

**THE POLITICS OF ELECTION SPENDING:
THE RULES AND REGULATIONS OF POLITICAL ADVERTISING**

BY

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Submitted to the Faculty of Graduate Studies
in Partial Fulfillment of the Requirements
for the Degree of**

MASTER OF ARTS

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A Thesis/Practicum submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements for the degree of

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ABSTRACT

The ultimate goal of political parties is to win elections. The most important factor in any election campaign is to get the right message out to voters. This cannot be done without money. Capital and resources are critical components of political power. However, money has acquired a special significance as the election campaigns of today are increasingly becoming capital-intensive as opposed to labour-intensive. Developments in election technology - television advertising, polling, computer analysis of voting patterns, and the use of focus groups to plan campaign strategy and advertising - have led to a professionally managed election process.

This thesis explores the use of paid political advertising by political parties and independent groups in Manitoba. The use of modern campaign technologies is also discussed and analyzed based on how the political parties have adjusted to these new technologies and election laws and how they have structured their campaigns. Both of these factors have led to greater centralization in the management of political parties, particularly with respect to communications, which is probably the most important activity of parties. New technologies have enabled party strategists to run a synchronized campaign that delivers a coherent and consistent message. Given the trend to capital-intensive technologies and the fact that third-party advertising is unregulated, it is recommended that the separate spending limit for advertising set out in the *Manitoba Elections Finances Act* be eliminated. One spending limit would allow the political parties the flexibility to channel their resources where they want throughout the election campaign.

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DEDICATION

For my parents. I could not have accomplished this without your support and encouragement. Thank you for everything. I love you.

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CHAPTER 1

INTRODUCTION

The primary function of the electoral system in Canada is to provide for an orderly and democratic succession from one set of political authorities to another. It permits the citizens of Canada to periodically review the performance of their political leaders and to pass judgment as to whether they should continue to govern or should be replaced by a new set of authorities.¹ In Canada, there are rules controlling the conduct of the electoral system. In Manitoba, the rules governing election spending are defined in the *Manitoba Elections Finances Act*.

As campaigning has become increasingly sophisticated and expensive, so too have issues of financing become critical to an understanding of the electoral process. Campaign finance regulation takes three forms: campaign spending limits; public subsidies to candidates and parties; and obligatory disclosure of campaign contributions. The Law Reform Commission of Manitoba has stated in its 1979 report that election finance laws are necessary for the following reasons:

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

¹ Richard J. Van Loon and Michael Whittington. *The Canadian Political System: Environment, Structure, and Process*. Third Edition. Toronto: McGraw-Hill Ryerson Limited, 1981.

- (3) 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.²

Officially, the current election laws rest on four principles: fairness; equality of access; openness; and participation. Fairness is defined as providing a level playing field by setting spending limits for both political parties and candidates. Equality of access provides public funding to candidates and political parties to run their campaigns. Openness is ensured by public disclosure of campaign contributions and expenses. And public participation is established through the tax credit system which encourages individuals to get involved in the political process. Unofficially, election laws, according to some commentators, are also created to serve the needs of the political parties and their candidates. Party officials have played a major role in shaping the laws.

With respect to spending controls, a separate advertising limit exists within the larger limit on overall election expenses. The political parties have supported two spending limits because it equalizes the use of media advertising. Furthermore, having a separate spending limit for advertising has slowed the growth of media-dominated election campaigns evident in the United States. However, questions have been raised regarding the relevancy of two spending limits given that third parties, that is, groups not contesting seats but seeking to influence the political process, are not subject to any restrictions during an election campaign. Having one spending limit would give the political parties the flexibility to determine where to focus their campaign dollars. That focus is increasingly on modern campaign technology. This technology embraces the electronic innovations in electioneering - polling, computerized direct mail, and television advertising.

² Manitoba Law Reform Commission. *Report On Political Financing and Election Expenses*. Report number 31. August 13, 1979, page 7.

Trends in election expenditures reveal that political parties are devoting more campaign resources to paid advertising in particular. While the news media continue to provide campaign coverage, parties are using political advertising as a communications tool that allows them to maximize their own control over the campaign message. Paid political advertising uses the mass media as a "direct transmission channel" from the party to the voter. Consequently, journalists do not have the opportunity to filter, frame or interpret the message. Furthermore, advertising has advantages because it gives campaign advisors complete control over the message that is transmitted, specifically, the content of the message, how many times a day the message will be transmitted, and to which target audience, though there is no guarantee that the target audience will notice or be receptive to the advertising. However, with the various technologies available, getting the message out has never been more efficient, or expensive. Dalton Camp recently wrote: "[b]ecause television advertising is expensive, and television production more expensive, and because polling can tell what is most likely to sell on television - and polling is expensive - money is simply an imperative; you can't go far without it."³ Capital and resources have always been critical components of election campaigns. But today, due to the utilization of modern campaign technology, money has acquired a special significance. The trend is toward the use of capital-intensive technologies and away from labour-intensive methods of reaching voters. We are in a period of rapid change in communication technologies and practices. These changes seem likely to revolutionize campaign communication in the next few decades. New technologies are already opening new channels for political parties and candidates and bringing changes to the media. As with the introduction of radio and television, each new technology can change the focus of campaigning by altering prevailing concepts of time and space. The

³ Dalton Camp. "Bagmen, Money And The Political Process." *The Hill Times*. February 19, 1996. page 7.

strategy, techniques, and hardware available to political parties and candidates has already transformed the environment in which elective office is sought. The election campaign laws, the development of television as a political medium, and the rapid advances in computer capabilities have substantially reduced the more traditional modes of electioneering. Voters who once saw their candidates behind podiums or on railroad cars now see them in cleverly edited 30-second television advertisements.

This thesis will explore the use of paid political advertising by political parties and independent groups in the Manitoba context. The use of modern campaign technologies will also be discussed and analyzed based on how the political parties have adjusted to these new technologies and the election laws and how they have structured their campaigns in relation to both of these factors. The conclusion being that there has been a centralization in political party campaigns, particularly with respect to communications. Furthermore, given the trend toward the use of capital-intensive technologies and the fact that third party advertising is unregulated, it is recommended that the separate spending limit for advertising set out in the *Manitoba Elections Finances Act* be eliminated. The original research methodology used for the study consists of interviews with political party advisors who were involved in developing campaign communication strategies.

Chapter two will examine Canada's and Manitoba's campaign finance law in a historical context. The *Manitoba Election Finances Act* defines the amount of money political parties can spend, the period in which they can advertise, the types of expenditures allowed, and election subsidies and reimbursements.

Chapter three will examine the trends in election spending and discuss the relevance of having a separate spending limit for advertising. The trends in election spending reveal that political parties devote a large portion of their advertising budgets to television advertising.

Modern campaign technology is discussed in chapter four. The increasing use of commercial advertising techniques and technologies has also necessitated the recruitment of advertising specialists. Campaigns have become more centralized because of the development in election campaign technology. Polls, 30-second advertisements, direct mail, demographic targeting, and phone canvassing, have all helped transform electioneering toward the use of capital-intensive technologies and away from labour-intensive methods of reaching voters. The election campaigns of today are highly synchronized operations that deliver a coherent and consistent message.

In chapter five the issue of third-party advertising will be addressed. As previously mentioned, Manitoba has no legislation in place governing third-party expenditures. While legislation concerning third-party advertising has been passed, it has never been proclaimed by the Lieutenant Governor in Council. Third party advertising will be examined in a comparative context with other jurisdictions.

The sixth chapter will attempt to evaluate how the political parties have structured their campaigns to work within the framework of the spending laws and how the law should be changed in light of having no law governing third party advertising.

CHAPTER 2

HISTORY OF ELECTION FINANCE LEGISLATION

While response to scandal or crisis has generally been the immediate impetus for electoral reform, it is important to remember that regulation of election campaigns is not a simple technical exercise. Rather, it is intended to promote the fundamental objectives of electoral democracy, namely securing the democratic rights of voters; enhancing access to elected office; promoting the equality and efficacy of the vote; strengthening political parties as primary political organizations; promoting fairness in the electoral process; and enhancing public confidence in the integrity of the electoral process. All of these purposes lie behind the various statements which govern Canada's electoral democracy. Similar purposes guide the regulation of the use of money during election campaigns. Political parties and candidates need money to fight elections. However, money can also corrupt the political process as is evident in Canada's early electoral history. For this reason, election finance laws have been introduced into the electoral process to promote fairness and equity, encourage participation, inspire confidence, and strengthen political parties.

HISTORY OF ELECTION FINANCE LEGISLATION IN CANADA

At the time of Confederation, the laws governing elections in Canada gave no recognition to the role that money played in the electoral arena. The issue was only recognized in the context of "corrupt practices" which usually meant giving and receiving bribes. The possibility of candidates being obligated to their contributors was

ignored.⁴ The problems with the system were recognized in 1873 when the government party of Sir John A. Macdonald "had received large sums of money from an entrepreneur vitally interested in a government contract and subsidy".⁵ The "Pacific Scandal" contributed to the defeat of the Conservatives in the election of 1874. The first Liberal government of Alexander Mackenzie introduced a new election law in 1874. The *Dominion Elections Act*, 1874 transferred the electoral system from provincial to federal responsibility.⁶ In addition, the doctrine of agency was established. The doctrine provided that the legal responsibility for the use of money was invested in a single agent, which meant that there was a central responsibility for spending.

Despite all the criticisms surrounding the 1874 Act, it took another scandal to induce further reform, and even then the reforms were modest. The McGreevey scandals of 1891 disclosed a system, operating in federal elections in Quebec, of contractors giving kickbacks on government contracts to finance Government candidates.⁷ The result was an amendment to the *Dominion Elections Act* of 1874, whereby it was made a corrupt practise for anyone to assist a candidate at an election in return for money or any "valuable consideration", or for the promise of "any office, place or employment".⁸ However, enforcement was a problem. Prosecution could only be undertaken by the Crown; therefore, the legal officers of the government in power were often reluctant to prosecute because it might embarrass or defeat that government.

⁴ J. Patrick Boyer. *Money and Message: The Law Governing Election Financing, Advertising, Broadcasting and Campaigning in Canada*. Toronto: Butterworths, 1983. page 4.

⁵ K.D. Ewing. *Money, Politics, and Law: A Study of Electoral Campaign Finance Reform in Canada*. Oxford: Clarendon Press, 1992. page 8. and A. Barbeau. *Report of the Committee on Election Expenses*. Ottawa: Queen's Printer, 1966. page 14.

⁶ Macdonald later completed the centralization of the electoral system, notably with the *Franchise Act* of 1885.

⁷ Ewing. *Money, Politics, and Law: A Study of Electoral Campaign Finance Reform in Canada*. page 9.

⁸ *Ibid.* page 5.

The parliamentary sessions of 1906 and 1907 were among the most scandal-ridden on record. There was the discovery of electoral and administrative corruption and patronage in the civil service, which in turn resulted in several reform measures. A series of amendments were made to the *Dominion Elections Act* in 1908. The amendments specified that contributions from corporations were prohibited, if made directly to electoral candidates. However, since political parties remained undefined in law, the law was all but unenforceable. The 1908 amendment also strengthened the doctrine of agency by making it an indictable offence for any contributor to pay money to a candidate other than through the official agent. As well, it prohibited foreigners from assisting in Canadian elections, a measure designed to end the expensive practise of bringing in former Canadians and others from the United States at election time.⁹

The banning of corporate political contributions reflected the sentiments of the Progressive Movement sweeping both Canada and the United States shortly after the turn of the century. However, the amendments "proved to be entirely ineffective in prohibiting big business from contributing to campaign funds ... [t]here was no evidence that business contributions slackened after 1908; on the contrary, they may have increased".¹⁰

In 1920, the ban on corporate donations was further amended. All companies and associations were subject to the prohibition. Thus, trade unions were now included in the ban. This limitation on the political role of the unions led both the Trade and Labour Congress of Canada and members of the Co-operative Commonwealth Federation to protest against the measures prohibiting contributions and to seek their repeal. The ironic result was that a law, originally designed to curtail the influence of big business in

⁹ Ibid. page 6.

¹⁰ Stanbury. *Money In Politics: Financing Parties and Candidates In Canada*. Royal Commission on Electoral Reform and Party Financing. Volume 1. Toronto: Dundurn Press, 1991. page 29. and Barbeau. *Report of the Committee on Election Expenses*. page 19.

politics, was in 1930 removed from the statute books on the urgings of socialist members of Parliament.¹¹

The 1920 amendment also clarified the meaning of "personal expenses". These expenses were an exception to the rule that all payments had to be made through the official agent. The disclosure requirements were also expanded. Candidates were now obligated to disclose contributors and the amount contributed, as well as expenditures.¹² Nevertheless, the Act still did not accord legal recognition to political parties nor did it provide adequate enforcement techniques. Subsequently, all of these "improvements" did not make any significant impact on the Canadian system of political finances. In fact, the year after the removal of the ban on corporate contributions, another scandal was uncovered. It was revealed that approximately \$700,000 had been given by the Beauharnois corporation to the previous Liberal Government and that an extremely valuable government contract had been given to the corporation.¹³

After the amendments in 1920, a half century passed without any other significant changes to the federal statutes affecting election expenses. Measures were advocated in Parliament from time to time to improve on inherent weaknesses in the existing legal regime, but these did not culminate in legislative enactments. By the early 1960s, the conjunction of several factors stimulated a re-examination of federal electoral law. Financial difficulties arose from the rapid succession of five elections between 1957 and 1965. Although the main political parties usually gathered enough funds for election campaigns, each election seemed costlier than the last. One of the main reasons for this was the use of paid television advertising beginning in 1957.¹⁴ A spirit of reform

¹¹ Boyer. *Money and Message: The Law Governing Election Financing, Advertising, Broadcasting and Campaigning in Canada*. page 7.

¹² Ibid. page 7.

¹³ Barbeau. *Report of the Committee on Election Expenses*. page 22.

¹⁴ F. Leslie Seidle and Khayyam Zev Paltiel. "Party Finance, the Election Expenses Act, and Campaign Spending in 1979 and 1980". *Canada at the Polls, 1979 and 1980: A*

began to emerge. The demand for change had already been acknowledged in Quebec after the defeat of Maurice Duplessis's Union Nationale government by the Liberals in 1960. The former government was allegedly looting the province's economy by a systematic disposal of rights over resources in return for campaign contributions, and the province's treasury by the blatant use of public funds to win electoral support.¹⁵ Debate within the Quebec Liberal party led in 1963 to sweeping amendments to the *Quebec Election Act*. Discussion of changes carried over to the federal Liberal party. This and other events meant that the time was right for a serious study of election spending and party finance.

The Liberal government at the time appointed a Committee to "advise in the best practicable way to set enforceable limits to expenditures in election campaigns".¹⁶ The Advisory Committee on Election Expenses was appointed in 1964. Chaired by Alphonse Barbeau, a Montreal lawyer, the committee reported its recommendations in 1966. These recommendations included bringing parties under the law as responsible bodies; broadening the base of political participation through a system of subsidies; reducing overall election costs by instituting shorter campaign periods and media spending limits; requiring complete disclosure by candidates; enforcing statutory requirements; and the publishing of audited financial statements.¹⁷

The Barbeau Report was ignored for several years until the House of Commons formed a Special Committee on Election Expenses in 1970. The Committee, chaired by

Study of the General Elections. Howard R. Penniman. (ed). Washington: American Institute for Public Policy Research 1981. page 229.

¹⁵ Norman Ward. "Money and Politics: The Costs of Democracy in Canada." *Canadian Journal of Political Science*. Volume V, number 3. September 1972. page 338.

¹⁶ Ewing. *Money, Politics, and Law: A Study of Electoral Campaign Finance in Canada*. page 11.

¹⁷ Donald C. Macdonald. "Election Finances Legislation In Canada." *Party Politics In Canada*. Sixth edition. Hugh G. Thorburn. (ed), Scarborough: Prentice-Hall Canada, 1991. page 69.

Hyliard Chappell, generally supported the recommendations made by the Barbeau Committee and advanced several of its propositions even further.

In 1972, Bill C-211 was introduced in the House of Commons. It attempted to further limit election expenses. The limits only included paid broadcasting time, print advertisements in periodicals, and the cost of printing, publishing and distributing any advertising material for the purpose of promoting or opposing a candidate or a party.¹⁸

After years of neglect of election finance law, the impetus of these various studies and reports culminated in a new law, the *Election Expenses Act* in 1974. Rumors of scandals in Quebec and the Watergate Affair in the United States are said to have created an atmosphere conducive to reform in this period of Liberal minority government. When the *Election Expenses Act* came into effect, it took the form of a series of amendments to the *Canada Elections Act*, the *Broadcasting Act*, and the *Income Tax Act*.¹⁹ Its major provisions are summarized under the following headings:

Party Registration and Agency

Registered political parties were required to appoint a chief agent and an auditor responsible for filing information with the Chief Electoral Officer. Only a person authorized by a party or candidate could incur "election expenses". However, the Act exempted interest groups or individuals who engaged in advertising during election campaigns, provided that they promoted discussion of public policy and did so in good faith.

Spending Limits

Each registered political party could spend up to thirty cents for each elector in each riding during the period between the issue of the writs and election day. "Election expenses" were also defined in the Act. Examples of what constituted election expenses include, the cost of broadcasting and periodic advertising, the cost of acquiring meeting space, and promotional literature, to name just a few.

Reimbursement of Campaign Expenses

¹⁸ Stanbury. *Money and Politics: Financing Federal Parties and Candidates in Canada*. page 35.

¹⁹ Seidle. "Party Finance, the Election Expenses Act, and Campaign Spending in 1979 and 1980." page 232.

All candidates who received at least 15 percent of the votes cast and who complied with the requirements for submitting their report on election expenses were entitled to be reimbursed for a part of their election expenses by the federal government.

Advertising

Amendments to the *Broadcasting Act* required radio and television stations to make available up to 6.5 hours of free and allocated time for paid political advertising or political broadcasts by registered political parties.

Disclosure

Every registered political party was required to submit a detailed statement of revenues and expenditures annually.

