

Transparency in Money in Politics: A Comparison of the United States and Canada

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I. Introduction

Few Canadians appreciate being compared to or mistaken as Americans and even fewer Americans feel comfortable comparing their presidential system with the Canadian parliamentary system. Nevertheless both nations despite their differing political cultures and size would agree that their disclosure systems for following money in politics have more in common than differences.

Arguably, Canada and the United States represent the most advanced disclosure systems and public transparency of political finance in the world. Both have experienced years of major transformations since the 1970s (and major adjustments in the last two years) and have had their fair share of court battles and political corruption scandals. This chapter points out the important role played by disclosure in controlling money in politics and highlights some of the similarities and differences between the Canadian and US approaches to transparency. Lastly, it will attempt to arrive at some lessons learned about disclosure that might be mutually beneficial or relevant to other parts of the world.

II. Disclosure Defined

The public's need to know who finances what party or candidate can be summarized in a single but difficult question: "Who gave how much to who for what purpose and when?" It is both an accounting question as well as an accountability question. The "accounting" side is the systematic collection of the receipts and expenditures of a party or candidate and the organized

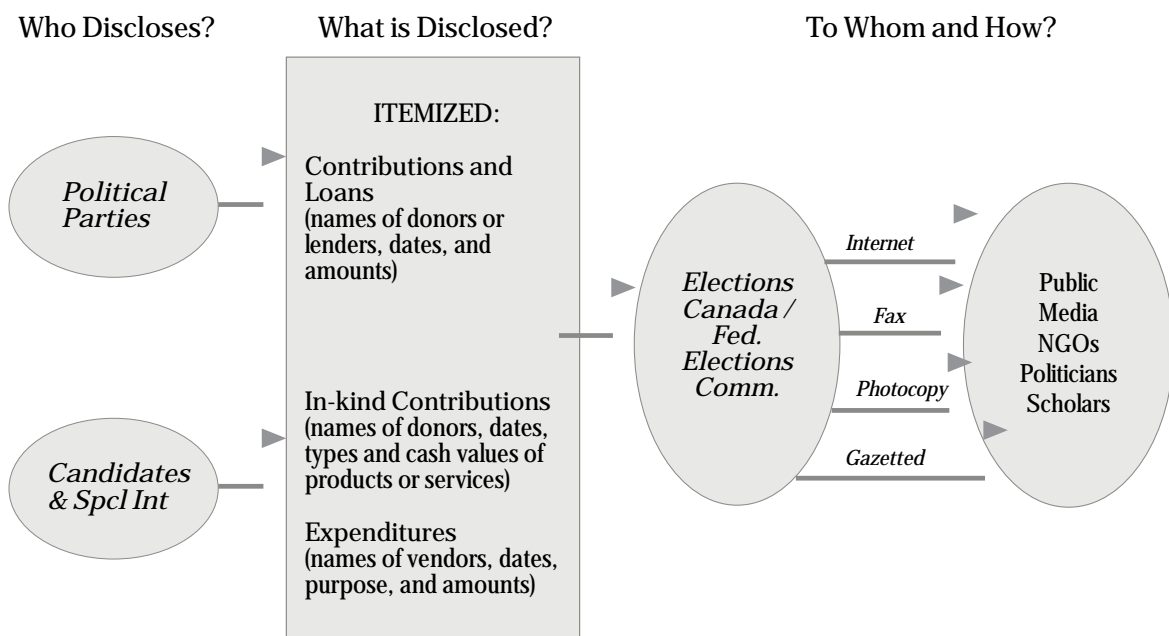
reporting of such to an election commission. The other side of the equation is “accountability” or making sure the public has access to the financial reports as quickly as possible. The major intent of campaign finance transparency is to allow the citizens of a democracy to answer the disclosure question and then make up their own minds about the meaning of the sources and amounts of money given to their leaders.

