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COMMISSION DE RÉFORME DU DROIT

REPORT

ON

POLITICAL FINANCING AND ELECTION EXPENSES

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The Manitoba Law Reform Commission was established by *"The Law Reform Commission Act"* in 1970 and began functioning in 1971.

The Commissioners are:

C.H.C. Edwards, *Chairman*
Robert G. Smethurst, Q.C.
Val Werier
Patricia G. Ritchie
Prof. A. Burton Bass
David G. Newman
Evan H.L. Littler

Legal Research Officers of the Commission are: Ms. E.-Kerrie Halprin, Ms. Leigh Halprin, and Ms. Donna J. Miller. The Secretary of the Commission is Miss Suzanne Pelletier.

The Commission offices are located at 521 Woodsworth Building, 405 Broadway, Winnipeg, Manitoba R3C 3L6, Tel. (204) 944-2896.

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I. INTRODUCTION

The subject of this Report is electoral expenses and contributions, and thus includes of necessity all political expenses and contributions in Manitoba, together with the ancillary subjects of reporting and disclosure of those transactions and, of course, enforcement of the rules relating to these matters. These subjects are comprehended in the terms of reference prescribed by the Attorney-General for this project, that is to say:

> . . . a thorough review . . . of the whole technique of the holding of elections . . . including whether or not political election expenses should be borne by the state itself rather than as at present, funded by private subscription; limitations on election expenses; etc.

The subjects have attracted much attention from political scientists and practitioners in recent years. As a result there are many writings and some legislation on these matters, but little practical experience. What little practical experience there is in various jurisdictions mainly shows either ineffectual legislation or systems which seem counter-productive to notions of participatory politics. It is a little early to judge the effects of recent legislation in the federal field.

The Commission has delved into the major writings and reports in pursuing this aspect of our elections study project. A landmark study was prepared by the federal Committee on Election Expenses whose report is known by the name of its second chairman, Mr. Alphonse Barbeau. The first chairman of that committee was Mr. François Nobert who resigned due to ill health and was replaced in January 1965

by Mr. Barbeau. Committee members were: Hon. M.J. Caldwell, Mr. Gordon R. Dryden, Mr. Arthur R. Smith and Dr. Norman Ward. We refer to this group as the "Barbeau Committee" and to its work as the "Barbeau Report".

We also refer to the Third Report (September 1974) of the Ontario Commission on the Legislature. The members of that Commission were Dalton K. Camp (Chairman), Douglas M. Fisher and Farguhar R. Oliver.

Reference is also made in these pages to the Chappel Committee. This multi-partisan Committee of Members of Parliament was at first chaired by Hon. James Jerome who was succeeded by Hyliard Chappel in 1970. The vice-chairman was Yves Forest, and membership in the Chappell Committee rotated among various Members of Parliament whilst keeping a fairly consistent complement of 12 to 16 members.

In September 1976, we invited the three major political parties each to designate a small delegation of party officers,M.L.A.'s or other party members so that the Commission could meet with all three delegations simultaneously in order to discuss answers to certain policy questions in the hope of actually establishing a consensus on some, if not all, points. That meeting took place on November 15, 1976, between this Commission and representatives of the New Democratic Party, the Progressive Conservative Party and the Liberal Party. The New Democratic Party representatives furnished us with a document stating principles of Funding of Political Parties in Elections. That meeting was most helpful to us and demonstrates that

whatever their political differences, the three parties' representatives shared common democratic ideals about the participation of our people in the political processes of this province.

Subsequently, in February 1977 we issued a Working Paper setting out our tentative recommendations seeking comments and criticisms. We received very few responses and these were, on the whole, supportive. In January 1979 we retained Mr. Peter J.E. Cole, the former Senior Research Officer of the Commission, to write this final Report as he had been heavily involved in the research and writing of the Working Paper.

In pursuing these studies we are concerned about the inherent delicacy of the matters with which we are called upon to deal. Political organizations in a parliamentary democracy generally are voluntary associations. Professionals are few and the lay public, who participate actively as volunteers, or somewhat more passively as ordinary voters, are many. We are conscious of the dangers of charging cavalierly into the free, democratic political process with legislative controls and other bureaucratic implements. That course can lead to a stifling of political activity and blockage of access on the part of much-to-be-encouraged lay volunteers.

We are also, however, conscious of the dangers of an accelerating spiral of campaign expenses requiring ever more memorable contributions from monied individuals, corporations and unions. One of the unfortunate facts of life in our democracy is that voters do not like to part

with their hard-earned dollars in support of politicians and political causes who and which all too often look and act like fronts for the rich and powerful few. The secrecy which oft cloaks most political fund-raising acts as a powerful stimulant to the cynicism which in turn dampens many people's enthusiasm for political involvement. Mass solicitation of funds has been tried in Canada and it has too often failed, leaving hard-pressed candidates and parties to fall back on the only method seemingly capable of generating adequate funds, a selective canvass of known supporters, preferably those who can afford to be generous.

For politicians and parties facing the ever-spiralling costs of campaigning and organizational maintenance, with no guaranteed source of income, the large contributor can be a godsend. He, or it, may indeed make the difference between winning and losing an election. Substantial political contributions, however, are not always made in a spirit of untrammelled civic generosity. The donor is often looking for something in return, which of itself is not necessarily wrong or harmful. Politicians and especially parties are defined in terms of their particular philosophy and ideals and for the vast majority of their supporters this is the prime motivation for involvement. They ask nothing more of their political gods than that they be faithful to their avowed principles. But for some the general and usually rather vague expression of principle is only part of the attraction. Of greater import is the potential largesse to be reaped from a "friendly" government beholden to its supporters. Patronage and "pork-barrelling" are as old as elected governments and in the absence of an army of informers and secret police, there is probably no way of ever entirely controlling the trade in political

favours, but retard it we must, if it is not to become a debilitating cancer in the body politic. Government exists to serve the public interest and only the public interest. When it is subverted to private ends we all suffer the consequences, not just in squandered wealth but in squandered trust. Faith in democracy and its capacity to give us good and honest government is the best defence we have against would-be tyrants.

We think it a safe assumption that politicians on the whole are as honest, diligent and well-meaning as anyone else in our society, and that they would like to go about their business without having constantly to worry about obtaining sufficient finances and voluntary help to sustain their election campaigns and between-elections grass-roots connections. Worrying about getting elected or re-elected is a most salutary part of the democratic process, but worrying about finances is another matter altogether. Political campaigning is expensive, not because politicians enjoy spending vast sums of money, but because they are caught up in an ever-expanding competition for legislative office, in which the restraints are either non-existent or unenforced. Each new technical innovation in the mass media, each new advertising gimmick, regardless of cost, must be exploited in the hope of gaining or preventing an advantage.

Despite the seemingly rapacious use of funds, however, a good deal of the expense is probably unavoidable. For one thing it is very difficult to determine the actual cost of an election campaign, since "costs" may embrace many things besides money, eg. volunteer manpower, printing and delivery services, transportation, etc. It is also

extremely difficult to say with any certainty whether the costs are too high or not. To the public the sums expended may seem exorbitant, but in terms of the tasks we expect politicians to perform, the amounts may be quite inadequate. Candidates and parties are not only expected to present themselves well, they are also, and quite rightly, expected to shoulder a major share of the burden of educating the electorate on the problems of the day and the virtues and drawbacks of the various solutions being proposed. Merely to limit the level of spending would probably do as much harm as good since it would restrict not only the hard-sell aspect of political campaigning but also its educational aspect.

It has also been said, and probably with some justification, that parties and candidates do not spend the money they have in the most effective manner possible, but then what is the most effective manner to spend money in an election campaign? While some research has been done in this area, there is little incentive for parties and candidates to take chances by experimenting. Voters and politicians can become conditioned to traditional approaches, like billboards and handbills, and the absence of them could have negative consequences. One-half the money spent in campaigns may indeed be wasted, but as one commentator wryly remarked, it is fair to say that no-one knows which half!

Accelerating costs, the partly forced reliance on a few large contributors, and the possibly inefficient use of funds are still, however, only part of the overall problem of political financing. The discrepancy in financial drawing power between different candidates and parties must also be taken into account, since there is little question that a saturation advertising campaign conducted by a very

wealthy candidate or party must take something away from the less effective efforts of his or its more deprived rivals. Such financial imbalance can distort the judgment of the electorate on voting day and perhaps even more important it can thwart the political aspirations of the less well-off segment of our society. The inherent vice of private political funding is that it can and has become the preserve of wealthy individuals and business and labour interests whose munificence is often founded on the hope or promise of gain peculiar to their own narrow interests. The promotion of one's own interest is not of itself a bad thing but in a pluralistic democracy with many competing interests to be balanced and considered in the formulation of policy, it can be extremely dangerous if only one or a very few of those interests is having a significant impact on the decision makers.

In summation, then, we regard uncontrolled political financing as a problem because:

(a) it is fast becoming exorbitantly expensive for both candidates and parties to contest elections with the result that politics could becoming the playground of the rich individual and of large, well-organized interests of various kinds;

(b) it is easier and more lucrative to solicit funds from a few wealthy donors than to tap the "little man", a situation which can lead to the debasing of the high trust of public office through the return of otherwise unmerited and exclusively privileged favours and patronage; and

(c) the more lavishly endowed candidates and parties in an election stand a better chance of winning than those who may be of equal or better political merit but lack private fortunes or generous sympathizers.

II. RECOGNITION OF POLITICAL PARTIES, CANDIDATES, AND CONSTITUENCY ASSOCIATIONS

1. The Need for Recognition

It would be difficult to imagine a modern parliamentary democracy in which there were no political parties but only individual candidates and individual platforms. A moment's thought should be all that is required for us to realize how utterly natural and essential it is that there should be political parties, that men and women of like thought and aspiration should band together to promote the policies and ideals which they consider of most benefit to their society. In this age of instantaneous communication and almost total economic interdependence it would be inconceivable for local constituencies to experience a general election in complete isolation from each other; to elect representatives to a provincial or national assembly on the basis of purely local biases and preferences. When the men and women of Manitoba go to the polls in a general election they do so with the intention of electing not just a local representative but also a government, and the instrumentality through which they elect a government is the political party.

Parties are not only critical to the actual functioning of the governmental system itself, they are also and inevitably the chief gatherers and distributors of campaign funds. Because they represent a constituency far broader than the narrow limits of the territorial seat and because they offer the distinct possibility of governmental control or at least a significant influence on such control, parties have a financial magnetism that far transcends that of the individual candidate or constituency association. Without the financial support of their party most candidates

would be operating on a shoestring budget, and a very short and frayed shoestring at that.

Once we have acknowledged the critical importance of political parties there is a need, as the Barbeau Commission pointed out in 1966, ". . . to make them responsible for their actions"[1]. Any attempt to control political finances that does not deal adequately or at all with the reality of political parties will be doomed to failure from the start.

Although parties are the primary instruments of political will in our system of government, they are not the only recipients of political donations or the only organizations to engage in political spending. Obviously during an election campaign much money will be raised and spent at the constituency level by the candidates and their campaign organizations. But in the period between elections it is the local constituency associations which keep the organization alive and the troops inspired, and although they cannot equal the fund-raising capability of the central party, nevertheless, funds are raised and spent at this level for political purposes. Constituency associations and nominated candidates should be recognized along with parties as recipients and spenders of money for political purposes.

These three entities - parties, constituency associations and candidates -- are the most readily identifiable as being entirely political in their activities and goals. There are other groups and individuals which lobby or advertise in support of particular policies or political points of view but they do not do so with the intention of nominating their own candidates or winning elections in their own names. They hope to influence but not wield political power. It is

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[1] Report of the Committee on Election Expenses (Barbeau Committee), Ottawa, 1966, p. 14.

only political parties and their subsidiary constituency and candidate organizations which have as their sole *raison d'être*, the winning of legislative office, and it is for this reason that they should be singled out as the primary objects of control.

2. Centralization of responsibility

It is one thing to say that parties, constituency associations and candidates should be singled out as the objects of control in any scheme of financial regulation but it is quite another thing to impose that control in a manner that will be effective. Each of these entities represents an organization that has no formal identity in law other than as an unincorporated association. Just as parties serve to centralize the responsibility for particular policies and courses of action in the minds of the electorate, so some means must be found of centralizing responsibility for the raising and spending of money within the parties themselves and the subsidiary constituency and candidate organizations.

The most effective way to do this is through the doctrine of agency or the centralization of responsibility in one individual or committee. This has long been recognized and applied in regard to candidates and is now increasingly being adopted in regard to parties. The present Manitoba legislation indeed provides that every "recognized political party" shall have only one "central campaign committee for the entire province, that shall be responsible for the handling of all campaign funds and filing of the returns that may be required . . ." and that the leader of a recognized political party shall appoint a person as the "central campaign agent".[2]

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[2] *"The Election Act"*, C.C.S.M. cap. E30, s. 171(1).

The duties and responsibilities of the committee and the agent are not very precisely defined but at least it is recognized that there has to be one central and identifiable body through which all donations, receipts and other campaign activities are channelled. Political organizations are far too diffuse to be controlled in any other manner.