Tax Credits

The federal government provided a tax credit for individuals and corporations, calculated as follows:

- 75 percent of amounts contributed up to \$100;
- 50 percent of amounts contributed between \$100 and \$550; and
- 33.3 percent of amounts contributed exceeding \$550, up to a total tax credit of \$550.²⁰

Overall, the 1974 *Election Expenses Act* was designed to achieve several objectives: to bring candidates and party financing into the open; to put limits on election expenses and thereby reduce the actual or potential influence of money on politicians; to use public funds to subsidize part of the election costs of both parties and candidates; and to reduce the dependence of the Conservative and Liberal parties on a small number of corporate contributors.²¹

The federal government has acknowledged that Canada's electoral laws need further reform, especially with the introduction of the *Charter of Rights and Freedoms*. In 1989, it appointed the Royal Commission on Electoral Reform and Party Financing. Its mandate was to inquire and report on the appropriate principles, processes and rules

²⁰ Stanbury. *Money In Politics: Financing Federal Parties and Candidates in Canada*. pages 37-38.

²¹ W.T. Stanbury. "Regulating the Financing of Federal Parties and Candidates." *Canadian Parties in Transition*. Second Edition. A. Brian Tanguay and Alain G. Gagnon. (eds). Toronto: Nelson Canada, 1996. page 373.

that should govern the election of members of the House of Commons and the financing of political parties and candidates during election campaigns.²² The Royal Commission made several recommendations for dramatic reform of the electoral system, including tough new limits on advertising and a guarantee of seats for aboriginal people. In addition, it concluded that election campaigns should be shorter; that the internal affairs of political parties should be more carefully regulated, and that the parties should be given financial inducements to attract more women into politics.²³ According to Robert Gabor, a former Commissioner, few of the recommendations were ever accepted. Gabor commented that the Royal Commission's study on women in politics was particularly well done; however, it was rejected by policy-makers.

HISTORY OF ELECTION FINANCE LAW IN MANITOBA

When Manitoba entered Confederation, it used the ordinary judicial system and tried election disputes like other cases. In time, it became one of the pioneers in dealing with election finances. While possessing progressive legislation, a wide gap remained between the intent of Manitoba's statutes and the actual operation of its political process.

Very early election legislation, from 1870 to 1917 was most concerned with candidate spending. As in the federal case, the legislation did not focus on the amounts spent, but rather required an account of candidate spending to ensure that candidates did not use spending to buy votes.²⁴ The philosophy behind the law can be seen in the following examples from the 1886 *Election Act of Manitoba*:

²² Pierre Lortie. "The Principles of Electoral Reform." *Canadian Parliamentary Review*. Volume 16, number 1. Spring 1993. page 2.

²³ Geoffrey York and Ross Howard. "Royal Inquiry Urges Reforms For Election." *Globe and Mail*. February 14, 1992. page 1.

²⁴ Elections Manitoba. Elections Finance Legislation. Unpublished document. nd. page 1.

No person shall for the purpose of promoting or procuring the election of a candidate at any election be engaged or employed for the payment or promise of payment ... except only for the purpose of the following:

- (1) one election agent
- (2) the personal expenditure of the candidate
- (3) the expenses of printing and advertising and the expenses of publishing, issuing and distributing addresses and notices
- (4) the expenses of holding public meetings
- (5) the expenses of a central committee room and of not more than one room in each polling sub-division for public and other meetings (Sec 195).²⁵

Except in respect of the personal expenses of a candidates, no payment, loan, or deposit, shall be made by or on behalf of such candidate at any election, on account of such election. Otherwise than through one or more agents, whose names and addresses have been declared in writing (Sec 223).

A detailed statement of all election expenses incurred by or on behalf of any candidate shall within two months after the election be made out and signed by the agent ... and delivered with the bills and the vouchers relative thereto to the clerk of the executive council (Sec 228).

The legislation was virtually unchanged until 1917. However, until this time furious partisanship led to charges of false voting, free treating, and bribery in three by-elections in 1912 and 1913.²⁶ The losing Liberal candidate in the Gimli by-election charged that "public moneys were improperly and corruptly employed," that "bribery was extensively practised and corrupt treating was carried on," that "liquor was freely dispensed," that "intimidation was largely practised and that employees of the Manitoba government and officers of the law were personally guilty of intimidation, bribery and distribution of liquor."²⁷ While these byelections were reason for concern, it was the scandal surrounding the construction of the Legislative building which was the main

²⁵ Ibid. page 1.

²⁶ W.L. Morton. *Manitoba: A History*. Toronto: University of Toronto Press, 1957. page 334.

²⁷ Jeffery Simpson. *Spoils Of Power: The Politics Of Patronage*. Toronto: Collins Publishers, 1988. page 246.

catalyst for reform and ultimately led the new Liberal government of T.C. Norris to remodel the *Elections Act* of 1886. The Manitoba government originally awarded the contract for construction of the building to a friendly company, at an estimated cost of \$2,859,700. Later design changes increased the cost to \$4,500,000. The Liberal party filed a petition alleging that funds for the Legislative buildings had been siphoned into Conservative coffers. A judicial committee of inquiry was established which concluded that many of the allegations against the Conservatives were true. Within six weeks of testimony by the commission, Roblin resigned as premier, thereby making way for a Liberal government.²⁸

The new election legislation introduced by the new Liberal government brought several changes to the previous Act; the most noteworthy of which was the introduction of spending limits for both political parties and individual candidates. The final change, that year, was to legislate against any contribution by persons or organizations outside the province. Specifically, the 1917 statutes entitled *An Act to Amend the Manitoba Elections Act* stated:

The total expenses of any kind whatsoever incurred or authorized by or on behalf of any candidate ... shall not exceed the sum of \$500, except in the electoral divisions of Winnipeg Centre, Winnipeg North and Winnipeg South where they shall not exceed the sum of \$750 (Sec 7).

The total electoral expenses that shall be incurred by the central or general committee of any political party ... in connection with any general election for the Legislative Assembly, shall in no case exceed the sum of \$25,000 ... [Sec 8(1)].

Within 15 days after the day on which the final declaration of the polls at any election takes place ... the central committee of any political party or other officers who have acted in such capacity shall transmit to the clerk of the Executive Council a true return ... containing

- (1) all contributions to the party fund, with the correct names, addresses and amounts of the contributors
- (2) all electoral expenses

²⁸ Ibid. page 247 and 248.

(3) all disputed and unpaid claims ... [Sec 8(3)].²⁹

In 1924, Manitoba became the first province to deal with the role of business corporations in financing elections. All corporate election funding was prohibited. However, this was eventually dropped in 1980 because corporate contributions were being "laundered" through individuals, thus making the law unenforceable.³⁰ The disclosure provisions outlined in the *Elections Act* were fairly broad. One of the greatest problems with the system was its failure to produce any prosecutions for offences.³¹ In fact, in 1977 Manitoba's Chief Electoral Officer at the time, Jack Reeves, acknowledged that Manitoba would be better off with no election expense legislation rather than carry on with its current provisions. Reeves acknowledged, "[a]ll of the actors in the electoral process participate in a massive deception when the public believes we have election expense controls, but doesn't know the controls are both ineffectual and easily circumvented".³²

Overall, it was recognized that the spending limits at the time were unrealistic. While a \$500 spending restriction per candidate may have been enough near the turn of the century, it certainly was not enough in the 1970s and 1980s. The increasing use of political advertising as a campaign tool meant that candidates were spending more money than ever in order to reach the electorate. Therefore, it was felt that reform of the legislation was needed in order to establish reasonable, workable spending limits. In addition, there was a problem with enforceability. While the *Election Act of Manitoba* required the disclosure and reporting of all campaign expenditures, it failed to indicate a specific, effective penalty for the breach of spending limits. If the issue of over-

²⁹ Elections Manitoba. *Elections Finance Legislation*. page 2.

³⁰ Macdonald. "Election Finances Legislation in Canada." page 69.

³¹ Boyer. *Money and Message: The Law Governing Election Financing, Advertising, Broadcasting and Campaigning in Canada*. page 171.

³² *Ibid.* page 171.

expenditures had ever been pursued in a court of law, it would have been dealt with as a summary conviction offence involving only a nominal fine. This was something many candidates simply viewed as another cost of getting elected.³³ Enforcement of the Act was further complicated because prosecution was the responsibility of the Attorney-General. This partisan figure was a member of the cabinet; thus there was a clear conflict of interest.

During the 1970s, several other provinces and the federal government undertook reforms to electoral laws which surpassed the requirements of the *Election Act of Manitoba*. Finally in 1976, the Law Reform Commission of Manitoba was asked to conduct a thorough review of the election laws in the province.³⁴ The Commission examined electoral expenses and contributions. In addition, the subjects of reporting and disclosure of those transactions and enforcement of the rules relating to these matters were also studied. The Commission presented its report in 1979.³⁵ It became the basis for the drafting of Manitoba's new legislation governing elections.

The Elections Finances Act came into force in 1980, with companion provisions contained in the totally revised *Elections Act* also passed in 1980, and in amendments to the *Income Tax Act of Manitoba*. The registration of parties and candidates was introduced. While no limits were set for contributions to parties and candidates, the manner of contribution was regulated. Other contribution-related provisions included the regulation of the amount of contribution in individual charges for fund raising functions, the deeming of the candidate's own funds to be contributions for the purposes of the Act, and the formal allowance of corporate contributions.³⁶ The 1980 Act gave

³³ NA. *Winnipeg Tribune*. October 28, 1977.

³⁴ The Manitoba Law Reform Commission was established by the *The Law Reform Commission Act* in 1970 and began functioning in 1971.

³⁵ Law Reform Commission. *Report On Political Financing and Election Expenses*. August 13, 1979. Report No. 31.

³⁶ Ontario Commission on Election Contributions and Expenses. *A Comparative Survey*

enforcement duties to an independent Elections Commission which also tended to other administrative functions. The Commission included the Chief Electoral Officer, a person appointed by the Lieutenant Governor in Council, who also served as the Clerk of the Manitoba Legislature. The Commission was also made up of two persons representing each of the registered political parties in the assembly. The role of the Commission was to assist parties and candidates and their chief financial officers in preparing financial statements and otherwise complying with the Act. This duty involved the issuance of guidelines to key actors in the campaign financing system. The Commission was also given the full control of prosecution decisions.³⁷ However, since the Commission was typically made up of partisan figures appointed by the Legislature, it could hardly be described as an independent and impartial body; thus prosecutions were hardly a regular occurrence.

In 1983, the NDP government introduced two bills, C-48 and C-74, into the Manitoba Legislature, which were intended to amend the *Election Act* to bring it into line with the new *Election Finances Act*. Both bills were passed in 1984. Under section 3 of Bill 48 the Chief Electoral Officer replaced the Commission for purposes of the administration of the *Election Finances Act*. The Chief Electoral Officer and the office of Elections Manitoba are independent from the Legislature, thus there is no partisan influence.

In addition to the new administrative arrangements, Manitoba's reformed election laws included several substantive revisions. The law required that to be a registered party, political parties must have four or more seats in the Assembly. It is argued that this serves as a 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

Of Election Finance Legislation, 1983. page 45.

³⁷ Manitoba. The Elections Commission. *The First Annual Report of the Elections Commission.* January 1982. page 1.

in terms of the effort made to get votes or the return on that effort in seats obtained.³⁸ The number of seats is the only qualification for recognition as an official party. Previously, the Law Reform Commission rejected an all-encompassing definition for what should constitute a "recognized political party". The Commission stated that the number of candidates or votes obtained should not be a qualification for recognition as a political party because this:

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.³⁹

Despite the reforms, there were no subsidies for candidates until 1986. At present, public funding of political parties and candidates is provided indirectly through income tax credits and directly through election reimbursements.

Currently, Manitoba's system reimburses qualifying candidates with 50 per cent of total election expenses within an upper limit. In order to qualify, the *Elections Finances Act* requires that candidates receive at least 10 per cent of the valid votes cast in their respective electoral divisions. This threshold for receiving the reimbursement is lower than the 15 per cent requirement under the federal system. In Manitoba, the parties receive the lesser of 50 per cent of election expenses permitted or 50 per cent of actual election expenses. The reimbursement is based on party spending limits for each name on the revised list in the electoral division where the party had fielded a candidate.⁴⁰

³⁸ The Law Reform Commission. *Report On Political Financing and Election Expenses*. page 14.

³⁹ Ibid.

⁴⁰ Peter P. Constantinou. "Public Funding of Political Parties, Candidates and Elections in Canada." *Issues In Party and Election Finance In Canada*. Royal Commission on Electoral Reform and Party Financing. Volume 5. Toronto: Dundurn Press, 1991. page 245.

Another method of public funding available is political contribution tax incentives that take the form of tax deductions. In Manitoba, the formula for political contribution tax credit provisions is the same as that at the federal level. When the Pawley government first introduced reimbursements to the electoral system, it was a subject of great contention. Sterling Lyon, leader of the Conservative Opposition party, denounced it as a blatant attempt by the NDP to provide public subsidies to "every left-wing kook group in the province".⁴¹ Furthermore, the Conservatives argued that the ability of a political party to raise funds reflected political support for that party. The Progressive Party⁴² also argued that allowing reimbursements to candidates and parties interfered with its members' fundamental freedoms by forcing them, as taxpayers, to subsidize an opinion or political party they did not support. The party members took their claim to court; however, the judge dismissed their application saying the sections being challenged did not contravene rights guaranteed by the Charter.⁴³

There was yet another court challenge in reference to the reimbursement of election funds. The case *Re Mackay et al. and the Government of Manitoba (1986)*, was argued on the grounds that the partial reimbursements of expenses granted to candidates and political parties constituted a violation of both freedoms of religion and expression, guaranteed by section 2 of the *Canadian Charter of Rights and Freedoms*, in that the citizen's tax money was being used to finance candidates and parties to which he was

⁴¹ Murray McNeil. "Lyon Scorns Public Aid In Elections." *Winnipeg Free Press*. June 7, 1983. page 1.

⁴² The Progressive Party of Canada emerged as a result of western regional discontent and alienation. In the 1921 federal election, the Progressive Party won 64 seats, including 37 of the 39 prairie seats, 24 seats in Ontario, 3 in British Columbia, and 1 in New Brunswick. Provincial wings of the party were formed; however, only the Manitoba Progressive movement outlasted the national movement. Although, many Manitobans who supported the Progressive movement made their way back to the Liberal party in 1926.

⁴³ Paula Martin. "Election Finances Act Challenge Denied." *Winnipeg Free Press*. April 18, 1985. page 1.

opposed.⁴⁴ Again, the Court of Queen's Bench justice held that the legislation did not infringe on freedom of expression. The Manitoba Court of Appeal came to the same ruling. The written judgment stated that statutory funding of candidates does not infringe on taxpayers' right to freedom of expression because:

The Act does not prohibit a taxpayer or anyone else from holding or expressing any position. Rather, the Act seems to foster and encourage the dissemination and expression of a wide range of views and positions. In this way it enhances public knowledge of diverse views and facilitates public discussion of those views.⁴⁵

This brief history of the public law respecting election expense reveals that changes have occurred both through statutory revisions and court rulings.

Overall, the development of electoral laws in Manitoba has shown a steady progression toward accountability. Interest in the topic has been rather sporadic, with scandal often being the catalyst for reform. Also driving electoral reform in Manitoba has been partisanship. First, the Liberal government remodeled the *Elections Act* of 1886 following the scandal surrounding the construction of the Legislative building. Second, after "polarized politics" took hold in Manitoba after 1969, the government embarked on a course toward electoral reform by introducing a new *Elections Act* and later the *Elections Finances Act*. Reforms have often been launched with much positive rhetoric about the need to protect and strengthen the democratic process. Over time, Manitoba's election laws have come to rest on four principles: (i) fairness in providing a level playing field by setting limits on the amount of money candidates and parties could spend; (ii) equality of access by providing public funding to candidates and parties to run their campaigns; (iii) openness through public disclosure of campaign contributions and expenses; (iv) public participation through the tax credit system to encourage

⁴⁴ Pierre F. Cote. *Etudes Electorales: Third-Party Advertising During An Electoral Period And Contributions Made to Political Parties and Candidates Regarding The Charter*. Second Edition. August 1994. page 10.

⁴⁵ Ibid. page 10.

individuals to get involved in the political process. This thesis will proceed to analyze how these principles are reflected in the public law provisions and practices respecting political advertising.

CHAPTER 3

TRENDS IN ELECTION SPENDING

Former Speaker of the US House of Representatives Thomas "Tip" O'Neill once said "there are four parts to any campaign. The candidate, the issues of the candidate, the campaign organization, and the money. Without money, you can forget the other three".⁴⁶ Joseph Israel Tarte, Laurier's chief organizer and fund-raiser in Quebec 1894-1896, and who also organized election campaigns in Quebec and New Brunswick until 1902, wisely observed that "prayers do not win elections". Jesse Unruh, former speaker of the California legislature used a different metaphor when he observed that "money is the mother's milk of politics". More recently, Norman Atkins, former chairman of the Progressive Conservative's 1984 and 1988 election campaigns, noted "you can't run ... campaigns on [the proceeds from] selling fudge".⁴⁷ The common theme here is that money is the fuel of election campaigns.

Although campaign spending is more tightly regulated in Canada than in the U.S. there is a debate as to whether money is a determinant of election outcomes. The Manitoba *Elections Finances Act* assumes that it is. The central premise of the Act is the belief that money has the potential to distort "the practice of representative democracy" at election time.⁴⁸ Empirical evidence suggests, however, that money alone does not

⁴⁶ Munroe Eagles. "The Political Ecology Of Campaign Contributions In Canada: A Constituency-Level Analysis". *Canadian Journal of Political Science*. September 1992. Volume XXV. Number 3. page 535.

⁴⁷ Stanbury. *Money In Politics: Financing Federal Parties and Candidates In Canada*. page 5.

⁴⁸ Eagles. "The Political Ecology Of Campaign Contributions In Canada: A Constituency Level Analysis". page 535.

determine outcomes; success in elections depends on the interaction of numerous long-term and short-term forces.

Rising advertising costs are often blamed for the increasing costs of elections. For this reason most statutes controlling election expenses have a separate spending limit for advertising expenses as a way to control overall election expenses.⁴⁹ The Manitoba *Elections Finances Act* sets the following spending limits on advertising:

51(1) the total advertising expenses incurred by or on behalf of a registered political party, including advertising expenses incurred by any person or organization acting on behalf of the registered political party with the knowledge and consent of the registered political party, shall not exceed

(a) in the case of a registered political party in relation to a general election, the amount determined by multiplying \$0.40 by the number of names on the revised voters' lists for all electoral divisions in which the registered political party endorses candidates; and

(b) in the case of a registered political party in relation to a by-election in an electoral division, the amount determined by multiplying \$0.75 by the number of names on the revised voters lists for the electoral division.