As simple as this might appear (and as indicated Diagram 1 below) a complexity of regulations and exemptions as well as loopholes and lack of enforcement have made disclosure less transparent than it should be, especially in clearly and unequivocally revealing to voters who or what organizations underwrite their leaders or who their leaders might be beholden to. Though flawed by its implementation in many nations, disclosure is still the best though not perfect measuring device for all types of campaign finance reform regarding source identification or dollar volume limitation to. As practiced in Canada and the US, disclosure is rather tightly calibrated and donor sources and volume limitations are precisely measured and shared with the public. For example, in the United States in the 2000 elections, approximately US \$2 billion was processed through the disclosure system, while in Canada disclosure reports accounted for about CAN\$100 million spent in the 2000 general election. Every dollar, with only a few exceptions in both countries, was traceable to an individual or group. The robust disclosure processes required to account for such large sums of money is represented graphically below (see Diagram 1).

Diagram 1 depicts Canada and the US with basically the same disclosure systems. As shall be seen later in this chapter, this is both the appearance and the perception, but the reality is that considerable, though subtle, differences remain between the two systems.

Diagram 1

US-CANADIAN DISCLOSURE PROCESSES



III. Some Conditioners of Disclosure

Before discussing detailed similarities or differences between Canadian and American disclosure, some structural differences should be noted that influence the way each country handles disclosure. For example the Canadian financing system is party-based with the lion's share of income generated by the parties and not candidates. The exact opposite is true in the United States where candidates prevail and a type of American 'rugged individualism' makes the parties the weaker fundraisers compared to individuals.

Other values also condition the two disclosure systems and provide the enabling environment for high levels of disclosure. For example, one important value driving Canadian policies is akin to an 'equalitarian social contract' mediated by government. Values behind US campaign finance are more akin to private sector and First Amendment-driven demand for "openness, equality of opportunity, and free speech."

Consequently, Canada has stronger political parties and large doses of public funding compared to the United States which has weaker parties and very little public funding. In this financial milieu US parties and individuals tend to stand up to government regulations and create more court cases and weaker enforcement. On the other hand, Canadian litigation is discouraged by the social contract as well as a statute that bans attempts to circumvent campaign finance laws – directly opposite of the intents of some lawyers in the US whose major job is to find ways around laws that restrict party and candidate creativity and innovativeness to raise and spend money¹². Getting around the law is the challenge of parties and candidates, and plugging the loopholes is the challenge of the government. Consequently US parties and candidates tend to play an avoidance game with regulators and many campaign finance laws are often tested in court before they are fully implemented.¹³

IV. History of Disclosure in North America

The case of the United States and Canada demonstrates that neither country started out with disclosure as an end in itself but as a means to an end. Both had other regulatory priorities that took precedence over the development of their disclosure systems. In Canada for example, the two biggest priorities of the nation's campaign and party finance regulatory regime was a strong national desire for strict spending limits and public funding for political parties or reimbursements to candidates.¹⁴ More recently contribution limits have been added. In Canada parties as well as candidates receive public funds either by grants, reimbursements, or tax credits. These together can account for up to a 65%+ subsidy for electoral politics paid for by Canadian taxpayers, in comparison to a very small subsidy for only US presidential contests. Canadian disclosure is thus most beholden to tracing government funds while US disclosure focuses primarily on tracing private funds. Disclosure in Canada is also more stringent for political parties than candidates, and will be discussed later.

¹² While Canada is known for its strict spending limits and lawyers who are not always looking for a way to circumvent the law like their US counterparts, it should be noted that spending limits in Canada apply only during the five-week election periods.

¹³ For example, the recently passed Bipartisan Campaign Reform Act (BCRA) of 2002 (McCain-Feingold) was challenged in court within hours of its passage by a group of sitting Senators and political action committees (PACs).

¹⁴ The Canadian public funding formula is \$1.75 per vote; these funds go to the parties only, not to candidates.

Consequently, Canadians have specialized in controlling spending, and the US has specialized in controlling contributions, but both have depended upon disclosure as the means to the end. US disclosure for example was codified almost 100 years ago by Congress when big donors like banks and corporations were prohibited from making campaign contributions.¹⁵ The US campaign finance system was driven by an early national desire to control the influence of big donors and a high demand for transparency and openness about money in politics. Early disclosure requirements were set forth as a founding principle shortly after political finance regulations began in 1867 with prohibition of government officials coercing naval shipyard workers to make campaign contributions. In 1910 the first disclosure laws were enacted for U.S. House candidates to file financial statements with passage of the “Federal Corrupt Practices Act”. The reach of disclosure was later broadened in 1925 and served as the basic campaign transparency requirement until 1971 and 1974 when present day disclosure laws were completely put in place.