Although the doctrine of agency and the registration of qualified political organizations make control of their finances possible, there is still the need for some further legal recognition of their existence for the purpose of prosecution. The Special Parliamentary Committee on Election Expenses (the Chappel Committee) considered the possibility of according corporate status but concluded that too many sections of the *Canada Corporations Act* would be inapplicable. They did, however, recommend that parties ". . . be made legal entities for purposes of prosecuting and being prosecuted and suing and being sued for offences under the *Canada Elections Act* and that they be given the powers to own and lease property, to sell and let property, to receive and make donations and to enter into contracts".[3] Only those parties qualifying for registration under the expense provisions of the *Elections Act* would be entitled to such status. Saskatchewan, Alberta and Ontario have enacted that for the purposes of prosecution under their respective elections legislation, parties and in the case of Ontario and Alberta, trade unions and constituency associations also, shall be deemed to be persons or legal entities.

Although we recognize the need for some legal recognition, we think a line has to be drawn between making political organizations complete *persona*, ie. corporations,

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[3]House of Commons Special Committee on Election Expenses (Chappel Committee), Second Report, Ottawa, 1971, p. 11.

and keeping their internal organizations flexible with plenty of mobility in the placing and replacing of key officers and personnel. Democratic political parties are not formal structures erected for the efficient generation of profits or the promotion of timeless ideals and ideas. They are vast, loose conglomerations of like-minded people and groups who while they may agree on certain guiding principles may be poles apart on the implementation and even the definition of those principles. To turn such living organisms into corporate monoliths would probably be a disaster of the first order. Parties and their subsidiary organizations are subject to enough control and regimentation as it is with the centralization of fund raising and expenditure through the doctrine of agency and registration, without having to acquire the bureaucracy and formalized channels of control that so distinguish large corporations. If legal recognition is to be accorded it should only be *for the limited purpose of prosecution.*

3. Registration

If the financial affairs of parties, constituency associations and candidates are to be regulated by an external agency through the devices of audited returns, filed by chief financial officers or official agents, then it is essential that the parties and their subsidiary organizations and the financial officers and agents be identified and the easiest way to accomplish this is by requiring their registration with the agency administering the controls. Registration also makes it much simpler to impose legislative controls such as those suggested later in this Report because they can be directed at registered political parties, constituency

associations and candidates. Thus, for example, only registered parties, constituency associations and candidates would be allowed to accept contributions, give receipts for the purposes of any tax-credit scheme, or receive subsidies. The use of such an objective, if artificial, test as an identifier makes the administration and enforcement of controls much easier than a simple blanket application of the controls to all political parties, constituency associations and candidates, and this is especially so in the case of political parties which are not so readily identifiable as constituency associations and candidates. There remain the questions - should there be qualifications for registration and, if so, what kind of qualifications?

In regard to constituency associations and candidates there is no problem since the former must of necessity be formally affiliated with a political party and the latter have to be nominated in accordance with the procedures laid down in *"The Election Act"*. Although a candidate may be nominated by his party prior to the issue of a writ for an election and could apply for registration ahead of the time of the said writ, the actual registration would only take effect as of the date of the issue of the writ. If a candidate should apply for registration after the issue of the said writ, his registration would then take effect as of the date of his application. The qualifications are inherent in the nature of the entity to be controlled and are readily apparent. This is not the case, however, with political parties which can be of infinite variety in terms of size, philosophy and credibility and which, as a result, defy easy definition. One of the fundamental things to be avoided in any legislated control of political finances is a screening process which in itself affects the openness of the democratic

market place by discriminating against certain groups or ideas. The controls must be as neutral as possible and yet to allow every little group or organization, no matter how far-fetched in ideology or political credibility, to qualify as a party would be an invitation to administrative chaos and above all to fraud in the matter of giving receipts for tax credits. There must be some measure of a party's credibility as a genuine aspirant for legislative office, and this measure must, of necessity, be related to its performance in the political arena either in terms of the effort made to get votes or the return on that effort in votes or seats obtained. For this reason we considered and rejected the kind of all-encompassing definition presently contained in the Manitoba *"Election Act"* which reads as follows:

> In this Act "recognized political party" means an affiliation of electors comprised in a political organization whose prime purpose is
>
> (i) the fielding of candidates for election to the legislature; or
>
> (ii) conducting a political campaign by advertising or otherwise.[4]

This definition fails as a means of determining qualification for registration because it not only contains no objective means of determining political credibility but it is wide enough to incorporate groups and associations not generally considered "political". Taking the word "political" in its ordinary sense (which does not necessarily mean partisan) it refers to the policies of the state or the government, or to public policy or to public affairs. By this definition

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[4] *"The Election Act"*, C.C.S.M. cap. E30, s. 2(1)(n. 2).

some voluntary organizations which say they are apolitical (usually meaning non-partisan) or groups which coalesce temporarily to lobby for some change in government policy are surely each "an affiliation of electors comprised in a political organization whose prime purpose is . . . conducting a political campaign by advertising or otherwise".

Now everyone knows that (for example) the Social Planning Council of Winnipeg, and those people who seek government support for day-care services, are not considered to be political parties; and no one would seriously think of requiring them to comply with section 170 of *"The Election Act"* which requires every recognized political party to file with the Chief Electoral Officer an annual audited statement showing various financial details. But they come within the definition although they do not field candidates.

A more realistic approach is that contained in the recent Ontario legislation on political finances:

> s.10 (2) Any political party that,
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> (a) held a minimum of four seats in the Assembly following the most recent election;
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> (b) nominated candidates in at least 50 per cent of the electoral districts in the most recent general election;
>
> (c) nominates candidates in at least 50 per cent of the electoral districts following the issue of a writ for a general election; or
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> (d) at any time other than during a campaign period provides the Commission with the names, addresses and signatures of 10,000 persons who,
>
> (i) are eligible to vote in an election, and

(ii) attest to the registration of the political party concerned,

may apply to the Commission for registration in *the register of political parties.*[5]

The tests elaborated take into account both effort expended and results obtained and in clause (d) provision is made for the new or smaller party which can demonstrate enough support to establish itself as a *bona fide* contender in the political sweepstakes. The numbers chosen are, of course, a reflection of the size of the Ontario legislative assembly and the population of that province.

We think a similar provision should be adopted in Manitoba but with clause (a) amended to read ". . . a minimum of two seats in the assembly following the most recent election", and clause (d) amended to read ". . .the names, address and signatures of 1,250 persons. . . ." The latter figure is high enough in the context of Manitoba to indicate genuine popular support, without being so high as to impede unduly the formal recognition of new or smaller coalitions of voters.

RECOMMENDATIONS

1. Political parties, constituency associations and candidates should be recognized as the entities to which financial controls must be applied if the controls are to be effective.

2. All political parties, constituency associations and nominated candidates should be required to register

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[5] *Election Finances Reform Act*, S.O. 1975, cap. 12, s. 10(2).

with the authority in charge of administering the proposed political finance controls.

3. The qualifications for registration of a political party should be as follows:

Any political party that:

(a) held a minimum of two seats in the Assembly following the most recent election;

(b) nominated candidates in at least 50 per cent of the electoral districts in the most recent general election;

(c) nominates candidates in at least 50 per cent of the electoral districts following the issue of a writ for a general election; or

(d) at any time since the most recent election but other than during a campaign period provides the (relevant authority) with the names, addresses and signatures of 1,250 persons who,

(i) are eligible to vote in an election;

(ii) attest to the registration of the political party concerned.

4. A constituency association, to be eligible for registration, should be endorsed by a registered party as the official association of that party in that constituency, and there should not be more than one constituency association recognized in each constituency for each registered party.

5. A candidate, to be eligible for registration, should be a person duly nominated in accordance with *"The Election Act"*, or nominated by a constituency association of a registered party as the official candidate of that party, or a person who, on or after the date of the issue of a writ for an election declares himself to be an independent candidate. While a candidate nominated by a constituency association of a registered party may apply for registration prior to the issue of a writ for an election, his registration would only take effect upon the issue of the said writ or if he should apply after the issue of the writ, then upon the date of his application.

6. All registered parties, constituency associations and candidates should be required to appoint a financial officer or official agent, through whom all receipts and expenditures must be made and who shall be responsible for filing all required returns of information. Failure to comply with the requirements shall be cause for deregistration.

7. Registered parties and constituency associations should be deemed to be persons for purposes of prosecution under any legislation embodying the proposal financial controls, and any act or thing done or omitted by an officer, official or agent of a political party or constituency association within the scope of his authority should be deemed to be an act or thing done or omitted by the political party or constituency association.

III. LIMITATIONS ON EXPENSES

Limitations on expenses are designed essentially to curb the assumed excesses of political spending, to introduce a measure of financial equality between competing parties and candidates, and to relieve politicians of some of the pressures of having to raise ever-larger sums of money with the concomitant risk of political indebtedness to the donors. Such limitations may be applied generally to all "election expenses" or may be restricted only to the predominant expenses or those which are readily ascertainable.

1. Single over-all limitation

One of the most commonly expounded methods of control is a general limitation on the amounts which may be spent by a party or candidate during an election, or indeed at any time. The present Manitoba legislation although it only applies during the actual election period, is a typical example of such general limitations, in this case a specific amount per elector being the prescribed maximum. A party may not spend more than "fifteen cents per eligible voter in

the aggregate of the electoral districts in which that party has nominated candidates" (s. 176(1)) and a candidate may not spend more than ". . . sixty-five cents per eligible voter in the constituency in which the candidate is nominated" (s. 177(1)). Simple as the idea of an overall limitation sounds, however, the effective implementation of such a ceiling can be a very complicated affair. Among the more important considerations to be borne in mind are the following:

(a) The definition and valuation of "expenses" - this is unquestionably the most fertile source of controversy and confusion and the real nub of the problem with overall limitations. It is very easy to say that an "expense" or an "election expense" is anything upon which a party or candidate spends money in furtherance of his or its campaign for public office or anything which may be contributed in the way of services or goods to that campaign. But how do we catch the governing party which artfully improves the roads in a certain constituency just prior to calling an election, or the politician who travels at public expense to lay the cornerstone of a new hospital, and spends the day glad-handing the good burghers of his constituency? And what about the person who volunteers the use of his lawn for a forest of "Vote Sam" placards? And if we say yes, these are indeed "election expenses" how then do we value them?

"The donation of a fleet of cars for election use by an automobile dealer can obviously be identified and reported at commercial value, but the lending of a private car on Election Day could not. Similarly, the donation of an aircraft, bus, or other commercial vehicle, should obviously be declared if such are used specifically for the purposes of the candidate's campaign. But if the candidate's supporters invite him to meet his constituents in their homes and provide

refreshments for those present, it would seem ludicrous to insist upon placing a commercial value upon their hospitality, even though it may well exceed $100."

"A more difficult task for the parties and their candidates is that of placing a 'commercial value' on individuals who volunteer their services and, by so doing, contribute some form of special expertise to the campaign. These would include advertising and public relations experts, trade union organizers, academics, journalists, broadcasters, musicians, audio-visual technicians, professional athletes and others with celebrity status, doctors, lawyers, and presumably almost anyone who has a gift or special skill by which he makes his living, and volunteers it to a party or candidate during an election campaign. No one who has had any experience with campaigning will underestimate the value of such a contribution; on the other hand, the mind boggles at the task of those who must record the particulars of all this, and put a fair market price on it for the purpose of calculating campaign expenses."[6]

(b) The actual amount of the spending limit - if the level is too low the result will most likely be evasion and a consequent lack of respect for the law; if too high then a mockery will have been made of the whole purpose of imposing a limitation, not to mention the fact that parties and candidates may well regard the high limits as a legitimate excuse to increase their spending if possible. . . . limitations of whatever type can be effective only if they are "reasonable", and take into account the fact that elections cost money. The maintenance of political parties during the periods between elections also costs money. The amount of money required is largely determined by the "style of elections" and the "style of politics" in the jurisdiction involved. By "style" is meant those practices which are normally accepted by the participants and the electorate as legitimate election activities. There are cases where parties

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[6]Ontario Commission on the Legislature (Ontario Commission) Third Report, September 1974, pp. 16-17.

and candidates spend more money on elections than they need to, as well as cases of unwise expenditures. Nevertheless it is the style of elections, determined mainly by the tastes, habits and desires of the electors, which determines the cost of elections. Campaign styles do not develop divorced from the general political and social norms and conditions of a society. Thus, the society must be willing to accept the fact that there is only a certain range within which expenses can be limited without forcing a change of "style". A reasonable limitation on both income and expenditures must be one which permits parties and candidates to raise and spend enough money to present their platforms and policies before the public in the manner demanded by the style of elections.[7]

(c) The period of time covered by the limitations - most jurisdictions that have imposed spending limits have imposed them only during the election campaign period or have defined expenses to mean election expenses.

(d) The persons to whom the limitations apply - in most jurisdictions the limits apply only to candidates which is totally unrealistic in a modern democracy where the principal units of political activity are parties. "It must be recognized that . . . in most modern democracies elections are not won or lost simply at the candidate or constituency level, whatever the legal forms may indicate. Organized political parties and their leaders are the main contenders with candidates usually forming only a part of the campaign army. Ceilings on candidates' expenses cannot achieve equity without corresponding limitations in party income and expenditures. It might in fact result in the strengthening of the position of the central party organizations vis-a-vis candidates."[8]

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[7] Barbeau Committee, *op. cit.*, p. 108.

[8] *Ibid.*, p. 101.

