

Financing and Facilitating Party Development: What Canada Could Teach Hong Kong

By Shiu-hing Lo

Political parties in Hong Kong are registered under the Companies Ordinance—proof that the legal regime governing them is seriously underdeveloped. It also shows that new legislation to manage party affairs should be drafted and passed, not to restrict their development but to stimulate party growth in several aspects: (1) by stipulating the need for financial transparency and regular reports to the government; (2) by requiring public disclosure of party constitutions and designated officeholders (chairs, vice chairs, treasurer, secretaries, central committee members, standing committee members, etc), as well as party platforms, objectives and organizations; (3) by stating that all parties must agree to uphold the Basic Law and respect the sovereignty of China over Hong Kong; and (4) by specifying the applicable tax incentives, privileges, benefits and credits.

Political party legislation might be unnecessary if the existing legal regime, including the Electoral Commission, could be improved in ways that would protect party operations. But while this is feasible, the absence of relevant legislation leaves the existing Companies Ordinance open to interpretation, if not manipulation, by the authorities in power. If the evolution of democracy requires legal reforms to consolidate the *de facto* and *de jure* operation of both ruling and opposition parties, then new legislation should be seriously considered a better alternative.

Some members of the Hong Kong democratic camp have voiced reservations about enacting such laws for fear they might restrict party operations. Yet the crux of the issue is to clarify the objectives of such legislation, namely that it be drafted to protect rather than undermine the growth of political parties. The Hong Kong government has not taken the initiative to do so, perhaps fearing that the central government would not approve. However, given that the Basic Law says nothing about political parties in Hong Kong and because Beijing's leaders at times seem to approve of certain parties by receiving their delegates, this delay seems overcautious. Understandably, de-politicizing Hong Kong is a policy in accord with the central government's views; nevertheless, drafting and debating party legislation would deal creatively with political developments in the Hong Kong Special Administrative Region (HKSAR). The principle of "Hong Kong people ruling Hong Kong" demands that both the HKSAR government and its ruling elites be imaginative enough to appreciate the potential of the unprecedented "one country, two systems" designed by Chinese leaders in the early 1980s.

The Companies Ordinance has been applied without major problems since the first political parties in Hong Kong were founded in the early 1990s. However, as a special region of China that is pondering the question of political reform, a review of existing laws will be necessary. Having new party legislation would not only symbolize political development but also give substance to principle of "Hong Kong people ruling Hong

Kong.” Its demonstration effect on Taiwan also could be significant. Examples of what could be done can be found in Canada.

The Canadian Case

In Canada, new legislation to register political parties was introduced by *An Act to amend the Canada Elections Act and the Income Tax Act*, S.C. 2004, c. 24.¹ Its introduction was in response to a ruling by the Supreme Court of Canada (*Figueroa v. Canada Attorney General*), in which the court not only ruled against provisions of an existing law that limited certain benefits in general elections to political parties which fielded at least 50 candidates, but also suspended implementation of its judgment for a year so Parliament would have time to revise the legislation. Specifically, the Supreme Court ruled that it was unconstitutional for the government to require a political party to field at least 50 candidates in general elections before receiving three major benefits: the right to issue tax receipts for political contributions, the right to receive unspent election funds from candidates and the right to have a candidate’s party affiliation listed on the ballot.² Under the new provisions, any party with one candidate or more in a general election or by-election can register under the *Canada Elections Act*, which defines a political party as “an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election.”³ This relatively loose definition could be applied in Hong Kong.

The act could be applied selectively. For example, the Canadian law introduced new registration requirements for political parties, plus accountability measures and listed offences that could result in a party’s deregistration. To be eligible for registration, a party must disclose such new information as the text of a party resolution appointing its leader, certified by the leader and at least three other officeholders, and supported by signed declarations from at least 250 members. In Hong Kong, many political parties are small and may not have 250 members, but the minimum required for registration could be relaxed, given the relatively short history of parties in Hong Kong.

In Canada, the Chief Electoral Officer must be satisfied that the information in the application is accurate and that the organization is a political party. Given that Hong Kong has long had an Electoral Commission, a chief electoral officer who could oversee party applications already is in place.

Other applicable aspects of the Canadian law include the requirement that each registered and/or eligible party must provide annual statements about the party’s basic purpose. Every three years, each must also provide an updated new list of members and new signed declarations. This updating process could be useful in Hong Kong, where existing

¹ This section relies heavily on the materials from Election Canada, <http://www.elections.ca/content.asp?section=gen&document=ec90538&dir=bkg&lang=e&textonly=false>, access date: 12 October 2006.

