reforms, we have made two assumptions: a) that Canada will remain a constitutional monarchy for the foreseeable future, and b) what is described as “a reform” consists of several components necessary to achieve the effects desired.

The first assumption is purely a matter of pragmatism. To push for a republic would, likely arouse strong emotional opposition which would effectively block highly desirable substantive changes. We recognize that some of the changes we strongly desire cannot be made within the framework of a constitutional monarchy, which implies that the Westminster model will remain in place. That model, however, can be modified to achieve important reforms. This is another case of perfection being the enemy of the good.

All of the reforms described below can be implemented by either a) the simple order of the PM, or b) by amending an ordinary statute. None require a change in the Constitution. All could be put in place in one session of Parliament.

The reforms have been grouped under eight headings.

- Strengthening Parliament
- Reducing Concentration of Power in the Hands of the Prime Minister

² Please send comment to wstanbury@laguna.com.mx. We reserve the right to change our minds about some of our reform proposals in light of further consideration.

³ The turnout in federal elections fell steadily from 75% in 1988 to 62% in 2000. Turnout fell by at least 10 percentage points in all provincial elections in the 1990s, except New Brunswick.

⁴ Two notable exceptions must be cited – the proposals of the Canadian Alliance party (see Dunfield, 2002) and of Gordon Campbell, Premier of BC (see Sullivan, 2002).

- Improving Access to Information
- Creating New Rules Governing Political Parties
- Changing the Laws Governing Financing of Political Parties
- Improving Accountability of Ministers and Deputy Ministers
- Creating More Opportunities for Direct Democracy
- Improving Public Consultations and Citizen Engagement

In each section, before listing the proposed reforms, we sketch the rationale or justification for such changes under the heading “discussion.”

2. CANADIANS’ ATTITUDES

Two recent polls provide new and, in one case, surprising evidence on Canadians’ attitudes toward politics. A national poll by Leger Marketing conducted in early April 2002 found that 69% of respondents believe the federal political system is “corrupt” or “somewhat corrupt.” Only 26% said it was “not very corrupt” or “not at all” corrupt. The comparable figures for the provincial level were 68% and 26% respectively. Some 53% of respondents described municipal political systems as highly or somewhat corrupt (Canadian Press, 2002a). Further, 80% wanted to see a major reform in the methods of awarding of government contracts. And 24% of respondents said that they believe that the political system was either not very democratic or not democratic at all (*Ibid*).

The more surprising data – in light of the decades of accepted wisdom that Canadians have greater trust in their governments than do Americans – were those generated by a national poll of about 1,000 Canadians and Americans in May 2002. These polls found that 51% of Canadians said that they have little, if any, trust in the federal government; for Americans the comparable figure was 30%. While 65% of Americans said they have a great deal of trust in their state governments, only 51% of Canadians had a great deal of trust in their provincial governments (Lawlor, 2002). Andrew Parkin, assistant director of the Centre for Research and Information on Canada, co-sponsor of the two polls, said that Canadians’ lack of trust in government started in the early 1990s at the end of the two-term Mulroney Government and has continued since then. This helps to explain the decline in voter turnout over the last handful of federal general elections, he said.

Electors vary greatly in their level of knowledge⁵ or even interest in public policy.⁶ About one-third of electors do not vote in federal general elections in Canada (compared to about 50% in the U.S.). Columnist Jeffrey Simpson (2002a) reports on a recent study on the reasons why voter turnout

⁵ See Cobb (2002) who reports on a study showing that a large number of Canadians are confused about the left-right position of the NDP and Canadian Alliance parties.

has declined in Canada over the past few decades (to 61% in the November 2000 general election). Canadians who come to voting age after 1988 accounted for much of the decline. They are less engaged in both politics and other kinds of civic activity such as joining interest groups. They pay less attention to politics, are less well informed, and a smaller fraction vote. We believe that the political reforms we propose could increase Canadians' sense of personal efficacy with respect to politics and participation would increase. They will certainly increase the efficacy of both Government backbenchers and opposition MPs.⁷

3. STRENGTHENING PARLIAMENT

3.1 Discussion

Currently, both the Legislative and Executive branches of government are now "integrated" under the control of the prime minister as long as he heads a majority government. In effect, the PM has a monopoly over the supply of new bills and also has the means to see they are enacted with no change he does not want.

In general, the independence and power of both houses of the legislature must be increased. But it cannot be increased so much that the essential design characteristics of cabinet/responsible government (that is the Westminster model) are threatened.

At present, the Senate⁸ is largely a patronage vehicle for the PM, although some Senators do produce useful committee investigations and reports (e.g., see the reports by Senator Kirby). We argue that the Senate should regularly pose a disciplined challenge to the Government which will continue to effectively control the Commons if it has a majority. Thus the Senate should not be a clone of the House in terms of party standings. Different timing and methods of election are necessary to achieve that goal.

The role of opposition parties needs to be strengthened. Successive governments have put in place a series of measures over time apparently aimed at limiting and channeling the role of opposition parties which has helped to make them into what they are today, e.g., a) Treating all committees as miniature replicas of the House with the whips on. This limits their ability to improve new legislation – unless the minister responsible adopts proposed changes as his/her own; b) Giving opposition parties very little money with which to develop a research base necessary for the development of informed

⁶ Indeed, David Marley (2002) argues that, "There is an alarming level of political, not to mention economic, illiteracy in this country, as well as ever-increasing citizen apathy, largely due to a widespread decision by electors, especially among the young, to practice a variant of rational ignorance respecting the political system."

⁷ Because Congressmen have far greater efficacy, the committee system in the U.S. often produces very fine analyses of policy issues.

⁸ Aubry (2002b) notes that the Senate is expected to sit only 69 days in 2002 and that senators gave themselves a pay raise of 20% in 2001 to \$106,400.

and reasoned alternatives; c) Blocking virtually all private member's bills (although the PM said recently that he will allow them to be given First Reading!);⁹ d) Making it impossible for the opposition to modify the annual expenditure budget (i.e., the Estimates); e) Seeing that Parliament reviews subordinate legislation only long after it has become law; and f) Setting the time allotted to debates and the use of closure, notably major new bill, the Estimates and revenue budget. The result is to make Parliament the slave of a schedule determined by the Government.

The Government could do much to enhance the role of opposition parties in Canada's Parliament, while retaining its authority to govern and to be responsible for how it governs.

If the opposition is to have greater weight in the House of Commons, however, it must start with the injunction "physician, heal thyself." Sean Moore (2002c) put it this way:

The answer, or at least one element of it, rests in part with the notion of devising and presenting alternatives, looking and sounding like a government-in-waiting. For opposition members, that means a new level of discipline, sophistication, focus, creativity, political courage and just plain hard work.

It is not enough for the opposition to criticize. It must put forward remedies or even broad alternatives. The latter is impossible to do in legislative terms.¹⁰ It is possible for opposition parties to develop their policies in some detail so that a) the bases for their criticisms and proposed changes are clear, and b) voters in the next elections will know for what the party stands and is likely to implement.

The current "first-past-the-post" or more formally, "single member plurality" method of electing MPs has some notable weaknesses: a) Much of the electorate is not represented in the House of Commons in any way at all; in the last general election, all opposition parties garnered 59.2% of the popular vote, but gained only 42.5% of the 301 seats; b) entire regions may be incompletely represented, e.g., in the November 2000 general election, only one-half of Ontario voters chose the Liberal Party, but that party obtained 100 of the 103 seats in Ontario; c) following a general election, only Government MPs can have much influence provided there is a majority government. Even then,

⁹ Columnist Andrew Coyne (2002b) had this to say about private member's bills: "In the current Parliament, some 229 such bills have been introduced in the Commons. Most of these die then and there: A small fraction win a lottery – literally – which entitles their sponsors to go before a committee to plead why their bill should be brought to a vote. A small fraction of these – just five out of the original 229 – succeed in persuading the committee, a majority of whom are government MPs, to make them "votable." And that's just the start of the many legislative hoops through which they then pass. Exactly two of those five bills have even made it as far as Mr. Martin's bill did [to second reading] and none have made it to committee: the clause-by-clause examination that bills receive after passing second reading."