Though US policy makers have generally fought for campaign finance reforms when they needed to, political scandals have been one of the bigger motivators for change. For example it was not until the Watergate scandal that the most far-reaching reforms, especially enforcement of disclosure regulations, in US political finance history took place. US civil society did show its strength during this period and ably articulated the national desire for uncompromisingly high standards of transparency, but it was the media and the scandal that catalyzed and locked in the actual disclosure enforcement legislation.¹⁶ Others have suggested that Watergate also prompted as many changes in Canadian politics since both countries conducted their major reforms during this period.

It was the Federal Election Campaign Act of 1971 (modified in 1974) that put the most stringent disclosure rules into effect in the US. Not only were donors to be identified by name and address, but also occupations were to be listed so corporate or other affiliated networks could be traced or linked to political donations. But the most important of all of the Watergate reforms was the formation of the Federal Election Commission in 1975, which began in earnest to enforce the decades old disclosure laws. Following the landmark Supreme Court decision in *Buckley v. Valeo* in 1976 spending limits were declared unconstitutional, however disclosure laws and contribution limits were sustained, and were thereafter locked in as the mainstays of the American political finance system.

Canada’s disclosure regime is even a more recent phenomenon- though strengthened by strict enforcement required of public financing. Canadian finance laws date back to 1891 but it was not until regulations from Quebec (1963) and New South Wales (1981) that the federal government was inspired to pass laws on disclosure and public financing.¹⁷ Today disclosure in Canada and the US however different their origins, have present-day systems that are quite similar though subtly quite different. As two of the most open societies in the world, Canada and the US rely on disclosure to meet each society’s demand for transparency and accountability. Disclosure and enforcement however do have a price. In fiscal year 2003, for example, the US Federal Elections Commission had a budget of about US\$ 50 million dollars in comparison to

¹⁵ Political donations by banks, though illegal in the US, are still legal in Canada.

¹⁶ Regarding the role that scandals play as a catalyst for campaign finance reform, some have argued that if the Enron scandal had not been juxtaposed to the public debate on the Bipartisan Campaign Reform Act (McCain-Feingold) of 2002 its passage might have been delayed or even rebuffed.

¹⁷ See “Political Finance in Old Dominions (Australia and Canada)” by Dima Amr and Rainer Lisowski, in Karl-Heniz Nassmacher (ed), *Foundations for Democracy: Approaches to Comparative Political Finance*, Baden-Baden: Nomos, p. 53.

the Canadian Electoral authority's budget of CAN\$ 201 million dollars - almost three times larger than the U.S. system.¹⁸

V. Highlights of Similarities and Differences between US and Canadian Disclosure

The literature on political finance in the United States is generally more cynical about campaign finance in the US than the Canadian literature is cynical about campaign finance in Canada. Criticisms include just about all aspects of US campaign finance save one, disclosure. Disclosure is an area in the US that has consistently earned more praise than scorn. Disclosure has been called the cornerstone of campaign finance in the United States and one of the few areas where the US excels.¹⁹ While other parts of campaign finance such as spending and contribution limits are contentious and without consensus, nearly all sides of the campaign finance debate accept the disclosure requirement that parties and candidates make known the sources of their money and the way they spend those funds. Even those in the United States who suggest an end to all campaign spending limits, regulations, or fundraising ceilings, agree that disclosure is first and foremost in importance in controlling, maintaining as well as understanding political finance.

One of the differences between Canadian and US disclosure is the level of intensity of enforcement, with the US having a history of laxity. Enforcement in the US started out rather ineffectively because the US Congress designated itself as the agent or watchdog of enforcement starting back in 1925. Due to this conflict of interest, disclosure laws on the books were not enforced for over 40 years until 1967 when former Congressman W. Pat Jennings became the Clerk of the House of Representatives and began enforcing the regulations. However because the U.S. Justice Department ignored his list of violators, it was not until the Watergate scandal and the establishment of the Federal Election Commission in 1975 that serious enforcement of the disclosure laws actually began.