51(2) the total advertising expenses incurred by or on behalf of a candidate, including advertising expenses incurred by any person with the knowledge and consent of the candidate, shall not exceed the amount determined by multiplying \$0.25 by the number of names on the revised voters' lists for the electoral division in which the person is a candidate.

With respect to overall election expenses, sections 50(1) and 50(2) of the Act set the following spending limits:

50(1) the total election expenses incurred by or on behalf of a registered political party, including election expenses incurred by any person or organization acting

⁴⁹ Section 51(3) of the *Elections Finances Act* states: the total advertising expenses permitted under this section are included in, and are not in addition to, the total election expenses permitted under section 50.

on behalf of the registered political party with the knowledge and consent of the registered political party, shall not exceed

(a) in the case of a registered political party in relation to a general election, the amount determined by multiplying \$0.80 by the number of names on the revised voters' lists for all the electoral divisions in which the registered political party endorses candidates; and

(b) in the case of a registered political party in relation to a by-election in an electoral division, the amount determined by multiplying \$1.50 by the number of names on the revised voters' lists for the electoral division.

50(2) the total election expenses incurred by or on behalf of a candidate, including election expenses incurred by any person or organization acting on behalf of the candidate, shall not exceed

(a) in the case of a candidate in an electoral division having an area of less than 30,000 square miles, the amount determined by multiplying \$1.25 by the number of names on the revised voters' lists for the electoral division; and

(b) in the case of a candidate in an electoral division having an area of 30,000 square miles or more, the amount determined by multiplying \$2.00 by the number of names on the revised voters' lists for the electoral division.

Section 52 of the Act provides a formula to adjust these levels based on price increases and inflation. The formula uses absolute dollar amounts per-voter and then adjusts these absolute amounts by changes in the Winnipeg Consumer Price Index. While the spending limits are easily understood, there has been some criticism of the definition of "election expenses." According to the Chief Electoral Officer, Richard Balasko, the scope of the definition ought to be expanded and it should also be more inclusive.⁵⁰ An election expense is defined in section 45(1) of the *Elections Finances Act*. Section 45(2) outlines what is included as an election expense. The sections state:

45(1) For purposes of this Act, "election expenses" means

- (a) money spent or liabilities incurred; and
- (b) the value of donations in kind accepted;

⁵⁰ Richard Balasko. Chief Electoral Officer of Manitoba. Interview: January 16, 1996.

prior to or during an election period in respect of goods used or services provided during the election period for the purpose of supporting or opposing a candidate or registered political party in the election.

Items included in election expenses.

45(2) Without restricting the generality of the definition in subsection (1), for the purposes of this Act "election expenses" includes money spent or liabilities incurred, and the value of donations in kind accepted, prior to or during an election period in respect of

- (a) advertising;
 - (b) the services of any person acting as official agent, organizer, manager, office worker, or other campaign worker;
 - (c) the services of any person to run as a candidate, except by way of paid leave of absence under a collective agreement or other employment agreement;
 - (d) transportation, accommodation, and food and refreshment for candidates, campaign workers, and the leaders for registered political parties;
 - (e) rental or purchase of office space, including office equipment and supplies and costs of utilities such as telephones, hydro service, and heating;
 - (f) hall rental and other meeting space;
 - (g) posters, leaflets, pamphlets, letters, cards, and other promotional material;
 - (h) signs and banners;
 - (i) lumber and other structural supports for signs and banners; and
 - (j) mailing or other distribution of election materials;
- used or provided during an election period for the purpose of supporting or opposing a candidate or registered political party in the election.

TRENDS IN ELECTION SPENDING: 1981 - 1995

A significant portion of election expenditures is spent on advertising, as is evident in Tables 1 and 3. Often, this is criticized as promoting party and leadership images and not on promoting substantive issues or policy platforms. Nevertheless, a separate advertising limit exists compared to overall election expenses. Questions have been raised regarding the relevancy of advertising limits as spelled out in section 51, given that there are overall limits for campaign expenditures. The view has been expressed that with a total election expense limit in effect the candidate or political party should be free

to choose how money is spent within the overall limit and not be further limited with respect to advertising expenses.

The arguments in favor of removing the separate limit imposed on political advertising are that a single limit would allow campaigns maximum flexibility in the delivery of their message. There is an argument that the current limit on advertising interferes with the right of parties and candidates to spend "their money" as they desire. If a political party or candidate wants to spend all of their resources on advertising alone, why should they be prevented from doing so? Another argument for removing the advertising limit is that it inhibits the cost of communicating with voters. By cost, it is meant that parties and candidates are limited in their capacity to reach and inform voters. Finally, the current advertising limit hinders political parties from responding to third party advertising, which is unregulated.

There are also several arguments for the retention of the current advertising limit. First, as an example, if two candidates had resources of \$15,000 and \$3500 respectively, the present law would still equalize the use of media advertising at \$3500. Should there be only one overall limit, one candidate might spend a much greater amount on media advertising.⁵¹ A second argument for retaining a separate spending limit for advertising is that it would keep election expenses down. Before spending limits were introduced, television advertising was the main factor driving election spending increases. A third argument for retention of advertising limits is that political advertising is already the main form of communication with voters. Removal of the advertising limit could lead to even more media-dominated elections. Subsequently, there would be less emphasis on individual candidates and on face-to-face communication with voters. Finally, removal of the separate limit presumes that society is indifferent as to how parties spend their

⁵¹ Manitoba. Elections Manitoba. *Annual Report On The Elections Finances Act*. 1990. page 40.

election funds, a portion of which comes for the public treasury in the form of tax credits and reimbursements.

On balance, one expenditure limit is more desirable than having a separate spending limit for advertising. In Manitoba, it is the political parties who do all of the television advertising. Each party's spending is fairly equal (see Table 2). Therefore, it is wrong to assume that one overall limit would allow one party to spend more on advertising than another, thereby making the electoral contest somehow unequal. If anything, having one limit would allow the parties maximum flexibility to get their message out and they would not feel compelled to advertise before the election period when the effectiveness of political advertising is lost. The Liberal party advertising blitz prior to the 1995 election proved to be a complete waste of resources. Thus the political parties should have the opportunity to do all of their advertising during the election period in order get their message to the voters. In addition, the hypothesis that removing the advertising limit would lead to more media-dominated interaction with voters is debatable. There is no proof that by having advertising limits, that this would somehow encourage the continuation of face-to-face interaction with voters. With advances in technology and the transfer of new marketing techniques into the electoral arena, it is safe to say that media-dominated interaction with voters will be the norm regardless of any spending limits imposed on advertising. The trend is toward the use of capital-intensive technologies and away from labour-intensive methods of reaching voters.

Filip Palda argues that if campaign spending is a useful activity, then the *amount spent on a campaign* is a misleading measure of cost. The *cost of informing a given number of voters* is more meaningful because it reflects how productive campaign spending is.⁵² According to Palda, while advertising costs more today, it reaches a

⁵² Filip Palda. *Election Finance Regulation In Canada: A Critical Review*. Vancouver: The Fraser Institute, 1991. page 15 and 16.

greater number of people. Therefore, the price of informing voters may in fact be lower than in the past.⁵³ However, Palda goes on to say that while the rules and regulations that surround spending limits may indeed reduce what is spent on a campaign, they may also interfere with the ability of candidates to communicate with voters. Palda holds that regulating the amount spent on advertising means "that a dollar's worth of advertising influences fewer people than it might were it unregulated".⁵⁴ Furthermore, he argues that advertising is also of great value to voters because it lowers their costs of collecting information about the issues and the candidates. Thus, low expenditures that result from spending limits may be bad if voters are deprived of information. Palda then maintains that spending limits may actually increase the costs of transmitting information between candidates and voters because of complicated administration. The main point he is proposing is that regulated spending may be less of a value to the electorate because spending regulation often makes it hard for candidates to get their messages across efficiently.⁵⁵

Essentially, there should be one overall limit for election expenses and no separate limit for advertising. In Manitoba, as in other jurisdictions, there is a trend toward capital-intensive technologies. Political parties do spend a great deal of their money on advertising. This will continue to be the case; thus in order to give the parties the flexibility to get their message out - they should be given the flexibility to focus their spending as they choose. The following figures show how much the three main political parties have spent on advertising since the *Elections Finances Act* has come into effect:

⁵³ Ibid. page 16

⁵⁴ Ibid.

⁵⁵ Ibid. page 19 and 20.

ADVERTISING EXPENSES FOR MANITOBA GENERAL ELECTIONS⁵⁶

TABLE 1

	1981	1986	1988	1990	1995
LIBERAL	50,972.00	91,713.56	203,016.53	164,210.00	379,905.00
NDP	259,792.00	325,044.00	366,490.00	333,263.00	391,755.00
PC	240,085.00	328,635.14	301,964.00	341,242.00	471,714.00

In Manitoba, the amount spent on advertising has shown a pattern of slight increase (with the exception of 1990). However, these increases are not significant. They do show that regulations have managed to keep spending from accelerating with each election. Thus they have served their stated purpose. However, it should not be assumed, as Palda does, that a laissez-faire market in which candidates spend as they like is the best model in an election. Political parties and candidates should still have an overall limit on election expenses. They should simply have the flexibility to spend money how they want in order to get their message out, whether it is on a glossy television advertisement or an informative pamphlet.

Palda's argument is based on the premise that money is an effective determinant of the election outcome. However, money alone does not determine electoral success. Rather, it is how that money is spent. In order for political advertising to be effective, it must target its message and be persuasive. This is where many of the techniques of political marketing become useful. Polling and the use of focus groups, for example, allow political parties and candidates to determine where and how to focus spending in advertising. Therefore, it does not matter how much money is spent, rather that it is spent

⁵⁶ Figures provided by Elections Manitoba. Compilation from annual reports and political party returns. Verified with Scott Gordon, Chief Financial Officer of Elections Manitoba. Actual figures, not in constant dollars.

wisely. What is important is that political parties and candidates have the flexibility to determine where best to focus their resources.

Overall, individual candidates in Manitoba do not spend much money on television advertising. It takes a great deal of exposure to make an impact in a major media market, like Winnipeg, and the costs are prohibitive for an individual candidate. Therefore, candidates rely mainly on the provincial advertising campaigns of their parties which emphasize central campaign themes and leadership. Individual candidates often make limited use of local newspapers and electronic media buys, but this spending pales in comparison to province-wide spending. During the 1995 election, the NDP spent \$390,756 on television advertising, the Conservative party spent \$444,244, and the Liberals spent \$305,483 during the election period. Television advertising consumed almost all of the advertising budgets of the three political parties.

The cost of advertising in Manitoba increased between 1981 and 1995. The price of a 30 second spot on television is dependent on several factors. Stations price their advertising according to supply and demand. First, the price of a 30 second spot depends on the season. The Fall season, which runs September 15 to December 5 is generally the highest demand time and therefore purchasing advertising at this time is more expensive than at any other time throughout the year. The Winter season runs from December 6 to February 25 and the ad prices are approximately 20% to 25% less expensive than Fall advertising spots. Prices jump back up in the Spring between February 26 and June 3. Summer advertising prices are the lowest. Prices also vary with the time of day, whether prime time, early fringe or late fringe, and of course by program. The television station sells 12 minutes per hour of advertising. A 30 second spot for the early local news on CBC in Winnipeg is \$395. A spot on the CBC national news, advertised at the local level is \$350. To show that same ad during the morning news is \$25. In the spring, a spot to be shown locally to the Winnipeg market during Hockey Night in Canada is \$600. To purchase a spot during a popular program, such as Seinfeld and Friends, on CKND could

run as high as \$2000 for 30 seconds of air.⁵⁷ The popular programs will always be more expensive in purchasing advertising time because the audience share is larger. According to Ken Mykichuk of the CBC, most political parties like to capture the wider audience; therefore, they buy a mix between prime time and fringe time. The formula is usually 60% prime time and 40% fringe time.⁵⁸ Political parties pay the same rates as all other advertisers.

Even if candidates spend little or no money on television, most have modest radio budgets. Radio is a good medium for political campaigns because messages can be much more targeted to specific kinds of listeners. Radio expenditures can be particularly important in rural Manitoba. People depend on the radio for timely information on crop prices, current events and local news. Rural radio time is also inexpensive and it offers a captive audience that spends a lot of time travelling by car from community to community.

Generally, the value of newspaper advertising varies from campaign to campaign. Full page advertisements in the Winnipeg Free Press cost \$11,287.50 per day during the week and \$14,267.40 on Saturdays. Rural weeklies and dailies in smaller communities can be a vital way of building name recognition and advancing policy positions. These newspapers are more likely to be read because of their local content. In fact, some voters will search the paper during an election to see if their favorite candidate has an ad and will want to know why if it is not there.⁵⁹ During the 1995 election, the NDP did little advertising in newspapers. The party spent only \$85 throughout the election period on advertising expenses in newspapers, magazines, and other publications. The Liberal

⁵⁷ Ken Hanson. General Sales Manager of the Television Advertising Group. Telephone Interview: July 9, 1996.

⁵⁸ Ken Mykichuk. Account Executive. CBC Winnipeg. Telephone Interview: July 9, 1996.

⁵⁹ Tom Brook. *Getting Elected In Canada*. Stratford, Ontario: The Mercury Press, 1991. page 138.

party, on the other hand, spent \$71,828 to advertise in newspapers. The Conservatives spent \$26,352. Newspaper advertisements can be used to detail policy positions and to document comparisons with opponents. Audiences can also be more easily targeted, as in the rural areas.⁶⁰ Specialized audiences can be more effectively targeted through advertisements in ethnic newspapers, religious newspapers, professional magazines, and special interest publications.

Printing is often a major part of a candidate's budget. On average, most campaigns produce approximately three leaflets during the election period. These pamphlets serve a variety of purposes: (i) they introduce the candidate to the electorate and extol his or her virtues and abilities; (ii) they tie the candidate to the larger issues and themes of the campaign; (iii) they tie the candidate to the local issues of the campaign; (iv) and they attack opponents. During the 1995 election the central party organizations spent the following amounts on posters, leaflets, letters, cards and other promotional materials: the NDP spent \$42,088, the Liberals \$149,957, while the PCs spent \$42,585.

Generally, the amount a candidate spends on paid advertising varies depending on the costs and on the effectiveness of the particular media in reaching target voters. A candidate in Winnipeg will no doubt be seen and heard by a number of his or her constituents, but will also be spending money on being seen and heard by many thousands of people who cannot vote for that candidate, because they do not live in that particular constituency. This can be a waste of resources because the advertising does not aid in targeting the message. For this reason, much of the advertising is done by the political party. This way the campaign seeks to be a highly synchronized operation that delivers a coherent and consistent message.

⁶⁰ Craig Varoga. "Doing Newspaper Ads: Predicting Turnout." *Campaigns and Elections*. Volume 16, number 8. August 1995.

In terms of other election expenses, the following tables reveal spending by the three main political parties in Manitoba since the Elections Finances Act came into effect:

TOTAL ELECTION EXPENSES (INCLUDING ADVERTISING)

TABLE 2

	1981	1986	1988	1990	1995
LIBERAL	n/a	168,583.17	382,945.62	248,453.00	815,978.00
NDP	n/a	670,771.00	742,097.00	757,691.00	942,796.00
PC	n/a	669,678.70	694,294.00	811,678.00	905,269.00

TOTAL ADVERTISING EXPENSES ALONE

TABLE 3

	1981	1986	1988	1990	1995
LIBERAL	50,972.00	91,713.56	203,016.53	164,210.00	379,905.00
NDP	259,792.00	325,044.00	366,490.00	333,263.00	391,755.00
PC	240,085.00	328,635.14	301,964.00	341,242.00	471,714.00

OTHER ELECTION EXPENSES (NOT INCLUDING ADVERTISING)

TABLE 4

	1981	1986	1988	1990	1995
LIBERAL	n/a	76,869.61	179,929.09	84,243.00	436,073.00
NDP	n/a	345,727.00	375,607.00	424,428.00	551,041.00
PC	n/a	310,543.56	392,330.00	470,436.00	433,555.00

TABLE 5

SPENDING LIMITS	1981	1986	1988	1990	1995
ADVERTISING	267,862.00 ⁶¹	336,990.15	371,519.93	407,038.51	476,868.00
TOTAL EXPENSES ⁶²	n/a	673,980.30	750,049.67	814,077.02	953,735.00

There has been an average increase of \$385,003 in overall election expenditures between 1986 and 1995. The composition of the three main parties "election expenses" is described in Table 2. The Manitoba Liberal party has had the greatest increase in the level of "election expenses". Given the practical problems with controlling and coordinating party spending, it is a remarkable achievement to be able to get so close to the spending limit and not exceed it. According to W.T. Stanbury, budgeting for anything over 95 per cent of the limit is very risky. The Progressive Conservatives and NDP have been fairly close to the spending limits. The Liberal party saw their greatest increase in spending in 1995. Advertising costs have consumed a large portion of each party's total outlay. Only the Liberal party spent more on advertising than other election expenses in the 1986, 1988 and 1990 elections.

Many other election-related expenses are excluded from a party's expenses. These include: fundraising costs, the costs of developing party policies and election organizations, the costs of training candidates or elections organizers, and all the party's internal costs. In total these expenses could amount to hundreds of thousands of dollars.

⁶¹ This expenditure limit is for the the NDP and PC parties. They were the only two parties to endorse a full slate of candidates in the 1981 Manitoba provincial election. The Liberal party of Manitoba endorsed 39 candidates and its spending limit on advertising was \$471,799.

⁶² Includes advertising.

Overall, most of the money spent under "other election expenses" as provided in Table 3 is for "fees for services." During the 1995 election campaign, the NDP spent \$342,579 on professional services, while the Liberals spent \$86,949 and the Conservative party spent \$212,995. Most of this is for polling and consulting.

