Foreword

JEAN-PIERRE KINGSLEY*

The essays in this work, written by eminent experts in their field, speak volumes to the complexity of the federal electoral system in the United States and how that system is inextricably bound in its courts, often resulting in an uncomfortable relationship between the political world and the judiciary. These essays are equally accessible to non-Americans interested in gaining a more profound understanding of the first electoral system in an established democracy devised “for the people.”

To Canadian eyes, these essays definitely bring home the point that a major difference between Canadians and Americans is how we live our electoral systems and our political processes. This may be explained in part by the fact that Canada has a (British) parliamentary system, and the United States a presidential one. Our historical trajectories differ significantly as well, the American Civil War being but one example, and the American Revolution another.

There are obviously similarities; however, it is more to the point to dwell on major differences. It may be useful to set the stage by providing a brief overview of the Canadian electoral system. The Office of the Chief Electoral Officer (CEO) of Canada is an independent nonpartisan agency (in effect, a one-person commission) established in law in 1920, reporting directly to Parliament. The CEO is elected by the House of Commons (all six were elected unanimously) and, like all judges in Canada, can only be removed upon a majority vote in both the House of Commons and the Senate (an appointed body).

*Jean-Pierre Kingsley was Canada’s chief electoral officer from 1990 to 2007. During his mandate, he instituted reforms aimed at ensuring and respecting Canada’s Charter of Rights and Freedoms and oversaw the modernization of Canada’s electoral system, including the 36-day electoral calendar, the digitization of electoral geographic systems, and the establishment of the National Register of Electors. After leaving the post of chief electoral officer, he served as president and CEO of the International Foundation for Electoral Systems, leading international observer missions for elections in Iraq and Haiti, among others. Prior to joining the federal public service, Jean-Pierre was a hospital administrator and held positions in the private sector. He holds a Bachelor of Commerce degree and a Master’s in Hospital Administration, both from the University of Ottawa.
The CEO has the statutory authority to spend the money required to achieve the purposes of the statute. Parliament votes the expenditures after the fact. The CEO may also “adapt” the statute to fit the exigencies of the situation in unforeseen circumstances and in emergencies. The CEO runs the election from start to finish under one set of rules across the whole country. Electors have only one decision to make: they vote for their member of Parliament. There is no other office to fill, and there is no referendum or plebiscite. There is only one definition of an elector and it includes all inmates, felons, and prisoners, as a result of a Supreme Court decision flowing from the right to vote (and to be a candidate) in article 3 of the Charter of Rights and Freedom forming part the Constitution of Canada since 1980. Money in federal politics and electoral campaigns in Canada is a regulated substance: only an individual Canadian or resident of Canada may make a contribution to a political party or a candidate, up to $1,500 a year, doubled the year of an election. No union, no corporation, no association (for profit or not), no PAC, no super PAC may make a contribution in money or in kind. Spending limits on a party fielding a full slate of candidates is approximately $25,000,000, and on a candidate an average of $100,000.

During an electoral campaign (usually 37 days), third parties may also participate by spending up to $200,000 nationally on advertising for or against a party or its policies or programs. In effect, the Supreme Court of Canada considered that free speech only assumes its full meaning when a reasonable limit is set on all intervenors. Moreover, collusion between them and political parties and candidates is illegal.

There are divergences concerning redistricting in the United States and redistribution in Canada. In Canada, each province is allocated a number of seats in the House of Commons, based generally on population. After every decennial census, an independent commission is established for each province and their decision on electoral boundaries cannot be overturned by the House of Commons. The commissions set the boundaries in accordance with population and in accordance with the concept of “community of interest.” The Supreme Court has decreed that important variations in population are permissible in a geographically dispersed country like Canada with sparse populations and that “effective representation” is the prevalent value. Each commission is presided by a judge appointed by the chief justice of each province and assisted by two commissioners appointed by the Speaker of the House of Commons after wide consultation.

Enforcement of the statute is shared among the chief electoral officer, the commissioner of Canada Elections, and the director of Public Prosecutions. The CEO examines and publishes financial reports and receives complaints, referring possible infractions to the commissioner of Canada Elections for investigation, who recommends prosecution to the director of Public Prosecutions when warranted.

As for proof of identification (ID), this is recently required, going one better by including proof of address. Different documents are approved by the CEO for this purpose, including library cards, utility bills, and drivers’ licenses, but the CEO
cannot deem acceptable the very document he sends electors before polling day informing them of their being on the list of electors as well as the different means of voting. There is no provisional voting, and vouching by another elector already on the list for the same poll of a maximum of 350 electors is only permissible if one provides two pieces of ID. There is a case before the courts on this matter.

This information comes from the Register of Electors maintained by the CEO and updated between elections from driver's license data, vital statistics data, income tax filings, provincial elections, and elector-initiated registration, and changes at all times, including online.

At the launch of the election some 92 percent of electors are registered and some 2–3 percent are added during the election period, including on polling day.

These differences are not minor, especially in light of the fact that they are occurring in two neighboring countries with long-established representative democracies. This behooves us to consider seriously what the essential and fundamental values of an electoral system are beyond considering traditions as sacrosanct and indispensable. Otherwise we risk missing opportunities to improve our systems and make them relevant “to the people.”