It should also be borne in mind that candidates and political parties are not the only persons and groups to engage in political advertising. In the United States it is common for ad hoc committees such as the "Friends of John Smith" or the "Supporters of John Doe" to spring up at election time in support of the various candidates. If allowed to participate actively in the election campaign, they render meaningless any controls or limitations which apply only to parties and candidates.

(e) The reporting and auditing of expenses - obviously the only way to police restrictions on spending is to have adequate reporting and auditing of the expenses incurred by candidates and parties. Without the necessary bookwork and without proper investigation where required, and stiff penalties for failure to comply, any limitation must be a dead letter.

(f) The political ramifications - in the United States, for example, ceilings have been influential in bringing about a decentralization of election and party financing. "Clearly limitations cannot be imposed in a vacuum; they are likely to have effects on parties, the relationships of candidates to parties, and the relationships between parties and the electorate."[9]

The complexities enumerated above were more than sufficient to deter the Barbeau Committee and the Ontario Commission on the Legislature from recommending overall limits.

The Committee believes that a body of evidence presented to it supports the need to make recommendations for some form of control of, and limitation on, election expenditure. The Committee does not, however, accept the argument

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[9] Barbeau Committee, *op. cit.*, p. 109.

> that these controls can be effectively placed on the total expenditure of a candidate. A total dollar limitation is inviting by its simplicity, but meaningless in practice. A total dollar limitation appears hopelessly inadequate in evaluating volunteer support in work or services. It is also the Committee's contention that any attempt to place such a limitation could be easily circumvented. Controls and limitation, in the Committee's opinion, should apply only to those items which can be traced and proved, ie. the public media whose use can be policed, so that controls will be meaningful.[10]
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> There are great difficulties with the enforcement of ceilings on expenditures, as we have indicated. Certainly, in any existing examples of such attempts before us, it seems certain that margins of error must be allowed, leading inevitably to permissiveness and then to inevitable carelessness and indifference. The enforcement of spending ceilings requires exacting reporting standards and thorough auditing, and demands of constituency organizations a competence that few of them in fact can be assumed to have.
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> These, then, are among the reasons, after much deliberation, why we have found it to be the greater wisdom not to recommend that spending limitations be placed upon the parties and upon candidates. Instead, we have given greater emphasis to disclosure, to limitations on individual contributions, and to other sanctions which will, overall, tend to discipline and restrain excessive spending by those involved in the political process.[11]

The Chappel Committee, on the other hand, made light of the fears of its predecessor, the Barbeau Committee, and recommended the imposition of spending limits similar in

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[10] *Ibid.*, p. 49.

[11] Ontario Commission, *op. cit.*, p. 43.

principle to the ones presently in force in Manitoba.

> Notwithstanding the fears of the Barbeau Committee we believe that limits can be enforced by the device we have previously recommended of requiring the candidates to supply reports audited by their own auditors. Thus a candidate who would spend beyond the legal limits and wished to avoid the penalty would have to
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> (1) deceive his auditor;
>
> (2) deceive his official agent;
>
> (3) deceive the electorate in his riding; and
>
> (4) deceive his opponents in the electoral district, their auditors and agents.
>
> As a practical matter, a candidate, his campaign manager and senior workers would have a fairly accurate judgment about what their opponents are spending.[12]

We think there is a great deal of wisdom in the position taken by the Barbeau Committee and the Ontario Commission on the Legislature. It is indeed impossible to monitor everything which might be construed as a contribution to a political campaign and thus an expense to the party or candidate assisted. We concur wholeheartedly with the Ontario Commission when it comments:

> There must be room for common sense, and the regulations governing our political procedures ought to be practical and sensible enough to encourage compliance and not to repel it. It seems to us that if a party employs anyone, for whatever purpose, the transaction is easily reported and must be. But any individual ought

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[12] Chappel Committee, *op. cit.*, p. 21.

> to be free to volunteer his or her services to a partisan cause, and the fact that some may have special talents and be of special value as individuals in a political cause ought not to be discriminatory. The parties ought to be free to accept such support without consulting a Plimsoll line of election spending ceilings and without paying a premium for it.[13]

For this province to embark on a vast administrative effort to tie down every last cent's worth of support for each candidate and party, would be folly in the extreme. There are other, more effective, if indirect, ways of controlling expenses (such as defining the length of the campaign period and allowing the use of the more expensive advertising media only during that period) than an overall limitation, and besides, the amount of money spent on political campaigns in this province is simply not excessive enough to justify elaborate controls, and especially controls which would in all likelihood prove unenforceable in any event. If limitations on expenditures are to be established the best approach is probably that suggested above by the Barbeau Committee, that controls be placed only on ". . . those items which can be traced and proved, ie. the public media whose use can be policed, so that controls will be meaningful".[14]

2. Specific Limitations

Direct control of the broadcast media by limiting broadcast time available, for example, is something which is beyond the legislative competence of the province. However,

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[13] Ontario Commission, *op. cit.*, p. 17.

[14] Barbeau Committee, *op. cit.*, p. 49.

the candidates and parties can be controlled by limiting the amount of money which they can spend on radio and television advertising, as well as newspapers, billboards, etc., and the time in which these facilities can be used. Although these limitations are very selective, applying only to some of the expenses of a political campaign, it is probably fair to say that for most campaigns they are the largest expenses and therefore the ones most urgently in need of control. Fortunately they are also the ones most susceptible to control. They can be noted and monitored.

The Barbeau Committee, as noted above, was of the opinion that controls and limitations should apply only to those items which can be traced and proved. The Committee accordingly recommended that candidates should be prohibited from spending more than 10¢ per elector on "the print and broadcasting media which include television, radio, newspapers, periodical advertisements, direct mail, billboards, posters and brochures".[15] Any advertising provided by the parties which directly supports a candidate would have to be included in that candidate's expense return, and from the date of issuance of the election writ until polling day no group or bodies other than registered parties and nominated candidates would be permitted to purchase advertising supporting or opposing any party or candidate. The latter provision is designed to prevent the restrictions from being circumvented by the use of ad hoc committees, etc.

The Committee further recommended that the

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[15]Barbeau Committee, *op. cit.*, p. 49.

publication of public opinion polls be prohibited during the campaign period on the grounds that "polling surveys of this type are often urged on a candidate, thus increasing his costs to off-set the purported results of an opponent's polling of public opinion".[16] To prevent gouging by the media, and favouritism as between parties and candidates, the Committee recommended that it be made an offence for a broadcaster or publisher to charge more than the usual local or national rate for political advertising, or to give free advertising to one candidate or party and not the others. And finally and perhaps most important, the Committee urged that parties and candidates be prohibited from campaigning on radio and television, and from using paid print media except during the last four weeks immediately preceding polling day, and that political parties be prohibited from purchasing or using any paid time on radio or television in excess of their share of the six hours of subsidized time recommended elsewhere by the Committee.

The recommended limit of four weeks on the active campaign process was supported by the Chappel Committee, and eventually enacted in 1974 as part of the federal *Election Expenses Act*. Also enacted was a prohibition against the incurring of election expenses by groups and bodies other than parties and candidates, during the period from the issue of the election writ to polling day. This prohibition is particularly directed against the use of the media other than by parties.

The Ontario Commission on the Legislature was not

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[16]Barbeau Committee, *op. cit.*, p. 51.

so sanguine about controlling politicians' use of particular media. Its comments, in precis form, are as follows:

> To limit the access of a political party to specific media is to place limits upon free speech and expression. No one would suggest that a candidate for office should be limited as to the number of public meetings he may hold, or the number of voters he may canvass, or how often. Why, then, should a party or candidate be limited as to the number of statements they may make to a mass audience through the media? The major concern with respect to an inordinate advantage in the financial resources of one party over another is that such an imbalance allows for the domination of television by the wealthier parties. One wonders why television should be so singled out. There are natural and self-imposed limitations on the use of television, eg. neither CBC stations nor the CBC network may be purchased for political broadcasts; television is too costly for individual candidates to permit extensive use; the commercial time available on private stations is limited and the cost of production together with time costs impose further realistic restraints.
>
> Another difficulty with placing restrictions upon the use of the media involves the growing practice of private citizens, and groups of citizens, advertising in the media in election campaigns to promote certain causes. In a campaign where spending ceilings are in effect, it may well be in the interests of a party to encourage its friends to support it in this manner. Even in a system where spending ceilings are not imposed, but where the parties must account for their contributions and expenses, such so-called "private" campaigns can be used to conceal both. The federal Election Expenses Act makes no attempt to deal with this problem, although it seems inevitable that it must since both disclosure and spending ceilings will encourage the practice. In the United Kingdom, such expressions of private opinion are simply disallowed during election campaigns, or, when they are not, they must be charged against the parties or candidates they are deemed to support.
>
> It would be foolish to attempt to forbid private citizens from sounding off on public issues in

> election campaigns. What they may not do, however, is specifically endorse a party or a candidate or specifically oppose the same, on behalf of undisclosed contributors. In short, where the advertisement on behalf of the individual or groups is deemed to be political in nature and relevant to the election campaign, the sponsor or sponsors must be identified.[17]

The Commission recommended as a measure to reduce costs and equalize the electoral contest that political advertising be banned altogether, except during the twenty-one days immediately prior to polling day.

> The exceptions to this limitation of 21 campaign days for political media advertising would be constituency advertising for party nominating conventions, any form of promotion by candidates seeking nomination, the advertizing of public meetings in constituencies, announcement of constituency organizations with respect to enumeration and revisions, and any other matter applying strictly to the administrative functions of constituency organizations.[18]

This measure has now been enacted as s. 38 of the Ontario *Election Finance Reform Act*, which also goes much further than the Commission's recommendations by imposing, in addition, limits on the amounts which may be spent by parties, constituency associations and candidates on advertising, including any advertising done by third parties with the knowledge and consent of such parties, constituency associations and candidates. Registered parties are limited to 25¢ per voter appearing on the revised lists in all the constituencies in which the party has an official candidate, and in

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[17] Ontario Commission, *op. cit.*, pp. 19-22.

[18] *Ibid.*, p. 41.

the case of by-elections the limit is raised to 50¢ per voter. Candidates and constituency associations are limited to 25¢ per voter in their particular constituency. It is interesting that the Ontario Legislature should have enacted spending limits after the Commission had ". . . found it to be the greater wisdom not to recommend that spending limitations be placed upon the parties and upon candidates".[19]

We are of the opinion that the selective spending limits adopted by the Ontario and Federal governments are a reasonable and enforceable way of controlling the major expenses of political parties and candidates and we think similar measures should be considered for Manitoba. Since *"The Election Act"* already imposes expense limitations similar to those enacted for Ontario, ie. based on the number of voters ineach constituency, the only changes necessary to these provisions would be (a) probably an increase in the amount per voter allowed over the present figures, and (b) a more specific and limited definition of "expense". We also think that the amount allowed in remote northern divisions should be greater in order to accommodate the extraordinary expense of campaigning in those regions.

We are not convinced of the necessity to prohibit public opinion polls during an election campaign, nor do we think there is much merit in confining political advertising to the 21 days immediately prior to polling day. Election campaign periods in Manitoba rarely exceed five weeks and we very much doubt that concentrating advertising within the shorter three-week period would reduce the amount spent

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[19]Ontario Commission, *op. cit.*, p. 43.

by the parties and candidates. The advertising blitz would simply be more intense than if spread out over the entire campaign period. We do not recommend these measures for Manitoba.

In summary, the major expenses for the purchase of advertising promotions which require financial resources, rather than motivated election workers, should be limited. The party and the candidate, and their political adversaries, can both monitor such advertising promotions, and both can therefore help to police and enforce the limits set for all. These limits should apply both *for* and *during* an election campaign, ie. to materials and contracts in a sense "stock-piled" in advance of the campaign and used during the campaign. The campaign period begins with the issuance of the writ, as provided in sections 174 and 175.

RECOMMENDATIONS

8. (a) Limitations of sums which may be expended both by parties and candidates should be imposed specifically on use of television, radio, newspaper, magazine and commercial billboard promotion and advertising contracted for and during election campaigns.

   (b) The limitations on these readily ascertainable expenditures should not be so generously set as to be, in effect, no practical limitations at all, but should effectively confine both the monied and the non-monied parties and candidates equally within the strictures of reasonable but not lavish appeals to the electorate.

9. It should be unlawful during an election for groups, associations or persons other than registered parties and candidates to publish or to purchase public advertising supporting or opposing any party or candidate. This prohibition should extend to constituency associations, and in addition, candidates should be prohibited from advertising except during an election.

10. It should be unlawful during an election campaign for a broadcaster or publisher to charge more than the usual local rate or to charge unequally as between parties or candidates for political advertising, or to give free advertising to one or any candidate or party and not all others.

11. The limitations expressed above, if otherwise pertinent, should not apply to merely factual advertising for meetings of electors to nominate a candidate, constituency organizational meetings, and any other matter involving solely the administrative functions of constituency organizations.

12. The limitations of expenditures should be fixed arbitrarily by statute to be applicable to all registered parties, constituency associations and candidates equally, and should be based on the number of electors. The only exception should be in relation to northern constituencies where the limits should accommodate the additional expense of campaigning in those regions.

IV. LIMITATIONS ON CONTRIBUTIONS

Limitations on the income of candidates and parties are not nearly so common as limitations on expenditures, and are generally aimed at reducing the potential undue influence of large donors, rather than keeping down the costs of election campaigning. The most common restraints are prohibitions or limitations on contributions from business corporations, labour unions, foreign donors, and civil servants. The United States and Puerto Rico have also limited donations from individuals.