In Manitoba, even without spending limits, it would be difficult for a candidate for provincial office to spend more than \$35,000. Although more could be spent, there comes a point when there are diminishing returns for each dollar spent. While the campaign can always spend more on buttons and posters, there is only so much that can be done on the most important job: getting the message out. For this reason, experienced campaigners say that the first dollar spent on a campaign will have as much impact as the last five.⁶³

As one political consultant has noted, how much money you have to spend is not as important as how and when you spend it. It is comforting to have all the money needed to conduct a campaign, but it is not always the candidate with the most access to ready cash who wins. If too much is allocated to offices, travel, and equipment, for example, there will not be enough money to buy advertising and leaflets, which is what gets the message out. In addition, if money for spreading the word is not available in the first days of the campaign, when people are making up their minds, then no amount spent in the last days can make up for the lost ground.

Money can be spent carelessly during an election campaign. But in most campaigns, where each of the candidates has an equal base and similar amounts of money, it is the one who manages their money well that has the best chance of winning - the one who gets the best bang for the buck.

⁶³ Tom Brook. *Getting Elected In Canada*. page 136.

REIMBURSEMENTS

Besides setting expenditure limits, the *Elections Finances Act* also provides a system of reimbursements to candidates and political parties which came into effect in 1986. Table 4 below provides data on reimbursements to political parties in Manitoba. The Liberals, New Democrats, and Progressive Conservatives are the only registered political parties that have ever qualified for reimbursements in Manitoba. At present, public funding of parties and candidates is provided indirectly through income tax credits and directly through election reimbursements. Currently, Manitoba's system reimburses candidates who qualify for 50 per cent of total election expenses. In order to qualify, the *Election Finances Act* requires that candidates receive at least 10 per cent of the valid votes cast in their respective electoral divisions. This threshold for receiving the reimbursement is lower than the 15 per cent requirement under the federal system. In Manitoba, the parties receive the lesser of 50 per cent of election expenses permitted or 50 per cent of actual election expenses. The reimbursements are based on party spending limits of \$0.80 for each name on the revised voter list in the electoral division where the party had fielded a candidate.⁶⁴ Section 72(3) of the *Elections Finances Act* also recognizes the added financial burden of reporting requirements and provides reimbursements for auditors' expenses up to \$250.

⁶⁴ Peter P. Constantinou. "Public Funding Of Parties, Candidates and Elections In Canada". *Issues In Party and Election Finance In Canada*. F. Leslie Seidle. (ed). Royal Commission On Electoral Reform and Party Financing. Volume 5. Toronto: Dundurn Press, 1991. page 245.

TABLE 5

TOTAL REIMBURSEMENTS

	1981	1986	1988	1990	1995
LIBERAL	n/a	84,291.59	189,672.81	122,111.50	407,295.92
NDP	n/a	335,385.00	359,163.50	378,637.50	470,941.00
PC	n/a	319,589.35	335,014.00	399,677.00	449,775.50

Manitoba provides public funding to its political parties for three reasons. First, it helps ensure fairness in electoral competition by encouraging a more level playing field and thereby lessening the obstacles to participation. In its 1977 working paper, the Manitoba Law Reform Commission suggested: "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".⁶⁵ Proponents of public funding schemes argue that it is the proper role of government to safeguard the electoral arena as a place in which all citizens, rich and poor, can participate without facing major obstacles.

Second, public funding of parties is based on the claim that it is important for government to work to reduce the potential for undue influence, thereby ensuring greater public confidence in the integrity of electoral politics. Scandal and other instances of "unethical" or illegal activity brought to the attention of the public have given many observers of the political process reason to become cynical.

Third, public funding initiatives have been enacted in the hope that broad and meaningful dialogue will be encouraged and nurtured. On the subject of annual subsidies, Claude Ryan has stated: "The subsidy provides a floor beyond which you can

⁶⁵ Ibid. page 236. and Manitoba Law Reform Commission. "Working Paper On Political Financing and Election Expenses". Winnipeg. 1977. page 33.

add donations from private sources. The parties are making a contribution to the democratic process and as such they should be entitled to get some form of recognition for the work they're doing".⁶⁶ From this point of view, government should work to ensure the political arena stimulates and strengthens individuals, parties and ideologies that might not otherwise be given an opportunity to participate. If "the clash of ideas is the sound of freedom", then it is the role of government to ensure that the arena is open and accessible, and that new ideas and political contenders can join the more established players.⁶⁷

CONCLUSIONS

Overall, the trends in election spending reveal that large portions of each political party's budget are spent on television advertising. By eliminating the separate spending limit on advertising, political parties and candidates would be given the flexibility to decide where to channel their election resources in order to effectively get their message out. This is particularly important as new technologies are being developed and adopted in political marketing. Campaigns are also becoming capital-intensive as opposed to labour-intensive in reaching voters. In conjunction with this trend, campaigns have become more centralized for two reasons. First, the introduction of the *Elections Finances Act* has meant that political parties have become more centralized in how they run their campaigns because of the various controls within the Act, such as spending limits and disclosure laws. Second, the introduction of new political marketing principles has allowed greater central control. This way, the campaign is a highly synchronized

⁶⁶ Constantinou. page 237. and Ontario Commission On Electoral Finances. *Canadian Electoral Reform: Dialogue On Issues and Effects*. Toronto: The Commission, 1982. page 231.

⁶⁷ Constantinou. "Public Funding Of Parties, Candidates and Elections In Canada." page 237.

operation that delivers a coherent and consistent message. The following chapter examines the political marketing tools used by Manitoba's political parties today.

CHAPTER 4

POLITICAL ADVERTISING AND THE IMPACT OF NEW TECHNOLOGIES

The election campaign laws, the development of television as a political medium, and the rapid advances in computer capabilities have substantially reduced the more traditional modes of electioneering. Advertising and marketing specialists have also replaced political party bosses. These new "image makers" have brought modern campaign technology to Manitoba elections. This technology embraces the electronic innovations in electioneering, as witnessed by new and sophisticated methods of polling, advertising, and direct mail. It also encompasses the development of third party advertising (subject of chapter 5).

Today's elections are increasingly being compared to marketing campaigns in which the political party or candidate put themselves on the voters' market and use modern marketing techniques, particularly marketing research and commercial advertising, to maximize voter "purchase".⁶⁸ The marketing analogy is more than coincidental. It is argued that the very essence of a candidate's interface with the voters is a marketing one. This does not just describe today's elections, but the ones of the past as well. Candidates who want to win elections cannot help marketing themselves. The only question is how effectively and how responsibly they do this.

Interest in the marketing aspects of elections has been stimulated to a large extent by the spectacular growth in political advertising, polling, computer analysis of voting patterns, and the use of focus groups to plan campaign strategy and advertising. While

⁶⁸ Philip Kotler. "Overview Of Political Candidate Marketing." *Political Marketing: Readings And Annotated Bibliography*. Chicago: American Marketing Association, 1985. page 1.

the technological developments of political marketing are new, election campaigns of the past have always had a marketing character too.⁶⁹ Prior to the new methodology, candidates sought office through handshaking, baby kissing, teas, and speechmaking. They still use all of these methods. The "new methodology" is not the introduction of marketing methods into politics but rather an increased sophistication and acceleration of their use.

The modern campaign first emerged in Manitoba with the election of Duff Roblin as Conservative leader. Roblin was a leader with energy and was open to new ideas. He offered expansive visions for Manitoba, including the upgrading of the province's infrastructure and government services by public borrowing. He also envisioned the future of modern campaigning. With his Conservative government came the advertising agencies, campaign strategists and pollsters. In fact, Dalton Camp helped the party in the 1958 election. From that point on the notion of politics as mere administration faded in Manitoba.⁷⁰ With the introduction of the *Elections Finances Act*, the modern campaign further developed in Manitoba as political parties sought to get their message out to as many voters as possible within the confines of the spending limits. Election campaigns have also become more centralized. This concentration is due to the election laws and also to the new technologies used by political parties to get their message out, resulting in more capital-intensive versus labour-intensive politics. Money - through the utilization of modern technology and election laws - has acquired a special significance.

With respect to campaigns becoming more centralized, Barb Bigger, a Conservative communications strategist, says that this has happened for two reasons. The first is the potential for economies of scale. It is simply less expensive for both political parties and candidates to centralize certain spending on items like television time and

⁶⁹ Ibid.

⁷⁰ Simpson. *Spoils Of Power: The Politics Of Patronage*. page 254.

printing. Centralization allows the provincial party to maintain tighter control, in part to ensure compliance with election finance laws. For example, the NDP prepare all tax receipts for the constituencies at the central office. However, Biggar holds that the main reason campaigns have become more centralized is for "message control." Ideally, the campaign should be a highly synchronized operation that delivers a coherent and consistent message through many different avenues and voices.⁷¹ When a political party has a thematic campaign, there are a number of advantages. First, in understanding the rationale for wanting to form the government, political parties are able to **define the test** by which voters decide whom to vote for. Second, political parties are better able to establish a clear contrast between themselves and other political parties. They **define the choice** that they are asking voters to make. Third, all campaigns are a series of unplanned reactions to unanticipated events and the integrating theme provides a **context in which to respond** in a manner consistent with the overall campaign focus. Fourth, a thematic campaign can be effective in communicating messages to different groups of voters, because the messages that each candidate transmits is always within the context of the theme.⁷²

Campaigns have also become more centralized because of the development in election campaign technology. Polls, 30-second advertisements, direct mail, and demographic targeting have transformed electioneering from being labour-intensive to capital-intensive. Campaigns are being run from party central under the direct navigation of campaign specialists and advisors. This is not to say that volunteers are no longer needed. In fact, all candidates continue to canvass door-to-door. According to NDP party organizer, Wendy Gerecke, each NDP constituency "runs their own campaign ... they

⁷¹ David Taras. "Political Parties As Media Organizations: The Art Of Getting Elected." *Canadian Parties In Transition*. Second Edition. Toronto: Nelson Canada, 1996. page 434.

⁷² *The Best Of Campaigns and Elections: On Campaign Strategy And Message*. July 1991. page 47 and 48.

have a team of people in their constituency". But she also admits that "the center is bigger than it used to be using all of these technologies."⁷³

Campaign consultants have certainly contributed to the growth of modern campaign technology. The growth and the accompanying complexities of campaign technology have contributed to the increasing recognition and influence of the campaign consultant. Political parties recognize the need for expert advice, not just at the beginning of the campaign for the initial planning, but throughout the campaign. During the 1995 election period alone, the Conservative party spent \$28,277.39 for "strategy development", "consulting strategy", and "organizers."⁷⁴ Many of the "campaign management" experts hired by parties have come from commercial advertising and marketing professions. Experts in marketing and advertising were initially hired because party politicians lacked the skills to run a commercialized campaign. Subsequently, they have become the most important players in an election campaign aside from the politicians themselves.

According to Larry Sabato, most consultants have been involved in politics for many years. Thus they know better than most elected officials that in politics, style is closely intertwined with substance: "fame and fortune - not to mention electoral success - come to those who can adjust the mirrors in just the right way and produce sufficient quantities of blue smoke in the public arena."⁷⁵ This comment may contain some hyperbole, but in a media saturated age the services of public relations specialists have

⁷³ Wendy Gerecke. NDP Party Organizer. Interview. July 30, 1996.

⁷⁴ Progressive Conservative Party of Manitoba. Statement Of Income, Transfers And Expenses Of A Political Party For An Election Campaign Period. Submitted to the Chief Financial Officer of Elections Manitoba. For the Campaign Period March 21, 1995 to June 26, 1995.

⁷⁵ Larry J. Sabato. *The Rise of Political Consultants: New Ways Of Winning Elections*. New York: Basic Books, Inc., Publishers, 1981. page 4.

become crucial in crafting the images of leaders and political parties for presentation to the public, especially via television.

The essential activities of political competition today - polling, computerized fundraising, television advertising - all require expert advice. Both the NDP and Conservatives used the services of campaign consultants prior to the election and throughout the election period. However, according to Robert Drummond, the Liberals did not make use of campaign specialists. The provincial Liberals imported two individuals from their federal counterparts; however, they did not offer any helpful advice on the direction of the campaign.⁷⁶ While the party did a lot of advertising focusing on selling their leader, there was no coherent message coming out of the campaign. As Drummond admits: "what issue did Paul Edwards ever stand on?"⁷⁷

The primary elements of modern campaign technology are no longer new to the political process or its participants. Political parties know the necessary tools of the campaign. If they do not use the tools, they cannot hope to compete effectively. The Liberal party performance in the 1995 election is an example of this. While the party had the money to compete, they did not effectively utilize the campaign technology to get their message out.

Overall the process of political communication involves creation, testing and re-creation. This whole "creation" of political communication "marries" the field of marketing, which includes advertising and polling, to politics.⁷⁸ The following lists some of the new and old technology of political campaigns:

⁷⁶ Robert Drummond. Senior Legislative Assistant. Manitoba Liberal Party. Interview. July 31, 1996.

⁷⁷ Ibid.

⁷⁸ Arlene Shwetz. "Campaign By Commercial: A Study of Advertising Strategy As Reflected In Political Advertising Broadcast During The 1988 Canadian General Election." Simon Fraser University. Master of Arts Thesis. June 1990.

New	Computers Satellites Cable Television Videocassette Recorders Direct Broadcast Satellite Multipoint Distribution Service Satellite Master Antennae Television Subscription Television Low-power Television VHF Drop-in Television Videotex Lasers Fiber Optics
Old	Broadcast Television Radio Newspapers Magazines Telephone Telegraph
Non-News Media	Direct Mail Electronic Mail Polling Videoconferencing Computer Conferencing Teleconferencing Use of the above technologies (cable, satellites, broadcast television, etc) for political purposes. ⁷⁹

In Manitoba, political parties have embraced many of these technologies. However, the pace of election technology has been slower than in the United States. Political parties face a number of difficult trade-offs: if they spend money on telephone banks, this reduces the amount they can spend, for example, on television advertising, since the total amount of campaign spending is limited by law. As discussed in chapter 3, the election

⁷⁹ Thomas S. Axworthy. "Capital-Intensive Politics: Money, Media and Mores In The United States And Canada." *Issues In Party And Election Finance In Canada*. F. Leslie Seidle. (ed). Royal Commission On Electoral Reform And Party Financing. Volume 5. Toronto: Dundurn Press, 1991. page 224.

finance laws have been successful to the extent that they have prevented the cost of elections from skyrocketing. The high cost of modern election technology has meant that Manitoba's political parties have been slower in adopting them. However, the realization that campaign technology leads to increased efficiency and productivity has also meant that the parties are ready to embrace whatever they can afford. Some of these technologies will now be explored.

POLITICAL ADVERTISING

Political advertising provides political parties with the opportunity to disseminate their message to the electorate during the short period of an election campaign. The print media is where political advertising first emerged. Newspapers, pamphlets and posters were important campaign tools in the past. An 1891 federal election poster featured the slogan: "The Old Flag, The Old Policy, The Old Leader," and depicted Sir John A. Macdonald being carried forward holding the flag. This is one of the best known images from Canadian history.⁸⁰ The poster has become familiar not only because of its striking imagery, but also because it was probably the first time that full-colour election posters had been used in Canada. The 20th century, however, saw the rise of the electronic media, first radio and then television. Political parties saw this as an opportunity to address the electorate directly and immediately. The trends in election expenditures (see Table 1 and 2) reveal that increasing proportions of campaign resources were devoted to political advertising. While the media continue to provide extensive coverage of election campaigns, political advertising, as the political parties see it, is a way for them to bypass the news media, thereby maximizing central party control over the campaign message. The party has complete control over the message that is transmitted: the content of the

⁸⁰ Brian Murphy. "Poster Power In Elections." *The Archivist*. Volume 16, number 1. January-February 1989. page 6.

message, how many times a particular message will be transmitted, to what types of audiences and at what time of the day or night. It is this ability to communicate directly with the electorate that encouraged the use of commercial advertising techniques and tactics and necessitated the recruitment of advertising specialists.⁸¹

While there is a debate over the effectiveness of political advertising, Manitoba political parties nevertheless see advertising as an important election tool. The election period of five weeks creates a hectic campaign, which, in turn, encourages a belief in the need to do at least as much advertising as the other parties within the legal limits of the *Elections Act*. Television is the most common medium for political advertising for two reasons. First, it is a medium that is utilized more than any other by voters to gain information. Second, the message and image being portrayed to voters is controlled by the parties. Therefore, the content of the ads is centrally-controlled. Television in particular has the ability to present an "image". According to Gina Garramone, the purpose of television political advertising is to create a favorable candidate image in the eyes of the voters.⁸² In Manitoba, television advertising generally focuses on the leaders of the parties. Their image is defined as the sum of their personal and professional characteristics. With respect to content, name recognition is the goal of political advertising. Challengers facing incumbents need to become quickly known, and past accomplishments need to be stressed. As previously mentioned, this was the Liberals' advertising strategy in 1995. Paul Edwards, the party's new leader was unknown to Manitoba voters. In an attempt to raise his profile, the Liberals focused their advertising

⁸¹ Stephen Kline. Rovin Deodat. Arlene Schwetz. William Leiss. "Political Broadcast Advertising In Canada." *Election Broadcasting In Canada*. Frederick Fletcher. (ed). Royal Commission on Electoral Reform and Party Financing. Volume 21. Toronto: Dundurn Press, 1991. page 223.

⁸² Gina Garramone. "Candidate Image Formation." *New Perspectives On Political Advertising*. Lynda Lee Kaid. Dan Nimmo. Keith R. Sanders. (eds). Carbondale: Southern Illinois University Press, 1986. page 235.

strategy on their leader. The party tripled its advertising expenditures from the previous election (see table 1). According to Robert Drummond, the ads were a flop because they were poorly prepared and were considered to be poor quality.⁸³

Political parties believe that television advertisements are an effective way to communicate political messages. Otherwise they would not direct such a large portion of their campaign resources to advertising. However, there has been little study on the effectiveness of political advertising. Most of the research on campaign communication has focused on the shortcomings of television news, particularly its tendency to focus greater attention on the "horserace," and less on the substance of political issues. In Canada in particular, there has been very little research focused on the content of political advertising. Existing research is devoted to developing categories of ads, with the greatest body of research devoted to attempts to define the difference between "issue" and "image" advertisements. There has, however, been no attempt to determine the significance of political advertisements in defining the information that Canadian voters receive about campaign issues. Given the inherent complexities of most public policy issues, it is important to understand if, in fact, meaningful information can be conveyed in a 30-second ad. Regardless, political parties continue to use political advertising as their main medium of communication during an election campaign. As Wendy Gerecke and Barb Biggar have both stated, political parties use political advertising because "it works." The ads themselves are brief, simple, and well-illustrated. They are also presented in a context that is less cluttered and distracting than a news story. Also, since the advertisements are repeatedly shown, the chances are good that the message will be seen more than once by large segments of the audience and that repeated exposure to the ads will enforce, at the very least, name recognition of the candidates.