¹⁰ Note that in 1783 William Pitt, as Leader of the Opposition in Great Britain, "brought forward an elaborate scheme of Parliamentary reform. He was defeated by 293 to 149....His other measure for the reform of abuses in the public offices passed the Commons, but was rejected in the Lords." In December 1783, Pitt took office as Chancellor of the Exchequer and first lord of the Treasury, i.e., he became prime minister (Thorne & Collocott, 1974, p. 1015).

only cabinet ministers have any real power – and they are hired, shuffled or fired by the PM.¹¹ Over the last three decades, an increasing amount of power has been exercised by the prime minister assisted by officials in the PCO and PMO (see Savoie, 1999). Prime Minister Trudeau once said that when they were off Parliament Hill, MPs were “nobodies.” Sadly, when they are in their offices or the Commons chamber backbench MPs are almost nobodies.¹² Party discipline in Canada is exercised more stringently than in the U.K., for example. Successive PMs have made it clear that what they want Government MPs to be cheerleaders for any initiative the PM proposes.¹³ Because the PM has a large number of carrots and sticks, almost all ambitious backbenchers – those seeking a cabinet post – are very careful to mute any criticisms and never to voice them in public. Sean Moore (2000) describes the problem as follows:

[There is] a conviction that’s becoming infectious on Parliament Hill – that the legislative branch of Canadian government has come to exist only in theory. “We’ve created an illusion that Parliament works,” says [Toronto MP Dennis] Mills. A prime ministerial aide and business executive before being elected, Mills has seen the political and public-policy process up close and personal for much of his adult life. “The reality of Ottawa is that senior officials in departments and PCO, along with ministerial staff and lobbyists are the people who make the policies.” According to Mills, MPs just aren’t in the game. “By the time something gets to Parliament, it’s baked.”

The most frequently recommended “solution” to the problems sketched above is some form of “proportional representation” of which “there are literally dozens of variations,” as Gordon Gibson (2002b, p. 26) points out.¹⁴ Note that in 1984 Jean Chrétien said that if he were prime minister he would implement at least partial proportional representation (see Johnson, 2002). Proportional representation is not without its own problems, so it might be best to apply it on a limited basis – starting with the Senate.

3.2 Proposed Reforms

- Create an elected Senate.¹⁵ The PM could begin the shift to an elected Senate by announcing that all future appointees shall be elected by voters in the relevant province.¹⁶

¹¹ And note that Donald Savoie (1999) quotes a Chretien minister as saying that the cabinet is largely a focus group for the prime minister.

¹² Jean Chretien is also reported as having said, on viewing the terra cotta soldiers at Xian, that “They look just like backbenchers!” See also Taber (2002b).

¹³ Paul Martin states that he wants to strengthen the role of backbenchers, but columnist Andrew Coyne (2002f) is skeptical.

¹⁴ For more detail, see Leonen (1997), (2001).

¹⁵ Our ideal is a Senate which has the following characteristics: a) all members are elected, b) the single transferable ballot would be used (see Dalby, 2001; Simpson, 2001), and c) the number of seats would be allocated among six regions so that those regions outside central Canada (Quebec and Ontario) obtain more seats than their respective proportion of the national population. Obviously, this matter will be highly controversial, but here is an allocation with which to begin the discussion: Atlantic 12; Quebec 21; Ontario 28; Prairies 22; B.C. 16; and North 1 for a total of 100.

- Ensure that more votes in Parliament will be “free votes” and that there will be fewer votes when party discipline will prevail (aside from those which involve a true matter of confidence).
- Ensure that there is a realistic opportunity for more private member’s bills to become law. For example, set aside 25% of the time devoted to debating Government bills for private member’s bills. Require at least two hours debate on private member’s bills that are endorsed by the two largest opposition parties.
- Provide more money for opposition parties to do research and develop policy options.
- Strengthen the role of committees in reviewing legislation and increasing their independence (e.g., requiring that an opposition member be the co-chair). This will also include giving them more money, some of which may be used to hire permanent, professional staff.
- Require voting by secret ballot for the election of chairs of House of Commons committees (see John Reynolds, 2002).
- Require near perfect equality in the size of electoral districts (except for previous constitutional deals such as four MPs for PEI).¹⁷
- Require that new statutes or major amendments be accompanied by the related regulations so both can be considered in the House, Senate and committees at the same time.
- Specify time limits for *ex post* review of subordinate legislation (currently by the Joint Standing Committee for the Scrutiny of Regulations).

4. REDUCE THE EXCESSIVE CONCENTRATION OF POWER IN THE HANDS OF THE PRIME MINISTER

4.1 Discussion

Very simply, the Prime Minister (PM) is by far the most powerful person in Canada (see Savoie, 1999). Corporate titans are far better paid (at least ten times as much, not counting stock options), but they are pikers when it comes to the amount of power they possess relative to that which can be exercised by the PM (see Stanbury, 2002b). Yet Canadians seem rather comfortable with this fact – perhaps because they do not appreciate the full extent of the PM’s power.

The Westminster model developed in England over more than three centuries concentrates power in the person of the PM. It does so by giving the head of the Executive (the PM) control over the Legislature so long as the PM retains the confidence of the House of Commons. When his party has a

¹⁶ We adopt this “phased approach” because what we really want (outlined in the previous footnote) will require changes in the Constitution and we indicated at the outset that none of the reforms proposed in this paper would require such changes.

¹⁷ Supreme Court of Canada decisions permit large variations (the average $\pm 25\%$) in the size of electoral districts. There is still a substantial bias favoring rural voters in Canada.

majority of seats in the Commons,¹⁸ the PM has almost complete control over that body. The PM controls both the supply of legislative initiatives and the votes to enact them. Should the Senate object because it is dominated by the appointees of previous prime ministers of another party, the current PM can create more Senators who will see things his way.¹⁹

Here is a summary list of the powers of the PM.²⁰

- The PM sets the legislative priorities of his Government (to the extent he desires to do so). The PM can almost always obtain the legislation he wants so long as his party has a majority of the seats in the House.
- The PM appoints, shuffles and fires cabinet ministers who collectively lead the Executive. It is the prospect of becoming a minister (hence exercising some power) that gives the PM great control over ambitious MPs. The PM also appoints all the parliamentary secretaries – the men and women being tested for appointment to the cabinet. The PM decides on the number, responsibilities and relative authority of cabinet committees.
- The PM appoints all members of the Supreme Court of Canada and, through the Minister of Justice, he controls the appointment of all other federal judges (see Tibbetts, 2002). The PM also appoints all Deputy Ministers, all heads of federal Crown corporations (as well as their directors) and regulatory agencies, and also the head of the RCMP.
- The PM appoints all senators (and so he can put key bagmen and political organizers on the public payroll).
- The PM appoints the chief of defense staff, although the Governor General is the titular commander in chief of Canada's armed forces. It appears that the PM has the authority to declare war and later have his decision ratified by Parliament.
- The PM effectively controls the flow of subordinate legislation²¹ whose sheer volume is greater than that of legislation passed by Parliament.
- If he wishes, the PM can substitute rule by PMO officials for true cabinet government. According to Gordon Gibson, "Jean Chrétien's ministers are just plain vegetables when it comes to great

¹⁸ From 1949 to 2000 there were six minority federal governments (three Liberal and three Progressive Conservative) which held power for a total of about 10 years. The rest of the time, majority governments prevailed – usually that of the Liberal Party.

¹⁹ Recall that Prime Minister Mulroney did this when the Liberal-dominated Senate was holding up his legislation dealing with the Goods and Services Tax.

²⁰ Adapted from Stanbury (2002b). See also Bliss (2002b) for a shorter list.

²¹ It is made into law by a cabinet committee, the Special Committee of Council.

decisions of state. Such things are decided by the PM and his senior advisors – who are rarely ministers” (quoted in Fisher, 1999).

- The PM is primus inter pares within the cabinet. He can “outvote” all of his ministers at any time, although if he does so regularly he may precipitate some resignations or even a full-scale revolt.
- The PM effectively controls several thousand order-in-council appointments (and an increasing number of these are of the “at pleasure” variety, as opposed to “during good behavior”).
- While the Queen appoints the Governor General (her representative in Canada and head of state in Canada), it is the PM who advises the Queen whom to appoint.
- The PM decides on the dates of by-elections and the next general election (subject to the five-year limit in the constitution).
- He controls the flow of patronage (to the extent desired). And the PM has unique ability to target his (her) riding with pork barrel “goodies” (see Cameron, 1995).
- The PM can spend any amount of taxpayer’s money on scientific public opinion polls (see Feschuk, 1998) and keep the results secret for sufficient time to exploit their strategic advantage.
- The PM can decide on the design/responsibilities of executive departments to the extent he is interested in the machinery of government.

