



# Dollars, democracy and disclosure

Should investors demand better disclosure from Canadian corporations on political spending?



A discussion paper from the **Shareholder Association for Research & Education**



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This paper is the second in a series of papers to be released as part of a three-year project to encourage dialogue among capital market participants about how Canadian corporations' influence on public policy debates and decision-making affects the interests of long-horizon investors. SHARE would like to thank the British Columbia Government and Service Employees' Union, the Canadian Union of Postal Workers, the Columbia Institute, the Glasswaters Foundation, the J.W.McConnell Family Foundation, the Muttart Foundation and the School of Environmental Studies (University of Victoria) for their support of this project. SHARE is solely responsible for the content of this report.

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# Table of Contents

<b>Introduction</b> .....	2
<b>A. How do corporations spend to influence public policy in Canada?</b> .....	4
1. Direct political contributions .....	5
2. Direct lobbying .....	8
3. Trade associations .....	10
4. Funding third-party organizations .....	12
5. Advertising and public relations .....	15
<b>B. Discussion Questions</b> .....	17
1. Can we differentiate between appropriate and inappropriate corporate political spending? .....	17
2. Should Canadian companies have policies on political spending and disclose them to shareholders? .....	19
3. Should corporate political spending in Canada be disclosed? .....	20
4. What is the appropriate mechanism for disclosure? .....	22
5. What information should be disclosed and what should be the threshold for disclosure? .....	24
6. How often should information be disclosed? .....	25
7. Are there risks or costs for investors from disclosure? .....	27
<b>C. Conclusion</b> .....	28
<b>Endnotes</b> .....	29

If a few groups are able to flood the electoral discourse with their message, it is possible, indeed likely, that the voices of some will be drowned out ... Where those having access to the most resources monopolize the election discourse, their opponents will be deprived of a reasonable opportunity to speak and be heard.

Supreme Court of Canada, *Harper v Canada (Attorney General)*<sup>1</sup>

To ensure transparency and fairness, Canadian taxpayers should be fully aware of which local and foreign interests are funding Canadian groups and to what level with the goal of hindering development of economically beneficial, yet environmentally sustainable projects in Canada.

– Canadian Chamber of Commerce<sup>2</sup>

# Introduction

Concern about the effect of money on politics is perennial. Aside from the obvious concern about outright corruption and/or illicit expenses and bribery, there is a broader concern about the influence of private interests on the development of policy and regulation, as well as on the content and tenor of public political debate.

The influence of money on elections, leadership contests, public policy decisions, media and public debate is contested equally from across the political spectrum. While some commentators raise concerns about the influence of oil companies on environmental policies, other commentators (and, indeed,

some federal Cabinet Ministers<sup>3</sup>) point to the influence of “foreign money” on environmental campaigns in Canada.

From a public policy and democratic perspective, political contributions, lobbying and political advertising by corporations, or other associations can tilt the playing field towards politicians, parties and policies that better serve those interests, regardless of whether those interests represent the wishes of the majority of citizens.

Even where that influence is not truly present, the widespread *perception* of undue influence from political spending can be damaging if it increases the sense amongst citizens that the system is weighted against them and that “big players” have better ac-

cess to political representatives, which undermines political participation. As Alison Loat, Executive Director of Samara Canada wrote recently in a summary of workshops on political participation held with young Canadians, “Those who felt that the political power deck was stacked against them seemed to feel it was a waste of time to even try to influence political decisions.”<sup>4</sup>

This discussion paper outlines some of the ways Canadian corporations engage in political spending – broadly defined in this paper as spending to influence the public policy process through direct campaign contributions, lobbying, advertising and support for public policy research and advocacy by trade associations and think-tanks.

There is an important role for corporations and trade associations in advocating for laws, policies and regulations that help build the economy, that are effective, and do not have unintended consequences. Lobbying, public education and support for public policy research by corporations can be an important part of political discourse.

However political spending is not without risks, and investors in particular are beginning to take stock of political spending by publicly-traded corporations in order to understand and evaluate those risks.

For investors, the issue of political spending by publicly-traded corporations does not depend upon one's political viewpoint; it is not about whether we "like" the political activity or not. Rather, it is foremost a question of governance. What board oversight exists regarding spending by management on influencing electoral politics and public policy-making? How

does the board ensure that political spending is in the interests of the company, its shareholders, and its stakeholders? What risks does political spending create for investors, and how is the board managing those risks? How is this spending, and related risks, dis-

closed to the company's shareholders? What role do shareholders have in approving political spending by the company?

These questions are at the heart of this discussion paper.

### **SHARE's political spending project**

The Shareholder Association for Research and Education (SHARE) is engaged in a three-year project to encourage dialogue among capital market participants about how Canadian corporations' influence on public policy debates and decision-making affects the interests of long-horizon investors.

This is the second in a series of publications analyzing Canadian corporate political spending and legal and policy options to

promote a balanced role for corporations, from an investor perspective. The first paper, published in October 2014, examined spending by Canadian publicly-traded corporations in the US 2014 mid-

term elections.<sup>5</sup>

### **This discussion paper**

This discussion paper starts with a look at the scope of political spending by Canadian publicly-traded corporations as well as the rules governing spending

and disclosure for corporations in Canada. We discuss the risks that this spending can create for investors. We then ask questions about the appropriate voluntary or regulatory mechanisms for addressing those risks, specifically:

- Can we differentiate between appropriate and inappropriate corporate political spending?
- Should Canadian companies have policies on political spending and disclose these to shareholders?
- Should corporate political spending in Canada be disclosed?
- What is the appropriate mechanism for disclosure?
- What information should be disclosed and what should be the threshold for disclosure?
- How often should information be disclosed?
- Are there risks or costs for investors from disclosure?

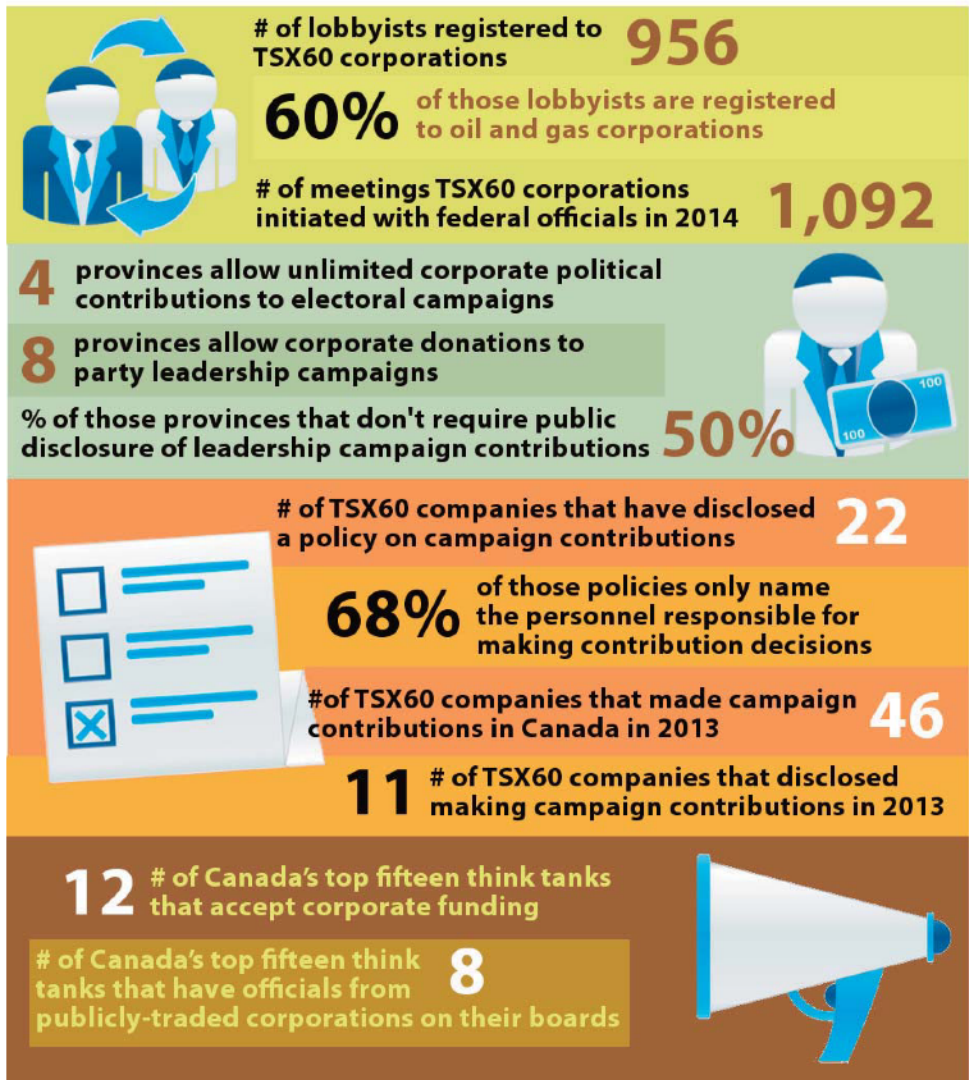
As a follow-up to this paper, SHARE will engage in discussions with companies, investors, and policy-makers in Canada about these questions and the various policy options for addressing the concerns they raise. We will also publish further reports addressing specific examples of political spending relevant to investors to better illustrate how this spending does or does not align with shareholder interests.