To get a more comprehensive view of the historical differences and similarities between Canadian and US disclosure, Charts 1 and 2 (below) record the changes that have taken place over the past two years. As indicated in Chart 1, the disclosure gap between the US and Canada just a few years ago was quite substantial. For example, disclosure was not required of all special interest groups (called "third parties" in Canada" or US PACs) as well as "constituency associations" and leadership contests, and party and candidate financial disclosure reports were of little value because they were not required to be filed until months after the election. Additionally, MPs were not required to declare contributions collected in the off-election period, and bank loans required very little documentation, and finally, donor identification did not require the occupation of the contributor.

These substantial differences demonstrate that disclosure is not only a more recent phenomenon for Canada but also one that was less comprehensive and ineffectively timed. In 2003 legislation was passed in Canada (Bill C-24) that required tightening these disclosure requirements that would become effective January 2004 and January 2005. In this legislation,

¹⁸ Aucion, Peter "Comparative Analysis on Political Party and Campaign Financing, Appendix 1" December 2003.

¹⁹ See Herb Alexander and Clyde Wilcox, "American Exceptionalism? Campaign Finance in the U.S.," January 2004.

political parties were required to file quarterly financial reports before elections as well as filing their usual annual reports after elections. Likewise ‘third parties’ (PACs) were required to begin reporting all of their funding sources.

Chart 2 represents the “post reform” state of disclosure for Canada and the US following the passage of Bill C-24 as well as Bipartisan Campaign Reform Act (McCain-Feingold) of 2002. From a comparative perspective, it can be seen that the United States maintained the same stringent disclosure requirements before and after McCain-Feingold. (McCain-Feingold prohibited “soft money” from being raised and spent by political parties, and has largely forced previous soft money donors, such as wealthy individuals, corporations and unions to other areas off the campaign playing field and is mentioned in more detail later in this chapter.) In addition to far-reaching disclosure reforms, Bill C-24 also impacted spending limits. Though Canada is most known for its strict spending limits, it was not until passage of Bill C-24 that corporations and trade unions were not allowed to contribute with no restrictions to Canadian political parties and candidates. Unknown to many outsiders, traditionally Canadian parties had depended on contributions from large corporations.²⁰

Another unique feature of Canadian disclosure is its system of incentives for compliance. For example Canada offers tax credits²¹ for donations that serve as an incentive to file accurately and quickly so donors can benefit on their annual tax returns; and secondly Canada has a large well-financed cadre of investigators armed with auditing authority and sanctions that serve as an incentive for parties and candidates to disclose quickly and accurately.

²⁰ *Ibid.*, p. 60.

²¹ According to research by Michael Pinto-Duschinsky, “Financing Politics: A Global View,” in *Journal of Democracy*, Vol. 13, No. 4, October 2002, about 18% of nations have tax credits as a means of providing incentives for filing disclosure reports.

CHART 1

<p>“BEFORE DISCLOSURE REFORMS”</p> <p>DISCLOSURE REQUIREMENTS:</p>	<p>2001²²</p> <p>CANADA</p>	<p>2001²³</p> <p>UNITED STATES</p>
<p>Income and Expenditure Disclosed by:</p>	<p><i>Parties & candidates excluding some “3rd party groups”, such as special interests, constituency associations, leadership contests” MPs also not required to disclose all donors between elections</i></p>	<p>Full disclosure including address, <i>except occupation not required</i></p>
<p>Electronic Filing Required</p>	<p>No</p>	<p>Yes, Required²⁴</p>
<p>Donor Identity Disclosure Requirements:</p>	<p>Parties, candidates, and all other “special interest” organizations and political action committees (PACS) must file disclosure reports</p>	<p>Full disclosure including address and occupation of donor</p>
<p>Thresholds of Disclosure: Non-Cash “In-Kind” Contributions Counted</p>	<p>Canadian \$200 Yes, including loans, but <i>key terms of bank loans not disclosed</i></p>	<p>US \$200 Yes, including loans and all details of bank loans are disclosed</p>
<p>Vendor Identity Disclosed</p>	<p>Yes</p>	<p>Yes</p>
<p>Timing of Disclosure</p>	<p><i>After Elections</i></p>	<p>Before & After Elections</p>
<p>Public Access to Reports</p>	<p>Yes</p>	<p>Yes</p>
<p>When Reports Available</p>	<p><i>If available, Immediately</i></p>	<p>Immediately</p>
<p>How Reports Accessed</p>	<p>Internet, Photocopying</p>	<p>Internet, Photocopying</p>
<p>Ease of Access to Reports</p>	<p>Yes</p>	<p>Yes</p>
<p>Reports are Itemized</p>	<p>Yes</p>	<p>Yes</p>
<p>Disclosure of Assets Required:</p>	<p>Yes</p>	<p>Yes</p>
<p>Off-Election Period Disclosure by MPs Required</p>	<p>No</p>	<p>Yes</p>
<p>Bank Donation Disclosure Required</p>	<p><i>Legal, with disclosure</i></p>	<p>Contributions from banks are illegal</p>
<p>Unregulated Trust Funds or Legislative Accounts held by MPs, Congressmen</p>	<p><i>Legal, with no disclosure required</i></p>	<p>Unregulated Accounts by Members of Congress are not legal</p>