Manitoba is unique in Canada at the present time in having an outright prohibition against donations from business corporations. The section reads as follows:

It is an election offence

(a) for any company or association having gain for its corporate object or one of its objects, or for any person directly or indirectly on behalf of such a company or association, to contribute, loan, advance, pay, or promise or offer to pay, any money or other thing of value to any person, corporation, or organization, for use for any political purpose in an election; or

(b) for any person or corporation, or the officials in charge of any organization, to ask for or receive any such money or thing of value from such company or association.[20]

It is uncertain how effective this provision is but given the facts that it applies only during an election period, that there is virtually no enforcement, and that it would be exceedingly difficult to prove indirect contributions, it is highly unlikely that it has seriously restricted corporate donations, particularly to political parties which continue to operate in the period between elections, unlike candidates whose political activity is, usually, restricted to the election period, unless they are sitting members of the Legislative Assembly.

For restraints on labour unions we have to travel to Canada's coastal extremes: British Columbia and Prince Edward Island, which both at one time prohibited the donation of union check-off funds for political purposes. The legislation in both provinces has now been repealed.

The Barbeau Committee was of the opinion that limitations on contributions are a waste of time.

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[20] *"The Election Act"*, C.C.S.M. cap. E30, s. 126.

> The Committee studied carefully the various theories which were advanced concerning limitation on income, and the practices in other jurisdictions. Arguments were advanced that unusually large contributions should be prohibited. Evidence adduced before the Committee, and the Committee's researches, established that limitation on size is simply and easily evaded; a large donation, for example, can be divided among a number of token contributors, thus defeating the principle. Further evidence was received that certain categories of organizations should be restricted from financial participation in election campaigns. Here too research indicated how ingenious such donors can be in defeating such restrictions where they have been attempted.
>
> The Committee is convinced that political parties must have sufficient funds to perform their vital functions of providing political leadership, education and research. Any restrictions on legitimate sources of income, without adequate alternative funds, would simply increase the difficulties they now face. The Committee also believes that one has not only a right to contribute to the party of one's choice, but a duty in the pursuit of which an elector should be encouraged rather than restricted. The Committee concluded that existing abuses in the field of contributions can be curtailed if not eliminated by the cleansing effect of audit and disclosure.[21]

The Barbeau Committee recommended that:

> No restrictions as to size or source of political contributions be initiated, and all individuals, corporations, trade unions and organizations be encouraged to support the political party of their choice.
>
> Any legislation giving effect to the foregoing recommendation should clearly protect the right of donating to parties, so that any existing or future provincial legislation could not be interpreted as limiting the right of participating financially in federal elections, or of supporting federal political parties.[22]

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[21] Barbeau Committee, *op. cit.*, pp. 47-48.

[22] *Ibid*, p. 48.

The Ontario Commission on the Legislature took a somewhat different tack, and although it decried complete disallowance of corporate contributions, it did recommend limits on the amounts which might be contributed to a party, candidate or constituency association in any one year or campaign period. The following is a précis of its comments on the vices and virtues of the corporate contributor:

> In the United States direct corporate or business contributions are illegal. Such a prohibition, however, is difficult to enforce, and it has become common practice for corporations to "bonus" their senior executives who then pass on the bonus as personal contributions. By prohibiting business contributions, the basic reliance for funds is merely transferred from wealthy corporations to wealthy individuals, leaving the system essentially unchanged. It also does not seem logical to disallow corporate contributions while continuing to allow trade union contributions, much less contributions from other non-profit associations and organizations. It does not appear sensible to encourage a system which would work a hardship on some political parties but not on others, or a system which, in effect, might only reroute corporate contributions from their direct source back through individuals, or channel them through non-profit associations and organizations. It should also be recognized that the party system simply cannot be adequately maintained without corporate support, short of substantial public funding. Corporations, no less than the other elements of general society, should be encouraged to support the party system.
>
> To disallow corporate contributions would mean a serious shortfall in the funds available to political parties, and would cause them to be increasingly dependent upon the media to report and interpret their platforms and arguments, and to adjudicate the quality of their leadership and candidates. "In candor, no party is willing to submit itself to such a circumstance. Given a campaign in which the issues are controversial, and where the voters are confronted with multiple

> options and choices, the political parties need to have the capacity to advocate their own cause, and with as much freedom and flexibility as their resources will allow".[23]

The Ontario Legislature accepted the Commission's recommendations regarding limitations on contributions and passed them into law in 1975. The actual limits are fairly straightforward but their implementation is a complicated business, especially the process of defining and valuing contributions. For instance the Ontario legislation deals with such things as the valuation of goods and services,the use by a candidate of his own funds, the provision of advertising by third parties, the holding of "fund-raising functions", the solicitation of money at political meetings, the transfer of funds between parties and their constituency associations and candidates, the receipt of contributions from persons outside Ontario, or from Federal parties, annual membership dues, trade-union check-offs, etc. The provisions for disclosure of contributors' names and the amounts of their contributions also add to the general complexity.

In order to render the controls enforceable the Ontario legislation, just as is done with expense limitations, narrows the field of those who may contribute and those who may receive the contributions. Only "persons individually, corporations and trade unions" may make contributions to political parties, constituency associations and candidates and the respective chief financial officers of the latter are responsible for the proper documentation, deposit, and reporting of all contributions. In the case of registered candidates, contributions may only be accepted

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[23]Ontario Commission, *op. cit.*, pp. 7-8.

through the chief financial officer or other person on record with the Electoral Expenses Commission as authorized to accept contributions.

The actual monetary limits imposed are as follows:

> Contributions by any person, corporation or trade union to political parties, constituency associations and candidates registered under this Act are limited to those set out in clauses *a* and *b* and shall not exceed,
>
> (a) in any year,
>
> (i) $2,000 to each registered party, and
>
> (ii) $500 to any registered constituency association, but in respect of registered constituency associations of a registered party, an aggregate of $2,000 to constituency associations of each registered party; and
>
> (b) in any campaign period in addition to contributions authorized under clause a
>
> (i) $2,000 in relation to the election in such period to each registered party, and
>
> (ii) $500 in relation to the election in such period to any registered candidate, but in respect of candidates endorsed by a registered party, an aggregate of $2,000 to registered candidates of each registered party.[24]

There are in addition certain prohibitions such as those against anonymous contributions, the receipt of funds from federal parties except during a campaign period and then only to the extent of $100 per officially endorsed candidate, and the receipt of contributions from extra-provincial sources.

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[24] *Election Finances Reform Act*, Stats. Ont. 1975, cap. 12, s. 19(1).

The philosophy of that Commission in recommending this piece of legislation is summed up in the following passages of their report:

> It is our intent to set political contributions at reasonable limits, which we believe sufficient to allow for the maintenance of the parties between elections and to generate sufficient campaign funds during elections. It is our purpose to remove from the political process the presence of big money from large and powerful interests.
>
> We strongly recommend that the substantial dependence of our political parties upon the substantial contributions of a few be terminated. We propose a system which relies on the support of many, at all levels of society, and in which, in the end result, no particular group or segment can be deemed to wield more influence, or bear more of the cost of political financing than another.
>
> This cannot be done if opportunities remain to redirect political contributions through third parties or groups. If limits are to be imposed upon contributions, these limits must be enforced and the opportunities for circumvention must be closed . . . .[25]

In the context of Manitoba we do not think that the problem of large donors is sufficiently acute to warrant the limitations imposed by Ontario. We agree with the Barbeau Committee that the reporting and disclosure of cash and other commercially valuable contributions would probably be more than enough to curb any potential for abuse in this area so long as the reporting and disclosure gives an accurate picture of who the donors actually were and how much they gave. In this regard we think it important that something be done to

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[25] Ontario Commission, *op. cit.*, p. 31.

prevent the laundering of funds through different individuals and organizations by donors eager to prevent disclosure of the real amount of their contribution. The Ontario legislation provides a model for how this may be accomplished by narrowing the range of contributors to individual persons, corporations and trade unions, by prohibiting contributions from persons ordinarily resident outside of the province, corporations not doing business in the province and trade unions other than those defined in the federal and Ontario labour legislation and holding bargaining rights for workers in Ontario, and by prohibiting contributions from funds not belonging to the donor or funds provided by someone else to the donor for the purpose of making a political contribution. It would also be necessary to prevent transfers of funds from federal political parties registered under the *Canada Election Expenses Act*, although as in Ontario, provision could be made for the donation to a provincial party of a fixed sum per candidate during an election period.

Donations made by unincorporated associations other than unions would have to be itemized as to each individual contribution, and would constitute part of the aggregate donations of the various individuals, corporations or unions involved, for the purpose of determining whether they exceed the limit beyond which public disclosure of the donor's name and the amount of his or its donations is required.

We think it important that donations from outside of the province be curtailed. As the Ontario Commission commented, ". . . [a provincial political party] should

survive on its own merits and with the support of the people of [that province]. It should not be possible to sustain or establish a party in [a province] by the subsidy of a corresponding federal party or, for that matter, by any political organization or group outside the province".[26] With this we concur wholeheartedly.

RECOMMENDATIONS

13. There should be no limitations of amount imposed by law upon contributions for political activities to political parties, candidates or constituency associations.

14. Individual persons, corporations and unions only should be allowed to contribute to political parties, candidates and constituency associations. Subject to recommendation 15, hereafter, any other attempted contributions should be promptly declined or refunded, or if the contributor's identity cannot be established, paid over to the Province to be added to the Consolidated Revenue Fund.

15. Any political contributions made by unincorporated associations other than unions should be itemized by amount and source as to each individual member's contribution, which should then be considered a contribution of theindividual member involved.

16. Corporations that are associated with each other under section 256 of the *Income Tax Act* (Canada) should be considered as a single corporation for the purposes of making political contributions.

17. No contributions should be knowingly accepted by political parties, candidates or constituency associations from any person normally resident outside Manitoba, from any corporation that does not carry on business in Manitoba, or from any union other than a union as defined in the Manitoba or federal labour legislation that holds bargaining rights for employees in Manitoba to whom that legislation applies.

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[26] Ontario Commission, *op. cit.*, p. 36.

18. No political contributions should be allowed from funds not actually belonging to the donor or from funds provided to the donor for the purpose of making a contribution (eg. employee bonuses given with the intention that the employee should then make a political contribution).

19. No political contributions should be allowed from federal political parties registered under the *Election Expenses Act* (Canada) except during a campaign period and only up to a prescribed maximum amount.

V. SUBSIDIES

While limitations on spending may reduce the overall costs of campaigning they do nothing to reduce the minimum costs. No matter how many frills are pared away there is still a core expense that must be borne by any candidate or party purporting to make a serious attempt at winning an election. Reaching the electorate is what campaigning is all about. The voters must at least know who you are and have some idea of what it is you stand for, but disseminating this most basic of information even if it is only through the barest and simplest of communication methods, is still, for many worthy candidates and groups, a costly exercise. If the theory of democracy is to achieve any degree of actual realization, there must be some equality of opportunity to run for public office. Given the unavoidable expense of mass communication and a dearth of voluntary contributions from the public, the only feasible way to accomplish this is through some kind of state subsidy.

Besides enabling legitimate but inpecunious contenders for public office to mount at least a minimal display of their wares, subsidies might also help to reduce

the dependence of politicians and parties at all levels on those few who can afford to be generous in promoting their political ideals and other, more wordly interests. Subsidies ensure that candidates and parties will at least have some of the funds required to perform their public role of educating the electorate on the issues and responses of the day, and encouraging more participation in the democratic process. And, as H.M. Angell, the political scientist who had a large part in designing the Quebec election expenses legislation, points out, one of the most important benefits to be derived from subsidies is a more equal balance between the resources of the government party and those parties in opposition.

> Whatever controls might be put upon sources of contributions, tradition, custom and the very climate of Canadian politics would seem to make it inevitable that the party in power would find it easier to obtain money than any opposition. Thus the main problem would seem to be that of ensuring that opposition parties would have available to them funds and facilities more equal to those of the party in power. This presents a strong argument for some form of state assistance for party campaign funds . . . [and] [i]f aid were to be provided then there would be more justification for what might appear to many to be interference and inquisitiveness [in the imposition of restraints on spending and disclosure requirements].[27]

Subsidies can take many different forms ranging from complete or partial financial support to subsidies in kind to the more indirect methods of tax deductions and credits. Generally speaking most jurisdictions which have contemplated or instituted subsidies have favoured a blend

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[27] Barbeau Committee, *op. cit.*, pp. 289-291.

of public and private funding, with the emphasis as much as possible on broadly-based private funding.

1. Total Public Funding

Although this would do away with the need for disclosure and reporting it would make candidates and parties dependent on the state for their financial resources. The Ontario Commission on the Legislature concluded that total public funding would have the unfortunate result of encouraging a proliferation of political parties, which become in effect self-perpetuating.