We welcome your participation in this discussion. Please see page 28 for ways to join the conversation.

# How do corporations spend to influence public policy in Canada?

Political spending by corporations is a broad term. While the most obvious type of spending is direct financial contributions to political parties, candidates or leadership campaigns, political spending also includes resources expended in lobbying politicians, contributions to third-party think-tanks, advocacy organizations and trade associations, and advertising and editorial contributions intended to influence policy debates.

## Canadian corporate political spending by the numbers



# 1. Direct political contributions



Unlike some countries, Canada has limited opportunities for direct political contributions by corporations, and yet donations to political parties, candidates and leadership contestants are not universally banned.

**Federally**, unions and corporations are both banned from contributing directly to political candidates, political parties, leadership contestants or nomination contestants. **Provincially**, however, there are different rules.

Seven of the ten provinces and all three territories allow corporate contributions, while three provinces (Quebec, Manitoba and Nova Scotia) do not.<sup>6</sup> Amongst those seven provinces, Alberta, Ontario and New Brunswick place financial limits on the size of contributions. The other four provinces (British Columbia, Newfoundland and Labrador,

Saskatchewan, PEI) and Yukon do not.

Ontario currently caps contributions (in an election year) at \$19,950 to the party, \$13,300 to candidates and \$13,300 to constituency associations. Alberta caps contributions at \$30,000 to a party and \$10,000 in total to a party's candidates in an election campaign, and \$5,000 in total to a party's constituency associations (although not during campaigns). New Brunswick caps donations at \$6,000 per year.

Within the provinces that do not place caps on corporate donations, the size of donations is still relatively low. The largest donations in any recent provincial election cycle by a publicly-traded corporation are set out in Table 1, below.

Most provinces make donation reports publicly available on the web, with the exception of

New Brunswick, which does not appear in the table below.

Forty-six of the companies in the TSX60 index made political contributions to major political parties in one or more provinces in 2013.<sup>8</sup> Of those, only eleven report the total sum of their Canadian political contributions to investors, and of those none reports the individual amounts and recipients of company donations. Of the companies in the TSX60 index, the top five direct political donors in 2013 (by sum total of donations) are set out in Table 2 (next page).

Municipalities, like provinces, vary in their approaches. The City of Toronto, Canada's largest city, does not allow corporate donations. However they are allowed in Vancouver.

**Table 1: Largest donations by publicly-traded corporations in most recent provincial election period**

Province	Amount	Party	Company	Year
British Columbia	\$200,000	Liberal Party	Goldcorp Inc.	2013
Alberta	\$25,500	Wildrose Party	Cenovus	2012
Saskatchewan	\$51,200	Saskatchewan Party <sup>7</sup>	Crescent Point Resources	2011
Ontario	\$9,975 (max allowed)	Liberal Party	Numerous publicly-traded companies	2014
Ontario	\$9,975 (max allowed)	PC Party of Ontario	Numerous publicly-traded companies	2014
PEI	\$7,998	Liberal Party	Scotiabank	2011
Newfoundland	\$10,000	Progressive Conservative party	Shoppers Drug Mart	2011
Yukon	\$1000	Yukon Party Yukon Liberal Party	RBC, Scotiabank, TD Bank each gave \$1000 to both parties	2011

**Table 2: Top five direct political donors, 2013 (TSX60 index)**

Company	Direct campaign contributions	Recipients	Reported to investors?
Goldcorp Inc.	\$210,000	BC Liberal Party	Aggregate sum
Teck Resources Limited	\$125,900	BC Liberal Party	Aggregate sum
	\$57,500	BC Conservative Party	
Encana Corporation	\$100,475	BC Liberal Party	No
	\$13,422	Alberta Conservative Party	No
	\$9,800	Alberta Wildrose Party	No
	\$3,000	Alberta Liberal Party	No
Canadian National Railway Company	\$53,150	BC Liberal Party	No
	\$21,000	BC Conservative Party	No
	\$9,300	Ontario Conservative Party	No
	\$7,875	Alberta Conservative Party	No
	\$4,350	Ontario Liberal Party	No
	\$1,995	Saskatchewan Party	No
Canadian Pacific Railway Limited	\$55,738	BC Liberal Party	No
	\$10,500	BC Conservative Party	No
	\$7,875	Alberta Conservative Party	No
	\$3,326	Saskatchewan Party	No

Note: the prevalence of donation to BC political parties reflects the fact that 2013 was an election year in that province, unlike in the other reporting provinces.

## Does size matter?

None of the amounts donated above are large from the perspective of corporate cash flows. Corporate spending in Canada on direct political contributions is clearly not as large as corporate spending in US elections. At the same time, total expenditures by political parties are much smaller in the Canadian context, due to legal limits on campaign spending. The Liberal and Conservative parties each spent approximately \$19.5 million in the last federal election, compared to the average of \$912 million spent by each of the Democrats and Republicans in the 2014 US congressional elections<sup>9</sup> – almost 47 times higher.

At the provincial level, the winning Liberal Party spent \$11.7 million in the last British Columbia election, approximately 33% of the amount spent by the winner of the Kentucky senator's seat in 2014, a state with a similar size population. If we include outside advertising spending by third parties in Kentucky, the BC Liberals' election spending amounts to 19% of what was spent to win Kentucky.<sup>10</sup>

So how do corporate contributions compare, as a percentage of that spending? Goldcorp's \$200,000 donation to the BC Liberals in 2013 represented 1.7% of the party's total campaign spending. The winning Kentucky Senator's largest direct donor (the Blackstone Group) contributed US\$213,400 or 0.7% of the candidate's direct spending.<sup>11</sup>

## Party Leadership campaigns

Eight provinces allow corporate donations to leadership contests within political parties. (Alberta, British Columbia, PEI, Saskatchewan, Nova Scotia, New Brunswick, Ontario, Newfoundland & Labrador<sup>15</sup>). Federal parties are not allowed to solicit corporate contributions to leadership contests and there is a \$1,200 limit for individual donations.<sup>16</sup> Parties are required to publicly report contributions to leadership contests at the federal level, as well as in Alberta, Ontario, BC, and Manitoba.

No legislated limits are set on donations to leadership contests in Alberta, although financial reports now must be filed with Elections Alberta. The Alberta Progressive Conservative Party



## Breaking the rules

Where it is illegal for a corporation to make a campaign contribution, it is also illegal for a corporation to reimburse its employees for individual campaign donations. In 2013 a SNC Lavalin executive testified that a group of approximately 50 company employees lent their names for party donations in Quebec and that their donations were reimbursed through annual bonuses, in contravention of Quebec campaign financing laws.<sup>12</sup> SNC Lavalin was also investigated by CBC News for a set of donations made by twelve executives and two family members to a Conservative candidate, all but one at the maximum allowable amount. The donations, made in a single day in the 2011 federal election, accounted for 2/3 of the candidate's war chest. Thirteen SNC Lavalin executives and family members made similar donations to a Conservative candidate in the 2009 election.<sup>13</sup> Several SNC Lavalin executives face charges for fraud in connection with government contracting, but have not been charged under campaign finance laws.<sup>14</sup>

instituted a \$30,000 cap on donations to its 2014 leadership contest.<sup>17</sup> Similarly, while no legislated limits on the size of leadership campaign donations exist in BC, contributions do have to be reported publicly. Manitoba and Quebec do not allow corporate donations and cap individual contributions at relatively low amounts.

Ontario requires disclosure of donations to leadership races but has no limits on the size of donations and allows corporate donations.<sup>18</sup>

Onex Corporation, for example, was the largest donor amongst publicly-traded corporations and one of the largest donors overall to Ontario Premier Kathleen Wynne's leadership race in 2013 with a \$10,000 contribution. (The company subsequently gave the maximum allowable donation to both the Liberal Party and the PC Party in the 2014 election as well as the maximum annual donation to each party.) The largest donation, of \$25,000, came from

the Insurance Bureau of Canada (an industry association of which most publicly-traded insurance companies are members).<sup>19</sup> Former Ontario Progressive Conservative leader Tim Hudak's 2009 leadership campaign received \$10,000 from Canaccord Capital Corporation, while Rogers Group of Companies donated \$15,000 to Mr.

Hudak and \$10,000 to his rival Christine Elliott.<sup>20</sup>

Notably, a percentage of Ontario leadership campaign donations is typically forwarded to the party, but is not counted in the contributor's total allowable annual donation – providing a means by which a contributor can donate more than the normal annual allowable total to the party.<sup>21</sup>

### The takeaway

While the rules for direct political contributions vary, even where Canadian corporations are allowed to donate freely to political campaigns or leadership contests the amounts currently being donated are relatively small for investors. However, even small political contributions can create risks for the company:

- the corporation may become associated with political positions and personalities that create reputational risks for the company;
- the public may perceive the corporation as buying influence, which could hinder genuine and positive relationships between the corporation and the government if the company is forced to back away from those relationships for reputational reasons; and
- relationships with legislators may be harmed if the company has backed the opposing party.