Against this plentitude of powers, is the British tradition of providing leadership while practicing the virtues of self restraint and moderation. These virtues have generally been in short supply in Canadian prime ministers. The actual amount of power exercised by the PM directly depends more on his (her) energy, style, values (e.g., willingness to delegate), confidence in colleagues, subordinates, etc. than what is set out in the law. Over time, Canadian PMs have increased their direct exercise of power by greatly expanding the staff in the PMO and PCO (see Savoie, 1999).

Diane Francis (2002), editor of the Financial Post, argues that corruption within the federal government is largely due to the concentration of power.

The biggest single reason behind corruption in this country is that the Canadian version of the Parliamentary system is a poor excuse for democracy. There are no checks and balances. The Prime Minister dictates to Cabinet, Cabinet to party whips and party whips to backbenchers. It’s a genteel dictatorship, punctuated by elections planned timing-wise to benefit the incumbent. Little wonder the vast majority of the electorate don’t bother to participate.

4.2 Proposed Reforms

These reforms must be taken together with those listed in section 3.2 above.

- Establish fixed (4 year) election dates (except when the Government loses the confidence of the House).²²
- Reduce the number of Order in Council Appointees from over 3,000 to, say, about 1,000 (to reduce opportunities for patronage). Thus the others would be Public Service Commission appointees.
- Establish criteria in regulations specifying which order-in-council appointments are “at pleasure” and which are “with tenure subject to a good behavior standard.”
- Require that all senior order in council appointees (deputy ministers, heads of regulatory administrative agencies and Crown corporations) be confirmed by a standing committee of the House of Commons.
- Amend the Supreme Court Act to require that a newly-created independent advisory committee generate a list of candidates for appointment to the Supreme Court of Canada from whom the Prime Minister would nominate. The nominee would then have to be confirmed by Parliament after a public hearing by a committee (see Ziegel, 2002). Gordon Gibson (2002) argues that Supreme Court of Canada judges “should be appointed only with the advice and consent of the provinces [because] the Court arbitrates between the federal and provincial governments. Who ever heard of an arbitral panel appointed by one side?”

5. IMPROVE ACCESS TO INFORMATION

5.1 Discussion

One of the main characteristics of Canada’s version of the Westminster model of government is a high degree of administrative secrecy. In whose name is this practice maintained? The official answer is “the people.” Their elected representatives, selected by the prime minister to form the cabinet (which effectively controls both the Executive and Legislative branches), function largely behind a heavy veil of secrecy in order to more effectively conduct the public’s business. Or so we are told. In fact, the main beneficiaries of pervasive administrative secrecy are the PM, his ministers, the public service, and the PM’s unelected advisors outside the public service.

In any system of government claiming to be a democracy, citizens need relevant, truthful and authoritative information if the system is to work properly for several reasons. First, citizens need such information to assess the performance of their representative and also that of the Government of the Day. This is the first step in holding the Government accountable, and accountability is at the core of

²² This change has been made in British Columbia by the Liberal Party under Gordon Campbell.

democratic government (see Stanbury, 2002c).²³ Second, citizens need to be well informed so as to be better able to participate in debates about public policy – including assessing the proposals of opposition parties. Information is the currency of politics. Third, citizens need information to try to understand how the world works, i.e., knowledge for its own sake. An individual's sense of affect depends heavily upon the knowledge they possess. Fourth, citizens need relevant and unbiased information to act as an antidote against the heavily manipulated flow of information supplied by government.

In his final report, Information Commissioner John Grace (1998, p. A5), argued that “a culture of secrecy still flourishes in too many high places even after 15 years of life under the Access to Information Act.”²⁴ Grace indicated that many senior public servants do not trust the public with the information created by their taxes and this has important implications for accountability.

The insult is equal only to the intellectual arrogance of it all. The commitment, by word and deed, to the principle of accountability through transparency has been too often, faltering and weak-kneed. It should not be a surprise that some of those who wield power also recoil from the accountability which transparency brings. (Grace, 1998, p. A5)

The current Information Commissioner (John Reid) indicates that he has found considerable evidence that senior public servants are “trying to avoid accountability by failing to create and keep appropriate records” (Reid, 2002, p. 2). Further, within days of passage of the Access to Information Act in 1983, “the Privy Council Office attempted to extinguish a substantive right [access to Discussion Papers going to cabinet] merely by changing the name of a record [calling them memoranda to Cabinet].... (Reid, 2001, p.3). A judge of the Federal Court Trial Division agreed with him (Federal Court, 2001).

Canada has few and only weak tools with which to fight government secrecy. First, access to government information is not a constitutionally protected right. But freedom of expression is so protected in the 1982 Charter of Rights and Freedoms. Second, there are obvious design flaws in the ATI Act, e.g., as John Reid (2001) points out, the exclusion of cabinet confidences (not merely subject to exemption – hence reviewable by the courts) amounts to a “loophole” big enough to drive an 18-wheeler through. Why should the Access to Information Act provide that cabinet documents are automatically kept secret for 20 years after which time they may be requested under the Act – thus

²³ David Marley (2002) argues that, “Without essentially unfettered and timely access to information held by government, it is virtually impossible for citizens, acting on their own initiative, or through either their elected representatives or the media, to hold officials, elected or otherwise, to account.

²⁴ One former senior official argues that, “Mr. Grace overstates the conspiracy of silence notion. In fact, high level servants tend, in order to protect and enhance their own careers, to be very careful about exposing the minister to embarrassment, hence the tendency not to divulge sensitive information. Also, ministers do not like to be upstaged by bureaucrats.”

putting the onus on the person requesting they be made public. It is only after 30 years that cabinet documents are made widely available through the National Archives. But this practice is hardly the same as posting them all – with a good index – on a website hence providing truly easy access at low cost for almost anyone.

Third, the Canada Evidence Act allows a cabinet minister to refuse to disclose information in both civil and criminal actions on the grounds that it is a cabinet confidence. Note, however, that the Supreme Court of Canada has recently put some limits on the cabinet's discretion in these situations - - see Makin (2002). Fourth, why should current or former senior officials be able to “clam up” and refuse to answer questions of a parliamentary committee on matters on which it is authorized to hold hearings? See Le Blanc (2002).

Both officials and ministers very strongly resist any proposal to reduce secrecy because that is tantamount to an effort to, diffuse power, or constrain the power of the cabinet or prime minister. Secrecy is used to contain critical analyses, to curb the diffusion of inconvenient facts, to cover-up errors both large and small, and to disguise the crassest examples of the political calculus that informs so many of the decisions by ministers. Perhaps, most important, secrecy is used to bury the alternative policy recommendations that were considered and rejected.²⁵ Improvements in accountability to citizens begin with a major reduction in institutionalized secrecy.

5.2 Proposed Reforms

- Limit the exemptions and so broaden the coverage of the Access to Information Act.²⁶
- Require all Crown corporations and the new quasi-governmental agencies like Canada Customs and Revenue Agency be subject to the ATI Act.²⁷
- Increase the financial resources given to the Information Commissioner.
- Shorten the period of confidentiality for cabinet documents (say to 10 years instead of 30!).²⁸
- Speed-up challenges in the courts (both sides).
- Section 8 of the Privacy Act should be amended such that the discretionary power respecting release of information in the hands of any government institution is removed to an official

²⁵ The routine disclosure of the alternatives considered is one of the great strengths of the committee system in the U.S.

²⁶ Perhaps the ACI Act should be transformed by starting with the assumption that all public documents should be in the public domain except those categories which are specifically exempted in the statute.

²⁷ See B.C. Freedom of Information and Privacy Association (2002).

²⁸ Gordon Gibson (2002d) argues that Cabinet Minutes should be confidential for a very long time, but not submissions to Cabinet nor Records of Decision.

reporting directly to Parliament, ideally an amalgamated office of the Information and Privacy Commissioner.²⁹

- Create rules which encourage “whistleblowers” to disclose evidence of illegality or of improper administration of government programs after seeking to correct the problem through the hierarchy have failed (see May 2002). Further, legitimate whistleblowers must be protected from reprisals and any other form of punishment (see Winsor, 2002).