²²This chart reflects the disclosure requirements in Canada preceding amendments to the Canada Elections Act, Bill C-24 passed in 2003 which became partially implemented in January 2004 and will become fully operational in January 2005.

²³This chart reflects disclosure requirements in the United States as of 2001 prior to passage of the Bipartisan Campaign Reform Act (McCain-Feingold) of 2002.

²⁴The U.S. Senate has not yet been required to file its disclosure forms electronically but is nearing its deadline. The House of Representatives has had mandatory electronic filing since 2000; also the vast majority of State Legislatures have electronic filing.

CHART 2

“AFTER DISCLOSURE REFORMS” ²⁵	2004/5 (Bill C-24)	2002 (McCain-Feingold)
DISCLOSURE REQUIREMENTS:	CANADA	UNITED STATES
Income and Expenditure Disclosed by:	Parties, candidates, but not “MP Trust Funds”	Parties, candidates, and others with partial exception of “527s”
Electronic Filing Required	No, Optional	Yes, Required
Donor Identity Disclosure address, w/o occupation	Full disclosure including	Full disclosure Requirements: address w/ occupation
Thresholds of Disclosure:	Canadian \$200	US \$200
Non-Cash “In-Kind” Contributions Counted	Yes, including loans (key terms of bank loans not disclosed?)	Yes, including loans
Vendor Identity Disclosed	Yes	Yes
Timing of Disclosure	After Elections	Before & After Elections
Public Access to Reports	Yes	Yes
When Reports Available	If Available, Immediately	Immediately
How Reports Accessed	Internet, Photocopying	Internet, Photocopying
Ease of Access to Reports	Yes	Yes
Reports are Itemized	Yes	Yes
Disclosure of Assets Required	Yes	Yes
Off-Election Period Disclosure by MPs Required	No	Yes
Bank Donation Disclosure Required	Legal, with no disclosure	Contributions from banks are illegal

VI. Contrasting Strengths and Weaknesses:

- **Loopholes in Disclosure:** Whereas the US appears to be constantly plugging loopholes in its disclosure system, the Canadian system appears less prone to such de-stabilization. For example, a new generation of “527 committees” in the US proliferated within a few months after the Bipartisan Campaign Reform Act (BCRA) of 2002 made ‘soft money’ illegal and the “527s” inherited most of the soft money in the nation. According to Professor Clyde Wilcox, “probably the biggest hole in the U.S. campaign finance disclosure system is issue advocacy,

²⁵These present disclosure requirements in Canada resulted from amendments to the Canada Elections Act passed in 2003 and became effective January 2004 with parts not becoming fully effective until January 2005.

which is spending that technically advocates an issue, not the election or defeat of a federal candidate. In the U.S. groups often try to persuade the public on a policy issue. The Supreme Court ruled that issue advocacy spending need not be disclosed to the Federal Election Commission unless it expressly advocates the defeat or election of a federal candidate, using any one of a series of “magic words” such as “vote for” or “defeat”.²⁶