⁸³ Robert Andrew Drummond. "Liberal Party Organization And Manitoba's 1995 Provincial Election." University of Manitoba. Master of Arts Thesis. May 1995. page 91.

Overall, the techniques employed for developing advertising campaigns include:

Targeting. Thinking about the audiences in segments made the parties become more concerned with timing and audience composition in their media buying. [Polling, focus groups, computers, and direct mail facilitate the "tailoring of the message" to fit different segments of the audience].

Value basing. Advertising personnel familiar with the use of attitudinal and polling research contributed to developing new approaches to political mobilization based on the communication of party positions on policy within the basic predispositions of the audience's values or attitudes.

Impression management. What is often called "image politics" refers to the application of basic advertising and public relations principles to election campaigns. In particular, this involves:

Personalization. Credibility with an audience depends upon establishing a public persona that is liked, respected and trusted. Therefore, the presentation of a leader must be crafted in terms of predicted audience response.

Impact. Grab attention and emotionally engage the audience whenever possible. It is not what is said but how it makes the audience feel that counts.

Condensation. Audiences' limited attention and interest mean that simpler ideas and communication formats are most likely to be effective.⁸⁴

The reasons that political parties use television advertising more than any other medium can be summarized in terms of four key advantages:

Cost effectiveness Broadcasting's advantages as a delivery system are the [provincial wide] scope of the audience and the low cost per voter reached.

Dramatic presentation Television allows the benefit of visual images and emotional appeals that could increase impact and strengthen impressions.

Creative design The advertising agencies' effective use of modern commercial art and marketing techniques can be translated into the political arena.

⁸⁴ Stephen Kline. Rovin Deodat. Arlene Shwetz. William Leiss. "Political Broadcast Advertising In Canada." page 229.

Integrated management techniques An integrated approach to the campaign attempts to manage public relations, advertising and the press in terms of common objectives.⁸⁵

Considering these advantages, it is understandable why political parties allocate so much of their expenditures to political advertising, particularly television advertising. It is an important campaign investment. Opportunities for partisan political communication through political advertising have made access to the public through the media the primary activity of campaigning. The emphasis placed on the electronic media by the parties demands that limited resources be increasingly siphoned away from traditional campaign techniques, such as candidate rallies, and instead be redirected to political advertising.⁸⁶

Regardless of the advantages of televised political advertising, it has frequently been criticized for stressing idealized image characteristics rather than issues. Content analysis of political advertising, however, have shown that these commercials generally contain both image and issue material. Issue content involves either the mention of a current political issue or a discussion of the candidate's stand on an issue. "We will introduce balanced budget legislation" and "no tax increases" are examples of issue statements. Image content includes all statements regarding a candidate's personality traits or personal characteristics. Examples include: "he cares about the people" and "a hard-working and dedicated leader."⁸⁷ Critics of political advertising claim that image is usually stressed over issues. However, studies by American researchers have found that

⁸⁵ Stephen Kline. Rovin Deodat. Arlene Schwetz. William Leiss. "Political Broadcast Advertising In Canada." page 229.

⁸⁶ Ibid. page 230.

⁸⁷ Ronald J. Faber. M. Claire Storey. "Recall Of Information From Political Advertising." *Political Marketing: Readings and Annotated Bibliography*. Bruce I. Newman. Jagdish N. Sheth. (eds). Chicago: American Marketing Association, 1985. page 101.

the majority of political advertising contains at least some issue information.⁸⁸ Usually, there is an attempt to blend issue and image ads. However, in a laboratory experiment of recall from political advertising, subjects exposed to an image-oriented commercial recalled more information than those seeing an issue-oriented commercial.⁸⁹

According to Barb Biggar, the Conservative party's communications strategist and creative director, political ads do focus on substantive issues. However, television is able to "humanize policy issues." It allows the political parties to be creative in how they communicate their message. According to Biggar: "it is a creative way to be able to sell a policy." Furthermore, she adds that "advertising has allowed me to warm up Gary Filmon."⁹⁰ This blend of "issue" and "image" is common to all advertising done by political parties. The formula for the advertisements is to focus on the party leaders and have them do the "sales pitch."

In Manitoba, the election laws do not stipulate that broadcasters must provide free broadcast time on radio and television, as is the case during federal elections. In the 1995 provincial election only the CBC provided free air time to each of the main political parties. The parties must declare this on their statement of returns as a donation in kind, and list the CBC as a contributor. Furthermore, broadcasters are not required to make paid time available to the parties during prime time. Paid advertising time slots are chosen by the political party.⁹¹ According to Barb Biggar, the parties are usually given approximately five minutes of free time on the CBC during the election period. The party advertisements generally air three times: two ads in English and one in French. This is in

⁸⁸ Joslyn found that 77 per cent of the televised spots he analyzed contained some issue content. Similarly, Patterson and McClure reported that 70 per cent of television ads in the 1972 U.S. presidential race contained at least "substantial issue material".

⁸⁹ Faber and Storey. "Recall Of Information From Political Advertising." page 102.

⁹⁰ Barb Biggar. Communication Strategist and Creative Director. Progressive Conservative Party. Telephone Interview. August 1, 1996.

⁹¹ Canadian Radio-Television And Telecommunications Commission. Circular no. 398. September 14, 1993.

contrast to federal political parties. To further the goals of "fair and equitable" campaigns the *Canada Elections Act* requires each broadcaster to make available 6.5 hours of paid time. The Act sets out allocation rules based on several factors: percentage of seats in the House of Commons, percentage of popular vote, and number of candidates endorsed in the previous election. The Act also specifies that no party may be allocated more than half of the total time.

While political advertising allows the parties maximum control over the campaign message, it also allows the parties to decide at what time of day, and during which programs, they want their advertisements shown. Also, they can target the audience composition. For example, during the 1995 election, one of the Conservative party's ads showed Premier Gary Filmon with a group of children saying that balanced budget legislation is the best thing for their future. The ad was generally run during the day when female viewership was highest. The party's health care advertisements were generally targeted toward seniors. However, the extent to which political parties can craft their message to evoke a positive response from marginal or swing voters should not be exaggerated. While political advertising, especially televised political advertising, uses up a large part of the budget and energy of political parties during election campaigns, there has been little study done in Canada on the effect of political advertising on voter behavior. A U.S. study by Thomas Patterson and Robert McClure showed political advertising increases voter knowledge of the issue and the candidates. The study reported that three-quarters of voters who remembered having seen political ads were able to identify the message of the ads. Also, voters who had a great deal of exposure to television were more likely to identify candidates' positions correctly from a list of ten issues presented in the political advertisements.⁹² In Manitoba, the parties focus most of

⁹² Charles Atkin. Gary Heald. "Effects Of Political Advertising." *Public Opinion Quarterly*. Volume 40, number 2. Summer 1976. page 217.

their advertising funds on television advertising. In 1995 the NDP, for example, spent 74% of their advertising expenses on television; 24% on radio; 2.14% on postcards; and 0.29% on posters.⁹³ When asked why so much of the advertising budget is poured into television, the response from all three parties is the same: it works. In fact, according to Wendy Gerecke, one NDP party strategist told her that had the NDP done more television advertising, they may have won the 1995 election.⁹⁴

Overall, regardless of the effects of political advertising on voting behavior, the political parties see it as an essential component in their campaigns. It allows the parties maximum control over the campaign message. However, it is not the only campaign tool on which political parties depend. The ad creators rely on public opinion polls to formulate an election campaign, as well as to evaluate the party's message.

POLLING

Senator Keith Davey, long time campaign advisor to the federal Liberal Party, who is widely credited with introducing the new technology of polling into Canadian politics, has written that: "the most basic tool in establishing a strategic game plan today is political polling."⁹⁵ Like advertising, polls have become an important election tool. In fact, according to Robert Gabor, a former advisor to the Progressive Conservative Party of Manitoba and former Commissioner of the Royal Commission on Electoral Reform and Party Financing: "there is one thing that runs campaigns - polling." Parties use polls to plan their advertising campaigns. The key to creating a successful ad campaign is survey research. Before the ads are developed, party strategists must decide what issues will be emphasized and what their message will be. Although political parties

⁹³ Wendy Gerecke. Interview.

⁹⁴ Ibid.

⁹⁵ Keith Davey. *The Rainmaker: A Passion For Politics*. Toronto: Stoddart Publishing Co. Ltd., 1986. page 175.

and candidates have always been concerned about the interests and preferences of voters, the amount of systematic probing of these attitudes has increased over time. Nearly every major political polling firm is engaged in specialized research into new areas of voter behavior, targeted to probe voters' underlying attitudes about issues, leaders, and parties. Pollsters are now able to design surveys containing finely detailed screening questions which capture more information about the respondent and thus yielding more precise results.

Political parties find polls provide valuable information defining their approaches to issues. This is done in two ways. First the voters are allowed to express in their own words the problems that they feel government should act upon. Second, voters may select from lists and then reply to questions. The results are then analyzed by pollsters. This information allows parties to focus their campaign messages on issues of greatest importance to the electorate. Polls help to plan the campaign strategy. They can help political parties and candidates determine where to spend time and money and how to campaign most effectively.

During the 1988 federal election, the Conservative party pollster, Allan Gregg, brought a new discipline to polling. He found that it was possible to create the issue. As Gregg stated:

It used to be an election was won by the ability to determine what the question was in the minds of the public. Now, through the technology of polling and television, it makes it increasingly able to set the question in the mind of the electorate ... what they believe they'll be deciding on election day.⁹⁶

This fundamental change in electoral strategy was made possible by research techniques developed for product marketing. Rather than merely monitoring voter intention,

⁹⁶ Robert Mason Lee. *One Hundred Monkeys: The Triumph of Popular Wisdom in Canadian Politics*. Toronto: MacFarlane, Walter and Ross, 1989. page 41.

pollsters found they could conduct research that "unearthed the underlying hopes, fears, and emotions of the public."⁹⁷ Political parties could then seek to draw upon, reinforce and respond to these largely unconscious values.

Overall, pollsters provide political parties with such information as candidates feasibility studies, classification of ridings, issue assessment, vote targeting, and capturing the "political mood." During the election campaign itself, the pollsters attempt to track and monitor the impact of the campaign through close and ongoing observation of key constituencies, the objective being to allow quick tactical adjustments in response to perceived shifts in public opinion. Tracking polls during the election gives the political parties a good indication of how the race is progressing. With such information, party strategists determine what resources and activities are needed to be used to shore up areas where the party is not performing at levels necessary to win. For example, if polls show that a party is not performing well with women, then it may shift its "television buy" to programs with heavy female viewership.⁹⁸ Another example occurred during the 1995 election campaign when polls showed that the teachers union advertising campaign attacking funding cutbacks in education was beginning to hurt the Progressive Conservative party's prospects. Therefore, they launched an ad which showed Premier Gary Filmon sitting in his kitchen with his wife discussing the importance of a "quality" education. Overnight tracking after the advertisement aired showed the Conservative ad had been successful in getting the message out. According to Barb Biggar, the PC party's communications strategist, the teachers ad was no longer relevant.⁹⁹ Polls had helped plan the strategy to minimize the effect that the teachers union ad was having on voters.

⁹⁷ Ibid.

⁹⁸ Matthew Dowd. "Bottom Of The Ninth: If You Target Them, They Will Vote." *Campaigns and Elections*. Volume 13, number 4. November 1992. page 39.

⁹⁹ Biggar. Interview.

Polling services themselves are fairly expensive. They are usually lumped into the general category of "fees for services" in the Statement of Income, Transfers and Expenses Report which a political party is required to submit to Manitoba's Chief Electoral Officer following an election campaign. During the 1995 provincial election, the PC party spent \$97,797.50 on polling during the election period. They used Western Opinion Research. The Liberal party declared \$8,352.76 for research and \$34,927.48 on "voter identification." In addition to this, the party spent \$45,457.00 for polling in 1994 in order to plan their campaign strategy. They spent another \$17,441.00 in 1995 for polling. The NDP spent \$342,579.00 during the 1995 campaign on "professional services." The party used Viewpoints research for all of their polling.

Overall, it is the role of the pollster to collect information on voters' concerns, their perceptions and the attributes they believe a politician should possess. The use of focus groups is a form of polling.

FOCUS GROUPS

Focus groups began as a tool of consumer marketing, but increasingly they have made their mark in the world of political research. To an increasing extent, focus groups are being used whenever public opinion has an important bearing on how an issue is resolved. Although focus group findings cannot yield statistical projections in the manner of quantitative survey research, they are helpful in planning a political party's communication program. Most research techniques do not allow anyone to watch the information gathering process in action.

The art of the focus groups is asking questions. Unlike quantitative research, however, qualitative research techniques allow far greater flexibility in what questions are

asked and how they are structured.¹⁰⁰ Essentially focus groups help the pollster determine what is on the voter's mind and what feelings issues and, specifically ads can appeal to. Focus groups do more to reveal the intensity, strength and content of opinions and feelings. Sabato defines the role and formation of focus groups as groups comprising of ten to fifteen individuals from predetermined population subgroups who are asked to join the sessions in random selections providing they fill the prescription.¹⁰¹ The individuals are selected nonrandomly to reflect age, sex, race, economic, or life-style characteristics. Once gathered together, the group is shown the advertisements and asked a series of open-ended questions by a trained discussion leader to probe their reactions to each ad. The media consultants watch the dialogue behind a two-way mirror. The discussion is also taped for later analysis. The advantage to focus groups is that "you get insights that go beyond the numbers. You get a linear thinking process that explores all sorts of unexpected dimensions to the campaign."¹⁰²

Manitoba's Conservative party has taken advantage of new technology called electronic ad testing. It allows members of a focus group to record their moment to moment responses to any type of video test material. A computer samples the record every second and instantly produces the results. At the start of each ad the participants are instructed to set their dials in the middle. When the spot begins, they are told to dial up if they are feeling more favorable to the subject of the ad (usually the party leader discussing a policy), or toward zero if they are feeling less favorable.¹⁰³ This type of focus group testing offers a great deal of information in half the time. Furthermore,

¹⁰⁰ Christopher J. Herbert. "Listen Up: A Guide For The Focus Group Observer." *Campaigns and Elections*. Volume 15, number 7. July 1994. page 42.

¹⁰¹ Sabato. *The Rise Of Political Consultants: New Ways Of Winning Elections*.

¹⁰² Ibid. page 77.

¹⁰³ Allan Rivlin. Lisa Grove. Mark Mellman. Ed Lazarus. Steve Hopkins. "Dial A Soundbite: Ad Testing In The Electronic Age." *Campaigns and Elections*. Volume 13, number 5. January 1993. page 45.

participants respond to the material individually with their own dials so there is very little "group think" effect. Top line results are available instantly, allowing the creative team to start making editing changes to the ads right away.

DIRECT MAIL

Direct mail campaigns are a powerful tool because they provide politicians with technical advantages no other form of political communication can match: personalization, concentration, and immediacy. Personalization means that each communication can address a particular person or family and cite their special characteristics. This indicates to recipients that the sender of the letter sees them as individuals and shares their values and concerns. Concentration permits the sender to reach a particular audience, for example, the party faithful. Therefore, money is not wasted contacting people who cannot help the cause. Immediacy is the characteristic of direct mail that precipitates action by recipients. Direct mail accomplishes this not only by inspiring the desire to act but also by supplying all the reply materials the addressee needs to take action.¹⁰⁴ The databases are particularly helpful during an election campaign, but they are used between elections to raise funds and to track voters. The role of the data use in politics is very simple:

- (1) Find out who votes;
- (2) Identify who is for you, who is against you and who is undecided;
- (3) Devote most of your attention to the undecided;
- (4) Make sure the ones who are for you get out to vote;
- (5) Keep track of all this and keep it updated.¹⁰⁵

¹⁰⁴ R. Kenneth Godwin. *One Billion Dollars Of Influence: The Direct Marketing Of Politics*. Chatham, New Jersey: Chatham House Publishers, Inc., 1988. page 10.

¹⁰⁵ The SECOR Group. "The Impact Of New Technologies On The Electoral Process And Party Management In Canada." A Presentation to the Royal Commission on Electoral Reform and Party Financing. Draft Report. January 31, 1991.

Essentially, direct mail has two roles in politics: advertising and fundraising. However, the two roles are often deliberately blurred. Direct mailing's value as an advertising medium helps to subtly mask it as medium for fundraising. Direct mail fundraising also revolves around two kinds of mailings: "house" and "prospecting". A direct mail campaign begins with prospecting for donations. From various sources, a list of potential donors is compiled whose characteristics the political party believes will most likely respond to their appeal for support. Individuals with a previous history of contributing are generally sought first. Those who eventually do respond and donate are then included in a campaign's "house list," consisting of individuals who have shown a commitment to the campaign and may be willing to give again in the future. The donor's name, address, telephone number, and the amount donated are then fed into a computer so the campaign will have data on the background and donations of each contributor. The ultimate goal of any direct mail effort is to build an extensive and reliable house list that will yield significant sums with each mailing.¹⁰⁶ Computerization speeds the production of the mail, lowers the cost, and subsequently increases the potential number of people who can be reached by direct mail.

The Progressive Conservative party in Manitoba was the first to respond to the opportunity presented by the new technology of large computerized direct-mailing lists and the generous tax credit in the *Elections Finances Act* to raise money from individuals. The party calls it their direct voter contact program. The process works as follows: for example, when the leader makes a public appearance, an aide stands behind him and writes down the name and issues in which the voter is interested. Within days, the individual is sent a letter thanking them for their time and reiterating that particular

¹⁰⁶ Frank Ian Luntz. "Candidates, Consultants, and Modern Campaign Technology." University of Oxford. Ph.D. Dissertation. June 1987. page 266.

voter's concerns. This is an extremely powerful tool and is likely to become a popular method of campaign communication. As the cost of television continues to increase, direct mail is a less expensive and more personalized alternative. The NDP are not far behind the provincial PC's in their use of direct mail campaigns. According to the NDP's Wendy Gerecke, "it's so much easier to do now that you've got so much information."