6. CREATE NEW RULES GOVERNING POLITICAL PARTIES

6.1 Discussion

Recent experience with party leadership races and particularly the unofficial leadership race to succeed Jean Chrétien as leader of the Liberal Party (which eventually forced him to announce his planned retirement) provides a great deal of evidence for the proposition that the federal government should propose new rules governing political parties, and leadership races in particular.

Very briefly, the case for the regulation of leadership contests of federal political parties appears to be as follows: First, leadership races are of great public importance because the leader of one of the parties is or will become prime minister (PM). Second, as noted above, the Westminster model of government concentrates truly enormous power in the hands of the PM. Thus it is logical to ensure that the means by which he or she comes to power are appropriate for democratic society. Third, in general elections, the electors in only one electoral district can vote for/against a party’s leader and potential PM. This fact of the Westminster model increases the desirability of electing party leaders in a fair and proper manner. Fourth, some private entities are too important to society not to intervene in their governance. Corporations are the dominant form of organization engaged in economic activity. They are primarily private bodies, but their internal governance is subject to extensive government regulation through corporation acts. This is done to achieve public policy goals. A similar argument applies to political parties. Hugh Segal (2002), head of the Institute for Research on Public Policy, has argued cogently that, “In the end, political parties are not the property of their membership or leadership to be used as electoral machines only. They are public instruments, financed by Canadian taxpayers, and primarily for the purpose of facilitating democratic expression, economic performance, social progress and real engagement on issues.” Fifth, the regulation of leadership races by the parties

²⁹ Some time ago, John Reynolds introduced a private member’s bill to this effect, according to Marley (2002).

themselves has proven to be varied and of limited effectiveness.³⁰ Columnist Andrew Coyne (2002) noted how loose those rules were in the Liberal Party.³¹

“Wait, wait: You’re saying Cabinet ministers could take money from the industries they regulated, indeed from the very companies they might have subsidized out of public funds? And that, as far as party leadership campaigns were concerned, ministers of the Crown could rake in all this private cash without even having to declare it? This is a joke, right? ”

On June 12, 2002, the Prime Minister established some new “Guidelines to Govern/Ministerial Activities for Personal Political Purposes” that deal with fundraising for leadership races: a) Ministers may opt to put contributions in a blind trust (after consultation with the Office of the Ethics Counsellor) that will be disclosed no later than 30 days before a leadership convention, or b) Donations to a minister’s leadership campaign including contributions in kind, collected outside a blind trust or which otherwise become known to a minister, must be disclosed every 60 days (Prime Minister’s Office, 2002). Further, all contributions to a minister’s leadership campaign received before the publication of the new Guidelines must be disclosed with 30 days (i.e., by July 11, 2002). Finally, the new Guidelines do not apply to “campaign expenditures,” nor to “funds raised for a political party.” Andrew Coyne (2002g) explains the weaknesses in these proposals.

The new Guidelines focus on “funds raised for personal political purposes,” and they also refer funds raised for a leadership campaign as if they are the same thing. Not so. When a minister raises funds as a candidate he is obviously doing so for “personal political purposes.” Indeed, some of the money for some ministers’ leadership campaigns came from the surplus they generated during the November 2000 general election. For example, John Manley’s riding association contributed \$96,000 to his campaign, out of a total of \$171,950 raised (Trickey, 2002). Allan Rock’s riding association collected \$236,592 in 2001 (not an election year!) from corporations and individuals. The association could give it to Rock’s leadership campaign (Laghi, 2002b).

6.2 Proposed Reforms

These reforms should be considered along with those in section 7.2 below.

Disclosure:³² Require full and prompt disclosure (i.e., monthly) of all contributions and expenditures by leadership candidates whether there is an official or unofficial leadership race in progress. The timing of disclosure should be quarterly prior to official race (see below) and monthly during the

³⁰ For example, Paul Martin and Brian Tobin refused to reveal the names of donors and amounts given to the leadership campaigns. See Fife (2002b), McCarthy (2002a). However, John Manley, Allan Rock and Sheila Copps did so. See Trickey (2002), Kennedy (2002), Greenaway (2002) respectively. See also Bryden (2002a).

³¹ Since Coyne wrote the column quoted below, the Prime Minister’s Office established some new rules for ministers involved in leadership races. See section 7.2 below.

³² Most of these proposals were put forward in Stanbury (2002a).

official race (both one week after the end of the period). For each donation of \$200 or more, the same disclosure requirements as now apply to registered parties and candidates in the Canada Elections Act (CEA) should be applied to leadership races.

Unofficial Races: Require prompt and extensive disclosure of all revenues and expenditure by any person (natural or legal) who spent say \$25,000 or more in any quarter on any activity aimed, directly or indirectly, at making a person leader of a registered political party or made with the purpose of assisting the incumbent leader to retain his/her position. With respect to the identification of donors of \$200 or more, the same rules would apply as now apply to registered parties and candidates under the CEA. Here is another alternative: require a potential leadership candidate, prior to the announcement of an official leadership race, to appoint a trustee to maintain a confidential trust whose sources and uses of funds would have to be publicly disclosed at once when an official leadership race begins.³³ This approach should help potential candidates avoid the problem of being undermined by the incumbent leader. Presumably, the blind trust would only be created once a potential candidate raised and/or spent, say, \$25,000 in any quarter.

Definition of Eligibility to Vote in a Leadership Race: Require each registered party³⁴ to promulgate a set of rules defining eligibility of persons to vote in the next leadership race within one year of the selection of a new leader. (Parties should give serious consideration to having MPs vote first and have the result made public before the rest of the members vote on the next leader.) These rules could not be changed without the approval of the Chief Electoral Officer or an umpire appointed by him (following a public hearing) until after the next leadership race. The objective is to eliminate the strategic manipulation of the rules to influence the result of a leadership race. These rules must include the “cut-off” date for signing-up new members, the supplying of the official list of party members eligible to vote in the leadership race, and specify the method of voting (e.g., by telephone, by mail, at polling places, at a Convention, etc.)

Leadership Review: Require each registered party to promulgate rules under which the periodic review of the incumbent leader must occur.³⁵ These rules would have to be established within one year of the election of a leader and they could not be changed without the approval of the Chief Electoral

³³ See section 7.1 below and Clark (2002b).

³⁴ David Marley (2002) does not want to leave such matters up to the parties: “I don’t believe it should be left to political parties to establish eligibility criteria for voting on intra-party matters, be they leadership races, candidate nominations, party executive selections (national, regional or local), or policy resolutions. The elections law of the country should apply to any and all intra-party voting. To be eligible, one must a Canadian citizen who meets the other criteria for voting in a general or by-election. To have it otherwise, as is the case today in Canada, makes a mockery of election law and connotes a marked lack of self-respect on the part of the society concerned.”

³⁵ Re the Liberal Party, see Canadian Press (2002b).

Officer (who would be requested to hold a public hearing in the matter) until after the next general election.³⁶

Membership Lists: Require parties to maintain a central, computerized list of all members that is updated at least once per year and is available to the public³⁷ and to leadership candidates at nominal cost. Require party's to report annually in January to the CEO on the number of members as of December 31st.

Foreign Sources: The rules would specify that no foreign money or foreign volunteers are entitled to participate in the leadership contests of federal parties.

Expenditure Limits: Parties would be required to establish limits on expenditures during both official and unofficial leadership races. They would have to establish adequate methods of enforcing such limits (i.e., subject to review by the CEO at a public hearing).³⁸

Income Tax Credit: Leadership candidates would not be permitted to use, directly or indirectly, the income tax credit currently available for political contributions to registered parties and candidates. (This practice is tolerated by the CEO at present.)

Party Membership: Eligibility for membership in a registered party would be subject to the person and party being able to meet the following criteria:

- The person does not hold membership in any other party. Since each party would be required to publish its list of members annually in an electronic form this would be easy to check.
- The individual fills-out the application form.
- The information requested by the party on the application form is substantially correct.
- The person pays the required fee.
- The person is a Canadian citizen who is also an elector.³⁹

7. CHANGE THE LAWS GOVERNING THE FINANCING OF PARTIES, CANDIDATES, ETC.

7.1 Discussion

³⁶ The objective is to stabilize the rules and prevent them being changed to benefit a particular individual – recall how Paul Martin's people "captured" the executive of the Liberal Party and then changed the rules. This was a key factor in Jean Chrétien's announcement of his planned retirement.

³⁷ Gordon Gibson (2002d) asks, "Why should party membership lists be available to the public? Suppose I want to join the Communist party – isn't that my business?" We reply that if parties are to be recognized as important public institutions their operations must be largely transparent. Further, public corporations must maintain a registry of all shareholders accessible to the public. That too could be considered an invasion of privacy.