## 2. Direct lobbying

Canadian corporations actively lobby political office-holders and the civil service. Lobbyists directly employed by for-profit corporations are the second largest portion of the approximately 8,500 registered lobbyists at the federal level, after non-profit associations (which may, in turn, be associations serving for-profit corporations, as we will discuss below). Consultant lobbyists (often hired by corporations) are a smaller proportion of federally-registered lobbyists.<sup>22</sup>

As an example, in the month of November 2014, of the more than 1800 communications recorded in the federal lobbyist registry, 301 were in-house lobbyists from corporations, 380 were



from industry associations or organizations representing companies, and 352 were consultants hired by corporations. Although in-house corporate lobbyists filed only one quarter of lobbyist communications in that month, almost 60% of the monthly communications reports were on behalf of private interests.<sup>23</sup>

The content of lobbying efforts frequently relates to specific projects or provisions that affect a company directly. This often in-

cludes efforts to win government contracts or concessions that favour the company's operations. Companies also lobby, at times, to keep policy-makers abreast of their industry's general concerns, and/or to develop relationships with regulators. Other lobby efforts may be part of an effort to respond to the government's policy initiatives or to propose one of their own.

The influence of lobbying, in Canada, is thought to be more important than that of financial contributions. Of the top 20 companies *lobbying* the British Columbia government (registered as of April 1, 2014), only one company (Encana) was amongst the top 20 *donors* to the BC Liberal Party.<sup>29</sup>

Not surprisingly, then, Canadian publicly traded corporations are actively engaged in lobbying governments at numerous levels. A review of active lobbyists registered in provincial and federal databases in Canada reveals that 80% of the TSX60 corporations have active lobbyists in at least one jurisdiction, and more than half are lobbying in multiple jurisdictions.<sup>30</sup> There are 956 lobbyists currently registered to TSX60 companies in publicly-available provincial and federal databases,<sup>31</sup> an average of 16 lobbyists per corporation. Two-thirds of the TSX60 companies directly lobbied federal officials in 2014, collectively initiating almost 1,100 meetings.

### Tip of the iceberg?


**Lobbyists registered in the federal database represent a fraction of the contact between government officials and corporations. When a federal official initiates the communication (i.e. by phoning the company rather than the company phoning them) there is no requirement to register the communication unless a financial benefit was involved.<sup>24</sup> These types of communications are common.**

**For example, Canadian company representatives are regularly invited to participate in policy discussions including:**

- the Finance Minister's annual summer policy retreat<sup>25</sup>
- the Finance Minister's Economic Advisory Council (which currently includes ten members from boards or management of publicly-traded corporations)<sup>26</sup>
- the since-disbanded "Oilsands Clean Energy Coordinating Committee" (which appears to have been coordinating international oilsands promotion efforts by the Canadian government)<sup>27</sup>
- Natural Resources Canada's "Pan-European Oilsands Team" which coordinated lobbying of European governments on behalf of Canadian oilsands exports (and notably produced a list of "allies" including Shell and BP, and "enemies" – including "NGOs", "Competing industries i.e. biodiesel industry" and "Aboriginal groups").<sup>28</sup>

However even this public disclosure may not reflect the full extent of a company's lobbying in Canada, since not all jurisdictions require lobbyist registrations. Further, not all lobbyists are equal: one registered lobbyist may conduct dozens of meetings with government officials, while another may meet just once; and, the level of access to high-level officials afforded to these lobbyists may differ. Lastly, companies may lobby in many international jurisdictions that do not have stringent rules about lobbying or public disclosure.

Half of the companies in the TSX60 index make mention of their involvement in lobbying governments in their public reporting, but of those only one – Telus Corporation – reports substantially on the scope and content of its lobbying efforts.

 **The take-away**  
Considerable financial and human resources are devoted to lobbying by Canadian corporations. While some details on the amount and content of lobbying activity may be available through government registries, shareholders have no way of knowing the full extent of expenditures on lobbying or the positions taken by their companies. While some of this lobbying may well benefit investors, without additional disclosure neither the benefits nor the risks resulting from such activity can be evaluated.

## Example: Projects

Approaching government for approval or assistance for a particular project is a frequent subject of lobbying activity. For example, officials from Enbridge, Cenovus, Suncor and MEG Energy met with the Deputy Ministers of Aboriginal and Northern Development Canada, Industry Canada, Finance Canada, and Natural Resources Canada on August 29th, 2013 to discuss future plans for Enbridge's Northern Gateway pipeline project. This was prior to a decision by the Government of Canada to approve the pipeline. Details of the contents of the meeting were excised from the minutes that were released under an Access to Information request.<sup>33</sup>

## Example: Policy initiatives

Approaching government for changes to policies and regulations is another common subject of lobbying efforts. For example, the Canadian Association of Petroleum Producers met with the Deputy Minister of Natural Resources Canada and with the Clerk of the Privy Council in May 2013 urging the federal government to renew a joint federal/provincial/territorial initiative to develop "goal-oriented regulation" for offshore oil and gas exploration, which sets general goals but gives industry "flexibility" in how it meets those goals and relies on third-party certifications rather than government inspectors to monitor compliance.

CAPP also lobbied for devolving environmental assessment powers to federal/provincial Offshore Petroleum Boards (OPBs),<sup>34</sup> joint bodies that are mandated to promote oil and gas development while also protecting the environment.<sup>35</sup>

A briefing note prepared for the Deputy Minister of Natural Resources agreed with devolving those powers to the OPBs.<sup>36</sup> And, in November of 2013, the federal government announced that environmental assessments will be required only for the first well drilled in "an area set out in one or more exploration licences" – which will be defined by the OPBs.<sup>37</sup> This was requested by CAPP at its May 2013 meetings.

## Example: Canadian corporations' overseas influence

Even if public lobbyist registries were complete and consistent in Canada, the sheer number of jurisdictions would make compiling an accurate picture of a company's activities nearly impossible for shareholders. With the addition of overseas lobbying by companies with global operations, the picture becomes even more opaque. For example, Yamana Gold was recently the subject of an uproar in Argentina when a local Yamana manager was revealed to be exchanging text messages with an Argentinian legislator during a government debate on the country's new mining law. Yamana's manager texted proposals for changes to the law. This revelation drew calls for a veto of the new bill.<sup>38</sup>

### 3. Trade associations

#### Top 5 lobbyists: Canadian Corporations<sup>32</sup>

The top five Canadian publicly-traded corporations lobbying Ottawa in 2014 were:

- 1 CN Rail
- 2 Telus
- 3 Shaw
- 4 Suncor
- 5 BlackBerry

The top five Canadian publicly-traded corporations lobbying Ottawa (when lobbying by trade associations to which they belong is included):

- 1 Royal Bank
- 2 Suncor
- 3 Bombardier
- 4 SNC-Lavalin
- 5 Teck Resources

Corporate lobbying often takes place not individually but through trade associations or third-party organizations acting on behalf of a large number of corporate members. In Canada, for example, there are thousands of trade organizations, from regional or local Chambers of Commerce to larger industrial organizations like the Canadian Forestry Association and cross-sectoral organizations like the Canadian Council of Chief Executives (CCCE). Most of these are registered as non-profits, and they collectively make up the majority of registered lobbyists at the federal level.<sup>39</sup>

Table 3 shows the trade associations in Canada that lobbied the federal government most frequently in 2014. Almost half of the companies in the TSX60 index are members of one or more of these five trade associations. Of the companies in the TSX60 index, however, only nine report fully on the memberships they hold in trade associations.

The CCCE is a frequent lobbyist on a range of issues on behalf of their membership. Between December 2013 and November 2014, the CCCE initiated 53 meetings with federal officials and/or politicians, according to the federal lobbyist registry. Similarly, the Canadian Association of Petroleum Producers (CAPP) initiated 128 meetings with federal officials (including ten Cabi-



net Ministers) over the same period to represent its members' interests.<sup>40</sup> CAPP has a total of 70 staff registered to lobby in Canadian provincial and federal jurisdictions. The Canadian Bankers Association, which represents the country's largest banks, has 49 lobbyists registered in every provincial and federal jurisdiction that currently maintains a lobbyist registry.

Corporations fund trade association political activity through both membership fees and special allocations. Although they sometimes assess "special levies" on members for particular purposes,<sup>41</sup> the application of general membership fees to support political activity poses a difficulty for a company that may wish to hold a membership in a trade association for any number of reasons (networking opportunities, membership benefits and programs, educational opportunities) but also wants to manage the risk of being linked to political positions taken by that association on its behalf where those positions conflict with its own.

For example, in 2013 CAPP lobbied the Alberta government

**TABLE 3: Top five trade association lobbyists (federal) and their TSX60 members**

Trade Association	Lobbyist Communication Reports, 2014	TSX60 Members
Alliance of Manufacturers & Exporters Canada	275	RBC, SNC-Lavalin, Bombardier, (only reveals Board members)
The Mining Association of Canada	154	Agnico-Eagle Mines, Barrick Gold, Cameco Corporation, Eldorado Gold, First Quantum Minerals, Kinross Gold Corporation, Suncor Energy, Teck Resources
Canadian Association of Petroleum Producers	128	ARC Resources, Canadian Natural Resources Ltd., Canadian Oil Sands Ltd, Crescent Point Energy, Encana Corporation, Enerplus Corporation, Husky Energy, Imperial Oil, Penn West Petroleum, Suncor Energy, Talisman Energy, Teck Resources
Canadian Bankers Association	95	Bank of Montreal, Bank of Nova Scotia, CIBC, Canadian Tire, Manulife Financial, National Bank of Canada, Royal Bank of Canada, TD Bank,
Food & Consumer Products of Canada	77	None

to delay greenhouse gas emissions regulations (specifically, increases in a provincial carbon levy), arguing the proposed regulations were “very likely” to “impact production and revenue” and “could lead capital to flow from Alberta to other projects in North America and abroad.”<sup>42 43</sup>

Yet there is reportedly “little consensus” amongst CAPP members on the issue,<sup>44</sup> and, notably, some member companies such as Teck Resources already factor in a much higher carbon price in their internal projections.<sup>45</sup>

On the other hand, companies may participate in trade associations specifically so that the association can advocate collectively without any one company bearing the full costs or reputational risk associated with the association’s position.