> To the degree that money provides clout in an election campaign, it would be difficult to apportion public funds among the parties without either favouring the "ins" and discriminating against the "outs" or, by arbitrarily treating all parties the same, favouring minority parties at the expense of major ones.
>
> Furthermore, it has been a part of our political tradition that citizens outside the party system may seek office as parties of one, representing an independent position. Total public funding would either eliminate the independent as a part of our political process or it must, willy-nilly, allow those seeking mere notoriety or self-aggrandizement access to the process at public expense.
>
> One could institute total public funding at the price of prohibiting independents and freezing the present array of parties in place, just as one could construct an alternative model in which, at considerable public expense, frivolous candidates could emerge, or parties of temporary fashion and representing special interests, or parties whose dogma and purpose may be sinister and hostile to the general society. Given total public funding, all these would survive and flourish on the public purse . . . .
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> . . .

> As for the possibility of publicly financing both election campaigns and political parties between elections, we doubt that many who understand and value the party system would find such a solution acceptable. Nor would anyone support it who would reckon the public temper.[28]

Whether the Commission is correct or not in its estimation of the public temper, we cannot but agree that total public funding would destroy the party system as we know it. The Puerto Rican experience, to be discussed below, in which party morale declined drastically and volunteer support virtually vanished, would probably also occur here. Publicly funded party organizations would lose their aura of independence, their peculiar identity, no matter how scrupulously the state refrained from interference or control, and perhaps more importantly, they would lose the excitement and risk of a great common venture in which the support of each individual adherent is not just desired, but required. Where there is a need there is a will. We think it better that parties and candidates should stay at least a little lean and hungry, not famished, but not replete either from a too easy feast of state endowment.

2. Direct Subsidies

Direct subsidies involve the payment of sums of money to candidates and/or parties to be used by them as they see fit. The payments are usually made in the form of lump sum or *pro rata* allocations, the latter calculated either on the number of electors, or of voters supporting a particular candidate or party, or on the number of seats

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[28] Ontario Commission, *op. cit.*, pp. 10-11.

obtained by a party in the Legislature. Several jurisdictions have adopted this method of providing assistance, including West Germany, Sweden and Puerto Rico. In Canada, Quebec was the first to institute a direct subsidy, followed by Nova Scotia, Saskatchewan, the federal Government and most recently, Ontario.

Because it was one of the first in the field (1957), and because of the clearly discernible effects on its party system, Puerto Rico has probably the best-known and most frequently analyzed subsidy program. It was developed to meet a rather peculiar and unique political situation in which a reform party, elected in 1940 to do away with the corrupt influence of money from the island's large sugar interests, was forced to rely on the macing of civil servants (ie., forced deductions from salaries) to finance its election campaigns. This exchange of one evil for another never sat well with the reform party, and in the election of 1956 it proposed a system of direct state subsidies which, following its success at the polls, was enacted into law in 1957. The legislation sets up a public electoral fund from which the "principal" political parties are authorized to draw moneyfor legitimate expenses. A "principal" political party is defined as one which is duly registered, has fought a general election with candidates in every riding, is represented in the Legislature, and has obtained at least 10% of the votes cast for Governor in the last general election. The allocation of funds to the parties is rather complicated but in essence involves an annual subsidy of $75,000 (which if not used, can only be partially accumulated and depending on the application of the specified formula, to a maximum of 50% of the total subsidy) and an election

year subsidy of $150,000 which is further augmented by a proportional share of an $800,000 (as of 1964) election fund, from which the minimum share is $75,000. The subsidy system is bolstered by reporting and disclosure requirements, and limitations on private contributions.

There is no doubt that the state subsidies have eliminated the really glaring abuses which existed under the older systems of dependence on the sugar interests and then on the civil service, but they have in turn led to some serious problems of their own. In late 1965, K.Z. Paltiel, in his capacity as Research Director for the Barbeau Committee, went to Puerto Rico and interviewed a number of prominent politicians and civil servants on the functioning of the Commonwealth's public funding program. He reported that

> The information gathered at these meetings leads to the following conclusions. The party leaders all display increasing concern over the consequences which application of the legislation has had on their parties and their members. They note a general decline of interest on the part of the members and a drop in private contributions. The Popular Democratic Party officials attribute the following effect to the existence of the electoral fund.
>
> 1. Increased election costs for the party, which are due not only to the normal rise in expenses but also because people now refuse to work without pay for the party.
>
> 2. Loss of members' enthusiasm for their party. Whereas people formerly worked voluntarily for the party during elections, now they want to be paid and are thus interested in the party to the degree that they gain from it. This has also tended to lead to a bureaucratization of the party structure.

> 3. A loss of control over party expenses has been noted since the election fund was created; members have been careless about expenses because they feel that the party is assured of having funds.
>
> To avoid these ill effects, several solutions are proposed by leaders of Puerto Rican parties. To counteract the decline in interest in the party on the part of the members, it has been suggested that regular monthly contributions be established. Others too have suggested that sums contributed to political parties be tax deductible so as to stimulate donations. In order to encourage political discussion, reduce costs to parties and arouse the public interest, others have proposed that the government allocate free periods on radio and television so that the parties may make broadcasts. The political parties are in danger of finding themselves in a precarious financial position if the tendency of members to demand payment for their services continues. It has therefore been suggested that the payment of poll workers and members of local election boards be assumed by the Commonwealth.[29]

In Canada, Quebec was the first jurisdiction to institute direct subsidies, their being one of the salient features of the electoral reform proposals put forward by Jean Lesage and the Liberals in the 1960 election in Quebec, the election which ushered in the so-called "Quiet Revolution". The reimbursement or subsidy provisions of the 1962 Quebec *Election Act*, applied only to candidates, not parties. To be eligible a candidate must be elected or receive 20% of the valid votes cast in his constituency, or belong to one of the two parties which received the most votes in the last election. If he qualifies the candidate will be reimbursed for election expenses as specified and shown as paid, in the amount of 15¢ per listed elector. In addition, by a 1965 amendment, an amount equal to one-fifth

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[29] BarbeauCommittee, *op. cit.*, pp. 222-223.

of election expenses in excess of 15¢ per listed elector but not in excess of 40¢ per listed elector and all election expenses in excess of 40¢ per listed elector, will be paid. It should be noted that there are expense limitations on both candidates and parties so that the reimbursement of expenses is not infinite.

Apart from cash subsidies, candidates are also entitled to receive twenty copies each of the electoral lists for their constituencies, and if they belong to the two parties which obtained the greatest number of votes in the last election (ie. the "official parties") they are entitled to have their poll representatives paid at the same rate as a poll-clerk.

Although the Quebec legislation was a bold move for its day, it failed to provide reimbursement for parties as well as candidates, a perceived weakness which has since been recognized and rectified. By a statute passed in late 1975, eligible political parties, defined as those

> (a) which had at least twelve members elected at the last general election; or
>
> (b) whose recognized membership in the National Assembly is less than twelve members but which obtained at least twenty percent of the valid votes cast according to the official addition of the vote throughout Quebec; or
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> (c) which was represented as in paragraph (a) or (b) in the preceding Legislature [30]

are entitled to an annual allowance to be computed on a pro

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[30] *"The Election Act"* (R.S.Q. 1964, cap. 7) as amended by S.Q. 1975, cap. 9, s. 36.

rata basis, depending on the number of votes received in the last general election, from a fund of $400,000, such allowance to be augmented if necessary to bring it up to a minimum of $50,000. The money is to be paid at the rate of one-twelfth each month and is to be used by the parties ". . . to pay the costs of their current administration, to propagate their political programmes and to coordinate the political activities of their members", and is only to be paid ". . .if such costs are actually incurred and paid". To date Quebec, New Brunswick and Saskatchewan are the only Canadian jurisdictions to extend state support to political parties.

Since the pioneer Quebec legislation, Nova Scotia, Saskatchewan, Ontario and the federal Government have all enacted provisions for the reimbursement of all or a part of the election expenses of candidates. The usual requirement for eligibility is the capture of a specific percentage of the popular vote, fifteen percent being the figure most in favour. The actual reimbursement is the lesser of actual expenses (or a specified portion of actual expenses) or a fixed sum for each elector enumerated in the particular constituency, the sum being stepped downward in amount as the number of electors exceeds certain prescribed plateaux.

Under the federal legislation the maximum subsidy would equal the aggregate of the postage costs of mailing one item, not exceeding one ounce in weight, by first class mail to each elector on the preliminary lists of electors for the candidate's electoral division, eight cents for each of the first 25,000 names on the preliminary lists and six

cents for each name in excess of the first 25,000. In Ontario the maximum subsidy is the aggregate of 16 cents for each of the first 25,000 voters and 14 cents for each voter over that number. Candidates in certain northern ridings are also entitled to additional funds to cover their higher travel costs, etc. Since provincial constituencies in Manitoba average about 10,000 voters, each, obviously the plateaux, if any, for determining the amount per elector of the subsidy would have to be different.

The Ontario Commission on the Legislature originally proposed a rather unique formula in which the more a candidate spent on his campaign the less he would receive by way of public subsidy. Thus a candidate who spent more than 80¢ for each of the first 20,000 electors in his constituency, and 25¢ for each of the remaining electors, would have had his subsidy reduced by $1.00 for each $2.00 by which he exceeded such total. The actual subsidy was calculated as the lesser of the audited difference between the contributions received by a candidate and his expenses as disclosed by his return, or $7,500. Clearly, this did not strike the fancy of the authorities at Queen's Park, who resorted instead to the familiar fixed sum per elector.

Direct subsidies tend to be controversial because they constitute the most overt use of state funds and resources for political purposes. As pointed out in one of the study papers done for the Barbeau Committee Report however, "In Canada, the state already pays for many expenses involved in campaigning: for example, the preparation of electoral lists and the printing of ballots".[31] Apart from

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[31] Barbeau Committee, *op. cit.*, p. 180.

such political ramifications as occurred in Puerto Rico, the primary problem perceived in regard to party subsidies is their allocation or distribution both among and within parties. There are two basic techniques of accomplishing distribution: the "subjective" where the taxpayer has the opportunity to indicate where he would like his tax dollars to go, and the "objective" where the subsidies are apportioned according to some fixed formula such as is now done in Canada by those jurisdictions which have adopted direct public funding.

1. "Subjective" Modes of Allocation Among Parties: Grants and Subventions

(a) *Tax "earmarking"*: Within the category of subjective modes of allocation, several specific techniques are possible. A special tax could be levied for political subsidies, and this set portion of a taxpayer's tax, say 1/2%, could be earmarked by the taxpayer for a certain political organization. This method has been advocated . . . [as] a way to preserve the taxpayer's anonymity.

(b) *"Matching"*: . . . [The] 'matching' plan is also designed to make government subsidies correspond to citizens' preferences. [It is] suggested that the state match every small donation, up to say $10, deposited in a special party account. The state treasury would pay bills for specified purposes up to twice the amount deposited from these small donations. This plan is intended to stimulate solicitations just as tax credits are intended to stimulate contributions. It also has a built-in control over the use of the funds.

There would, of course, be room for fraud. A party could simply deposit a large donation in several small instalments, thus gaining double the original amount, unless adequate checks were made. Since the intention is to get many small donations, the administrative difficulty of making such checks could be great, and it would likely be impossible to check adequately without compromising the anonymity of the donors.

With the matching plan as with some of the "objective" standard plans, there is the problem of defining eligibility. If the matching were done through special accounts as suggested, with government cheques being authorized for specific bills, there would be little trouble with misappropriation of funds. But the question still remains of what constitutes an eligible political organization: when does a small splinter group become a "political party"?

2. *"Objective" Modes of Allocation Among Parties: Grants and Subventions*

(a) *According to Seats Held or Votes Received:* The "objective" standard of the number of seats held in the previous election solves the problem of defining eligibility of parties. But it does bias the system in favour of established parties at the expense of new ones. Allocating grants according to votes received rather than seats won lends a little more flexibility.

If, however, grants are given to candidates, too, the question of eligibility again arises, and again some balance has to be struck between consolidating the *status quo*, and encouraging the splintering of parties.

(b) *Reimbursement*: One solution is to make the subsidies as reimbursements after the election, the reimbursements being contingent on the candidate's receiving a certain percentage of the popular vote. This system would also serve to encourage reporting of expenditures. The candidate would still be left with the problem of obtaining loans or other funds prior to the election to finance his immediate needs.

(c) *Fixed Ratio Major: Minor Parties:* A former Director of Research for the Democratic National Committee in the United States suggests that the Republican and Democratic National Committees each receive the same amount: a sum equal to 10 cents per vote cast in the preceding election and that 1/4 of that amount be granted to minor parties (those having received 5% of the popular vote or able to present a petition signed by a number equivalent to one percent of the votes cast in the previous election).

> This system, while perhaps adequate for minor parties in the United States, would likely be unsuitable without adaptation in Canada, where minor parties are stronger and longer established.

3. *Allocation Within the Party*

> A more delicate problem is the allocation of direct subsidies within the political parties. The impact of these subventions on a party's structure would depend upon the existing patterns of fund raising and distribution within the party. If subsidies were given directly to the national organizations, it would probably have little effect on the structures of the Liberal and Conservative Parties in Canada; but if subsidies covered a significant proportion of total costs, it might significantly alter the structure of the New Democratic Party to have the funds go directly to the national party. On the other hand, sizeable grants to Liberal or Conservative candidates might have a decentralizing effect on the power structure of those parties.[32]

The reimbursement modes of allocation, marked 2(b) above, is the one adopted in Canada so far and when all is said and done, it is probably the simplest to operate and the most equitable, certainly at the candidate level where the greatest need is simply for a basic minimum of funding. It is also a powerful incentive to timely filing of financial reports since no subsidy can be paid until the required reports are filed. At the party level although there is a case to be made out for some assistance especially in the period between elections, we do not think the costs of campaigning in Manitoba or the administrative apparatus required to administer a party subsidy warrant dipping into the public purse for support. One of the biggest drains on a party's resources is providing financial assistance to its candidates, something which a candidate subsidy

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[32] Barbeau Committee, *op. cit.*, pp. 181-182.

would do much to relieve. If a subsidy is to be established in Manitoba, we recommend that it be confined to candidates only and not include parties.