As a fund-raising technique direct mail has certain attractive characteristics in addition to the fact that it can generate substantial sums for parties. First, it can be an important source of information about issues for voters. The letters often contain two or three pages of information about a party's policies and positions. It is a good vehicle to convey political ideas in a more substantive form than the "sound bites" on television advertising. Second, direct mail is "involving." It asks for action and thus is a method of countering political alienation. Sending a cheque is a way of giving "voice" to one's political views. Third, it may be an efficient method not only to raise funds but also to get a party's message across, because it appeals directly for support.¹⁰⁷

COMPUTERS

In Manitoba, election campaigns are becoming increasingly high tech. Political parties are investing resources to get hooked up to the information highway. As Taras Sokolyk, Chief of Staff for the Progressive Conservative Party in Manitoba, observed: "we were just on the edge of the technological revolution in the 1995 election."¹⁰⁸ During the 1995 election, the Conservative campaign was "on-line." The party spent \$2472.12 for an internet subscription and another \$27,352.03 for computer consulting

¹⁰⁷ W.T. Stanbury. "Direct-Mail Fundraising And Electioneering." *Money In Politics: Financing Federal Parties And Candidates In Canada*. Royal Commission On Electoral Reform and Party Financing. Volume 1. Toronto: Dundurn Press, 1991. page 268.

¹⁰⁸ Taras Sokolyk. Chief of Staff. Progressive Conservative Party of Manitoba. Interview: August 8, 1996.

services. Computers are used to find phone numbers, place calls and respond to voters with a taped message from the party leader. Computers can also find addresses, print letters and decide which letter is most likely to appeal to a voter depending on the block where the voter lives.

More importantly, computers have expedited and strengthened internal party communication. According to Barb Biggar, the central campaign office can get information out to the constituencies immediately. Furthermore, this ability to communicate "takes chance out of elections." For example, it is rare for candidates to "get caught" by the media on issues just released by the central campaign office because "everybody is on the same page everytime." Computers make that possible. If the leader has just made a statement about a particular policy, this is immediately sent off to all constituencies in order that the candidates can respond accordingly. This "helps control the message."¹⁰⁹

While the Progressive Conservative party has developed a mastery of technology, the opposite is true for the Manitoba Liberals. Prior to the 1995 election, the party hired an individual to develop a campaign database program. However, he "disappeared" a few months before the writ was dropped. A new system was quickly developed, but the majority of the volunteers did not know how to use it and no computer support was available at campaign headquarters. According to Robert Drummond: "there was little thought given to how computers would be integrated into the campaign as a whole."¹¹⁰

¹⁰⁹ Biggar. Interview.

¹¹⁰ Drummond. "Liberal Party Organization And Manitoba's 1995 Provincial Election." page 96.

THE FUTURE OF POLITICAL COMMUNICATION

Overall, election campaigns in Manitoba are increasingly becoming more capital-intensive as the political parties are adopting modern campaign technologies. It is evident that elections have become heavily dependent upon marketing techniques, such as polling and advertising and this has led to a professionally managed election process. Despite the technical advances, there is still no formula which guarantees success. All three of Manitoba's main political parties are using the same modern techniques to varying degrees and with varying amounts of competence and success. The Conservative party appears to be ahead in terms of the technological components of political marketing. The NDP is not far behind. The Liberals are still running to catch up. During the 1995 election, the Liberal party came closer than it has in years in running a campaign comparable in spending to the PC's and NDP. While they had the money, the party did not spend it to run a coherent and convincing communications campaign. Regardless, Manitoba's political parties will continue to adopt new technologies into their election campaigns.

A whole new array of technologies ranging from faster and smaller computers, to fiber optics and satellites, will eventually change the way communication takes place in election campaigns. Satellites already free communication from time and distance constraints; the computer allows the storage of large volumes of information and fast retrieval; fiber optics permits transmission of voices, pictures and other data on very thin transparent glass allowing the flow of multiple interactive communications.¹¹¹ Political parties will eventually adopt these new technologies to manage their electoral campaigns. In turn, these new technologies will provide voters with the opportunity to step out of the

¹¹¹ The SECOR Group. "The Impact Of New Technologies On The Electoral Process And Party Management In Canada." page 10.

mass and homogenized audiences of newspapers, radio and television and take a more active role in the process by which knowledge and entertainment are transmitted through society. According to Taras Sokolyk: "in the next provincial election ... a large number of Manitobans have access to cable television, rather than the five or six channels they used to. People have a choice of twenty-five or thirty channels. Television advertising may not play as great a role as it has in the 1970s and 1980s. We will have a real challenge on how to get our message to people." Traditional technologies, like television, are mainly "unidirectional", with one or few individuals conveying a message to an audience of many. The new communication technologies, on the other hand, facilitate the exchange of information on a "many-to-many" basis through computer-based systems. They allow a "technology-assisted interpersonal communication" which combines qualities of both mass media and interpersonal communication.¹¹² Subsequently, political campaigning could shift from a broadcasting approach in which general messages are sent to a broad audience, to a targeted "narrow-casting" approach where specific messages are sent to narrowly defined audiences through such media as cable television, videotex and computerized direct mail. Presently televised political advertising requires parties to "broadcast" one message across an entire area. They can target their audience according to what time of day and what program the political advertisement is aired. In the future, political parties will be able to tailor their messages to specific audiences selected by computers or audiences watching particular targeted channels. In relation to election spending, some of these modern campaign techniques may be difficult to define. For example, would direct response marketing be considered an advertising expense or a printing expense? This is another reason why there should be one election expense.

Overall, these new technologies will lead to more efficient communication management. Also, modern campaign techniques will give better access to, and more

¹¹² Ibid. page 14.

personalized contact with the electorate. They might even lead to greater involvement in politics by Manitobans. Communications will be more efficient because they will be targeted and personalized, and individual voters will feel they can make a difference as there will be greater potential for interactivity. Electoral innovation will continue to accelerate in Manitoba.

CHAPTER 5

THIRD PARTY ADVERTISING

One of the most complex and controversial issues in the field of election finance legislation is that of third party expenditures. The issue is not new but is one that has become increasingly prominent. "Third party" expenditures refer to expenses incurred to support or oppose a candidate, political party, or issue during an election by groups or entities other than political parties and candidates. There has been much controversy and debate and some litigation over what is essentially a clash of values. A fundamental aspect of election finances legislation has collided with rights contained in the *Charter of Rights and Freedoms*.

The issue of third party advertising has arisen in connection with more general attempts through legislation to limit election spending. This is advertising originating not with a candidate or party but with a private individual or interest group. Obviously, parties and candidates cannot monopolize the debate on election issues. It would be undemocratic to ban all election-related expenditures by those who are neither parties nor candidates. On the other hand, should private individuals and groups be permitted to spend whatever they want in promoting or attacking parties and candidates? Is it fair and equitable to legislate limits on what parties and candidates can spend but to have no limits on what third-parties can spend? One solution would be to compromise between the two extremes and place limits on third party advertising, as they exist for political parties. An alternative would be to remove from the law the present separate spending limit for advertising by political parties and candidates and thereby allow them the flexibility to respond to third party advertising.

THE NATURE OF THIRD PARTY ADVERTISING

Third party advertising is concerned with the "propagation of ideas of controversial social issues of public importance in a manner that supports the position and interests of the sponsor while expressly denying the accuracy of facts and downgrading the sponsor's opponents".¹¹³ The controversy surrounding such activity in the political realm arises because of the constitutional guarantee of free speech provided for the Canadian *Charter of Rights and Freedom*. Advocacy groups insist upon their right to speak out on issues of public importance, including during election periods.

Who are these third parties in Canadian politics? They are SIGs (Single Issue Groups), advocacy groups, business organizations, and unions. However, during an election period they are all defined as "third parties". They are organizations whose members act together to influence the political agenda during an election in order to promote their common interests.¹¹⁴ They do not seek to control the entire machinery of government; that is the aim of political parties. They merely seek to influence it. The increased activity by third party groups is a significant development in the political process over the last fifty years.

ADVOCACY ADVERTISING IN THE UNITED STATES

Canadian politicians have always been alarmed by the political clout exercised by advocacy groups in the United States. Since the 1960s political action committees (PACs) have grown remarkably, both in numbers and in wealth. Third-party political

¹¹³ S. Prakash Sethi. *Advocacy Advertising and Large Corporations*. Toronto: Lexington Books, 1977. page 7.

¹¹⁴ A. Paul Pross. "The Pressure Group Conundrum". *Canadian Politics*. James P. Bickerton and Alain G. Gagnon (eds). Peterborough: Broadview Press, 1994. page 173.

action committees spend millions of dollars independently advocating or opposing a candidate or party. The committees are often "fronts" for lobby groups ranging from gun owners to public health insurance advocates, and their advertising has been shown to have a significant influence on the electoral fortunes of individual candidates.¹¹⁵

In 1974 the U.S. attempted to modify its election finance legislation. However, in 1976 the U.S. Supreme Court heard the case of *Buckley vs. Valeo*, which was a class action suit, challenging provisions of the 1974 *Federal Election Campaign Act* that limited freedom of expression in the electoral arena for political parties and third party groups. The majority ruled that spending limits on candidates and advocacy groups violated the First Amendment's guarantee of free speech.¹¹⁶ Recently, The National Association of Broadcasters has urged television stations to reject certain third party advertising which may appear unfair or inaccurate. The television stations are under no obligation to air PAC advertisements and in fact may be sued over misrepresentations found in the ads. Political candidates whose records are distorted by PAC ads can sue for slander both the airing station and the PAC.¹¹⁷

The absence of serious legal restrictions has assisted the emergence of PACs. These advocacy groups have come to occupy a significant role in American electoral politics. In 1986 there were over four thousand PACs that spent \$156 million in election campaigns throughout the United States. A large portion of PAC money goes to parties and candidates and these amounts are limited by law. However, it is the spending done by PACs independently of candidates that undoubtedly make Canadian politicians

¹¹⁵ Ross Howard. "Reform of Election Laws Would Cap 3rd-Party Advertising." *Globe and Mail*. February 23, 1993. page A6.

¹¹⁶ Theodore J. Eismeier. Philip H. Pollock. *Business, Money, and the Rise of Corporate PACs in the American Elections*. New York: Quorum Books, 1988. page 98.

¹¹⁷ Kathleen Hall Jamieson. "The Subversive Effects of a Focus on Strategy in News Coverage of Presidential Campaigns". *1-800-PRESIDENT*. The Report of the Twentieth Century Fund Task Force on Television and the Campaign of 1992. New York: Twentieth Century Fund Press, 1993. page 46.

particularly anxious. In 1982 in the United States, for example, the conservative association, NCPAC (National Conservative Political Action Committee), spent over \$3 million attempting to defeat certain Democratic Senators. For the most part PACs tend to support incumbents in order to get access to members of Congress for their lobbying activities.¹¹⁸

Recent legislation on campaign finance in the United States was mainly aimed at minimizing the impact of independent expenditures in Congressional elections. The U.S. Congress passed an act in June 1993 that stipulates that when more than \$10,000 of independent spending is incurred on behalf of a candidate, or in opposition to a candidate, the disfavored candidate receives a public subsidy equal to the amount of the third party expenditure and the candidate's spending limit is increased by the amount of the public subsidy.¹¹⁹ It is argued that such a provision would have the effect of discouraging independent expenditures at the local level and of ensuring that when they do occur financial equity among candidates is not threatened. In addition, the provision may discourage third parties whose spending will serve to provide more public funding for a candidate they oppose. Such a system would most likely not work in Canada, simply because it would be far too expensive. There are significantly more candidates contesting Canadian elections. For example, in the 1993 federal election alone there were 7.3 candidates per riding.¹²⁰ In the United States, public subsidies are only provided to Republican and Democratic candidates.

¹¹⁸ Wearing. "Regulating Federal Election Spending." page 331.

¹¹⁹ Cross. "Regulating Independent Expenditures in Federal Elections." page 260.

¹²⁰ Ibid.

THE LAW ON THIRD PARTY ADVERTISING IN CANADA

Canada's current legislation regulating election campaigns was passed in 1974. The legislation outlines the regulation for candidate and party contributions and also limits campaign expenditures. Concerning advertising, the legislation states:

Section 72(1) Every printed advertisement, handbill, placard, poster or dodger that promotes or opposes the election of a registered political party or candidate and that is displayed or distributed during an election by or on behalf of a registered party or a candidate shall indicate that it was authorized by the registered agent of the party ...

The legislation specified that no individual or group may spend money to express an opinion if candidates do not wish it. These rules arose from the 1966 Barbeau Committee's recommendation that only registered political parties and candidates be allowed to buy airtime to advertise for one side or against the other. The Commission suggested that if interest group spending were not controlled, financial restrictions on parties and candidates would be ineffective.¹²¹ The Commission's report made reference to the U.S. situation where ad hoc groups form to promote particular candidates. Subsequently, expenditure limits become futile and likewise render the reporting of election expenses by parties and candidates meaningless. The Chappel Committee of 1971 essentially echoed the Barbeau Committee's recommendations and in 1974 the *Canada Elections Act* was amended by the *Election Expenses Act* (Bill C-203) to include Section 70.1, which states:

Everyone other than
 (a) a candidate, official agent or any other person acting on behalf of a candidate's actual knowledge and consent, or

¹²¹ Patrick Boyer. *Reform of Electoral Campaigns*. Toronto 1990. page 10.

(b) a registered agent of a registered party acting within the scope of his authority as such or other person acting on behalf of a registered party with the actual knowledge and consent of an officer thereof who between the date of issue of the writ for an election and the day immediately following polling day, incur election expenses is guilty of an offence against this Act.

The provisions of the 1974 Act prohibited interest groups from financially promoting or opposing a candidate but allowed a defence of "good faith" (*bona fides*). This is advertising intended to promote a particular position on an issue of public policy. However, drawing the line between candidate and issue advertising is not always straightforward.

This loophole was eventually eliminated when the Crown brought suit against a trade union official who hired an airplane to tow a banner inscribed "Vote as You will, but not Liberal OHC Local 767 CUPE", over the riding of Ottawa-Carleton during the October 1976 by-election (*Regina vs. Roach, 1978*). Despite the fact that the banner referred only to a registered party, not to a policy, the union local's president defended the action by claiming that he had incurred the expense only to oppose the government's anti-inflation program. The union official claimed the defence of *bona fides* provided by section 70.1(4) which allowed a defence if a person charged established that he/she incurred the expense for "the purpose of gaining support for views held by him or her on an issue of public policy" or for advertising the aims of any non-political organization in which he/she was a member.¹²² The judge dismissed the case on the grounds that "the fundamental principle of our parliamentary democracy [is] that there be freedom of public discussion of public affairs".¹²³ An appeal court refused to allow the Crown's appeal in the case because it could "not be proven" that the local's expenditure had been "for the

¹²² Filip Palda. *Election Finance Regulation In Canada: A Critical Review*. page 71.

¹²³ *Ibid.* page 72.

purpose of ... opposing directly a registered party" and because the president of the union "was clearly expressing the views of his association on an issue of public policy."¹²⁴

Canada's Chief Electoral Officer, Jean-Marc Hamel, argued in his 1983 report that the *bona fides* defence undermined election expense limits. The problem was that a group could promote a candidate while claiming that it was doing nothing more than promoting a cause. He urged Parliament either to abolish the defence or to qualify it to prevent abuse in words that nonetheless protected free speech. Hamel's report was accepted. Subsequently, Parliament abolished the section 70.1(4) defence by passing Bill C-169, which imposed a total prohibition on third party advertising.¹²⁵ As Warren Bailie stated:

the underlying ideas used to promote these legislative developments were very similar to those employed in the United States. There was a concern to regulate individual and group contribution making to candidates and parties so as to ensure that the latter could not be placed, or be seen as being placed, in a subordinate, dependent relationship to the former. Moreover, concern was felt in most provinces and at the federal level of government that limitations on campaign expenditures were necessary as a means of assuring that electoral success would not be contingent upon the quantity of wealth deployed by candidates and parties and interest groups but upon the quality of the ideas, policies and records carried by the candidates and parties before the electorate ...¹²⁶

Overall, differing political traditions led to differing forms of elections finance law in the United States and Canada. The American law reflects the priority which many

¹²⁴ Robert E. Mutch. "The Evolution Of Campaign Finance Regulation In The United States And Canada." *Comparative Issues In Party And Election Finance*. Royal Commission On Electoral Reform And Party Financing. Volume 4. Toronto: Dundurn Press, 1991. page 98.

¹²⁵ Bill C-169 contained 37 proposals to amend the Act, among which were provisions for indexations of spending limits and changes in the reimbursement formula for candidates and parties.

¹²⁶ Pierre F. Cote. *Third Party Advertising / Independent Expenditures*. Notes Prepared For A Panel Discussion. 11th Annual Conference of the Council on Governmental Ethics Laws. December 1989, New Orleans. page 4.

Americans accord to the U.S. Bill of Rights and the principles of individual liberty and equality of opportunity which are enshrined in American political culture. In contrast, Canadian law, as it is still developing, reflects the tensions felt by Canadians between the principles of individual liberties and those of collective order and equality of condition.¹²⁷

The *Canadian Charter of Rights and Freedoms*, entrenched into the Canadian Constitution in 1982, affirms such individual and collective rights and freedoms as the right to vote, to converse with the federal government in either French or English and guarantees the fundamental freedoms of association, assembly, expression, belief and religion, as well as of the legal and equality rights to "life, liberty and security of person", the right to due process of the law, and the right to be free from various forms of discrimination (sections 2 and 7 to 15). However, section 1 of the Charter reads:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The National Citizens' Coalition set out to challenge the prohibition on third-party advertising at election time.

NATIONAL CITIZENS' COALITION COURT CHALLENGE

The National Citizens' Coalition is a nonpartisan organization that promotes political and social views ranging from classical liberal to the "old-fashioned" conservative. The coalition is portrayed by the media and others as a right-wing lobby group.¹²⁸ According to its publicity, "[t]he Coalition is a grass-roots group of 30,000

¹²⁷ Ibid. page 5.

¹²⁸ Michael Mandel. *The Charter of Rights and the Legalization of Politics in Canada*.

concerned Canadians, coast-to-coast, who are committed to "more freedom through less government".¹²⁹ The NCC launched a court action in Alberta to test the constitutionality of Bill C-169 under the new *Charter of Rights and Freedoms*. The Coalition submitted that the amendments favored the established parties to the detriment of new parties and independent candidates, and that they harmed public participation in elections by regulating the campaign expenses of advocacy groups. Their formal charge was that the amendments violated freedom of speech and the right to an informed vote guaranteed in Sections 2(b) and 3 of the *Charter of Rights and Freedoms*.