## Chamber of Commerce pipeline advocacy

**In September 2013, the Canadian Chamber of Commerce released a report arguing for more pipelines and energy infrastructure to transport hydrocarbons to foreign markets, arguing that the lack of transportation causes \$50 million a day in lost revenues for oil and gas companies, and that “failing to export Canadian energy products will have little impact on global greenhouse gas emissions .... If Canada does not export Canadian oil and gas, the world will not stop using hydrocarbons, but Canada will have missed the opportunity to invest the proceeds of its energy resources back into Canadian society.”<sup>46</sup> The study was sponsored by Enbridge, TransCanada, Shell, Nexen and Suncor and others. Perrin Beatty, the Chamber’s president, led a speaking tour in support of new energy infrastructure in the fall of 2013.<sup>47</sup> In July, 2014, the Chamber released another report suggesting the risks from shipping oil from the BC coastline are “extremely low” and that we “can’t ignore the benefits” to the economy.<sup>48</sup>**

**Does this more active advocacy on behalf of the oil industry by the Chamber of Commerce reflect the views of all Chamber members (which include green energy companies)? Do shareholders of its member companies believe that their portfolio’s long-term value is served by this advocacy?**



### The takeaway

Some political positions taken by a trade association may pose risks for the reputations of corporate members or for those corporations' investors. In general, shareholders should be careful to assess the degree to which a corporation is associated with a trade association or third party's lobbying and advocacy activities. Indicators of closer association may include the presence of a corporation's representative on the board of the organization, special allocations or sponsorships for particular projects or events, or direct involvement with the organization's officials in lobbying or public advocacy efforts.

## Example: Disagreeing with your own association

The UK-based Carbon Disclosure Project (CDP) has, since 2013, been asking corporations to report not only on their own political engagement on climate policy, but also on whether they were members of relevant industry associations, whether the company's position on climate policy is "consistent with" the association's stance, and how the company is attempting to influence the association's position.

According to a report by the Center for Science and Democracy, in 2013 57% of companies reporting publicly to the CDP acknowledged that the industry associations they belong to influence climate policy, and 40% recognized that they "could directly or indirectly influence policy on climate change" by more substantial involvement (e.g. board membership, funding). That said, 95 companies (5%) responding to the CDP noted that one or more of the trade groups to which they belong held positions on climate policy that differed from their own, yet companies may remain as members when the trade association does represent their views on other matters.<sup>49</sup>

## 4. Funding third-party organizations

Alongside trade associations, Canada's public policy environment is influenced by other types of third-party organizations, such as think tanks that produce materials aimed at influencing policy-makers. Some have strong corporate representation on their boards and among their donors.

For example, the CD Howe Institute produces regular research papers and conferences on policy matters, and solicits donations from corporations. The Fraser Institute, the Canadian In-

ternational Council, the Montreal Economic Institute and the MacDonald Laurier Institute are all examples of third party organizations whose goal is to influence the policy debate and all receive funding from publicly-traded corporations. In addition, Canadian corporations may fund third-party organizations or campaigns in the United States or elsewhere that produce materials and/or advertising espousing positions on matters of public policy.

The University of Pennsylva-



nia publishes an annual list of the most influential think tanks globally, with regional sub-lists.<sup>50</sup> The university's list of top Canadian think tanks is included in Table 4, ranked by the university in order of influence, along with a sample of their funding sources and the presence of executives from publicly-traded companies on the think-tank's board.

**Table 4: Top Canadian think-tanks and funding from publicly-traded companies**

<b>Organization</b>	<b>Identified publicly-traded funders</b>	<b>Trade Association Funders</b>	<b>Board members affiliated with publicly-traded companies</b>
Fraser Institute	no information	no information	Canaccord Capital, Brookfield Properties, FirstEnergy Capital, Goldcorp
Centre for International Governance Innovation	Encana, Power Corporation, Scotiabank	no information	
CD Howe Institute	A large list of major corporations	Canadian Association of Petroleum Producers, Canadian Federation of Independent Businesses, Canadian Bankers Association, others.	GE Canada, Intact Financial, Ford Canada, Manulife, Potash, Open Text, Brookfield Renewable Power, CIBC, Enbridge, BMO
Canadian Defence and Foreign Affairs Institute	no information	no information	RBC, IAMGold, Aviva insurance
Institute for Research on Public Policy	no information	no information	
Canadian International Council	Power Corporation, RBC, Teck Resources, Sun Life Financial, Barrick Gold, AGF Management, BMO, Scotiabank, TD	no information	
MacDonald Laurier Institute	BMO, Google Canada, Martinrea, TD, RBC Foundation, Arc Resources, Spectra Energy	Canadian Association of Petroleum Producers, Canadian Fuels Association, Mining Association of Canada	Martinrea, Aecon
Atlantic Institute for Market Studies	Clearwater Fine Foods, Astra Zeneca PLC, Bank of Montreal, Empire, Google, Intact Financial, Merck Frosst, Pfizer, Qwesterre Energy, Scotiabank, TD Bank, the Shaw Group, CST Brands	Canadian Petroleum Products Institute, Rx&D	Clearwater Fine Foods
International Institute for Sustainable Development	Enbridge, Shell, Transcanada	no information	
Conference Board of Canada	funded through fees for services	no information	Rogers Communications, GM Canada, CGI Group, Transalta, RBC Financial, Shell Canada, Xerox Canada, Sasktel
Montreal Economic Institute	27% of its budget comes from corporations, but no information on funders	no information	Garda World Security Corporation, BMO, Schiff International, Fiera Capital, Groupe Canam, Reitmans
Public Policy Forum	Apache Canada, ATCO Group, BMO Financial Group, Capital Power Corporation, Cenovus Energy, CIBC, CISCO, CN Rail, Enbridge, General Electric Canada, Loblaw Companies, Manulife Financial, Microsoft Canada, Power Corporation of Canada, RBC, Sun Life Financial, Suncor Energy Inc, TD Bank Financial Group, TransCanada	Canadian Association of Petroleum Producers, Canadian Bankers Association, Canadian Energy Pipeline Association, many others	RBC, Cenovus
Frontier Centre for Public Policy	18% of its budget comes from corporations, but no information on funders	no information	
Queen's Centre for International & Defence Policy	no corporate funding	no information	

While a company may be involved in a trade association to access a range of benefits and not necessarily to engage in policy debates, special funding provided to think tanks is usually more directly linked to specific policy or research objectives.

For example, the Fraser Institute solicited corporate donations from a range of tobacco companies by promoting publications and conferences that question the relationship of second-hand-smoke and cancer, decrying government regulation of the tobacco industry and asking for support in further research on “risk and regulation”. The Institute claimed credit for the Parliamentary Finance Committee beginning to assess the cost of regulations on the economy.<sup>51</sup>

The Atlantic Institute for Market Studies, which receives fund-

ing from numerous publicly-traded companies, has advocated for school voucher systems,<sup>52</sup> private provision of health care<sup>53</sup>, against Canada Pension Plan expansion,<sup>54</sup> and in favour of moving public sector workers from defined-benefit pension plans to defined-contribution plans.<sup>55</sup> Whether or not these controversial positions align with the values and purpose of the individual publicly-

**Whether or not these controversial positions align with the values and purpose of the individual publicly-traded corporations that sponsor the Atlantic Institute, they may be problematic for the shareholders in those companies, which include the pension plans of teachers, nurses, and other public sector workers.**

traded corporations that sponsor the Institute, they may be problematic for the shareholders in those companies, which include the pension plans of teachers, nurses, and other public sector workers.

Not surprisingly, then, some shareholders have reacted negatively to news that their companies provide funding to policy-oriented third-party organizations. For example, US companies like Google and Facebook were challenged by investors

after it was revealed that they supported the controversial American Legislative Exchange Council (ALEC), a group that drafts and promotes legislation. ALEC has advocated the expansion of “right-to-work” laws,<sup>56</sup> and has been accused of climate-change denial.<sup>57</sup> Although little information is available on its membership or corporate supporters, TransCanada has recently been identified as a sponsor of ALEC’s activities.<sup>58</sup>

**The takeaway**  
Although companies may wish to support organizations that contribute research to public policy discussions, companies that provide funding to these organizations should be clear about the purpose of this funding and how it aligns with the company’s interests – and that of their shareholders.