² *Ibid.*

³ *Ibid.*

political groups might well combine to create larger organizations or divide into smaller ones as time passes.

One registered, a Canadian party must continue to have a designated leader, three other officers and at least 250 members. Failure to do so may lead to deregistration. In Hong Kong, these criteria could be revised because party memberships are smaller.

In Canada, parties can be found guilty of offences if they: (1) knowingly make false statements on their applications when updating registry information; (2) knowingly make false statements about party membership; (3) solicit or accept contributions with representations that all or part of these contributions will be transferred to persons or entities other than regulated political entities (i.e. candidates, registered parties, registered associations, nomination and leadership contestants); (4) fail to provide annual financial statements or reports on election expenses; and (5) knowingly enter agreements for goods or services in return for contributions, directly or indirectly, to regulated political entities.⁴

This list of offences cannot simply be transferred from Canada to Hong Kong for several reasons. First, it is an open secret that an underground Chinese Communist Party (CCP) exists in the HKSAR. Thus a law against making false statements about party membership cannot be applied effectively in Hong Kong, where some registered party members may also belong to the CCP. To avoid becoming entangled in the problem of fraudulent reports and statements about party membership, Hong Kong can focus on the requirement that parties (1) report their annual finances to the government, and (2) submit receipts and reports of election expenditures to the Electoral Commission. New party legislation, if enacted, would have to refrain from considering the relationship between an underground CCP and above-ground Hong Kong parties.

Some Hong Kong democrats may argue that, if new legislation is enacted, all parties including the underground Communist Party should register. Ideally, if the CCP did operate openly it would be conducive to political development in Hong Kong, with all parties treated equally under the law. If some members of other parties were also members of the CCP, they could choose between them and not feel a need to hide their membership. Most Hong Kong people would welcome such a bold move. If the ruling elites in the HKSAR, the central government and any underground CCP branches in the territory instead chose to dodge the issue, the question of CCP registration in Hong Kong would presumably be dropped. In other words, the tradition of having an underground CCP operate in Hong Kong would persist, coexisting with legislation to govern the other parties.

However, applying the Canadian experience could include party registration. To register in Canada, a party's application must be signed by the party leader with the full name of the party as it appears on such election documents as the ballot and the party logo. Moreover, the entire application, including the names of party members, is a public document. To confirm the accuracy of a leader's declaration about party objectives, the

⁴ *Ibid*

Chief Electoral Officer can ask the leader for additional information. Meanwhile, the party name cannot resemble the name, abbreviation or logo of any other party so as to avoid confusion. Interestingly, Canadian law stipulates that a party name must not include the word “independent” or any word likely to be confused with it.⁵ Thus Hong Kong likewise, if it wished, could stipulate explicitly in law that no party may use the word “independent” in its name.

Other areas where Canadian law could apply include the requirement that a party must report any new appointment of officers to the Chief Electoral Officer and must appoint an auditor who is a member in good standing of a corporation, association or institute of professional accountants. If an auditor ceases to hold office for any reason, the party has to appoint a new one and notify the Chief Electoral Officer of the change in writing within 30 days. This easily could be applied in Hong Kong, where political parties already have auditors. Canada also stipulates that certain persons are not eligible to act as auditors, including party candidates, party officers, agents of candidates, leadership contestants, nomination contestants, campaign agents and financial agents. Again, these stipulations would seem reasonable if contained in any Hong Kong version of party legislation.

Under the *Canada Election Act*, party registration is effective for a particular election if filed at least 60 days before the writs for that election are issued. This requirement, if adopted in Hong Kong, would require earlier registration. The registration status of a party is maintained in Canada’s Registry of Political Parties and it does not need to be renewed for each election. Such provisions could be applied to Hong Kong.

Party Registration

The benefits of party registration are numerous. First, the party may issue official income tax receipts for monetary contributions, which contributors may use to claim tax credits. Arguably, if the Hong Kong government wishes to stimulate the development of political parties, at least in the short run, similar tax credits could be provided.

Second, in Canada, a candidate endorsed by a registered party may transfer his or her surplus campaign funds to a registered electoral district association of the party or to the national party organization, while all other candidates are required to remit any surplus funds to the Receiver General. In Hong Kong, the existing electoral requirements appear to give considerable room to candidates, regardless of whether they are affiliated with political parties. A minority of candidates in past Hong Kong elections did not appear to report their campaign expenditures in full to the Electoral Commission, which apparently lacks manpower to double-check or inspect financial statements filed by the candidates, party or non-party.⁶ This loophole would have to be plugged.