“527 committees” have thus resurrected ‘issue advocacy’ advertising and remains the latest loophole for corporate and union funds that were declared to be illegal since 1907 and 1943 respectively. “527s” were challenged in the FEC in early 2004, but will not be decided upon until after the presidential election of November 2004. Canada on the other hand with comparatively fewer legal challenges to its disclosure regime has nonetheless also been subject to ridicule for its loopholes. For example, Karl-Heinz Nassmacher noted that “Canada, despite its almost perfect model regulation, has loophole ridden regulations about disclosure because it neglects debts and assets, constituency associations and leadership contests”.²⁷ Bill C-24 will largely do away with these loopholes though not all of them until January 2005, and it is still uncertain whether the undisclosed and unregulated trust funds held by Members of Parliaments will be eliminated.²⁸ Trust funds or slush funds such as this are illegal in the US because they are not accountable to any government oversight.

- **Uneven Disclosure Filings:** The reforms of 2004 required that Canadian parties, but NOT Canadian candidates file quarterly financial reports. Since candidates and political parties spend almost the same amount of money during the election season, this appears to be a disclosure weakness and in favor of candidates who don’t have to file their expenses until after the elections are over. This has the appearance of being an uneven playing field, and as noted earlier places more stringent disclosure requirements on the parties rather than candidates. In the United States, on the other hand quarterly financial reports have been required since the Teapot Dome scandal of 1925.
- **Seasoned Court Decisions:** As previously suggested, Canadian disclosure and other regulations have not had to be tested in court quite as often as US regulations, but could be subject to change in the future. For example a serious legal challenge is presently being waged in Canadian courts that might change the political landscape of Canada in the near future. “Third Party” organizations or special interests are presently battling in court against spending limitations. Decisions of lower courts so far have favored striking down Third Party spending limits (such as the US courts did in 1976), but the Canadian Supreme Court is still deciding the case. If special interests spending limits are not sustained, disclosure and the entire political landscape of Canadian elections could somewhat shift away from the political parties which are now the center of gravity for Canadian political culture.

US campaign finance law is marked with a variety of legal battles especially over the past thirty years, and with the parties and candidates usually coming out on top. The only exception to strict US disclosure requirements, for example, was the US Supreme Court exemption given to the Socialist Workers (Communist Party) of America from disclosing the names of its donors in fear that it would hamper donations or invite harassment. The Supreme Court ruled that

²⁶ “Transparency and Disclosure in Political Finance: Lessons from the United States,” Paper presented by Prof. Clyde Wilcox, at the Democracy Forum for East Asia, Sejong Institute, Seoul, Korea, June 2001.

²⁷ “Major Impacts of Political Finance Regimes” by Hiltrud and Karl-Heinz Nassmacher, in Karl-Heinz Nassmacher (ed), *Foundations for Democracy: Approaches to Comparative Political Finance*, Baden-Baden: Nomos, p. 196.

²⁸ As of this writing, a “Bill C-34” had been introduced in the House of Commons to possibly close this “trust fund loophole” or force some kind of disclosure on these funds.

the threat of reprisals against donors would mean that forced disclosure would limit the party's ability to raise funds to compete in election contests.

Overall the role played by the US courts in campaign finance has been almost as important as that played by the US Congress, though harsh measures to restrict disclosure or contributions have been largely avoided in favor of moderate or compromise measures.

- US and Canadian Disclosure Closest From a Distance: What Canada and the US share in common is what distinguishes it from most other parts of the world. For example, regarding disclosure of loans in campaign accounting, it is common for Canada and the US to not only count loans, but also include in-kind contributions as income, whereas most other nations overlook these categories. More importantly a vast majority of countries (estimated to be 70%+) do not require the itemized reporting of donor names and addresses, or the identification of vendors by name and addresses, though this is a common characteristic of the US and Canadian disclosure systems. The US and Canada also insist that the public has immediate and easy access to party and candidate disclosure statements, something that many countries make available months or even years later and make it difficult for NGOs and the media to have easy access to the data. The United States and Canada are also alike in requiring financial reports to be both aggregated and disaggregated, (itemized) so outside agencies, (NGO's and the media), will be better able to scrutinize and interpret the data without difficulty. Lastly the US and to a lesser extent Canada have electronic filings and most disclosure reports are available on the Internet for downloading and analysis but this is rare elsewhere.