## 5. Advertising and public relations



At the federal level, third parties can spend up to \$150,000 nationally on advertising in an election period.<sup>59</sup> In the last federal election (2011), however, third party reports showed no contributions to third-party advertising from publicly-traded corporations in Canada.<sup>60</sup> The vehicle of third-party advertising was used much more frequently by trade unions and civic organizations. A total of just over \$1,250,000 was spent in total on third party election advertising in the 2011 election.<sup>61</sup>

Provincially, third party advertising during election periods is not officially limited in Ontario, PEI, and Newfoundland and Labrador, as well as the three territories. Other provinces either prohibit third party spending entirely (Saskatchewan, Manitoba) or place financial and time limits on spending, ranging from a mere \$300 in Quebec to \$150,000 in British Columbia.<sup>62</sup> Nova Scotia allows third party advertising by corporations, but any group that spends more than \$500 must register as a third party and can spend up to \$10,465.<sup>63</sup> However few third parties registered in the most recent (2013) election.<sup>64</sup>

Third party spending *outside* of election campaign periods (i.e. before the writ is dropped) is not limited by law, nor is reporting

required. In Canada, considerably more is spent by trade associations and publicly-traded corporations to influence policy and/or the policy environment between elections.

Canadians will be very familiar, for example, with advertising by Suncor, Cenovus and the Canadian Association of Petroleum Producers (CAPP) regarding the benefits of oilsands development in Canada. Ads with slogans like “See what Yes can do” that make claims about the environmental and economic benefits of oilsands projects run frequently in Canadian movie theatres, on television, and in newspapers. In addition, new “Advertorial” content (advertising designed to look like news reporting) with similar positive messages about the industry is now appearing regularly in newspapers and websites owned by Postmedia – sometimes without notifying readers that it is paid advertising – through a special deal between the media conglomerate and CAPP.<sup>65</sup>

“We’ve done a lot of advertising on oil sands,” says CAPP’s President, David Collyer, “and I think the public opinion polling that we do suggest that they are, overall, effective, in terms of moving the middle.”<sup>66</sup>

Syncrude’s VP of Government and Public Affairs Kara Flynn, says the ads deliver “The message ... that the folks who work

in the oil sands are your neighbours, your colleagues, the people your children play minor baseball with. They are just like you and I. They go to work every day as dedicated individual employees.”<sup>67</sup>

Figures for the cost of these media campaigns are not publicly available nor are they reported to investors in the companies footing the bill, but Janet Annesly, Vice President of Communications at CAPP, has said ad campaign costs are “in the millions of dollars, all funded by the industry.”<sup>68</sup>

The ad campaigns by CAPP and other oilsands industry players do not advocate for or against a particular politician or public policy, but they are an important part of framing the public policy discussion on oil industry regulation and creating a supportive atmosphere for political lobbying. “Our research shows that the longer the ads are on, the more effective they become,” Annesly says.<sup>69</sup>

At the same time, they may be considered legitimate public relations efforts by companies that face a serious reputational and/or regulatory risk to their business.

Investors have not typically called for disclosure of public relations spending by companies. However there is an investor interest in careful board oversight of these public relations campaigns, as they can cross the line

into political advocacy and also have the potential to create their own, additional reputational risks for companies and undermine acceptance of key projects. For example, Kinder-Morgan was the subject of a complaint to the BC Elections Commission over television ads run during the province's municipal elections in October, 2014. The ads, in support of the company's Trans Mountain pipeline expansion, were run extensively during the election in Burnaby and Vancouver, where the expansion was a major issue of the campaign. Kinder Morgan denied the ads were targeting the elections,<sup>70</sup> and the Elections Commissioner ultimately ruled that the company did not have to register as a third-party advertiser,<sup>71</sup> but the incident generated substantial negative press for the company.

In November 2014 the leak of a strategy document by a public relations company employed by TransCanada Corporation to help sell its Energy East Pipeline project created damaging headlines for the company at a time when it was seeking regulatory approval. The document advised Tran-

sCanada to "play offense" by "work[ing] with third parties to pressure Energy East opponents" and "add[ing] layers of difficulty for [its] opponents, distracting them from their mission and causing them to redirect their resources." The document proposed "opposition research" focused on organizations like the Council of Canadians, Equiterre and the David Suzuki Foundation.<sup>72</sup> After the document was revealed, TransCanada quickly disavowed that component of the strategy and announced that its contract with the public relations firm would not be extended. However it acknowledged that the leak "has created distraction most notably in Quebec."<sup>73</sup>

TransCanada's public relations strategy – also outlined in the leaked document – includes mobilizing citizens to advocate for the project politically through "digital grassroots advocacy initiatives". The strategy advises the company to focus on "recruiting a sizeable community of supporters in our key audiences and geographies (e.g. Conservative, Quebec, etc)". TransCanada has established an

"Energy East Action Network" featuring an online petition directed at political leaders and decrying a "well funded, well organized campaign" to "do whatever it takes to deny Canada from realizing our potential."<sup>74</sup>

Establishing grassroots networks to petition political leaders or regulators is clearly a form of political spending, not simply public relations. Two examples are the newly formed "Energy Citizens" network (a CAPP-sponsored platform which seeks to create a movement of "advocates" for Canada's oil and gas industry<sup>75</sup>) and the Canadian Chamber of Commerce-funded "Partnership for Resource Trade" organization that hosts an online petition to political leaders urging support for Canada's natural resources industries.<sup>76</sup> The earlier Energy Policy Institute of Canada, which featured many of the same supporters and claimed responsibility for significant changes in Canada's environmental policies<sup>77</sup>, took a backseat after its director was charged by the RCMP with prohibited lobbying and influence peddling.<sup>78</sup>

## The takeaway

Careful board policy and oversight of the purpose, content and timing of advertising and public relations campaigns is essential. Advertising and public relations efforts related to the public policy environment or electoral campaigns may create additional reputational risks for companies and their shareholders. At present, spending on advocacy campaigns by companies either directly or through their trade associations is not generally revealed to investors in Canada.

# Discussion Questions

SHARE is inviting institutional investors and other Canadian market participants to join in a conversation about political spending as a corporate governance question. We set out, below, a number of questions to help guide that discussion. Along with each question, we include information on practices in other jurisdictions, examples of current practice, and proposals relevant to shareholders.

## 1. Can we differentiate between appropriate and inappropriate corporate political spending?

Like beauty, the appropriateness of a corporation's political spending may be in the eye of the beholder. When it comes to the question of corporate involvement in politics, an individual may view the activity more favourably when it supports their personal beliefs or preferred candidates and disapprove when it runs counter to their personal preferences. Clearly a more rational approach to assessing corporate political activity is needed.

Can we, however, make distinctions between types of corporate political activity? Can we differentiate between appropriate activities and inappropriate activities?

The short answer is yes, in that the law does differentiate. As outlined in the previous sec-

tion, the law sets limits on lobbying, contributions, and advertising, and it addresses the timing of these activities, who can undertake them, as well as the level of public disclosure required for each activity.

There is, of course, room for debate about the omissions or inclusions in these legal limitations, and there are a number of proposals for new limitations and better disclosure, including:

- Provincial-level bans on union and corporate campaign contributions
- Requiring disclosure of provincial leadership contest donations
- New and/or lower limits on campaign contributions in each province<sup>79</sup>

### Example: Lobbying for tax reductions

**A common subject of business lobbying is corporate tax reduction, and political contributions may be given to candidates that favour lower corporate taxes. Although lower taxes may serve companies and executives in the short term, companies and their shareholders may have different long-term interests. For example, a lower tax base may lead to public service cuts that affect the beneficiaries of public sector pension plans that may hold substantial shares in the companies undertaking lobbying. Is this lobbying in shareholder interests?**



## Example: Against Say-on-pay and majority voting

Companies sometimes advocate regarding questions of corporate accountability to shareholders. For example, Power Corporation of Canada submitted a comment letter to Industry Canada in 2014 arguing against the inclusion of provisions in the *Canada Business Corporations Act* requiring “say on pay” votes, majority voting procedures for boards, and splitting the role of Chair and CEO.<sup>82, 83</sup> Yet all three of these are considered good governance practices by shareholders.<sup>84</sup> When does corporate management’s use of corporate resources to advocate against the expansion of shareholder rights cross the line?<sup>85</sup>

For investors, however, the limitations imposed by law are not the only yardstick. For a corporation to engage in political activity it must be clear that the engagement or spending provides value, does not create undue risks, and does not run counter to the company’s and shareholders’ interests – even if the activity is legal.

The question is whether the company’s board makes any distinctions beyond those prescribed by law. For example, in jurisdictions where campaign contributions are allowed, how does the board assess whether a particular expenditure is in the company’s best interest? Should the company devote resources to lobbying governments, and if so, how does the company determine the issues on which it lobbies and the positions it takes? How does it assess the

risks involved in the political activity?

Assessing the value of political contributions for the corporation is difficult. Using shareholder interests as a benchmark is itself difficult since shareholders vary considerably in their interests. Even their common interest in financial returns may vary depending on each investor’s anticipated holding period and tolerance for risk. Whether political contributions by a corporation result in superior financial returns for a company and its shareholders is subject to considerable – and ongoing – empirical study and scholarly debate.<sup>81</sup> Similarly, assessing benefits to the corporation of lobbying activity is difficult, since beneficial laws and regulations may be the result of many factors, which makes conclusive attribution

and measurement difficult, if not impossible.

Finally, any returns from political activity must also be weighed against the risks the activity may create for the corporation, both in terms of reputational risks, as well as the distinct possibility that a candidate or party that received contributions may not win (i.e. wasted resources and/or generating hostility from the winning party or candidate).

### Questions

- What criteria should be applied to determine whether a political action is in the company’s interests?
- What criteria should be used to assess risks in political spending?