³⁸ Note that the Ontario PCs set a limit of \$1.5 million for each candidate in the leadership race in early 2002 although it appears that this was violated. See Mackie & Campbell (2002). The Canadian Alliance, however, did not set a limit for the race won by Stephen Harper in May 2002.

³⁹ Southam News (2002) proposed that only citizens be eligible to vote for party leaders and that they be age 18 or over. We appreciate that this will conflict with the existence of "youth wings" in parties.

Since the mid-1970s, Canada has sought to greatly limit the role that money plays in election campaigns (generally, see Stanbury, 1991, 2000a). The general approach has been to limit campaign expenditures, but not contributions. Disclosure of both is also central to the regime. Although amendments were made to the Canada Elections Act effective September 1, 2000, extensive changes are needed.

What is wrong with the rules governing party and candidate finances in the Canada Elections Act, effective September 1, 2000? Here is a brief summary:

- There is no federal regulation of leadership races (except by parties and these may not be enforced).⁴⁰
- There is an excessively long delay in reporting by parties. It is six months after the end of the calendar year for parties, electoral district associations and trust funds. However, it is only four months after the election for candidates to file data on their revenues and expenditures.
- The penalties are inadequate, e.g., Canadian Alliance was over a month late in filing its report for 2001, but no penalty was imposed; CUPE failed to report spending \$150,000 as a “third party” but paid a fine of only \$1,000 (see Waldie, 2002).
- There are questionable uses of the tax credit, e.g., contributions to leadership races;⁴¹ for contributions to the federal party that are later transferred to the provincial or local level (by NDP); to cover convention fees (see Stanbury, 1991; Stanbury, 2000a).
- Donors can hide the source of contributions by donating to provincial bodies which are later transferred to various reporting entities, e.g., federal party or candidate. The source of the donations behind the transfer is not disclosed.
- EDAs can receive large surpluses from candidates at the end of a general election (or by-election). This creates a discretionary “slush fund” for whomever controls the EDA – usually the sitting MP.
- EDAs can receive donations (but not issue tax receipts) in non-election years. The money can be used to benefit the incumbent MP. See Laghi (2002b).
- The regulation of EDAs is obscure and convoluted⁴² and needs to be simplified along the lines as in Ontario.

⁴⁰ For example, after his first run for the leadership of the Progressive Conservative Party, Brian Mulroney refused to disclose his expenditures as required by the party. Party leadership races can involve large sums. For example, in the last one in Ontario the five candidates spent \$8.6 million. The winner spent over \$3 million. By comparison, the PCs spent \$6.2 million to win the 1999 provincial election (see Mackie & Campbell, 2002).

⁴¹ To gain this benefit, it is necessary to flow contributions through the party which then issues a receipt and forwards the contribution to the leadership candidate – usually after retaining a portion of the donation. This was done by the Canadian Alliance during its last leadership race, for example.

- Individuals or corporations can donate fairly large sums without the party or candidate having to disclose the donor's name via multiple cash contributions under \$200.
- There is excessive regulation of "third parties." The expenditure limits are too low. The reporting burden is too great for those spending small amounts (see Stanbury, 2002d).
- At present, the Canada Elections Act requires that the official candidates of each party be endorsed by the party leader. Thus it is not sufficient to win the nomination at the local constituency level even with the strong support of many members of the party at the local level. This rule obviously gives the leader great control over dissidents or potential dissidents.⁴³ If MPs are to be representatives of the persons living in a local area, then they should be selected by locals, not the party leader. At the same time, it seems reasonable to suggest that where a candidate is not endorsed by the party leader, that this fact be required to be disclosed on all the candidate's literature, signs, commercials, and on the ballots.
- At present, there are almost no government rules governing nomination races – except that contestants are limited to spending 1% of the allowable "election expenses" for candidates in that riding in the last general election. (This amounted to an average of only \$620 in the 2000 election.) David Marley (2002) argues that nomination and leadership races are the "fulcrum of the democratic process. They are where one gets maximum leverage per unit of effort or money expended. As the late, former Mayor of Chicago, Richard Daley, was apparently fond of saying, 'I don't care who does the electing, just let me do the running.'"

In the June 12, 2002 News Release, the Prime Minister's Office (2002) said that there will be changes to the rules governing the financing of parties and candidates "to ensure that all contributions and expenditures are fully and clearly disclosed."⁴⁴ The changes will specify that

- All transfers of funds from provincial political entities as well as from trust funds and local electoral district associations (EDAs) name the original contributors to these bodies;⁴⁵
- Stronger enforcement provisions;⁴⁶ and

⁴² See section 424 of the Canada Elections Act which requires the national party to report the names of donors of \$200 or more. Thus one cannot tell how much money was donated by whom to which EDA. Each EDA should be required to report publicly annually separately from the party (see Stanbury 2000a).

⁴³ After John Nunziata voted against the Liberal Party on a budget bill, Mr. Chretien refused to sign his nomination papers before the next election despite the strong endorsement of his constituency members. Thus he could not be the Liberal Party's official candidate. He did get re-elected as an independent in 1997 but not in 2000.

⁴⁴ Andrew Coyne (2002g) summarized them as "partial disclosure, sham enforcement, lots of artful loopholes."

⁴⁵ It is not clear how this can be done. Suppose a provincial association raises \$100,000 for which it has a complete list of donors. Then it transfers \$40,000 to a federal party or candidate, how does it decide which persons contributed the \$40,000? One might assume a rateable allocation.

- All contributions be receipted (those under \$200 are now exempt).

There will be other disclosure requirements of contributions and expenses incurred by a) contestants for the leadership of a party, and b) contestants for party endorsement.

Bryden (2002b) states that the Government is planning legislation (to be announced in the Throne speech) that will a) require full disclosure of donations to riding associations and to leadership candidates,⁴⁷ and b) limit the amount that may be contributed by any contributor (there are no limits at present).

Note that the PCO (2002) document spoke of a) developing tax-based approaches to further facilitate the making of contributions by individuals (currently the maximum tax credit is \$500 and is reached when annual contributions total \$1075); and b) developing, if necessary, other governmental subsidies of the electoral process to compensate for the smaller pool of contributors and/or smaller amounts given. (It is estimated that, over a complete electoral cycle – usually four years – that taxpayers finance about 40% of the total expenditures by candidates and parties – see Stanbury, 1991).⁴⁸

We recognize that even if the reforms we propose below are adopted, that we have not dealt with symmetrically with all the entities which seek to influence public policy in Canada. We refer to the growing importance of interest groups in Canadian politics (see Stanbury, 1993). The crucial point is to recognize that much more money is spent between elections to influence public policy than is spent on election campaigns to do the same thing indirectly by influencing who gets into power. While we believe that their revenues and expenditures also merit disclosure, we have not had sufficient time to formulate appropriate rules in this paper.

7.2 Proposed Reforms

- Limit the total amount of contributions to any political entity during the course of a calendar year. (There is no limit at present, although the maximum tax credit is \$500.)⁴⁹

⁴⁶ Note that CUPE effectively paid a \$1,000 “fine” (in the form of a donation to charity) for failing to report spending \$150,000 as a “third party” in the November 2000 general election. See Waldie (2002). On third party spending in that election, see Stanbury (2002d).

⁴⁷ But donations to “third parties” will not have to be disclosed apparently.

⁴⁸ See Stanbury (1991). Note this excludes leadership races and the actual cost of administering general elections by the Chief Electoral Officer (some \$120 million!). The main direct subsidies are the rebates on party “election expenses” (22.5% of total), and 50% rebate on candidates’ “election expenses.” The indirect subsidy consists of the income tax credit for contributions by individuals and corporations.

⁴⁹ David Marley (2002) argues, “there ought to be reasonable contribution limits placed, on an annual basis, respecting political parties, candidates for office, public or party, and third party advocacy campaigns, I’ve come to the conclusion that limits on spending are inappropriate. Rigorous disclosure rules, seriously enforced, will likely cure any abuses in this respect. The public can then see and judge for themselves the role of money in any given contest. Besides, in my view, the impact of money in the determination of political battles is overemphasized. Classic examples being both Brian Mulroney’s 1976 campaign for the federal PC Party leadership and the 1992 referendum on the Charlottetown Accord.”