3. Indirect or specific subsidies

These subsidies may take the form of money or of free use of facilities such as television or postal services. The granting of free broadcasting time on radio or television is one of the most common of such benefits accorded parties and candidates. In Canada the new federal election expenses legislation provides that political parties may recover half the cost of the broadcasting time purchased by them during a general election. Each broadcaster is obliged to make available for sale during the four weeks before polling day, a total of six and one-half hours of broadcasting time which is allocated among the parties by the Canadian Ratio-Television Commission. In addition the network operators (as distinct from individual stations) must provide a number of program periods free of charge to the registered parties.

In the countries where grants of free time have been made, common problems have emerged, the greatest being the problem of how to allocate the time between the parties and candidates.

> If parties were to receive equal amounts of time, the formation of splinter groups might be encouraged. If, on the other hand, parties received grants in proportion to the strength they had shown at the last polling day, the system would be biased in favour of the status quo. . . .[33]

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[33]Barbeau Committee, *op. cit.*, p. 175.

Many other subsidies in kind are, of course, possible. Free distribution of campaign booklets and circulars, free mailings, free transportation, the use of public buildings for political meetings; all have been tried at one time or another either here, in the United States or in Europe. The most obvious criticism of such subsidies is that they entail tremendously complicated and detailed regulation. The U.S. President's Committee on Campaign Costs came to the conclusion in 1962 that because of the cumbersome administration, it would be more efficient to give direct money grants for specific purposes than to extend franking privileges to candidates, or free printing services, etc.

Specific subventions were recommended by the Barbeau Committee for candidates including a free mailing and a media subsidy of 2¢ per elector toward proven expenses in purchasing space or time in any communications media. The Committee commented:

> Considerable evidence was adduced suggesting that lack of finances eliminated many serious candidates from seeking election in the federal field. Modern election campaigning relies heavily on the use of the mass media, which is extremely expensive to the politicians. The Committee therefore considers it desirable that certain basic necessities of a minimal election campaign receive public support, so that all serious candidates may be provided with an opportunity to present their views and policies to the electorate.
>
> The Committee has no intention of suggesting that the public pay the costs of an extensive or extravagant campaign. In sharp contrast to the system in some jurisdictions where funds are made available to candidates for whatever purposes they determine, the Committee is unanimously agreed that subventions should be

> made available only toward the basic requirements of communicating with the electorate. The Committee also agrees that public funds should be used only to assist the serious candidate who has reasonable support in his constituency.
>
> On the basis of this belief, the subsidies hereafter recommended (except that concerning free mailing) should be available after each election, only to those candidates who obtain a minimum of 15% of the valid votes cast. Those receiving fewer votes should receive no financial aid (with the exception of mailing). All those receiving the minimum support of 15% should be compensated equally.[34]

The Committee's obvious concern with the equal treatment of each candidate, that state support should only be applied to the basic educational requirement of telling the electorate who you are and what you stand for, is laudable, but perhaps overdone.

Simply to give money freely without any proof of expenditure or any reporting would indeed be an invitation to candidates who might run solely to get into the public trough. But surely there would be at least the basic requirement of attaining a minimum number of votes. As long as candidates have to establish their *bona fides* or better still, prove their actual election expenses as defined in the legislation, what does it matter on what particular expenses they spend the money? One of the purposes of the subsidy is certainly to ensure a minimum level of exposure for each candidate, but surely the candidates themselves, of all people, are perfectly well aware of the need to communicate such basic information to the electorate.

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[34] Barbeau Committee, *op. cit.*, pp. 40-41.

4. Tax Incentives

Since there appear to be considerable objections to the total public funding of parties and candidates, it is more than likely that the latter will have to continue to rely on the private sector for at least a part if not a good deal of their material support. This being the case one of the foremost considerations of any attempt to alter the existing system of political financing must be the finding of ways to broaden the base of contributions, to expand it from the wealthy and committed few, to the multitude of average earners whose political interest and philanthropy has to date been little better than moribund. Direct subsidies are in a sense a broadening of the base in that they come from tax dollars but the perceived connection is between the state and the politicians not the individual taxpayers and the politicians. To be truly democratic in function and appearance the funds must derive directly from the taxpayer and be channelled by him to the party or candidate of his choice.

The soliciting of funds from a mass of small supporters is, generally speaking, an arduous and costly task in which the cost of collecting often approaches and even exceeds the amount collected. The American parties have generally been the leading innovators in the field of mass solicitation and their experts have indeed found a new challenge in our own country in rescuing the federal parties from the drought in corporate donations caused by the new disclosure provisions. It has been said without much contradiction that Canadian candidates and parties have come nowhere near exploiting all of the possible sources of financial support, and could well learn a lesson from their more industrious and enterprising counterparts

in Europe and the United States. Such endeavours, however, are largely beyond the scope of legislation being in the realm of clever advertising and astute commercial ventures. Our concern is with the measures that can be successfully applied through legislative action, and in this regard the almost universal approach is the provision of incentives to giving through tax deductions and credits, and tax check-offs. In Canada the federal Government and Ontario have both established tax credit programs which for obvious reasons are virtually identical. If one scheme provided a greater advantage than the other then monies would be laundered through the most advantageous, as is indeed apparently now happening between those jurisdictions with a tax credit scheme and those without.

The Ontario and federal schemes provide that a taxpayer may deduct from the income tax (in Ontario this means both federal and provincial income tax) he would otherwise have to pay, 75% of the amount given to a registered party or candidate if such amount does not exceed $100; $75 plus 50% for amounts exceeding $100 but less than $550; or $300 plus 1/3 of the amount by which the sum given exceeds $550 to a maximum credit of $500. This maximum credit is reached with aggregate donations of $1,150 per annum. In Ontario corporations also may deduct up to $4,000 from their Ontario income tax, and contributions in excess of $4,000 may be carried forward for deduction in future taxation years.

A recommendation of the Ontario Commission on the Legislature that an income tax check-off be instituted was not implemented. The proposal envisioned a system

similar to that tried in the United States in which the taxpayer designates a certain amount of his tax payable in any year as a political contribution to the party of his choice. The Commission foresaw the probable fate of their proposal when they remarked, "we anticipate bureaucratic resistance to our proposal, perhaps some of it well-based".[35] The Americans found the individual preference of donee to be an administrative nightmare and abandoned it in favour of a simple check-off in which the taxpayer may earmark the sum of one dollar for the Presidential election campaign. The money is then aggregated and divided among the parties according to an established formula. Clearly this is just an indirect extension of public funding, with little real participation on the part of the individual voter.

Tax benefits can take the form of either a deduction or a credit. The former would apply to the taxable income of an individual while the latter would apply to the actual amount of tax owing. Deductions are open to serious objection in that they offer in a progressive taxation system greater relative savings to those in the upper income level than those in the lower. Herbert Alexander, the most prominent American student of political financing, commented that

> . . .most small contributors could not avail themselves of the deduction, and its incentive power would be mainly for those, mostly in the middle and higher income brackets, who itemize their expenses. Moreover, the benefit of the deduction would come as a windfall to those large contributors in high income brackets who would give in any event.[36]

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[35] Ontario Commission, *op. cit.*, p. 39.

[36] Barbeau Committee, *op. cit.*, p. 177 (quoting Alexander, Herbert E., "Tax Incentives for Political Contributions", Princeton, N.J., 1961, p. 18).

A study done a year after tax deductions were introduced in Germany indicated that there had been no significant increase in contributions, which tends to bear out Alexander's conclusions.

Tax credits, on the other hand, avoid the problem of equity. Each taxpayer simply allocates a portion of his assessed tax to the support of a political party or candidate. The problems to be encountered are more of a technical rather than a political or ideological nature.

The success of the Ontario and federal tax credit schemes in promoting contributions from a larger segment of the general public has yet to be definitively evaluated; however, the evidence we have heard to date indicates that for some parties there has been an appreciable broadening of the base of their financial support. We think it indisputable that tax credits do provide an incentive to give, and that this incentive must have some effect over the long run. We would recommend for Manitoba a scheme similar to that now in force federally and in Ontario. Tax abatement for contributions to Manitoba parties would be set off against the provincial share of the income tax and should be on the same scale and to the same maximum allowable as under the federal system.

RECOMMENDATIONS

20. Candidates who receive at least 15% of the popular vote in their electoral districts should be entitled to be reimbursed for the lesser of their campaign expenses for the campaign period as disclosed in their audited financial statements or an amount based on a fixed sum per elector in their electoral districts. An additional sum should also be available to candidates in northern ridings where the costs of campaigning are higher.

Memorandum of Dissent and Separate Opinion of David G. Newman

In my view the subsidy is unnecessary and undersirable for the following reasons: it would be too costly, expecially if most of it turns into a windfall for those candidates who are successful fund-raisers and make profit by it; it is likely to reduce the effectiveness of a proven method of testing candidates, namely the ability to attract the fund-raising support of a party or supporters; there will be less need for subsidies if our proposed tax credit incentives are implemented; and there has been no demonstrable need proven in Manitoba.

21. The disposition of such subsidies should be left to the discretion of the candidate.

22. There should be no subsidies provided to political parties.

23. Tax rebates against the provincial portion of income tax should be allowed for political contributions on the same diminishing percentage scale and to the same maximum as presently provided under federal law.

VI. REPORTING AND DISCLOSURE

Reporting and disclosure of the manner in which campaign war-chests are raised and spent is one of the oldest and most characteristic components of legislation aimed at controlling political finances. Such measures have been implemented primarily for two quite distinct reasons: (a) as an administrative necessity for the enforcement of limitations on contributions and expenditures, and (b) as an important means of control in themselves. There is no question that without some means of effectively monitoring, for example, the expenses of a party or candidate, it would be impossible to enforce specific limitations on expenditures. This is an undeniable administrative necessity. The controversy arises in regard to the public disclosure of the reports submitted, and the belief that such disclosure will, through the pressure of public opinion, constitute an important means of control in itself. The reporting and disclosure of contributions has generally aroused the greatest ire. Those in opposition have argued that

(1) compulsory reporting and disclosure of contributions is an invasion of privacy and a breach of the principle of the secret ballot, since a person would be pressured and could be assumed, normally to vote for the candidate or party he supported financially;

(2) publication of a donor's name might lead to persecution or at the very least embarrassment from his associates, his employer, and adherents of other political parties and for corporate donors there would be the risk of shareholder displeasure, customer resentment and public suspicion;

(3) the loss of anonymity might result in a serious drop in contributions, and might well drive parties who desperately need funds to illegitimate sources willing to defy the law by not reporting contributions;

(4) such reporting legislation would affect those parties which rely largely on membership dues less than those which rely on individual or corporate contributions;

(5) evasion would be relatively easy and would lower respect for the law;

(6) reporting might encourage the development of sponsor or front organizations to evade the reporting requirements;

(7) the burden of bookkeeping and accounting might hinder the chances of election victory for smaller parties;

(8) such legislation might open the way for administrative interference in party affairs other than the simple examination of financial records;

(9) it might discourage business-based donors who would anticipate that the published list would be used by other parties as a canvassing list and thus lead to requests for several times as many contributions;

(10) disclosure might create suggestions of donor-government conflict of interest, especially in an age when government has customer relationships throughout the business community.

On the other side, it is contended that:

(1) a financial contribution is not the same as the privilege of the secret ballot but an attempt to influence the votes or opinions of others and thus a public act;

(2) if donations were made public it would be easier for candidates and parties to resist pressures by donors for favours;

(3) disclosure permits an analysis of the connection between donations and patronage appointments;

(4) publicizing contributions would curb the entry of undesirable, tainted or criminal money into the campaign because candidates who accepted such money might be adversely affected at the polls;

(5) public confidence in the political system would be fostered through the removal of the "mystery" surrounding political financing and this would in turn lead to a broadening of the base of political donations;

(6) publicizing expenditures may force those spending money in election campaigns not to stray beyond what the general public feels is reasonable;

(7) if there is to be any public subsidizing of political parties and candidates through grants of public money and services, then the public has a right to know if the recipients needed the funds and if the funds were expended for legitimate election purposes.

The Barbeau Committee, in its 1966 report to the House of Commons in Ottawa, considered that reporting and disclosure were essential to the imposition of controls.

> The arguments both for and against disclosure have merit, but in the minds of the Committee's members the need for meaningful disclosure and

> reporting appears vital if any controls are to be introduced. Obviously, limitations could not be policed if no one could audit and check the income and expenditures of those to be restricted. In addition, if public funds are to be spent in support of political parties and candidates, the public has the right to know if the recipients needed the funds, and if the funds were expended for legitimate election purposes.
>
> Therefore, in spite of the obvious shortcomings in the present disclosure law, the Committee is encouraged to retain the principle as it applies to candidates, and to extend it to cover political parties.[37]

Five years later, in 1971, the Federal Special Committee on Election Expenses, decided that public disclosure of the names of individual donors would be "counter-productive" and cited in support of this conclusion many of the arguments listed above. They recommended instead that disclosure be made to the Minister of National Revenue as part of the tax credit scheme. In Ontario, the Commission on the Legislature reported that

> . . . the disclosure of political contributions in itself may not significantly improve the system, but may only present new problems and create a number of new practices in fund-raising methods which will distort the spirit of the principle of disclosure, even while observing the letter of it.