## Example: Market level risks

Political spending may create both company and market-level risks. For example, an International Monetary Fund Working Paper correlated lobbying activity in the U.S. mortgage lending sector with riskier lending by those companies that undertook lobbying, the sum of which had market-wide effects in the crash of 2008.<sup>86</sup>

## 2. Should Canadian companies have policies on political spending and disclose them to shareholders?

In the US, more than 125 of the S&P500 companies voluntarily disclose their political spending and lobbying policies.<sup>87</sup> In Canada, 22 companies in the TSX60 have disclosed policies related to political donations<sup>88</sup>, but of those only seven provide guidance on the size or type of acceptable contributions and identify the committee or individuals responsible for authorizing contributions. Fifteen companies simply identify those responsible for authorizing contributions, but provide no indication of what guides the company's decision-making process. The other two thirds of the TSX60 companies have not disclosed any policy related to political contributions.<sup>89</sup>

The content of existing corporate policies and disclosure varies considerably. Proposals for model board policies also differ in their scope and content.

One of the most comprehensive models is that of the Inter-

national Corporate Governance Network, which proposes a set of principles for policies on political activity framed around the concepts of legitimacy, transparency, accountability and responsibility. The ICGN proposes that policies include public disclosure of lobbying activities and political donations, including spending on third-party organizations and trade associations, the people responsible for making decisions in the company, oversight by the Board's governance or risk management committee, and disclosure of lobbying positions taken on key policy issues. Lastly, the ICGN proposes that shareholders be allowed to vote on the political donations policy and to set a maximum amount for company political donations.<sup>90</sup>

Another set of model board policies has been made available by the Coalition for Accountability in Political Spending, modeled after existing company

policies from Colgate-Palmolive, IBM and Microsoft. The Colgate-Palmolive model is the most restrictive, prohibiting direct and indirect political contributions, as well as indirect spending through non-profit organizations. It also requires that dues and other payments to trade associations not be used for political purposes.<sup>91</sup>

In France, a coalition of corporate members of Transparency International (including BNP Paribas and L'Oreal) signed a declaration last year pledging to develop responsible lobbying policies, disclose political contributions as well as lobbying activities and positions being taken (including through trade associations), and to promote similar policies amongst their trade associations.<sup>92</sup>

Oversight of third-party associations is perhaps the most difficult part of policy development, because it is difficult to distinguish at the policy level between useful memberships in trade associations and potential undesirable political activity by an association that the Board does not control. On this point, policies may outline a process for risk

**Legitimate corporate political activities are those that are conducted legally and transparently, are clearly linked to a company's business purposes and strategic intent and carry the support of its shareholders. Such activities serve the interests of the company as a whole, not interests specific to individual managers or shareholders. Legitimacy is enhanced when corporate political activities occur within a clear policy framework that is overseen by the company's Board and carries investor support.**

International Corporate Governance Network<sup>80</sup>

management, and provide for access to the necessary information upon which to make operational decisions. For example, Ira M. Millstein, the former Chair of the OECD Business Sector Advisory Group on Corporate Governance, proposes that Board policies require trade associations to provide the member company with a report on their political spending, and disclose to members the full list of donors underwriting their political spending.<sup>93</sup>

Some shareholders, seeing the risks involved in corporate spending to influence political elections, have filed shareholder proposals simply urging a company to refrain entirely from making contributions to political candidates or parties. For example, in 2014 the US shareholder group As You Sow filed a resolution at DuPont asking “that the

board of directors adopt a policy to refrain from using corporate funds to influence any political election,” including taking measures to prevent any contributions or dues to trade associations being used for the same purpose. (Notably, the proposal did not seek to restrain lobbying). As You Sow argued that disclosure alone was insufficient, because

disclosure is retroactive, occurring after the contribution has already been made, and does not allow shareholders to anticipate or pre-emptively evaluate the potential risks associated with those contributions. Consequently, proponents believe that a company policy against political contributions intended to influence elections will ensure shareholders are protected against the potential risks and controversies associated with this practice.<sup>94</sup>

### 3. Should corporate political spending in Canada be disclosed?

Disclosure of political spending by corporations is seen by many US investors as a critical element in good corporate governance and an important accountability mechanism because corporations in that country can spend unlimited amounts on influencing the political process, and because the evidence is clear that some corporations are indeed spending very large sums of money on political influence.

In Canada, legal limits on campaign contributions are stricter

and, even where allowed, little evidence of the type of large campaign contributions seen in the US. Is the level of political spending, then, a substantial concern for Canadian investors?

If we include spending on lobbying,<sup>95</sup> spending on advertising and editorial content, and contributions to third party organizations and industry associations that buy advertising and conduct lobbying, the total level of spending by Canadian corporations to influence public policy

## Questions

- What should be addressed in a corporate policy on political spending?
- Should all spending be forbidden?
- What should it say about membership in trade associations or other third party organizations?
- Who should be responsible for overseeing and/or signing off on political spending?
- Should there be a shareholder vote to approve political spending, and if so should it be binding or advisory in nature?

is clearly much larger than just amounts donated to electoral campaigns. Because most of that spending is not subject to any regulated disclosure regime, it is not possible for investors to determine the full extent of spending by Canadian corporations to influence public policy.

In the United Kingdom, where corporate campaign donations also do not reach the levels seen in the US, UK corporate law requires that political donations be disclosed to shareholders and their upper limits prescribed by shareholder vote. Total authorized spending between 2001 and 2010 was more than £85.6

million, but actual reported spending by publicly-traded corporations during that period was only £10.2 million (C\$18.5 million).<sup>96</sup> Yet, disclosure is still a requirement under UK law.

Current Canadian securities laws already require disclosures at fairly low financial thresholds. For example, companies must disclose perks provided to Named Executive Officers amounting to more than \$50,000 in a given year, not because these are material in a financial sense but because investors have a clear interest in the information.

In a similar vein, the test of materiality for spending on political influence should not rely solely on the *level* of spending but also on the *risks* it creates for the corporation.

The test for materiality in Canadian securities law is whether a “reasonable investor’s decision whether or not to buy, sell or hold securities of the issuer would likely be influenced or changed if the information was omitted or misstated”<sup>97</sup>

Speaking to the same point in US law – and opposing a disclosure rule at the SEC – Paul Atkins writes:

Fundamentally, it is not enough that some investors may view a fact as important; rather, it must be important to the *reasonable* investor. Not a special-interest shareholder, a shareholder with an axe to grind, a shareholder with a particular religious or political bent, or a shareholder who thinks that it would be “nice to know” some relatively insignifi-

cant fact, but a reasonable shareholder focusing on the total mix of information informing his investment decisionmaking.<sup>98</sup>

For political spending, the “reasonableness” test would likely centre on reputational risks created by the activity, which could include impacts on things like brand value, consumer preference, employee loyalty, obtaining regulatory approval of projects, the company’s relationship with local communities, and the company’s relationship with government.<sup>99</sup>

The editors of Bloomberg.com note, for example, that even a relatively small political donation by Target Corporation to a business group supporting an opponent of same-sex marriage “resulted in damaging publicity and a nationwide boycott of Target stores by gay-rights supporters.”<sup>100</sup> The amount of the donation was not material; its results, however, were.<sup>101</sup>

Apart from the disclosure of specific political spending, investors may be interested in the policies and practices adopted by the Board to oversee political spending, as discussed above. Typically, boards do not disclose all policies to the public, but many non-financial policies (e.g. Environment, Health and Safety policies) are disclosed, and provide confidence to investors that the Board is exercising appropriate oversight in a particular area.

Before voluntarily disclosing information that is not required by law, company boards or managers must evaluate whether the

disclosure is needed or wanted by investors or other stakeholders such that the cost of collecting, preparing and publishing the data is justified. Similarly, when enacting regulations requiring disclosures, regulators often consult stakeholders to determine whether there is sufficient interest in the new requirement.

In the US, investor interest in political spending has been clearly evidenced by the 530 shareholder proposals related to political spending filed in the US during the last five years. Political spending disclosure requests now represents the largest category of shareholder proposals filed in the US, and in 2014, 16 of those proposals achieved support of more than 40% of votes cast.<sup>102</sup> The level of investor interest is also clear from the more than one million comment letters received by the Securities Exchange Commission on the issue.

In Canada, however, political spending is still a nascent issue, and has not yet been the subject of shareholder resolutions.

## Questions

- To what degree do Canadian companies face reputational or other risks from political spending?
- Is there a clear need and/or desire for disclosure of specific spending in Canada?
- Should investors be made aware of Board or management policies regarding oversight of political spending?

## 4. What is the appropriate mechanism for disclosure?

Should disclosure be pursued as a voluntary option for individual companies or a regulatory requirement across the market? If a regulatory approach makes sense, is it better to make changes to applicable securities regulations or to corporate law? Should shareholder approval of political spending be required?

In order to answer these questions, we look first to existing practices in Canada and other jurisdictions for experience and guidance.