However, two factors tilted the scale against the Coalition's challenge. First, in 1982 the Quebec Provincial Court had ruled that the Centrale de l'enseignement du Quebec had violated that province's ban on advocacy advertising during elections. The court had ruled that "freedom of expression is not equivalent to freedom of expenditure" and that the election law limits "not the right of free speech but the right to spend money to express oneself".¹³⁰ Thus, a precedent had already been set. Second, the Crown was prepared to use its resources to call many expert witnesses from both Canada and the United States to testify.

The federal government's case hinged on the argument that uncontrolled spending by interest groups would disadvantage candidates, who are subject to strict regulations. According to the Crown, the legislation ensured a fair electoral process because participants' chances were not jeopardized by the impact of unaccountable and unregulated money. A second justification for the law was that citizens should not be denied an opportunity to receive a full and balanced exposition of all election issues. In

Revised Edition. Toronto: Thompson Educational Publishing, Inc., 1994. page 288.

¹²⁹ Ibid. and *The Globe and Mail*. August 27, 1985. page 9.

¹³⁰ Khayyam Zev Paltiel. "Canadian Election Expense Legislation, 1963-85: A Critical Appraisal, Or Was the Effort Worth It?" *Comparative Political Finance in the 1980s*. Herbert E. Alexander and Joel Federman (eds). Cambridge: Cambridge University Press, 1989. page 61.

other words, integral to the government's argument was the belief that restrictions on interest group spending during an election campaign would enhance, not detract from, freedom of expression. The government argued that:

... if the aim of freedom of expression is to ensure that a variety of viewpoints will be heard, there may be circumstances in which that goal will be served by action which prevents the monopolization of the freedom by powerful elements.¹³¹

Justice Medhurst, of the Alberta Court of Queen's Bench, did not concur. He declared that the law in fact violated freedom of expression. He did not accept the government's argument that "mischief or harm" would come of advocacy group advertising. In handing down his judgment, the judge stated:

... In my opinion the limitation must be considered for the protection of a real value to society and not simply to reduce or restrain criticism no matter how unfair such criticism may be. It has been said that the true test of free expression to a society is whether it can tolerate criticism of its fundamental values and institutions. A limitation to the fundamental freedom of expression should be assessed on the basis that if it is not permitted then harm will be caused to other values in society. This requires, as has been said, a balancing of the respective interests of society and of the individual.

Care must be taken to ensure that the freedom of expression, as guaranteed by section 2 of the Charter, is not arbitrarily or unjustifiably limited. Fears or concerns of mischief that may occur are not adequate reasons for imposing a limitation. There should be actual demonstration of harm or a real likelihood of harm to a society value before a limitation can be said to be justified.¹³²

The judgment was handed down only a few days before John Turner became the leader of the reigning Liberal party and two weeks before he called a general election. Accordingly there was no time to appeal the decision before the election. While the

¹³¹ Boyer. *Reform of Electoral Campaigns*. page 10.

¹³² P. Macklem. et al. *Canadian Constitutional Law*. Volume 2. Toronto: Emond Montgomery Publications Limited, 1993. page 421.

Court's decision on this case was only binding in Alberta, Elections Canada officials announced that for the sake of consistency, no independent expenditures made during the 1984 election would be prosecuted anywhere in Canada.¹³³

THE REAL DEBATE BEHIND BILL C-169

Before the passage of Bill C-169, the Liberals had been the target of most advocacy group attacks. In 1980, the Jewish Joint Public Relations Committee attacked Liberal candidate Frank Epp during the 24-hour candidate advertising blackout before polling. Also, in 1980, the International Fund for Animal Welfare threatened to spend \$3 million in Toronto ridings to oppose Liberal candidates to end the government's support of the Canadian seal hunt.¹³⁴ In light of these challenges and despite the 1984 Alberta court ruling, the Liberal party continued to defend the law restricting third party advertising. On the other hand, members of the Progressive Conservative party who had previously supported the law began to make statements distancing themselves from it.

Overall, Bill C-169 was undebated until the National Citizens' Coalition, described as a "right-wing" organization "heavily dominated by wealthy business people," launched the court action. Within the media, which had an interest in Bill C-169, for obvious reasons, editorial opinion was split. For example, the *Toronto Star* supported the legislation, while the *Globe and Mail* came out in opposition.¹³⁵

A much broader argument can be made concerning Bill C-169. In the same way that spending limits were imposed, the restriction on third party advertising was seen as

¹³³ William Cross. "Regulating Independent Expenditures in Federal Elections". *Canadian Public Policy*. Volume XX, number 3. September 1994. page 254.

¹³⁴ Janet Hiebert. "Fair Elections and Freedom of Expression Under the Charter". *Journal of Canadian Studies*. Volume 24, number 4. Winter 1989-1990. page 73.

¹³⁵ Donna Greschner and Howard McConnell. "Canadians in Danger of Losing Their Rights?" *Globe and Mail*. March 12, 1994. page 7.

another attempt to restrict the influence of wealth in elections. Three arguments could be made in support of this analysis. First, Bill C-169 was mainly directed against wealthy individuals and groups who could afford to spend heavily on behalf of parties and candidates. In a related point, it was argued that the legislation was directed mainly against those with "right-wing" views since again these groups were those with the funds to spend. Third, the bill was not directed against the media or the politicians themselves,¹³⁶ but independent groups outside the political arena who "should not be permitted to influence" the electoral process. One of the main objectives behind the *Canada Elections Act* was to attempt to make the election process more "equal" by putting spending limits on parties and candidates. The belief was that the wealthier candidates or the political parties with wealthier supporters have an unfair advantage in the election campaign. Therefore, by regulating spending during an election, poorer groups and interests can acquire an equal chance with wealthier groups and interests in their quest for legislative power. With respect to third party advertising, the supporters of election finance law fear that certain parties and candidates may use nonpartisan groups to support or oppose them. According to a former New Democrat MP, Rod Murphy, "some of the most partisan, vicious and one-sided advertising takes place during election campaigns on behalf of so-called third-parties".¹³⁷ Perhaps this is an exaggeration; however, it illustrates the point that "left-wing" parties, such as the NDP, favor banning third party advertising.

According to David Somerville, President of the National Citizens' Coalition, third party advertising is not a way that the political right circumvents the election finance laws imposed on them by left-wing parties. In fact, he states that it is the exact opposite:

... the people who benefit by the existing structure is the establishment of the left and the right ... the big union bosses have their party - the NDP - big business has

¹³⁶ George Jonas. "Brave New Democracy". *Toronto Life*. April 1984. page 31.

¹³⁷ *Ibid.* page 32.

their party - the Tories and the Liberals - but, what if you're just a small individual and you're not part of the establishment of the left or the right and you want to speak out - what can you do? The way you do it is by banding together by like-minded people ... pooling your resources and speaking out. The big business groups and the unions will always have a powerful voice through the respective parties and through the news media ... but what happens if you have some modest means and you don't want to be part of the machines of either big unions or big business and you've got to speak out against MP pensions or gag laws or the Charlottetown Accord - when the establishment of the left and the right were in bed together? Then you band together and you speak out ... allowing freedom of association to flower during elections empowers people who would otherwise have very little power.¹³⁸

Therefore, from Somerville's perspective the issue of third party advertising cannot be interpreted along ideological lines since according to him, both right and left wing political parties benefit from third party advertising. This is true to some extent, but the NDP has always been the only party that supports an outright ban on third party advertising, or at the very least, some form of regulation. Therefore, to assume that the "establishment" (ie: the Liberals, Conservatives and the NDP), all believe and say the same thing is false. Furthermore, the 1988 federal election proved to be a showdown between the left and the right.

THE 1988 FEDERAL ELECTION

The 1988 campaign featured a major issue - free trade. However, one of the most controversial questions of the campaign was whether advocacy groups should be allowed to promote their points of view in the media unrestricted by spending limitations such as those imposed on political parties. One side argued that the other had much more money and had unfairly influenced the outcome. On the other side, was the argument that there

¹³⁸ Somerville. Interview.

was no evidence to support this and that in any event, it was the right of individuals and groups to make their positions known.¹³⁹

After being elected in 1984, the Progressive Conservative Government of Brian Mulroney did not address the issue of third party advertising and expenditures. The negative publicity and editorial reaction surrounding the NCC case had undermined political resolve. Also, the Progressive Conservatives did not feel any threat by interest groups in 1984. Any hidden benefits of muting independent opposition were not worth a retreat from their public stand for freedom of expression and the threat of attack from the press and the NCC. During the 1988 federal election, independent groups took full advantage of the opening in the election law. For the first time in a federal election, advocacy groups became major players in the 1988 election campaign.

Interest group spending reached unprecedented levels in 1988. The Canadian Alliance on Trade and Job Opportunities spent \$3 million shortly before and \$2 million during the election to champion free trade. The National Citizens' Coalition, anxious to combat the rise of popularity of the NDP and its leader, Ed Broadbent, launched a \$500,000 advertising campaign on radio, television, and in newspapers, calling Broadbent "very, very scary .. a socialist who means what he says".¹⁴⁰ The Coalition used humor to help drive its message. It aired advertisements that simulated a game show in which contestants mistook the views of Broadbent for those of Karl Marx and Iran's Ayatollah Khomeini.¹⁴¹ Overall, however, most of the third party advertising in the 1988 campaign was to support or oppose the free trade agreement. The Pro-Canada network opposed the agreement with an outlay of \$600,000 as did the Canadian Automobile

¹³⁹ Canada. *Reforming Electoral Democracy*. Royal Commission on Electoral Reform and Party Financing. Final Report. Volume 4. Toronto: Dundurn Press, 1991. page 79.

¹⁴⁰ Tom Barrett. "Humorous Ads Compare Broadbent to Marx, Ayatollah". *Montreal Gazette*. October 25, 1988. page A4.

¹⁴¹ *Ibid.*

Workers with a two-page advertisement in a major newspaper costing \$400,000.¹⁴² In total, the Chief Electoral Officer counted 29 violations of the advocacy group regulations. Estimates of what was spent by these third-party groups range from \$2 million to \$10 million. In addition, this advertising could continue right up to the day before the election, while parties themselves were subject to the traditional 24-hour advertising blackout.¹⁴³

With a mandate to consider this 1988 experience of increased independent spending along with other issues of electoral reform, the Royal Commission on Electoral Reform and Party Financing was established. During the Commission's hearings, the NDP and the Liberals offered testimony critical of third party advertising. At the hearings, they argued that opinions by third parties should operate through the parties or should at the very least obey the rules set for the parties. Advocacy groups who had themselves felt attacked said the same. The Ontario Federation of Labour told the Commission that unlimited expenditures by advocacy groups posed a significant threat to Canada's political democracy. The Federation, a traditional supporter of the NDP, claimed that the FTA opponents had held their ground in the debate before the election but that the free-trade forces had crushed them with massive expenditures during the campaign.¹⁴⁴ The solution was to ban advocacy groups' spending unless it was part of the declared expenditures of a party or candidate. Even the Council of Canadians¹⁴⁵ argued that while they should be allowed to distribute hand-bills and put out lawn signs, massive media advertising should be the privilege of established parties.¹⁴⁶

¹⁴² Palda. *Election Finance Regulation In Canada: A Critical Review*. page 77.

¹⁴³ Joseph Wearing. "Regulating Federal Election Spending". *Politics: Canada*. Seventh Edition. Paul W. Fox and Graham White (eds). Toronto: McGraw-Hill Ryerson Limited, 1991. page 331.

¹⁴⁴ Palda. *Election Finance Regulation In Canada*. page 77.

¹⁴⁵ The Council of Canadians is an interest group representing national social issues.

¹⁴⁶ *Ibid.* page 78.

BILL C-114

The Lortie Commission concluded that unfettered spending by independent interests creates an unfair electoral playing field. The Commission proposed that all entities, other than official parties and candidates, be limited to spending no more than \$1000 during the election period on election expenses. It was also proposed that the definition of election expenses be expanded to include both candidate and party advocacy, and issue advocacy. The permitted \$1000 could not be combined with another's spending - thus no group or association would be permitted to spend more than \$1000 regardless of the size of its membership. The Commission further recommended that the advertising blackout period be expanded to prohibit independent advertising during the final 24 hours of the election campaign.¹⁴⁷ The Commission recognized that although this amount was insufficient for those who wished to mount national advertising campaigns, "the centrality of fairness in the electoral process justifies this limit. If individuals or groups wished to conduct broader campaigns they could do so by supporting existing parties and candidates (including independents) or by forming a political party and fielding candidates."¹⁴⁸

While the Royal Commission felt that the limit would be acceptable under the *Charter of Rights and Freedoms*, it was also felt that this limit would meet certain fundamental tests, as established in the *Oakes* case. When Canadian judges apply the Charter they must follow two steps. First, they must determine if the challenged law or practise violates a Charter right. If it does, then the Court must apply section 1 of the

¹⁴⁷ Canada. *Reforming Electoral Democracy*. Royal Commission on Electoral Reform and Party Financing. Final Report. Volume 1. Toronto: Dundurn Press, 1991. page 341 and 352.

¹⁴⁸ *Ibid.* page 353.

Charter, which asks, is the limit on the right prescribed my law, reasonable, and justified in a free and democratic society? In the *Oakes* case, the Supreme Court laid down guidelines for applying this section 1 test. The government must show that the law is designed to achieve a "pressing and substantial objective" and that the legislative means chosen are "proportional to that objective." When the Royal Commission recommended the \$1000 spending limit for third parties, they anticipated that it would meet the *Oakes* case. First, the Commission felt that the legislation was in the words of the *Oakes* case "substantial and pressing" in a free and democratic society. Second, it was argued that a spending limit on independent expenditures was rationally connected to the objective of promoting fairness in the exercise of rights and freedoms during an election and does not place an arbitrary or unfair burden on any particular individual or group. Third, members of the Commission felt that given the seriousness of promoting fairness in the electoral process, that the \$1000 spending limit could pass the *Oakes* proportionality test. It was argued that it would be impossible to increase the spending limit for third parties and at the same time secure the objective of fairness that political party spending limits are meant to realize. Thus, the Royal Commission proposed that \$1000 was not entirely arbitrary because political parties and candidates have to have a higher limit because they have to take positions on a variety of issues. Finally, it was argued that a \$1000 limit met the criterion of the *Oakes* case in that it "impairs freedom of expression as little as possible."¹⁴⁹

In response to the Royal Commission's report, an all party House of Commons Special Committee on Electoral Reform was established. The Committee proposed draft legislation that was largely adopted by the government. It included Bill C-114, *An Act to Amend the Canada Elections Act*. This was passed by Parliament in May 1993. Overall,

¹⁴⁹ Royal Commission on Electoral Reform and Party Financing. *Reforming Electoral Democracy*. Final Report. Volume 1. pages 354 and 355.

Bill C-114 included provisions to limit to \$1000 the amount third parties can spend on advertising expenses "for the purpose of promoting or opposing, directly and during an election, a particular registered party or the election of a particular candidate".¹⁵⁰ Similar to the Lortie Commission's proposal, Bill C-114 prohibits one individual's independent spending from being combined with another person's "if the aggregate amount of the advertising expenses incurred exceeds one thousand dollars".¹⁵¹ The Bill also expanded the advertising blackout to include third parties. There was all-party support for the reforms. David Somerville noted that "the Ottawa political elite learned nothing from their resounding defeat on the Charlottetown Accord vote ... They must understand that Canadians want to be included in the political process, not shut up and shut out. I believe the real reason for this gag law is that the political establishment wants to force citizens to channel their political spending through the parties, rather than speak out independently"¹⁵²

As in 1984, the National Citizens' Coalition challenged the legislation in an Alberta court. Again, the Coalition argued for the amendments to be rescinded on the basis that they transgress the *Charter of Rights and Freedoms*. They maintained that the law infringes on "the right to vote because gagging viewpoints removes the right to a truly informed vote".¹⁵³

The Alberta Court of Queen's Bench ruled on June 25, 1993 that the restrictions on independent spending violate the Charter protections of freedom of expression, association, and an informed vote (*Somerville v. Canada, 1993*). This time, the federal government appealed. The appeal was heard on May 8, 1995. Three appeal court judges handed down their unanimous decision on June 5, 1996. They upheld the lower court

¹⁵⁰ Ibid.

¹⁵¹ Cross. "Regulating Independent Expenditures in Federal Elections." page 259.

¹⁵² Diane Francis. "A New Attack On Freedom of Speech." *Maclean's*. Volume 106, number 22. May 31, 1993. page 9.

¹⁵³ Ibid.

ruling that the law was unconstitutional and they dismissed the federal government's appeal of that decision. The ruling, written by Madam Justice Carole Conrad, said the law fostered evils against which the *Charter of Rights and Freedoms* was meant to protect Canadians:

If a group of citizens wishes to identify certain issues with candidates or parties, that message is crucial to both the sender and the receiver ... [t]o interfere with such identification of candidates ... is to thwart the free and democratic process. A manipulative communication system favoring the political parties is, in my view, one of the evils from which the constitutional guarantee provides protection ... One is led to conclude that the very aim or purpose of this legislation is to ensure that third parties cannot be heard in any effective way and that political parties are entitled to preferential protection ... [i]ts objective strikes at the very core of these fundamental rights and freedoms, and is arguably legislation which has as its very purpose the restriction of these rights and freedoms, which can never be justified.¹⁵⁴

It is expected that the federal government will appeal the decision to the Supreme Court.

THIRD PARTY ADVERTISING IN QUEBEC

The issue of third party advertising in Quebec became a concern to the Parti Quebecois when the federal government began advertising during the 1980 referendum. A tidal wave of federal advertising inundated Quebec in the days preceding the referendum. There were television and billboard advertisements urging Quebecers to say "Non, merci" to drinking and driving. Also, there were advertisements reminding Quebec tourists that the Rocky Mountains provided "so much to stay for".¹⁵⁵ Although government advertising is generally defined differently from advocacy advertising, it was

¹⁵⁴ Alanna Mitchell. "Court Criticizes Election Ad Law." *The Globe and Mail*. June 6, 1996. page 1.