- Consider limiting the source of contributions to electors.⁵⁰ (This would eliminate corporations and unions as donors, and has been the law in Quebec since 1976.)
- Increase the income tax credit for contributions from individuals, i.e., electors. (The amount of the increase will depend on whether donations are limited to those by electors.)
- Require more frequent reporting by all political entities (one month after the end of each quarter – except when a general election occurs).
- Make party or candidate trust funds, electoral district associations, leadership candidates, so-called “third parties, etc. reporting entities which are obligated to use the same form describing their revenues, expenditures and transfers provided by the Chief Electoral Officer.⁵¹ If it is used, all monies will be tracked and all donors identified. There will be no more “black holes.”
- Require parties to establish rules re financing leadership races (e.g., limits), but mandate detailed and frequent disclosure for all such races. (Recall section 6.2)
- Limit amount/value of contributions in kind in the form of efforts by volunteers. (At present, lobbyists can effectively “donate” \$50,000 in time and not be recorded.) In general the rules governing volunteers in the Canada Elections Act need to be revised to close the loophole which permits certain professionals to, in effect, make large contributions in kind which are not reported.
- Eliminate the requirement that the party leader must sign the nomination papers of each candidate running under the party’s banner. If the leader does not endorse a candidate, the candidate would be obliged to disclose this fact on his/her advertising materials and on the ballot.
- Increase the limit individuals’ expenditures in nomination races to 5% of the allowable “election expenses” in that district in the previous federal election. (This would result in a limit of about \$3,400 in the next general election.)
- Require all persons seeking nomination as a candidate who spends over \$1,000 to file a statement of their revenues and expenditures within three months using the form specified by the Chief Electoral Officer.

8. IMPROVE THE ACCOUNTABILITY OF MINISTERS AND DEPUTY MINISTERS⁵²

8.1 Discussion

⁵⁰ Coyne (2002d) and Marley (2002) strongly support permitting only electors to contribute to parties, etc. Marley (2002) states, “I believe that only individual Canadian citizens ought to be entitled to make contributions, monetary or in-kind, to political parties or candidates. Entities such as industry associations, professional firms, corporations, or unions ought to have no ability to influence either electoral contests or public policy by means of financial or coerced ‘volunteer’ muscle. Subject to stringent disclosure rules, they ought to be limited to participation in ‘third party’ issue advocacy campaigns only.”

⁵¹ The best model here is Ontario.

⁵² The discussion in this section is adapted from Stanbury (2002c).

The concept of accountability is essential to what we mean by democratic government. The need for accountability flows from the delegation of authority, the exercise of discretion and the possibility that such authority will be used in ways not anticipated or approved by those persons who delegated authority in order to achieve the benefits of division of labour. In a popular democracy, citizens, collectively, are the ultimate principal; elected representatives are their agents. These agents are also principals who, through the legislature, delegate authority to a host of departments and agencies that make up the sprawling executive branch of government.

It is the necessity to exercise power⁵³ in the context of a democracy that generates the need for accountability. Power is a conundrum. It is necessary to get things done and to do so efficiently.⁵⁴ It is necessary to use coercion to ensure peace and order for the vast majority in the face of the disruptive behavior of the few. The central problem for all political systems is to reconcile government's use of coercion with the citizens' right to liberty. So while power is necessary, it can be used improperly. The clear evidence is that power tends to corrupt and, as Lord Acton so famously put it, "absolute power tends to corrupt absolutely." Power without accountability is likely to lead to tyranny. Thus it is necessary to (a) justify the moral basis for the existence of power (might does not make right), (b) constrain the use of power, and (c) hold those who exercise power responsible for its exercise. "Accountability is what makes delegated authority legitimate; without accountability, there is nothing to prevent abuse" (Monks & Minow, 1991, p. 75). Even with good accountability regimes, however, abuses can still occur, although they tend to be smaller and less frequent.

The correlative of power in the context of a democracy is the responsibility to exercise it effectively and honestly. The correlative of responsibility is accountability. This requires, at the least, the specification of performance standards and provision of information regarding the agent's performance to the principal, together with the opportunity for the principal to reward or sanction the agent to whom authority was delegated.

The realpolitik of accountability to citizens under the Westminster model as it operates in Canada at the federal level can be summarized as follows:⁵⁵

⁵³ In a democracy, government has a monopoly on the legitimate use of coercion – in the name of preserving order in the face of disruptive individuals/groups who threaten the peaceful cooperation that generates the benefits of division of labor (see von Mises, 1996).

⁵⁴ Efficiency also requires specialization and the division of labour. Thus authority must be delegated by principals to agents. Further, as noted above, the process involves a hierarchy of principals and agents in which all but the top and bottom entities are both principals and agents. See Priest & Stanbury (1999).

⁵⁵ This section is adapted from Stanbury 2002c).

- a) In the Westminster model, the key mechanism by which elected representatives (and parties) are to be held accountable to citizens is the next general election. But its date is up to the PM within the constitutional limit of five years.
- b) Periodic general elections are a remarkably poor mechanism for making elected representatives accountable to citizens. While citizens vote to elect an MP, it is merely the first of several steps (effectively aggregation rules) in which voters collectively choose the governing party and its leader chooses the three dozen men and women (the cabinet) who will control both the executive and the legislature for the next few years.
- c) From the perspective of many citizens, the sanction of “voting the bastards out” must seem puny indeed. Most defeated MPs will receive an indexed pension (so long as they were elected twice) and all receive transitional assistance out of the public purse. Defeated cabinet ministers do lose a large set of perks, e.g., limo and driver, a host of assistants, the status of being a Minister of the Crown, and a varying degree of real power over public policy. But this is the harshest punishment defeated MPs of the previous party in power will face. Some of the former ministers - even manifestly poor ones - may even receive a patronage appointment from the new party in power. No matter how badly the previous Government performed, no real punishment will be inflicted on those responsible. Worse, some of the MPs hardest hit by the election results may have had almost nothing to do with the debacles created by those MPs who were ministers.
- d) Within the federal government, individuals and organizations are subject to varying accountability regimes which are, in most cases, likely to be more effective than that under which citizens are to hold their elected representatives accountable (see Priest & Stanbury, 1999). The most arrogant ministers, when challenged to explain/justify his/her actions, often fall back on the following argument: the voters will be able to pass judgment on my performance and that of the Government at the next election. This argument tends to be used far less frequently as the date of the next general election approaches.
- e) The doctrine of collective responsibility is frequently used to shield individual ministers from being held accountable. In any event, ministers are not accountable to Parliament, as the theory claims, but to the prime minister. So long as it has a majority, the Government (and the PM) is

not accountable to the Commons because it can't be defeated on a non-confidence motion so long as strict party discipline is imposed by the PM, and accepted by the MPs.⁵⁶

In summary terms, the Westminster model's main claim to fame, that it holds the governors (i.e., ministers) accountable to the governed (i.e., citizens) is largely a myth, and potentially a dangerous one at that. Stanbury (2002c) shows that the regime for holding elected representatives accountable (the general election) to citizens is grossly deficient: It is infrequent, crude, indirect, lacks the means to inflict serious punishment no matter how bad the performance, and it usually prevents voters from targeting those largely responsible for both superior and bad performance.

8.2 Proposed Reforms

- Require Deputy Ministers to appear annually before the Public Accounts Committee to explain his/her department's performance and to justify the requested Estimates.⁵⁷
- Require ministers to appear at least twice before committees reviewing new legislation: when a bill is first considered to explain the rationale for the proposed changes, and to respond to the committee's draft recommendations for changes to the bill.
- Establish clear conflict of interest legislation (not "guidelines").⁵⁸ This problem was not remedied by the Prime Minister Chrétien's proposals of June 11, 2002. See Prime Minister's Office (2002). However, Bryden (2002b) states that in the throne speech, the Government will announce a new draft code of conduct for MPs and Senators under which they and their spouse will be required to disclose their assets and liabilities to a new parliamentary ethics officer on a confidential basis. It is not clear if the new requirements will be put into legislation.
- Make it much easier for private organizations or individuals to sue the government for violations of its own laws, regulations (see Abbate, 2002).

⁵⁶ Gordon Gibson (personal communication, July 4, 2002) points out to the curious truth that a rebellion by a majority of the party's MPs could change the system at any time. An incipient rebellion of Liberal Party MPs, led by Paul Martin, helped to bring about the announced retirement of Jean Chrétien on August 21, 2002 to be effective in February 2004.