### 1. Voluntary approaches

As noted above, disclosure of political spending by individual US corporations has been the subject of numerous shareholder resolutions and some voluntary disclosure. The US Center for Political Accountability publishes an annual Index of Corporate Political Disclosure and Political Accountability (the Zicklin Index) which measures transparency at the largest 300 companies in the S&P 500.<sup>103</sup> The 2014 survey found that 99 of the companies surveyed have reached agreements with shareholders to disclose political spending, and that 100 of the 192 companies included in both the 2013 and 2014 indices had improved their scores. However 65 of the companies surveyed still disclose little or no information. More companies disclosed

direct political contributions to parties or candidates, while fewer disclosed their contributions to trade associations or non-profit third-party organizations. Notably, as pressure to disclose grows in the US, a number of companies that had not yet faced a shareholder resolution on the subject had also made partial disclosures.<sup>104</sup>

### 2. Regulatory approaches

#### Changes to corporate law

In the **United Kingdom**, the *Companies Act of 2006* (Part 14) requires UK companies to obtain shareholder approval for financial contributions to political parties and organizations (defined as organizations that seek

to influence public support for a party, candidate, or position in a referendum) or political expenditures (including advertising or company activity designed to influence public support for a party, candidate, or position in a referendum). Shareholders are asked to approve an overall ceiling on donations or expenditures for a given period (rather than specific sums for specific purposes), with a maximum period of four years. If a company makes a donation that is not authorized by a general shareholder resolution, the Directors are personally liable for reimbursing the amount and compensating the company for any damage.<sup>105</sup>

General memberships in trade associations, even if those associations carry out political activity, is not considered a political donation under the law.<sup>106</sup> The *Com-*

*panies Act* political spending provisions also do not address corporate lobbying expenditures, which represents a significant gap in disclosure obligations compared, for example, to the ICGN standard.

Companies are required to include in their annual Directors' Report to shareholders a list of any political donations or expenditures that exceeded £2000 (aggregated over the year), including naming the

## A modest proposal?

**Lucien Bebchuk (Director of the Corporate Governance Program at Harvard Law School) and Robert Jackson (Associate Professor of Law at Columbia Law School) have suggested that US lawmakers:**

- **Provide shareholders with a role in determining the amount and targets of corporate political spending;**
- **Require that independent directors oversee corporate political speech decisions;**
- **Allow shareholders to opt out of – that is, either tighten or relax – each of these first two rules; and**
- **Mandate detailed and robust disclosure to shareholders of the amounts and beneficiaries of a corporation's political spending, whether made directly by the company or indirectly through intermediaries.**<sup>109</sup>



candidate, party or organization that received the donations. Similarly, companies must report charitable donations over a similar threshold.<sup>107</sup>

Similar approaches have been proposed but not adopted in the **United States**. In 2011, for example, legislators in New York proposed amendments to the state's corporate laws requiring a corporation to obtain prior shareholder approval "at least annually" before making any political donations or independent expenditures, and to set an annual aggregate amount of allowed donations or expenditures. The law would also require disclosure to shareholders of the company's donations or expenditures and the business rationale for them. The bill did not pass.<sup>108</sup>

In **Canada**, enacting changes to corporate law is complicated by the constitutional division of powers. While the federal government may make changes to the *Canada Business Corporations Act*, this only governs companies incorporated federally. Changes to the relevant company laws in each province would be required for any companies incorporated provincially. Further, changes to corporate laws would also affect privately-held companies. While there may be an argument for public disclosure of spending by privately-held companies, this paper is concerned with protection of public company shareholders and does not necessarily extend to the spending being done by private parties.

### Changes to Securities Law

A group of ten U.S. law professors submitted a proposal to the Securities Exchange Commission in 2011 asking that the SEC "develop rules to require public companies to disclose to shareholders the use of corporate resources for political activities."<sup>110</sup> The rule-making petition received more than one million comment letters, more than any petition ever received by the SEC. Although the rule-making proposal was put on the SEC's agenda for 2013, the SEC faced considerable political pressure from Republican lawmakers not to adopt a rule,<sup>111</sup> and the project was subsequently abandoned in favour of completing overdue Dodd-Frank rule-making projects. It is not clear whether the SEC will again take up the project.

Efforts have been made to enact changes to the *US Securities Exchange Act of 1934* in the US Congress, most notably through the *Shareholder Protection Act of 2013 (S. 824)*. Introduced in the US Senate in April, 2013, this bill proposed an amendment to the *Securities Exchange Act* requiring companies to obtain majority shareholder approval for annual expenditures for political activities, including funds provided to trade associations or tax exempt organizations that may be used or transferred to other organizations for political activities, but not including direct lobbying expenditures.<sup>112</sup> The *Act* would also require issuer Boards to vote on

any political expenditure in excess of US\$50,000 and to disclose these votes – including the vote taken by each Director – to shareholders. Lastly, the *Act* would require issuers to report quarterly on any political expenditures and votes of the board authorizing expenditures, and to summarize every expenditure over \$10,000 in an annual report.

The *Act* was immediately sent to the Senate Committee on Banking, Housing, and Urban Affairs and is not expected to go to a vote.<sup>113</sup> This was the third attempt at introducing similar legislation by Democratic Senators.

In **Canada**, enacting changes to securities regulations is, at present, complicated by constitutional division of powers, as there is no single national securities regulator. Efforts to maintain a level playing field across the country mean that changes made by some of the larger securities regulators may lead to eventual adoption across all jurisdictions; opportunities may also arise from the introduction of the proposed Co-operative Capital Markets Regulatory System.

## Questions

- Are voluntary measures (encouraged by shareholder votes) sufficient, or is there a space for regulatory approaches to requiring disclosure?
- If so, are securities regulators best equipped to create appropriate rules or should disclosure be enacted by amendment to Canadian corporate laws?

## 5. What information should be disclosed and what should be the threshold for disclosure?

One difficulty with voluntary disclosure at a company-by-company level is that the scope and quality of data reported can vary significantly, making analysis by investors more akin to reading tea leaves than a careful assessment of risks and opportunities.

Even if companies were consistent in the type of spending they reported, there is still the question of the threshold of spending that requires disclosure (the “material” threshold for spending).

A comment letter submitted to the US SEC by a group of forty

institutional investors representing more than US\$690 billion in assets under management proposed answers to the questions of scope and materiality. They argued that the following information should be disclosed:

- Policies and procedures for political contributions and expenditures
- The title of the person responsible for making decisions about political contributions
- Monetary and non-monetary contributions and expenditures (direct and indirect)

used to participate or intervene in any political campaign, broken down by recipient.

- How trade associations are using their payments, including the recipients or beneficiaries of trade association political spending underwritten by company funds<sup>114</sup>

They also argued that there should be no *de minimis* exceptions for direct donations, on the grounds that even small, immaterial do-

nations can create large reputational risks for companies and therefore should be known to investors. They proposed a \$25,000 threshold for reporting mem-

berships in associations, such that only more substantial memberships are reported.

The most common requests in shareholder proposals on political spending in the US are for the company to review and report on political spending and/or lobbying. In 2014 seven shareholder proposals asked the company to report specifically on climate change advocacy, and seven proposals urged the company to end all

One difficulty with voluntary disclosure at a company-by-company level is that the scope and quality of data reported can vary significantly, making analysis by investors more akin to reading tea leaves than a careful assessment of risks and opportunities.

## Are there GRI Indicators for political spending?

Within the world of voluntary corporate reporting, the Global Reporting Initiative’s (GRI) current G4 guidelines include an indicator regarding political contributions:

### G4-SO6: TOTAL VALUE OF POLITICAL CONTRIBUTIONS BY COUNTRY AND RECIPIENT/BENEFICIARY

- Report the total monetary value of financial and in-kind political contributions made directly and indirectly by the organization by country and recipient/beneficiary.
- Report how the monetary value of in-kind contributions was estimated, if applicable.

Many investors favour the use of GRI indicators to create consistency and comparability in sustainability reporting. While this GRI indicator is useful for companies reporting campaign contributions, it does not address other types of political spending like lobbying.

GRI’s previous set of indicators (G3) did ask companies to report on “Public policy positions and participation in public policy development and lobbying.” However Canadian companies that use GRI indicators mostly did not report on that indicator.

political spending. A small number of proposals have asked for either shareholder approval or an advisory vote on political spending.<sup>115</sup>

Proposals related to spending tend to ask for “a report, with semi-annual updates, on how [the company] makes direct and indirect contributions to political campaigns and referenda, identifying recipients, individual contributions, and the titles of corporate officials making decisions.” Proposals related to lobbying tend to ask for reports on the company’s policy, payments, memberships in groups that write model legislation, and information on how these payments occur and how management and the board of directors monitors them.<sup>116</sup>

## Questions

- What range of activities should be disclosed to shareholders (e.g. campaign contributions, lobbying, memberships, advertising)?
- Should contributions to trade associations or other third party organizations be included in reporting, and if so, should this include general membership fees or only contributions earmarked for lobbying or other political advocacy?
- Should there be a *de minimis* exception for reporting and, if so, what should be the threshold?

## 6. How often should information be disclosed?

Advocates for disclosure of political donations note that any campaign contributions should be disclosed prior to the vote in question.<sup>117</sup> While the argument that details of a candidate’s backers should be known to the voters prior to the election is strong, the democratic interest for the average voter is not the same as a shareholder’s interest in their corporation’s contributions. For the latter, the reason to seek disclosure is to identify risks to the company and ensure management is representing the company’s best interests, rather than to decide how to vote as citizens in a particular election.