Despite the fears expressed by the Federal Committee and the Ontario Commission both jurisdictions have since introduced public disclosure of the names of donors of gifts exceeding in the aggregate the sum of $100 during the prescribed fiscal period. Apparently at the federal level

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[37]Barbeau Committee, *op. cit.*, p. 54.

[38]Ontario Commission, *op. cit.*, p. 5.

the disclosure requirements have had the effect of considerably reducing the flow of funds from such traditional sources as business corporations, with the result that the major parties have had to concentrate more and more on the solicitation of funds from the general public.

It remains to be seen whether public disclosure will have a permanent and lasting effect on the Canadian party system and the manner in which it is financed. The record of the past is certainly no guide, most of the legislative attempts at disclosure being farcical in their operation, and debilitating to the belief in public exposure as a cleansing element.

As the Barbeau Committee pointed out

> Even though the device of publicity, which has been at the heart of all the attempts at legislation, has not been effectively realized, the idea should not be dismissed as impractical or meaningless. The fact is that the device of publicity has never been really tested. Two fatal weaknesses have vitiated all efforts in that direction: the failure to recognize political parties as essential units of political finance and the failure to provide effective machinery for enforcing the laws. It is not possible at the moment to conclude that publicity has failed only that it has never been properly tried.[39]

These comments are particularly applicable to Manitoba which has disclosure provisions which were, until recently, regarded as being among the broadest in Canada. Admirable in spirit and intent, they have unfortunately proved to be woefully inadequate in practice. The basic

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[39]Barbeau Committee, *op. cit.*, p. 25.

problem is lack of enforcement, but there are flaws in the wording and design of the legislation which would seriously qualify its effectiveness even if it were enforced.

For instance the wording of s. 170 which provides for the filing by political parties of an annual audited return, is such that donors do not have to be individually identified. It is sufficient simply to say "individual donation". Furthermore there is no deadline for filing with the result that parties have been atrociously late in submitting their "annual" returns, and the only donations and expenses that have to be reported are those made in kind or which exceed the amount of $250. a figure which is high enough to make splitting large donations among several donors relatively easy.

Finally, and far from exhausting the potential list of criticisms, it is interesting to note (a) that the election report required under s. 178 is to be a "notarized statement", which is a far cry from a properly audited statement, such as is required under s. 170; (b) the Chief Electoral Officer is obliged under s. 183 to publish only an "abstract" of the statements received, not the actual statements; and (c) s. 185 requires the Chief Electoral Officer "shall carefully examine every return filed with him . . . to ascertain whether those returns comply with the provisions of the Act". How is the Chief Electoral Officer, without a full and properly audited investigation possibly supposed to gain, from such returns, more than a superficial appreciation of whether the Act has been complied with or not?

Clearly, if Manitoba is to implement an effective

scheme of public disclosure it will have to be far more thorough and be applied far more vigorously than the present half-hearted measures.

We think there is a great deal to be said in favour of public disclosure of the manner in which politicians and parties raise and spend money. More than anything else it is the veil of secrecy behind which the financial connections of politicians and their supporters are shrouded that gives rise, if not to the actuality, then at least to the suspicion of sinister deals and ulterior motives. On the other hand we recognize the fact that politics involves taking sides and that for some donors this could result in persecution or commercial loss. The secrecy of the ballot is indeed based on these considerations, and to allow public disclosure of the names of all contributors to political causes, regardless of amount, could both undermine that cardinal principle of our democracy and lead to a further lessening of the already meagre level of financial support for political causes from the community. For this reason we think there should be a line drawn between the more memorable donations and those of lesser amount, so that only those donations which could conceivably buy influence would result in disclosure of the donors' names.

It has been suggested to us that the sum of $100, which is the level contained in the federal and Ontario legislation, is too low to encourage broad financial support and as far as single contributions are concerned this may be so. We are faced with the problem, however, of what to do about the donor who gives a separate gift, below the disclosure level, to each of a party's constituency associations, and

if it is an election year, an additional gift to each of that party's candidates. The total gift to the party, albeit indirect, is still far in excess of the amount beyond which disclosure is required for individual gifts, and to raise that amount, as has been suggested to us, would make the disparity even greater. The alternatives are either to reduce the disclosure level for individual gifts or to devise a system which will catch the aggregate gifts to all constituency association and candidates by each donor and apply the disclosure level to that aggregate.

We debated these alternatives at length and were not convinced of the practicality or the necessity of either. Ontario, for example, has chosen to impose detailed administrative requirements for the documentation and collation of all contributions, a paper burden which we do not wish to see imposed in Manitoba. At the federal level, no attempt is made to control multiple gifts with the result that it is possible to give in excess of $25,000 in an election year to a political party and its candidates (constituency associations are not recognized) without disclosure. Applying the same $100 level in Manitoba the maximum possible gift to a party and its affiliated constituency association and candidates would be $11,900. In this inflationary day and age we do not think this maximum is so excessive as to warrant a disclosure level for individual gifts of less than $100 or the imposition of the administrative machinery necessary to catch multiple gifts.

We recommend that there be public disclosure of the names of all donors who give in the aggregate in excess of $100 to a constituency association or candidate, in any year in the case of a constituency association and (since

a candidate's registration can only become effective during a campaign period) during any campaign period in the case of a candidate. As for political parties where we do not have to be concerned about the cumulative effect of multiple gifts we recommend a disclosure level of $500 during any one year for the aggregate total of all gifts made by a single contributor during that year.

In order to ensure the accuracy and honesty of the information reported by the various parties, contituency associations and candidates it is essential that proper vouchers and receipts be retained by their chief financial officers or official agents and that the reports be audited by a person duly accredited to perform that task. Parties and constituency associations should be required to file annual audited statements in addition to the reports required following an election campaign and the statements should be filed within a prescribed time period. The Chief Electoral Officer, or whoever is in charge of administering the reporting and disclosure provisions should report to the Legislative Assembly annually and following each election, whether it be a general election or a by-election, and publish in the Gazette a summary of the political expenses and contributions reported by each of the parties, constituency associations and candidates, including the names of all donors who gave in excess of the prescribed levels either during a campaign period, or during the year.

RECOMMENDATIONS

24. All registered political parties and their constituency associations should be required to file annual audited financial statements (as presently required of parties under s. 170 of *"The Election Act"*) within a specified

time following the end of the year, and with the additional disclosure of the names of all donors (see recommendations re contributions) who gave in the aggregate in excess of $500 during the year to a party and in excess of $100 to a constituency association. The control year selected could be either the calendar year or a party's or constituency association's fiscal year, or any more convenient 12-month period.

25. All registered parties, constituency associations and candidates should be required to file an audited financial statement for any campaign period within a specified time following polling day showing all of the information presently required under s. 178 of *"The Election Act"* and each candidate should disclose the names of all donors who gave in the aggregate in excess of $100 during the campaign period.

26. The authority responsible for administering the proposed financial controls should be required to publish an accurate summary in the Manitoba Gazette of the audited reports required above, disclosing the names of all contributors who gave in excess of the prescribed levels, and the audited reports themselves should be made available to the public on request.

VII. ENFORCEMENT

The most persistent weakness of the many attempts made to control political finances in this country has been the absence of effective means of enforcement. The Barbeau Committee reported that Sir Henry Drayton once said in the House of Commons, in regard to the 1908 ban on corporation contributions:

> Is there any honourable member in this House so foolish as to think that contributions are not made to election funds? Why, of course, they are made . . . . Everybody knows also that this country has yet to find a single prosecution. The law is a dead letter . . . .

> It has never been enforced, and there is no intention of enforcing it today.[40]

The comment would appear to be as applicable today as it was before the First World War. The disdain of the public can easily be attributed to apathy, lack of knowledge and the lack of funds first to investigate and then commence and sustain a private prosecution. As for those charged with the administration of the enforcement provisions (usually the Chief Electoral Officer and his staff, if any) there are nearly always the problems of no money and no time.

It is asking much to expect a civil servant who may, and usually does, have other and more onerous duties to perform, such as, in Manitoba, being the Clerk of the Legislative Assembly,and who in his various capacities must be completely impartial and above the political fray, to initiate the controversial and unpleasant task of fingering delinquent politicians, and especially when the legal arm of the government, the Attorney-General's Department, is more than likely extremely loath to follow up with a prosecution or even an investigation. We think it a more onerous task, for instance, than initiating a controverted election petition for breach of elections procedure over which the Chief Electoral Officer has direct supervision.

The first requirement for the enforcement of political finance laws is that the laws themselves be capable of enforcement. This was one of the critical flaws of the early Canadian legislation in this area, which like so many of the reforms of the so-called "progressive era"

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[40] Barbeau Committee, *op. cit.*, p. 19.

was little more than a collection of pious legal platitudes. Ease of proof is essential if there is to be even an attempt at prosecution, let alone conviction.

> Experience in the United Kingdom shows that it is easier to prosecute for technical offences than for substantive offences. Under the system of official electoral agents it becomes an offence for anyone to spend money locally in support of the candidate except through the agent and for the agent to spend any money for which he does not account, or spend money above the permitted amount. Thus, it is necessary only to prove that money has been spent, not that it has been spent corruptly.[41]

This approach may appear petty and contrived, but it is effective in exerting an indirect control over the more heinous but difficult to establish substantive offences. Technical offences, of course, must still be proved, and here there is no escaping the vigilant inspection of the keeping of records and the accuracy and veracity of their contents.

The question of who should administer and enforce the apparatus of control is a vexed one, principally because it is essential that the controls be enforced vigorously yet without undue suspicion of bias or favouritism. There are many administrative models from which to choose, some combining the administrative and enforcement functions in one agency or official, others dividing them between two or more. Generally speaking it is difficult to avoid the conclusion that somewhere in the process there has to be an independent, non-partisan commission either enforcing the controls directly or responsible for publicly reporting

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[41] Barbeau Committee, *op. cit.*, p. 288.

infractions and recommending their prosecution. Such a body may also, as in Ontario and many American States, be in charge of the day-to-day administration of the legislation, but this, in our opinion, is a secondary consideration to that of enforcement and may indeed be a step to be avoided.

The simplest, cheapest and most easily disposed of approach to running the machinery of any election expense legislation is to leave it to a government department. The opportunities for abuse by the party in power would be rife, matched and exceeded only by the accusations of abuse. And if the past record of Attorney-General prosecutions in Canada and the United States is any indication, enforcement would be non-existent or at best lethargic.

The Chief Electoral Officer could be entrusted with the task, and there may indeed be some compelling reasons why he should be designated to keep overall control of the expanded electoral machinery. To have several administrative agencies working in a common area can be an invitation to jurisdictional confusion and dispute, and this may become critical when the public or those subject to the control of the particular agencies involved are confronted with the overlap. The experts in the administrative agencies may, through constant application, have a thorough knowledge of their working jurisdictions, but the executives of political parties and constituency organizations, and the candidates they field, come and go with considerable frequency. There is just not the same degree of proficiency or involvement. The fewer administrative channels there are to contend with the easier it will be to integrate the amateurs into the machinery of control.

It should also be noted that any legislative scheme established in Manitoba at this time would, of necessity, be an experiment, subject to constant review and updating. At the federal level, the Barbeau Committee in 1966 was very aware of the untried nature of their proposals, and this concern was evident again in the Chappel Committee and eventually in the 1974 *Election Finances Act*. By leaving the legislation largely within the purview of the Chief Electoral Officer and allowing him, in consultation with representatives of the major political parties, to develop the administrative techniques for giving it effect, rather than spelling them out in detail in the statute, the way has been left open for the gradual evolution of workable controls. If it should prove desirable at a later date to establish a separate administrative agency, then the Chief Electoral Officer may so recommend through his annual report to Parliament. We suspect it would be a lot easier to split an existing administrative agency into two distinct parts, should such prove from experience a desirable step, than to start with two separate entities, as in Ontario, and then at a later date attempt to integrate their operations. Bureaucracies tend to be jealous guardians of their access to funds and personnel, and especially of their right to exist. Whether the enforcement, *per se*, of political financing and election expenses law even requires a full-blown bureaucracy is a question we now consider.

While it may be advantageous to entrust the administration of any election expense legislation to the Chief Electoral Officer, at least initially, it may not be so beneficial to expect him also to take care of its enforcement. As pointed out earlier his office is one that should

really be above the potential conflict and allegations of bias which could flow from the direct enforcement of legislative controls. At the federal level, although the Chief Electoral Officer is the principal administrator (the Canadian Radio-Television Commission and the Department of National Revenue are also involved) of the election expenses legislation, and has authority to appoint a commissioner ". . . whose duties, under the supervision of the Chief Electoral Officer, shall be to ensure that the provisions of the Act in regard to election expenses are complied with and enforced", his direct powers of enforcement do not extend much beyond the actual filing of the required reports and statements within the time prescribed, and the provision of the right kinds of information.[42] As the Chappel Committee remarked in its 1971 report,

> We recognize that it would be difficult for the Chief Electoral Officer to maintain the appearance of impartiality to candidates and parties if at the same time he is called upon to police the accuracy of their financial reports. We suggest that this difficulty is overcome by requiring the parties and candidates to file their own audited reports . . . .[43]

This philosophy is reflected in controls which are largely self-policed by the parties and candidates themselves and their auditors, with heavy reliance placed on reporting, disclosure and publicity in the belief that public opinion and the attitude of the electorate will act as a brake on campaign spending. Whether this will be sufficient to keep the system functioning as intended remains to be seen. The

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[42] *Elections Expenses Act*, Stats. Can. 1973-74, cap. 41, s. 11.