VII. Lessons Learned

What, if anything, can Canada and the US learn from each other's disclosure systems and what, if anything might be relevant to other countries? The reality of political finance is such that no nation's political finance system has yet matured enough to be considered a model for others. However, some countries like Canada and the US have more experience than others in grappling with the influence of money in politics and particularly with the subject of disclosure, and some lessons learned might be useful to others.

Disclosure and Enforcement: The Best of the US and Canada

If it were possible for the best parts of both systems to be cobbled together it might prove beneficial to both as well as something other nations might consider. For example to combine the strict disclosure of the US system revealing the names and addresses of donors and vendors with the strict enforcement of the Canadian system could prove to be a very strong combination.

The lesson learned to date is that disclosure without enforcement is of limited value and enforcement without a comprehensive disclosure system is guesswork. To strengthen enforcement in the US and other nations, it would likely necessitate the creation of an "Enforcement Czar" much like the present politically independent and authoritative powers enjoyed by Elections Canada. While the level of funding required for the Canadian model might be a barrier, there is already some discussion about such an office in the US.²⁹ Canada on the other hand, would need

²⁹For example, Senators McCain and Feingold et.al. introduced legislation in 2004 that would abolish the Federal Elections Commission and put in its place a more Elections Canada-like non-partisan organization headed by a single non-partisan individual (appointed for life)with strict powers of enforcement and oversight of disclosure. So far no action has been taken on the measure and some doubt such a system fits US political culture where politicians rarely trust government officials.

to tighten its disclosure requirements somewhat to match that of the US level of stringency. Lastly other nations without disclosure of donor or vendor identity might see the US and Canadian model as the best way of adding credibility to their existing disclosure systems as well as a way of encouraging civil society organizations to become more proactive watchdogs in the political arena. The reality is that without donor and vendor identity NGOs and the media are denied their rightful watchdog positions in society and politicians and parties control the playing field.

Election Deposits Might Increase Disclosure

The lessons learned about election deposits in Canada are not only that they are an incentive for disclosure for election finances, but that they also go hand in hand with public funding. As previously noted, Canada requires a candidate to post an election deposit of CAN \$1,000 and is used as an incentive/leverage for prompt disclosure of contributions and expenditures, however this system would be more difficult to administer in the US where there is no public funding and because races are so expensive, the size of the deposit could be prohibitive. Using \$70,000 as the average cost of a Canadian election contest for a member of parliament and \$750,000 as the average cost of a US House seat, the deposit would be about \$10,000 which suggests the deposit system might be more relevant at the state level where legislators have experimented with public funding and is a good incentive for fast and accurate disclosure.

From an international perspective where the vast majority of nations have some form of public funding, an 'election deposit' and might be more relevant. There is a danger however that deposit requirements could be manipulated and create unequal access to office. A nation could for example set the deposit level so high it could become a way of shutting out the poor (or honest) from entering politics. Access to office is already difficult in many countries where fees range from US \$5,000 to \$10,000 just to get one's name on the party list, and that is not at the top where the cost is much greater.

Public Funding Should Leverage Disclosure

Public money provides the majority of the money in politics in Canada but the cost to the parties and candidates is strict compliance. This structure of incentives may have applicability to other nations that rely on public funding but still have weak disclosure systems and are allowing public and private funds to go unaccounted for. Probably the best lesson learned here is that if a nation has not yet established public funding, it should do so only after first establishing strict disclosure standards before filling the coffers of any parties or candidates. Using public funding as an incentive for agreeing to stringent disclosure requirements has been argued as one of the best forms of persuasion according to some key scholars.³⁰ Regarding nations which already have public funding but are denying their taxpayers this vital public information, these monies should also be leverageable by civil society for more transparency.

³⁰Two strong advocates of this approach for example are Professor Karl Heinz-Nassmacher of University of Oldenburg, Germany and Professor Menachem Hofnung of Hebrew University, Israel.