With regard to reporting on a company’s lobbying and advertising spending, both shareholders and the general public could benefit from timely disclosure. In many jurisdictions specific lobbying activity must be posted in public registries shortly after it is conducted, as there is a clear public interest in disclosure about lobbying and influence at

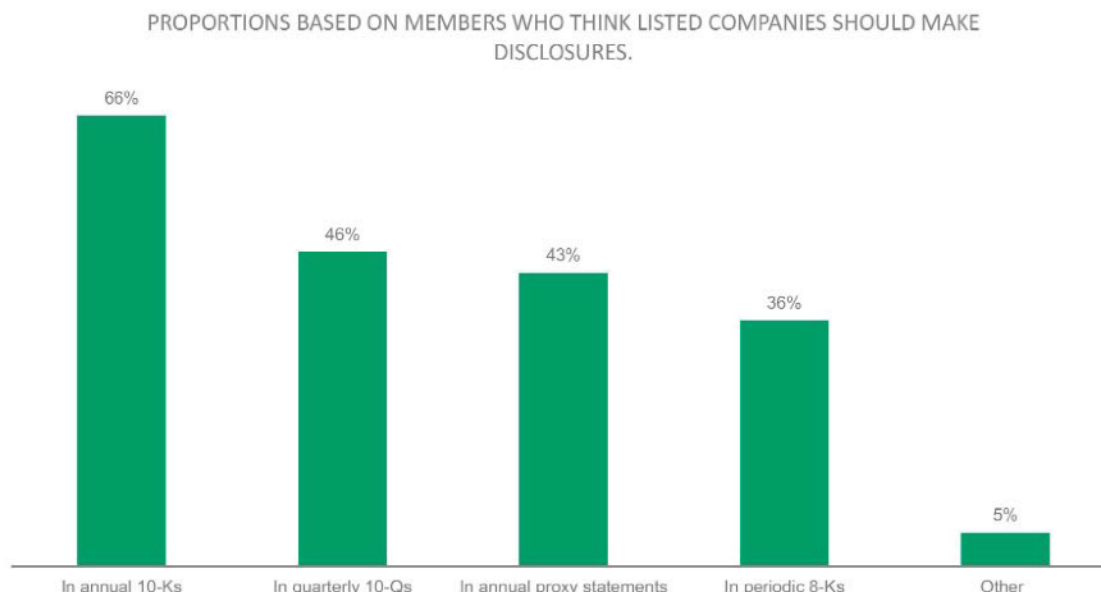
the time laws and regulations are being developed.

Shareholders require information on risks to their investment on an ongoing basis, but at the same time do not want to divert too many company resources to reporting, and should not be overwhelmed by excessive information. A balance is necessary. In corporate reporting, this is usually achieved by including relevant information in the company’s annual report to shareholders, or in some cases in an annual sustainability report issued at a different time. However companies also report financial information on a quarterly basis, and publish other information in the form of news releases and/or website postings.

In a recent survey by the CFA Institute in the United States (see graph, page 26), 66% of respondents felt disclosures of political spending should be made in annual reports, followed by 46% who favoured quarterly reporting and 43% who favoured in-

Shareholders require information on risks to their investment on an ongoing basis, but at the same time do not want to divert too many company resources to reporting, and should not be overwhelmed by excessive information. A balance is necessary.

## IN YOUR OPINION, WHERE SHOULD LISTED COMPANIES MAKE DISCLOSURES ON POLITICAL CONTRIBUTIONS?



Source: CFA Institute

cluding it in annual proxy statements (respondents could select more than one option).<sup>118</sup>

Although annual reporting should be sufficient to provide investors with information about policies, oversight, and memberships in outside organizations (none of which is likely to change on a quarterly basis), would it be sufficient for finan-

cial contributions to specific campaigns, or lobbying activity related to a time-sensitive policy matter? In the Canadian context, would annual reporting still provide shareholders with adequate information on the company's spending and relevant risks associated with it?

As the chart above demonstrates, some would prefer report-

ing on political donations that accompanies quarterly financial reports. Also, some believe that disclosures should be made "sufficiently in advance of the company's annual shareholder meeting to allow shareholders to use the 'procedures of corporate democracy' to address the company's political activity."<sup>119</sup>

### Questions

- How often should companies report on political spending?
- Are there different considerations for campaign contributions, lobbying, advertising, or contributions to trade associations?
- How often should companies report on policies and oversight?
- Should disclosure be included in Annual Reports, quarterly reports, proxy circulars, or in some other form?

## 7. Are there risks or costs for investors from disclosure?

One argument marshalled against disclosure of political spending is that it may create risks for companies by drawing attention to the amounts and recipients of their spending.

David Primo, an advisor to the Center for Competitive Politics<sup>120</sup> in the US, wrote recently that “any group, including non-shareholders, can use the information gleaned from disclosure reports to attack the company and advance the group’s political goals.”<sup>121</sup> For example, the pharmaceutical company Merck was an early adopter of political spending disclosure, and it has been subject to a shareholder proposal by a self-described conservative think tank regarding its expenditures on lobbying in the US. The organization’s primary concern was the company’s support for the President’s health care reform in the US, specifically, “prevent[ing] another catastrophe like ObamaCare.”<sup>122</sup>

The risk of negative attention for a company’s political spending is real. The question, however, is whether these risks are best avoided by keeping contributions undisclosed from shareholders, or by having clear and defensible policies and practices on political spending that withstand shareholder scrutiny.

Another concern for investors is that disclosure may deter companies from participating in the political process even where they should do so. For example,

a company could refrain from lobbying related to legislation that affects their interests, leaving the playing field open for competitors or other interests who may influence lawmaking in a manner detrimental to the corporation’s value.

Or a company may feel the need to forego a largely beneficial membership in a trade association because of a relatively minor position taken by the association. Membership in a trade association may confer benefits on the company, including the development of jointly-supported industry advocacy regarding legislation and regulations that help companies overcome free-rider problems.<sup>123</sup>

Activist campaigns to convince companies to disassociate with such associations once they are fully disclosed could cause the company to forego the benefits to shareholders of membership.

Eighteen US companies have responded by earmarking contributions to distinguish between trade association membership dues and contributions which go to political activities. Qualcomm Inc., for instance, has a policy requiring disclosure of any portion of dues or special assessments channelled towards lobbying or political contributions by the association.<sup>124</sup>

Lastly, could a disclosure regime create unnecessary costs

or administrative burdens for a company?

Unfortunately, on this point the evidence is not yet clear. After reviewing its own policies and procedures for political spending, Charles Grezlak, Vice President of State Government Affairs and Policy at Merck, noted that “The administrative burden wasn’t much of a problem.”<sup>125</sup> However there has not yet been a comprehensive study of the burden of reporting political spending, in part because the phenomenon is relatively new.

### Questions

- What are the potential negative consequences of political spending disclosure?
- Do the risks of outside pressure outweigh shareholder interests in political spending disclosure?
- Are there ways of tailoring disclosure requirements to reduce those risks?

# Conclusion

“A healthy system of corporate governance ensures that companies make proper use of power that is entrusted to them by their shareholders. This relates to all aspects of a company’s activities, but certainly includes a company’s involvement in seeking influence in the political process.”

- International Corporate Governance Network<sup>126</sup>

**A**lthough the question of disclosure of political spending is relatively new to the corporate governance agenda in Canada, questions about corporate spending in the political arena are not. Canada’s first Prime Minister, John A. MacDon-ald, was forced to resign when the opposition revealed substantial secret payments made to the Conservative Party’s 1872 election campaign by Hugh Allan, then-head of the Canadian Pacific Railway Company, in exchange for the contract to build Canada’s cross-country rail line. Concerns about corruption and corporate influence have continued ever since.

Canadian jurisdictions have enacted many rules to lessen the impact of corporate money in politics, and to expose those contributing financially and those lobbying behind the scenes to daylight. Canada’s political system, in general, has benefitted from better disclosure.

Canada’s capital markets have also benefitted from increased disclosure. Many matters not previously subject to disclosure under strict financial materiality tests have been added to the roster of relevant information for investors in recent years, as investors increasingly become aware of the full range of risks and opportunities that can affect the value of their portfolios. SHARE’s examination of political spending is intended to stimulate discussion amongst institutional investors about the intersection of these two worlds – good public governance and good corporate governance. In both cases, much is to be gained from a better understanding of the issues, better policies to govern the relationship of corporations and the political process, and better disclosure of information relevant to decision-makers – whether voters or shareholders.

We invite your comments and thoughts.

## Contribute to this discussion:

### 1. Take our online survey at:

<http://ow.ly/HX4ka>

### 2. Contact SHARE at:

<http://www.share.ca/contact/>

# Endnotes

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- <sup>95</sup> Unlike in the United States, lobbyists are not required to disclose the amounts spent by their clients on influencing government.
- <sup>96</sup> A review of UK corporate spending on political contributions between 1993 and 2010 found that aggregate political spending by publicly-traded companies remained fairly steady before and after the reforms. Post-reform, management-proposed political spending resolutions were almost all approved by shareholders, but most were for fairly modest amounts (£50,000 to £100,000) and most companies underspent their budget considerably. Further, a number of large companies (like BP) passed resolutions allowing spending only as a safeguard against legal liability (should some spending inadvertently occur), even while holding policies against corporate political spending. Total authorized spending between 2001 and 2010 was over £85.6 million, but actual reported spending by publicly-traded corporations during that period was only £10.2 million. Source: Torres-Spelliscy, pp. 553-567.
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- <sup>106</sup> Ibid, section 375
- <sup>107</sup> <http://www.legislation.gov.uk/uksi/2008/410/schedule/7/made>
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