⁵ *Ibid.*

⁶ Observation made by the author in the previous Legislative Council and District Councils elections. A few candidates at the district level even told the author that in reality their campaign expenditure exceeded the official limit.

Third, after a general election Elections Canada receives party election expense returns and auditor reports. This may qualify parties for refund of 50% of their election expenses, provided they received at least 2% of the valid national vote or at least 5% of valid votes cast in districts where they endorsed candidates. The goal is to encourage the development of political parties. Unfortunately, in Hong Kong, so far neither the local elite nor the government has proposed a similar use of monetary incentives to encourage party development. But the Canadian experience is a useful reference for Hong Kong.

Fourth, in Canadian general elections, each registered party is allocated a fixed amount of prime broadcasting time which it may purchase from broadcasters, based on party results in the prior general election.⁷ Registered parties also are entitled to an allocation of free broadcasting time, based on the allocation of paid time. A comparable benefit already is found in Hong Kong; the government traditionally has provided equal time to all parties and candidates to broadcast their platform by radio and television.

Fifth, the Canadian system provides concrete benefits to the electoral district associations of political parties. A party's district associations may be registered, allowing them to accept contributions and surpluses, provide goods and services, and transfer funds to other bodies within the party. With the party's consent, registered district associations may issue tax receipts for monetary contributions. In Hong Kong, party branches are not really regulated, although party headquarters and candidates are required to submit election expense reports to the government. If Hong Kong is keen to expand party branches, their registration could be made a precondition for branch benefits, notably the right to receive donations and issue tax receipts. The transfer of funds from party branches to party headquarters, and vice versa, does not seem to be regulated by the government, thus giving parties a considerable degree of financial autonomy. However, allowing party branches to register would give them the formal right to raise funds and issue tax receipts, a considerable financial incentive to support parties at the district level.

Stimulating Party Development

First, the Hong Kong government could encourage business donations to parties by giving companies tax concessions or incentives, such as 1% of tax concessions per year if they annually donate a certain amount of money to a party. This 1% can be deducted from the profit tax levied by the government on a business company that makes a minimum amount of donations to a political party each year.

Second, the government could consider giving a direct subsidy to each party for branch operations every year, allowing them to expand branch operations. When political parties mature eventually, such subsidies would become unnecessary.

⁷ For details, see

<http://www.elections.ca/content.asp?section=gen&document=ec90530&dir=bkg&lang=e&textonly=false>
access date: October 12, 2006.

Third, the government could provide a certain percentage of a party's campaign expenses if the party vote surpasses a designated percentage in any of the 18 districts in District Council elections, or in any geographical constituency in direct elections for the Legislative Council. That would give special support to small parties.

Fourth, the government should encourage all parties to submit a list of members who are recommended for consideration as appointees to consultative and policy-making bodies.

Fifth, a balanced representation on appointed political bodies should be a fundamental principle of governance; no single party should dominate membership. In the past, the government sometimes has changed the post-election balance of power on District Councils by appointing new members from parties it favored.

Sixth, the appointment of ad hoc members to District Councils also should be limited. If party members are appointed, the principle of balanced representation should be adopted to avoid changing the political configurations of any council after its elections.

Seventh, to stimulate citizen participation in parties, membership fees could serve as tax credits for citizens who submit their receipts.

Conclusion

The Canadian system for regulating political parties can be selectively borrowed by Hong Kong to stimulate their development. The government should enact party legislation which is brief and focuses on party registration, annual financial reports, election expense returns and regular audits. It could avoid the issue of contribution limits and thus give a relatively high degree of autonomy to party operations. The objective of such laws would not be to restrict party activities, but to safeguard, facilitate and promote party development.

The HKSAR government could do this by providing (1) tax incentives to individual and corporate donations to political parties, (2) governmental subsidies, (3) partial support of a party's election expenditure after it obtains a threshold of votes, (4) a regular channel for receiving recommendations from parties about which members they consider suitable candidates for various appointed public bodies, (5) a balanced representation in the appointment of party members to District Councils, (6) a convention governing the addition of ad hoc members to each District Council, and (7) tax credits for ordinary citizens who join political parties. If the principle of "Hong Kong people ruling Hong Kong" demands that its government and people be creative, the development of political parties is a crucial indicator of innovative governance.

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