⁵⁷ A former senior official noted that, "The present system requires the DM and/or ADMs to make such a presentation if the committee requests it, but it is a futile gesture. The committee chairman's role is to muzzle any question that might lead to embarrassment of the minister or government. And, under our system, no MP has the knowledge or the analytical resources to get to the bottom of financial issues, never mind expose financial misconduct. Far more useful would be the creation of Budget bureau, as in the U.S., which can do the analysis and feed the hard questions to the committee for real debate." It appears, however, that such actions may be inconsistent with the Westminster model.

⁵⁸ The evolution and content of the various "guidelines" is discussed in Mancuso et al. (1998). They were first introduced in 1964. On the effectiveness of the Ethics Counsellor, Coyne (2002g) states: "We know of the many ways in which the current ethics counsellor falls short of independence this requires. He is, as the name implies, neither an investigator nor a commissioner, but an advisor, hired by the Prime Minister and answering to him. He has no power to compel evidence, or to enforce his findings. All of this remains the case today. He may not be quite so tongue-tied, now that he has the promise of five years' job security, but he is just as toothless."

- Require departments/agencies to report annually on certain standardized measures of performance specified by Parliament (see Auditor General, 2002).
- Require that all departments' contracts reviewed at least once every two years by an independent agency such as the Auditor General (particularly in areas known to be subject to abuse, e.g., advertising contracts).⁵⁹
- Institutionalize an independent review (at least once every five years) of every government organization using a set of standard criteria plus those for that specific organization.⁶⁰ The reviews must be published quickly.

9. CREATE MORE OPPORTUNITIES FOR DIRECT DEMOCRACY

9.1 Discussion

Canadians need more opportunities to participate in their governance directly. One of the weaknesses of the Westminster model is that the prime minister is not elected by all voters directly, but only by those in his/her electoral district.

Some elements of direct democracy would be a very use complement to our traditions of responsible or cabinet government. No serious commentator argues the expensive use of the recall, initiative or referenda.⁶¹ But on a limited basis each of these tools could make government more accountable to voters. Gordon Gibson (2002a, p. 23) explains

as a practical matter, direct democracy is little used and even little discussed in the Canadian context, it has a small but essential place in our system. Beyond the election of representatives directly, the direct approval of constitutional amendments is required by law in B.C. and Alberta, and by quite strong precedent elsewhere. The nation-wide vote on the Charlottetown Accord (which of course rejected that constitutional plan notwithstanding its support by the federal government, every provincial government, most local governments and essentially the entire "establishment" of the country from business through unions, churches and the media) has probably set a pattern which governments will be unable to ignore in the future.

⁵⁹ Diane Francis (2002) argues "...the moral deterioration in Ottawa spread the minute the Liberals gained power in 1993, when they imposed a blackout in the public accounts as to how money was spent, how much was spent and by whom. All contracts over a certain small amount used to be a matter of public information, annually posted, which kept the politicians and civil service more or less honest. But now absolutely nothing stands between our money and sticky-fingered friends of the Liberals except leaks by principled persons, whistleblowers from inside government or investigative journalists." See also, Aubry (2002c).

⁶⁰ We recognize that such an approach is best suited to routinized functions. For professionals, the problem is much more complex and other, more flexible, ways of measuring performance are necessary.

⁶¹ One of the commentators on an earlier draft made the following point: "It was the plebiscite which, according to the historian Mommsen, led to the death of the Roman Republic, for it finally collapsed under the influence of demagogues like Julius Caesar. And with television, I think our society is more exposed than Roman society was to the plebes. I do not like to repeat too often a favorite quote, but I like Ortega y Gasset's quote of a German scholar writing in the 1920s to the effect that our greatest social problem is the "internal invasion of the barbarians," meaning the half-educated persons who watch nothing but the sitcoms (which includes the TV news) and read only the sports pages. What he was referring to was the new, partly educated masses in Europe that were falling prey to the then current demagogues, Mussolini, Hitler, Franco, et al. A recent example of what can happen with initiatives is the notorious tax ceiling initiative in California. In any case, I would never recommend that an initiative be permitted to be invoked in connection with a money bill."

It is no secret that many people in Canada are frustrated by the way the present political system works. They want some new and powerful signaling devices to force their federal government to be more responsive to them. This is the case for using the tools of direct democracy as a “safety valve.” Gibson (2002a, p. 23) explains: “the ‘safety valve’ consists of machinery that can be activated by an outraged public against government action or refusal to act. The two main instruments here are the ‘Initiative’ and ‘Recall’. The Initiative allows a group of citizens of a stipulated minimum size to force a vote on any given proposition of public policy. The Recall provides for a vote that can potentially prematurely end the term of the local representative.”

These tools are commonplace in the U.S. And they were put in place most reluctantly in B.C. by the NDP government following a referendum by the previous Social Credit government in which there was over 80% support for an Initiative and Recall procedure. The problem is that the requirements established by the NDP are so restrictive that these tools are effectively impossible to use, e.g., an Initiative can be activated only by obtaining the signature of 10% of the persons on the voters list in every electoral district! (Gibson, 2002a).

We want the tools of direct democracy to require considerable effort to be put into operation – but we also want them to be practicable when a fair amount of discontent builds up and the Government needs to hear stronger signals.⁶²

9.2 Proposed Reforms

- Initiative: When the valid signatures of 10% of electors are collected in each of the following five regions (the Maritimes, Ontario, Quebec, the Prairies and B.C. and the far North), the Government of Canada shall be obligated to hold a national referendum on the policy issue (or issues) advocated by the proponents of the initiative within four months of the validation of the necessary signatures. The Government will be obligated to implement the policy (policies) that receive at least 50% of the votes cast.
- Recall: When the valid signatures of 20% of the electors are collected in any electoral district calling for a recall election, the Government of Canada is required to hold a by-election within three months.
- National Referenda:⁶³ A national referendum shall be held on any non-technical amendment to the Constitution of Canada. The proposed amendment shall be adopted if it receives at least 50% of the votes cast on a national basis.

⁶² We agree with Gordon Gibson (2002a, p. 23) notes that “Direct democracy is not the voice of God, merely mass opinion on one issue at one point in time.” See also Joyce (2002), Victoria Times Colonist (2002).

10. IMPROVING PUBLIC CONSULTATIONS AND CITIZEN ENGAGEMENT

10.1 Discussion

While we believe that the role of legislators in canvassing the views of citizens is important, so too is the role played by the executive branch in its public consultations on public policy matters. However, despite the substantial human and financial resources expended annually by governments on consulting the public at large and stakeholders in particular on a vast array of issues, there is widespread dissatisfaction with both the processes and the results, on the part of participants both inside and outside government.

One of the biggest challenges for government is what to do with the information and the ideas presented to it during consultations. Too often, for many in government, consultations involve going through the motions,⁶³ fulfilling an obligation (often set out in law or regulation) to consult stakeholders representing consumer and commercial interests. Yet, too often, such consultation processes are cooked⁶⁴ from the beginning with key premises defined, options specified and – frequently – conclusions predetermined by those for whom consultations is largely an exercise in social marketing and communications rather than an open engagement on ideas.

There is no lack of creative means for eliciting the views of citizens and stakeholders. Over the years, a substantial cadre of skilled facilitators and public consultations professionals have emerged in Canada with lots of ideas about how to elicit views on complex issues. The remaining challenge is what to do with this information and how it should be factored in to the deliberations of decision-makers. Given the considerable diversity in scope, complexity and relevance of the various issues which are subject to public consultations, we will make no attempt here to propose how the information should be used in policy-making. However, in the interests of transparency, accountability we believe it is essential that much more attention be paid by governments in responding to what it hears in such consultations.

Too often, those who make representations to government on public policy issues do so without adequate information on background associated with the matters at issue (including key assumptions being used by policymakers, their definition⁶⁵ and parameters of the issue and the policy options under consideration) and are unaware of the decision-making apparatus, process and timetable in place to deal with the issue. It's no wonder then, that such citizen or stakeholder representations are then judged by public servants to be not very helpful or germane.

⁶³ We use the term *referenda* not *plebiscite*. The former are binding on the legislature; the latter is not – it only gathers the opinion of electors.

There is often too little diversity in the information and proposals provided to government. There are too few organizations in Canada which have the financial means to do the research and policy development required to play a meaningful, constructive role in public consultations on policy matters. Yet, Canada's substantial civil society network is eager to expand its role in this regard.