[43] Chappel Committee, *op. cit.*, p. 13.

present Chief Electoral Officer of Canada has taken full advantage of the leeway afforded him in the legislation to design the actual apparatus through which the financial controls will be exercised. Instead of relying on his staff to conjure up a detailed set of regulations and forms to be unloaded holus bolus on the political parties, he has called upon the parties to assist him in the task, and in effect to design for themselves the system through which they will be controlled.

The level of involvement and commitment inspired by this process may have got the federal controls off to a very successful start but there is no guarantee that substantial compliance will continue indefinitely. If accurate disclosure and reporting is to be required of parties and candidates to substantiate compliance with limitations on expenses and contributions, and to determine the amount of state subsidies, then there is, in our opinion, a need for more active enforcement, through an independent agency, one sufficiently removed from the government and the parties to earn their respect and confidence.

The Barbeau Committee recommended a Registry of Election and Political Finance which would administer the controls as well as enforce them. The Registrar,

> . . .should have unchallengeable qualifications of impartiality and integrity, and his appointment and removal should be the sole prerogative of the House of Commons.[44]

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[44]Barbeau Committee, *op. cit.*, p. 58.

It was suggested that the Registrar

> . . . on his initiative and discretion and at public expense, may on his own authority institute and maintain an action against a candidate, political party, or third persons involved in any breach of the requirements of the proposed Election and Political Finances Act.[45]

These recommendations were never implemented. Instead, as we have already pointed out, the devices of audited returns and publicity were relied on to provide (a) accurate information, and (b) public reaction to that information, in the belief that the reaction would be sufficient in itself to curb excessive spending and excessive reliance on large donors.

The Ontario Commission on the Legislature had more luck with its suggested Commission on Election Contributions and Expenses, but it is largely an administrative body with power only to refer infractions to the Attorney-General for his consideration.

The inability of the Commission on Election Contributions and Expenses to commence prosecutions in its own name, and the device of referring infractions to the Attorney-General, are weaknesses clearly recognized by its own staff. A Comparative Survey of other legislation, done for the Commission, reported that

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[45]Barbeau Committee, *op. cit.*, p. 61.

> An especially precarious provision regarding complaints is one which only allows an independent body to refer an alleged violation to a political entity (such as an Attorney-General) rather than to investigate and prosecute the offence itself. This leaves room for political favouritism and may attract the very activity which the legislation was originally introduced to curtail.[46]

Certainly the record to date in Canada of Attorney-General prosecutions is meagre to the point of being non-existent. The publicity attendant upon the Commission's Reports and the response of the public and the opposition in the Legislative Assembly may be sufficient to provoke action but somehow we doubt it. Much, of course, will depend on the determination and integrity of the persons who compose the Commission on Election Contributions and Expenses and in this regard it is interesting to note that the majority of its members are representatives of the political parties, at least those with more than four seats in the Legislative Assembly and who nominated candidates in at least fifty percent of the electoral districts. At present this would mean at least six such representatives which is sufficient for a quorum. It is questionable that the political parties should be so represented on a Commission which is meant to be independent of their influence. Trade-offs are always a possibility, despite the presence of such non-partisan members as the Chief Electoral Officer and a bencher of the Law Society of Upper Canada, and especially when the party representatives constitute a clear majority of the Commission.

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[46] Ontario Commission, *op. cit., Comparative Survey of Election Finance Law*, (unplished study paper), p. 9.

If a similar Commission is to be established in Manitoba we would suggest that its function should be restricted to enforcement and not administration, which should be left to the Chief Electoral Officer, and we would strongly suggest that it be given independent powers of investigation and prosecution.

Another possibility, one which would avoid the expense and bureaucracy of a board or tribunal, would be to appoint a single individual as a special prosecutor of infractions under any legislation for the control of political finances. We anticipate there would be problems finding someone willing to take on this task, especially as it would not be a full-time position. Should such an individual be appointed, however, he or she would, of course, have to be given the same independent powers of investigation and prosecution as recommended above for a Commission.

One of the proposals which draws virtually unanimous support from those who have studied the problems of political finances is the stiffening of penalties.

The Barbeau Committee was

> . . . of the opinion that the penalties for failure to comply with the proposed legislation must be severe. The entire purpose of this Report and its recommendations will be defeated unless the system proposed is rigourously policed and persons and parties prosecuted for infractions. The penalties must reflect the seriousness of the breach, and thus encourage compliance with the provisions.

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[47] Barbeau Committee, *op. cit.*, p. 61.

With this we wholeheartedly concur and especially with the added stricture that the system be rigorously policed and offenders prosecuted. Whatever the penalties selected they must be severe enough to instil respect for the law and not be merely a licence for wrongdoing, but without the certainty of enforcement no penalty, no matter how onerous, can be of any real effect as a deterrent.

RECOMMENDATIONS

27. The Chief Electoral Officer should have charge of the administration of the proposed political finance controls, but not their enforcement.

28. The enforcement of the proposed controls should be entrusted to a separate commission or individual who should be directly responsible to the Legislative Assembly and have powers of investigation and prosecution, including the commencement and staying of court proceedings, independent of the Attorney-General's Department, but restricted solely to the enforcement of the proposed controls.

29. Because the kind of offences prescribed by the proposed provisions strike at or undermine public confidence in our democratic processes, the penalties for breach of the Act should be such as effectively to deter offenders and to demonstrate to the public that lawmakers themselves and their political cohorts are not "let off" more lightly than ordinary members of the public in similar straits. A full range of penalties including imprisonment, fine, damages and restitution, disqualification from public office (elective, appointive and salaried or contracted services) should be prescribed.

SUMMARY OF RECOMMENDATIONS

1. Political parties, constituency associations and candidates should be recognized as the entities to which financial controls must be applied if the controls are to be effective.

2. All political parties, constituency associations and nominated candidates should be required to register with the authority in charge of administering the proposed political finance controls.

3. The qualifications for registration of a political party should be as follows:

   Any political party that:

   (a) held a minimum of two seats in the Assembly following the most recent election;

   (b) nominated candidates in at least 50 per cent of the electoral districts in the most recent general election;

   (c) nominates candidates in at least 50 per cent of the electoral districts following the issue of a writ for a general election; or

   (d) at any time since the most recent election but other than during a campaign period provides the (relevant authority) with the names, addresses and signatures of 1,250 persons who

      (i) are eligible to vote in an election;

      (ii) attest to the registration of the political party concerned.

4. A constituency association, to be eligible for registration, should be endorsed by a registered party as the official association of that party in that constituency, and there should not be more than one constituency association recognized in each constituency for each registered party.

5. A candidate, to be eligible for registration, should be a person duly nominated in accordance with "*The Election Act*", or nominated by a constituency association of a

registered party as the official candidate of that party, or a person who, on or after the date of the issue of a writ for an election declares himself to be an independent candidate. While a candidate nominated by a constituency association of a registered party may apply for registration prior to the time of a writ for an election, his registration would only take effect upon the issue of the said writ or if he should apply after the issue of the writ, then upon the date of his application.

6. All registered parties, constituency associations and candidates should be required to appoint a financial officer or official agent, through whom all receipts and expenditures must be made and who shall be responsible for filing all required returns of information. Failure to comply with the requirements shall be cause for deregistration.

7. Registered parties and constituency associations should be deemed to be persons for purposes of prosecution under any legislation embodying the proposal financial controls, and any act or thing done or omitted by an officer, official or agent of a political party or constituency association within the scope of his authority should be deemed to be an act or thing done or omitted by the political party or constituency association.

8. (a) Limitations of sums which may be expended both by parties and candidates should be imposed specifically on use of television, radio, newspaper, magazine and commercial billboard promotion and advertising contracted for and during election campaigns.

(b) The limitations on these readily ascertainable expenditures should not be so generously set as to be, in effect, no practical limitations at all, but should effectively confine both the monied and the non-monied parties and candidates equally within the strictures of reasonable but not lavish appeals to the electorate.

9. It should be unlawful during an election for groups, associations or persons other than registered parties and candidates to publish or to purchase public advertising supporting or opposing any party or candidate. This prohibition should extend to constituency associations, and in addition, candidates should be prohibited from advertising except during an election.

10. It should be unlawful during an election campaign for a broadcaster or publisher to charge more than the usual local rate or to charge unequally as between parties or candidates for political advertising, or to give free advertising to one or any candidate or party and not all others.

11. The limitations expressed above, if otherwise pertinent, should not apply to merely factual advertising for meetings of electors to nominate a candidate, constituency organizational meetings, and any other matter involving solely the administrative functions of constituency organizations.

12. The limitations of expenditures should be fixed arbitrarily by statute to be applicable to all registered parties, constituency associations and candidates equally, and should be based on the number of electors. The only exception should be in relation to northern constituencies where the limits should accommodate the additional expense of campaigning in those regions.

13. There should be no limitations of amount imposed by law upon contributions for political activities to political parties, candidates or constituency associations.

14. Individual persons, corporations and unions only should be allowed to contribute to political parties, candidates and constituency associations. Subject to recommendation 15, hereafter, any other attempted contributions should be promptly declined or refunded, or if the contributor's identity cannot be established, paid over to the Province to be added to the Consolidated Revenue Fund.

15. Any political contributions made by unincorporated associations other than unions should be itemized by amount and source as to each individual member's contribution, which should then be considered a contribution of the individual member involved.

16. Corporations that are associated with each other under section 256 of the *Income Tax Act* (Canada) should be considered as a single corporation for the purposes of making political contributions.

17. No contributions should be knowingly accepted by political parties, candidates or constituency associations from any person normally resident outside Manitoba, from any corporation that does not carry on business in Manitoba, or from any union other than a union as defined in the Manitoba or federal labour legislation that holds bargaining rights for employees in Manitoba to whom that legislation applies.

18. No political contributions should be allowed from funds not actually belonging to the donor or from funds provided to the donor for the purpose of making a contribution (eg. employee bonuses given with the intention that the employee should then make a political contribution).

19. No political contributions should be allowed from federal political parties registered under the *Election Expenses Act* (Canada) except during a campaign period and only up to a prescribed maximum amount.

20. Candidates who receive at least 15% of the popular vote in their electoral districts should be entitled to be reimbursed for the lesser of their campaign expenses for the campaign period as disclosed in their audited financial statements or an amount based on a fixed sum per elector in their electoral districts. An additional sum should also be available to candidates in northern ridings where the costs of campaigning are higher.

21. The disposition of such subsidies should be left to the discretion of the candidate.

22. There should be no subsidies provided to political parties.

23. Tax rebates against the provincial portion of income tax should be allowed for political contributions on the same diminishing percentage scale and to the same maximum as presently provided under federal law.

24. All registered political parties and their constituency associations should be required to file annual audited financial statements (as presently required of parties under s. 170 of *"The Election Act"*) within a specified

time following the end of the year, and with the additional disclosure of the names of all donors (see recommendations re contributions) who gave in the aggregate in excess of $500 during the year to a party and $100 to a constituency association. The control year selected could be either the calendar year or a party's or constituency association's fiscal year, or any more convenient 12-month period.

25. All registered parties, constituency associations and candidates should be required to file an audited financial statement for any campaign period within a specified time following polling day showing all of the information presently required under s.178 of *"The Election Act"* and each candidate should disclose the names of all donors who gave in the aggregate in excess of $100 during the campaign period.

26. The authority responsible for administering the proposed financial controls should be required to publish an accurate summary in the Manitoba Gazette of the audited reports required above, disclosing the names of all contributors who gave in excess of the prescribed levels, and the audited reports themselves should be made available to the public on request.

27. The Chief Electoral Officer should have charge of the administration of the proposed political finance controls, but not their enforcement.

28. The enforcement of the proposed controls should be entrusted to a separate commission or individual who should be directly responsible to the Legislative Assembly and have powers of investigation and prosecution, including the commencement and staying of court proceedings, independent of the Attorney-General's Department, but restricted solely to the enforcement of the proposed controls.

29. Because the kind of offences prescribed by the proposed provisions, strike at or undermine public confidence in our democratic processes, the penalties for breach of the Act should be such as effectively to deter offenders and to demonstrate to the public that

lawmakers themselves and their political cohorts are not "let off" more lightly than ordinary members of the public in similar straits. A full range of penalties including imprisonment, fine, damages and restitution, disqualification from public office (elective, appointive and salaried or contracted services) should be prescribed.

This is a Report pursuant to section 5(3) of *"The Law Reform Commission Act"* dated this 13th day of August 1979.

Clifford H.C. Edwards, Chairman

R. G. Smethurst, Commissioner

Val Werier, Commissioner

Patricia G. Ritchie, Commissioner

David G. Newman, Commissioner

A. Burton Bass, Commissioner

Evan H.L. Littler, Commissioner