Privacy vs. Public Interests to Disclose

Where it is weak or doesn't exist, disclosure is controversial and philosophically opposed. For example, some countries in the Americas are still waging the debate about the place of political finance in a democratic society. Some have used the argument (which likely originated in Sweden and Switzerland) that money in politics is nobody's business except the donor and recipient. It equates the privacy of a donation with the privacy of the ballot box. If a person is protected by the privacy of the ballot box and does not need to reveal who one voted for, then one should not be required to tell anyone who one supported with their financial contribution. The lesson learned has been that this type of logic generates a low incidence of enthusiasm for disclosure and the value of transparency to "name and shame" is curtailed.

The opposing argument in favor of full disclosure is that political parties fulfill a public function and are therefore subject to public oversight and scrutiny and part of the public debate. Parties and candidates revealing their sources and amounts of funding are therefore doing so in the public's interest and that monitoring campaign and party finances is an essential public policy.³¹ The lesson here is that scrutiny of party finances by the public, including names of donors, requires some underpinnings in the political culture before it will be adopted by politicians and political parties themselves. The citizens of the US and Canada have already won the 'right to know' how much money goes into politics and who is financing their leaders, but for many years their parties felt this was nobody's business but their own.

Caveat about US-Canadian Disclosure

A final word of caution about disclosure is in order here. Although the more open a society the more disclosure it will have in its campaign finance system, it should be pointed out that the US and Canadian systems are so open and so comprehensive they could ill adapt or actually be dangerous to different levels of democratic culture. In countries like Ukraine for example, where donations to opposition parties can cause a host of tax and fire inspectors to descend upon the business and nearly shut it down, US and Canadian disclosure is ill advised. On the other hand if a nation is a beacon of hope for democracy in Africa, and it has no disclosure laws on the books for private funding, a nation like South Africa might want to consider the US and Canadian disclosure systems. Every nation will eventually be ready for full disclosure, but only according to its own time frame and level of pressure from civil society organizations and citizenry.

Summary and Conclusion

Money in politics goes to the heart of democracy and the core requirement for outfitting a government. Canada and the United States have perhaps developed the most sophisticated disclosure systems in the world to date, though not perfect, are effectively following money in politics. The main difference remains one country's reliability on transparency and controlling contributions (US) while the other stresses controlling spending (via mostly government funding) and enforcement. Since undergoing significant changes in the past two years with passage of

³¹ Resistance to disclosing names of donors has been particularly strong in Latin America and fear of losing donors contribution is the most often cited reason, though some parties more likely fear revealing their illegal sources of funding.

Bill C-24 and McCain-Feingold, the two systems have never looked more the same as now, and the disclosure gap has about closed, but not quite on the Canadian side.

Will they continue to be so similar? According to some US-Canada-watchers the answer is yes, with Canada likely being fast-forwarded by US scandals or court cases.³² The cycle of reform in both countries appears to come about every 15-20 years between major changes in US and Canada campaign finance law. In the meantime small changes in disclosure can be expected such as elimination of trust funds and increased mandatory electronic filing in Canada and likely quicker electronic filing requirements for the US. The biggest potential disclosure changes in Canada will result from the present court case being argued about special interest spending limits, and could have a very large impact. The biggest potential disclosure changes in the US will result from the legal challenges now being waged against the “527 committees” which will determine the future of ‘soft money.’

One final point about disclosure in North America: disclosure and the transparent display of money in politics have probably been the best insurance policy the US and Canada have had against corruption in their political processes. Scandals in the US and Canada have rarely been about hidden money or secret donor identity; in fact, generally the opposite is true. Enron is a case in point. Following its financial collapse, campaign disclosure reports revealed to the public that the Enron Corporation, its major subsidiaries, and its executives had made millions of dollars of political contributions at the national and state levels. These disclosure reports propelled the media to break the scandal and the later momentum for new campaign finance reform measures in 2002. Disclosure was the key to exposure, and demonstrates the impact that transparent financial systems can have in a democracy. Every nation could benefit from this first line of defense against corruption as much as the US and Canada.

³²Diffusion theorists suggest that neighboring states exert some of the biggest influences for political finance change on each other which in turn migrates throughout the region. See for example “Comparative Political Finance in Established Democracies,” by Karl-Heinz Nassmacher in Karl-Heinz Nassmacher (ed), *Foundations for Democracy: Approaches to Comparative Political Finance*, Baden-Baden: Nomos, p. 17.