There seems no doubt that citizens want new and more effective ways of signalling their political preferences to governments in Canada. Voting once every four years or so is not sufficient (see Stanbury, 2002c). Over the past three decades at least, the volume of lobbying activities has increased and a far wider range of organizations are actively seeking to influence public policy.⁶⁴ But the tax treatment of donations and/or expenditures aimed at influencing public policy is not the same for all entities engaged in lobbying in any of its many forms. Perhaps the easiest and more general approach is to permit individuals to have a tax credit for direct expenditures on lobbying (defined broadly as any effort to influence public policy) or for donations to any "registered political entity." The latter would simply be any entity that spent over, say, \$25,000 per year on lobbying. It could only issue receipts for tax purposes provided it was registered with the federal government, and filed the required annual report on its revenues, expenditures and issues/policies it sought to influence. The tax credit might be structured like that for donations to parties or candidates. Thus the maximum tax credit would be \$500.

Andrew Coyne (2002h) argues strongly against the proposition that registered charities (i.e., those entitled to issue a receipt for tax purposes for the contributions they receive) be permitted to spend as much as 49% of their revenues on advocacy. The current limit is 10% (although enforcement is hardly uniform). The crux of his argument is that by increasing the limit, "the government [will be] paying people to lobby it to pay them to lobby it to pay them to lobby it. And so on and so forth, per ardua ad astra." Further, "the right to speak your mind does not extend to the right to a subsidy to do so."

The crucial weakness in Coyne's analysis is the fact that he fails to note that profit-making businesses deduct tens of millions each year for lobbying expenses. Such activity is expressly designed to influence public policy in ways favourable to the firms (trade associations) doing the lobbying. In other words, other taxpayers indirectly subsidize the free speech of any tax-paying corporation that spends money on lobbying. Unions, on the other hand, not being taxable entities, cannot obtain a comparable subsidy for the money they spend on lobbying either directly, or through dues paid to the Canadian Labour Congress or other central body.

10.2 Political Reforms

- Require government departments or agencies which undertake public consultations to publicly provide a summary of what it heard during the consultations and indicate, at least in general terms, its response to the proposals (i.e., whether they are being reflected in public policy or, if not, reasons as to why).
- Require that some written explanation be provided before, during and following public consultations of the options and associated trade-offs which must be considered by policy-makers. (This in contrast to the typical practice of government merely providing an explanation, defence and rationale for the single policy option chosen in the end.)
- Require government organizations sponsoring public consultations to provide more detailed information on the decision-making processes in place to make decisions on the issues at hand, the timeframes governing the decision-making process, the premises used by government in initially framing the issues and the preliminary range of policy options for discussion along with some assessment of the trade-offs associated with each.
- Amend the Income Tax Act to enable registered charities to expend up to 25% of their resources on “advocacy” activities. (They are currently restricted to a maximum of 10%).
- Permit “registered political entities” (i.e., lobbying organizations) to issue tax receipts for contributions to individuals. Then individuals would be entitled to a tax credit on the same basis as they now receive for contributions to registered parties or candidates under the Canada Elections Act.

11. CONCLUSIONS

Georges Clemenceau (1841-1929) observed that “war is much too serious a matter to be entrusted to the military.”⁶⁵ So it is with political reform. It would be foolish to leave it up to the incumbent politicians, although it is the party in power which must legislate the reforms. For example, Paul Martin has recently promised a number of reforms aimed at strengthening the role of backbench MPs (see Coyne, 2002f). Yet, despite being a senior cabinet minister under Jean Chrétien since 1993, he had never made any previous public statements on the need for such reforms (see Laghi, 2002c). A very experienced observer of the Ottawa scene recently stated that he knew of no real interest in political reform among MPs.⁶⁶ In rebuttal we note that the Glorious (but peaceful) Revolution of

⁶⁴ And, Canadian policies are being influenced by groups funded abroad and by the efforts of interest groups in other countries. See, for example, Stanbury (2000b).

⁶⁵ The saying is also attributed to Charles Maurice de Talleyrand Perigord (1754-1838).

⁶⁶ This statement was made before the Canadian Alliance’s proposals for political reform were released. See Dunfield (2002).

1688-1689 in England did not come about under the leadership of James I, who was deposed and went into exile. If Canadians want the reforms outlined above, they must communicate their wishes strongly to all parties and all leadership candidates.

Democracy in the form we have today is the product of a long slow process first in England and then in Canada beginning in the 1840s when responsible government first came to the colonies.⁶⁷ Recall that it was not until 1918 that women could vote in Canadian federal elections.⁶⁸ As important, democracy is a process in which citizens must take an active role – or it tends toward oligarchy. If the prime minister has vastly too much power, it is because citizens have failed to curb the increasing concentration of that power in the hands of successive PMs. In short, Canadians have been far too trusting of their elected representatives and far too uncritical of the gradual evolution of the Westminster model of government in Canada. The performance of Canadian democracy is far, far from satisfactory on any of the key criteria: representativeness, responsiveness to electors, limitation of the inevitable abuse of power, and citizens' access to sufficient reliable and authoritative information necessary to make sound decisions about their elected representatives.

The claims in the mind of the current prime minister with respect to the last general election are proof that – as a signaling system – general elections in Canada are highly deficient. Prime Minister Chrétien has repeatedly referred to the “mandate” he received from Canadians in light of the larger majority of seats the Liberal Party obtained in the general election of November 2000.⁶⁹ Recent research seriously questions his claim:

Only 15 per cent of people polled by SES Canada Research Inc. said they think the Liberals won the last election because of Mr. Chrétien's leadership. And only slightly more – 17 per cent – said the 2000 election results were a shared victory for the “team” of Mr. Chrétien and former finance minister Paul Martin. Just seven per cent said the Liberals won because the party had the right vision for Canada.

Meanwhile, though a whopping 40 per cent of Canadians said the Liberals won their third majority government 20 months ago because there was no appealing alternative among the opposition parties. And 21 per cent said they were simply “unsure” why the Liberals won. That's almost two-thirds of Canadians who seem to believe that this country is being governed by default. (Delacourt, 2002).

Unfortunately, the political reforms most likely to benefit citizens – like those described above – are also what economists call pure public goods. That is they have two essential characteristics: a)

⁶⁷ Nova Scotia is usually said to be the first colony to achieve responsible government in 1847 largely due to the efforts of Joseph Howe. The Province of Canada soon followed.

⁶⁸ Note that even after the Reform Bill of 1832 in the U.K., only 20% of adult males were able to vote. Note that in France, women did not get the vote until 1946!

⁶⁹ The Liberals obtained 173 seats in 2000 versus 155 in 1997.

increased consumption by one or any number of persons does not reduce the amount available for others; and b) efforts to create such goods are subject to “free riders,” i.e., there is apparently no incentive to help pay the costs of creating such goods because – if they are created – no one can be excluded from their benefits. They need not pay to get them. Thus it appears that citizens will not gather together to see that the political reforms they want will, in fact, be put in place. This phenomenon has been described as the “logic of collective inaction” (see Stanbury, 2002e).

But there are two crucial facts which belie this analysis: a) citizens can only ride for free if the public good in question (i.e., political reform) is, in fact, produced; and b) citizens recognize that their calculation of the benefits and costs of taking political action should not be a narrow one. They must reckon with the possibility that what was a democratic regime could become transformed into a tyranny.⁷⁰ Ironically, a democratically elected government could, by a majority vote, effectively establish a dictatorship. This threat may seem remote – but it is that prospect which greatly increases the potential benefits of making political reforms. Or, put another way, the costs of failing to act to institute reforms could result in extraordinarily high costs to Canadians.

Most economists recognize that the calculus of choice involving the basic elements of participation in a democracy is not like that for ordinary economic goods and services. It is a fact that a bountiful economy requires very extensive reliance on effectively competitive markets. But the existence of such markets is closely correlated with the existence of a popular constitutional democracy. Ensuring the health of that democracy is critical to an abundant and growing economy. The health of Canada’s democracy requires that most of the reforms set out above be implemented promptly.

⁷⁰ This point was recognized explicitly by the U.S. “founding fathers” who (following the ideas of John Locke) stated in the Declaration of Independence that “when a long train of abuses and usurpations [by government], pursuing invariably the same object, it is their duty [i.e., of citizens] to throw off such government, and to provide new guards for their future security.”

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