¹⁵⁵ Morris Wolfe. "The Case Against Advocacy Advertising". *Saturday Night*. December 1980. page 17.

essentially seen by the PQ as the same thing during the 1980 referendum. Therefore, the Quebec government amended the province's election laws by banning third party advertising. It should be noted that the PQ is traditionally viewed as a left of centre party.

Overall, Quebec's election finance legislation is the most clearly defined. Whereas other provinces' election laws and even federal legislation are vague in their definitions of what constitutes an elections expense and what may or may not be allowed in terms of third party advertising, Quebec's election finances legislation is clear. In Quebec, the *Election Act* establishes that an election expense is:

... the cost of any goods or services used during an election period to:

- (1) promote or oppose, directly or indirectly, the election of a candidate or the candidates of a party;
- (2) propagate or oppose the program or policies of a candidate or party;
- (3) approve or disapprove courses of action advocated or opposed by a candidate or party;
- (4) approve or disapprove any action done or proposed by a party, a candidate or their supporters.

Then, it stipulates that:

During an election period, no person other than the official agent of an authorized party or independent candidate or his deputy may incur or authorize election expenses.¹⁵⁶

Essentially, there is a total ban of third party advertising in Quebec.

Since the advent of the *Canadian Charter of Rights and Freedoms*, Quebec has witnessed three election campaigns and another referendum on sovereignty. During all three campaigns, third parties were prohibited from broadcasting advertisements or distributing pamphlets denouncing government policies or those of political parties. Even when Quebec's *Election Act* was amended in 1989, it continued to prohibit third parties from "incurring, during an election period, expenses likely to favor, directly or indirectly,

¹⁵⁶ Pierre F. Cote. *Etudes Electorales: Third-party Advertising During An Electoral Period and Contributions Made to Political Parties and Candidates Regarding the Charters*. February 1991. page 3.

the election of a candidate or a party". The ban on third party advertising has been widely criticized as an attempt by the PQ to limit spending by federalist forces during referendum campaigns as a way for the separatists to avoid being outspent by the Quebec business class. Following the coming into force of the new Act in 1989, the Chief Electoral Officer of Quebec announced his intention to apply these provisions strictly. This has been evident since the October 1995 sovereignty referendum. In what David Somerville calls an "Orwellian episode" in the wake of the October 30th vote: "the Quebec election police ... interrogated a private Montreal citizen who had sent out letters over his fax machine to his business associates and friends urging them to vote no ... and they went and investigated him because he might have contravened Quebec's election laws".¹⁵⁷ Currently, Elections Quebec officials are also investigating some of the airlines and bus lines to determine whether they had subsidized any trips to Montreal for the unity rally.

While such strict enforcement of the ban on third party expenditures has been applauded by some for ensuring "equity" and "fairness", others have criticized Quebec for its "totalitarian" election finance laws. Elections officials in Quebec, however, defend their investigations. Quebec has this law banning third party advertising in place and subsequently will enforce this law. According to the province's Chief Electoral Officer, Pierre Cote:

The formula chosen by the Quebec legislature thus leaves to recognized political parties and candidates the privilege of incurring election expenses. It then becomes relatively easy to control the sums involved by imposing limits and the obligation to submit reports. The responsibility for the election campaigns is first and foremost that of the candidates and the political parties, within the financial limits set by law. That is what is important. The financial power of intervening third parties does not become a means of preventing voters from freely exercising their right to vote.

¹⁵⁷ Somerville, interview.

During a precise and very short time period, the rules of the game are not the same: there are indeed certain impediments to freedom of expression. Why? Because we must strictly control election expenses, protect electors, protect the free exercise of the right to vote and , in so doing, protect democracy.. We do not want to find ourselves with hidden funds in a context where it costs a greater deal to have a member elected to the National Assembly.¹⁵⁸

The position of Somerville and Cote can be seen to be diametrically opposed. So far, the debate on third party advertising in Manitoba elections has not been as intense as in other jurisdictions.

THIRD PARTY ADVERTISING IN MANITOBA

In 1983 when the Manitoba government began to revise the *Elections Act*, the intention was to deal with third party advertising. However, because of the Alberta Court of Queen's Bench decision concerning third party advertising, the Manitoba government did not make any changes to its law governing advocacy group advertising in the province. The legislation was passed; however, it was never proclaimed.

The *Manitoba Elections Finances Act* was adopted by the legislature in 1985 and included restrictions similar to those contained in the *Canada Elections Act* (ie: including a "defence clause" which would permit third party expenditures under certain circumstances). The proposed sections of the *Manitoba Elections Finances Act* restricted spending in support of, or in opposition to a candidate or a political party during an election unless the expenditures were approved by a Chief Financial Officer of a party or candidate. Spending by third parties would have been permitted; however, if done for the purpose of gaining support on an issue of public policy, or to advance the aims of an organization without supporting or opposing a particular candidate or registered political

¹⁵⁸ Cote. *Etudes Electorales*. page 25.

party (in which it would be assumed that no election expense would be incurred). Because these sections were not proclaimed in the light of Medhurst's judgment in Alberta, Manitoba has no legislative provisions dealing with "third party" expenditures unless the spending is undertaken with the knowledge and consent of the political party or candidate concerned.¹⁵⁹ The net result is that third parties may spend during an election without restriction whereas political parties and candidates are subject to spending limits. Many argue that this calls into question the fairness and equitability of election campaigns. Until the 1995 provincial election, third party advertising had not been as prominent in Manitoba as in the United States and in the 1988 Canadian federal election. Still, the issue remained unresolved and became more sensitive due to developments during the 1995 provincial election.

During the 1995 Manitoba election, third parties spent over half a million dollars in advertising. In contrast, the average spent by the political parties on advertising in the election was \$414,458.00 each. The Manitoba Teachers Association spent \$220,000 on advertisements that showed statues of students in graduation gowns shedding tears because of the "devastating stresses" causing the education system to crumble. The Manitoba Nurses Union used \$167,000 from its members' union dues to attack the Filmon government's health care record and offer alternative solutions. In the meantime, the Manitoba Government Employees Union spent \$70,000 for a campaign that criticized the Filmon government's cuts to education and health. The Telecommunications Employees Association of Manitoba launched a series of print advertisements criticizing the government's handling of the Manitoba Telephone System. Another television commercial was a plea by the Dakota Tipi First Nations to vote against the Filmon government.

¹⁵⁹ Elections Manitoba. *Annual Report on the Elections Finances Act*. 1990. page 36.

However, there were also third-party advertisements that defended the government. The Manitoba Taxpayers Association commercial used a baby sinking in debt to push for balanced budget legislation.¹⁶⁰ Overall, the unions did most of the advertising in the last Manitoba election. It has been suggested that had the New Democrats won, some of these groups would have claimed that their advertising made the difference, and expected an NDP government to accept many of their demands. According to NDP organizer Wendy Gerecke, third party advertising did help the NDP in the 1995 campaign: "you couldn't possible say it didn't help. It has to help ... but this belief that the Tories fuel that because a person belongs to a labour union that they are supporting the NDP, that is absolutely not true ... yet unions do help us ... but [third party advertising] doesn't translate into votes necessarily."¹⁶¹ Interestingly, NDP leader Gary Doer has stated that when his party forms government, it will enact legislation preventing "outside influences from trying to involve themselves in political campaigns".¹⁶² On the other hand, both the Conservative and Liberal parties in Manitoba hold that third parties have the right to advertise during an election.

EFFECTIVENESS OF THIRD PARTY ADVERTISING

There is no disputing the fact that advertising by interest groups often lets a party or candidate benefit from support while escaping election spending regulations. It also lets these groups do the "sales pitch" for them. A classic case of the effectiveness of third party advertising is an example from the United States - where the Democrats'

¹⁶⁰ Paul Samyn. "Speak Loud, Sell Shtick." *Winnipeg Free Press*. April 8, 1995. page A17.

¹⁶¹ Gerecke. Interview.

¹⁶² Judy Waytiuk. "Union Ad Campaigns Crass, Questionable." *Winnipeg Free Press*. April 28, 1995. page A7.

presidential candidate Michael Dukakis was linked to criminal Willie Horton. Television ads by an organization that was technically independent of the Bush campaign told viewers about a black convict who raped and murdered a white woman while on a weekend pass. Weekend passes were part of the prisoner rehabilitation program in the state of Massachusetts, where Dukakis was governor. After the advertisement first aired, 36 per cent of voters felt that Dukakis was soft on criminals. By the end of the campaign, that figure had climbed to 49 per cent. The U.S. literature is full of such examples showing that advertising by political action committees and interest groups is effective.¹⁶³

In Canada, an Environics survey conducted in December 1988, the month after the federal election, showed that third-party election advertising was an important factor in voting according to those surveyed. Nearly three people in ten (27 per cent) consider third-party advertising and leaders debates very important in their voting decisions. Moreover, only 13 per cent considered parties themselves as very important, while even fewer considered information distributed to residences (11 per cent) and opinion polls (11 per cent) as important.¹⁶⁴

In a survey conducted four months after the November 1988 election, 31 per cent of Canadians admitted that their vote had been influenced by third-party ads, and half of these (14 per cent) said the ads had a significant effect. During the survey conducted by the same company in December 1988, 27 per cent said that third-party advertising was important in their electoral choice. These are, however, raw survey data based upon the memory of interviewees about how their voting preferences evolved during the campaign. Regardless, the fact remains that there is a striking parallel between the daily quantity of

¹⁶³ Jean Crete. "Television, Advertising and Canadian Elections." *Media and Voters In Canadian Election Campaigns*. Royal Commission on Electoral Reform and Party Financing. Volume 18. Toronto: Dundurn Press, 1991. page 29.

¹⁶⁴ *Ibid.* page 30.

advertising by the coalition for free trade and the return to power of the party bearing the free trade standard.¹⁶⁵

From this limited information, it cannot be determined whether advertising paid for by third parties is more effective or less effective than political party advertising. However, to the extent that advertising paid for by third parties is added to that of the political parties and candidates, a larger audience is reached - or the same audience is reached more often.¹⁶⁶

REGULATORY OPTIONS

The main objectives of election finances legislation are to prevent corruption by requiring public disclosure and to promote fairness and greater equality of opportunity in the electoral process for political parties and candidates. To accomplish its objective, legislation has included such strategies as tax credits, restrictions on election spending and reimbursement of election expenses. There is the argument that for such elements as spending limits to be meaningful, groups other than registered political parties, candidates and constituency associations have to be subject to legislation intended to limit their participation. The limits on election expenses were not seen as meaningful if only some of the groups participating directly in an election were restricted. However, at the same time, Section 29(b) of the *Charter of Rights and Freedoms* guarantees that everyone has the "freedom of thought, belief, opinion and expression including freedom of the press and other media of communication ...".¹⁶⁷ How is it possible to accommodate what seems like competing democratic values? In order to sort through the various arguments

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Elections Manitoba. *Annual Report on the Elections Finances Act*. 1990. page 35.

for and against third party advertising which have been debated up to this point, it is necessary to distinguish the various positions surrounding the issue in greater detail.

THE LIBERTARIAN MODEL

The first position is that there should be no restrictions on participation in the electoral process by parties, interest groups or individuals. Before the introduction of third-party advertising, political parties virtually controlled the electoral agenda. In such a situation, when there is unanimity among the three major parties on a question (ie: capital punishment), this model argues that the electorate is cheated as there is no "market-place competition" of ideas. Free speech, therefore, is equated with the right to spend money to advertise one's views. Third-party advocacy groups thus function within a classic "libertarian" interpretation of the political process. Any form of regulation on the groups' ability to purchase advertising space or broadcast time undermines the opportunity to express the views of the organization.

This view of freedom of expression is largely a negative one - freedom from interference - and rejects the claim that considerations such as access and opportunity are reasons for imposing limits.¹⁶⁸ Most advocacy groups would like to see this model continue, and there is no doubt that any attempts to regulate third party advertising and spending would be challenged vigorously in the courts, as they have been up to now by the National Citizens' Coalition. The logical extension of this argument is that any existing regulations on advertising by political parties should be abolished. According to this view, the current spending regulations on candidates and parties undermine the ability of election participants to make their policy positions known to electors and to

¹⁶⁸ Janet Hiebert. "Interest Groups and Canadian Federal Elections." *Interest Groups and Elections In Canada*. Royal Commission on Electoral Reform and Party Financing. Volume 2. Toronto: Dundurn Press, 1991. page 48.

distinguish their programs from those of their partisan rivals. Therefore, the removal of all spending limits for third parties and political parties would ensure freedom of speech and expression for all groups during an election.

Much of the criticism of this approach is based on the U.S. experience. In American elections, money assumes a prominent role in candidate spending and in the networks of support for candidates through PACs and independent expenditures. This raises concern about the possibility of corruption and undue influence, real or perceived, arising from candidates' dependence on wealthy contributors. Furthermore, the absence of spending regulations results in more expensive elections and prevents those of modest means or those without substantial PAC or interest group support from contesting elections in any meaningful way. Another criticism disputes the assumption that an unregulated economic environment enhances and facilitates free expression. The contrary argument is that, rather than being a free exchange of ideas, an unregulated environment becomes dominated and controlled by wealthier groups who are in a position to purchase unlimited advertising time and monopolize the air waves to promote their own interests.¹⁶⁹ As opponents of this model have argued, no restrictions on advocacy advertising would lead to a "free-fire zone" of campaign advertising.¹⁷⁰

REGULATORY MODELS

This model proposes the regulation of third-party advertising by making the regulations currently in effect for political parties also apply to third parties. The view here is that parties and candidates should not be granted an exclusive right to the electoral

¹⁶⁹ Ibid. page 49.

¹⁷⁰ Walter I. Romanow. "Negative Political Advertising: An Analysis of Research Findings in Light of Canadian Practice." *Political Ethics: A Canadian Perspective*. Royal Commission on Electoral Reform and Party Financing. Volume 12. Toronto: Dundurn Press, 1991. page 185.

stage, but should share that stage with other individuals and groups wanting to participate. Consequently, interest groups should be subject to the same kinds of financial regulations that apply to parties. They should be entitled to the same range of expression.

The argument in favor of allowing interest groups to participate financially in elections asserts that independent expenditures allow for a broader range of ideas and discussion of political concerns by addressing those issues for which parties are reluctant to assume policy positions. Furthermore, it is argued that political parties alone cannot represent the multitude of interests in Canada. Therefore, they should not prevent individuals and groups who do not identify with one of the parties from speaking out during elections.¹⁷¹

The regulation of advocacy groups through their registration under the *Manitoba Elections Act* and the enforcement of time and financial limits is advanced by those who are concerned with implications for freedom of expression stemming from a complete ban on third-party advertising. Third parties would register under the *Elections Act* and be subject to budgetary limits, disclosure of contributors and the obligation to file reports with the chief electoral officer or the broadcasting arbitrator. These regulations, it is argued, would "level the playing field" between parties and advocacy groups, while protecting the rights of citizens and groups to participate fully in the electoral process. Critics of this approach say that such regulations could easily be circumvented through the multiplication of the number of groups registered. For example, rather than registering one group concerned with an issue, five might be registered with different names and officers, subsequently increasing the amount of money that could be spent. As

¹⁷¹ Hiebert. "Interest Groups and Federal Elections." page 49.

one critic of this proposal pointed out, "vocal special interest groups will always find a way to voice their concerns".¹⁷²

Another criticism of the regulatory model is that it does not make any distinctions between parties and independent groups in terms of their roles and responsibilities. Because political parties, not independent organizations, are the main bridge between the state and voters' preferences, it is misleading to suggest that each participant during an election campaign is equal. Political parties have the opportunity to hold office and, therefore, have different responsibilities than do interest groups. Parties must appeal to a broad range of values and policy preferences and must reconcile conflicting regional and national tensions. On the other hand, individuals or groups can organize along narrow interests.¹⁷³

A second regulatory approach is related to the content of advertising. Here, the focus of regulation would not be on controlling the third parties allowed to advertise, but rather on policing what is contained in advertising and how it is expressed.

During the Lortie Commission hearings, two specific proposals were given regarding content regulation. The first recommendation was for the creation of an Elections Communications Commission. The Commission would be made up of experts in the field. All election ads - both political party and advocacy group - would be submitted to this panel in advance of showing in order to be evaluated on the criterion of decency and cleared for use. The second content control proposal called for the creation of an "election advertising adjudicator" to whom parties aggrieved by negative ads could lodge complaints after the offending ad had been shown.¹⁷⁴

¹⁷² Romanow. "Negative Political Advertising: An Analysis of Research Findings In Light Of Canadian Practice." page 185.

¹⁷³ Hiebert. "Interest Groups and Federal Elections." page 50.

¹⁷⁴ Romanow. "Negative Political Advertising: An Analysis of Research Findings In Light Of Canadian Practice." page 187.

Overall, it would be difficult to attempt to regulate the content of either political or third party advertisements. There was a provision in place to regulate unethical advertising in the 1968 *Broadcasting Act* which stated that a "licensee shall identify the sponsor and the political party, if any, on whose behalf a program, advertisement or announcement of a partisan character in relation to a referendum or an election ... is broadcast or received".¹⁷⁵ This section was dropped from the 1991 *Broadcasting Act*. However, even as far back as 1936 attempts to prevent the abuse of broadcast privileges for political or advertising purposes were put into place. In 1936, a Special Committee was appointed to inquire into the operations of the Canadian Radio Broadcasting Commission and its administration of the *Canadian Radio Broadcasting Act* of 1932, in order to recommend changes in the broadcasting system and to investigate whether there had been any abuse of the system. The Committee reported that, during the 1935 federal election, there had been abuses, such as the "Mr. Sage" broadcast, which utilized drama to carry its politically partisan message without identifying its sponsor. Such complaints served to intensify the general dissatisfaction with the performance of the CRBC. As a result, the Committee recommended that "dramatized political broadcasts be prohibited, that full sponsorship be required, that the proposed new CBC ensure that time be allocated on an equitable basis among all parties and that no political broadcasts be allowed on election day or during the two days immediately preceding election day."¹⁷⁶ The 1936 Committee further recommended that the CBC exercise regulatory control over all programming and advertising broadcast by private stations and networks.¹⁷⁷

More recently, during the 1996 B.C. election, the National Citizen's Coalition found a way around regulation of third party advertising. Currently in British Columbia, third parties are prohibited from spending more than \$5000 during the election period on

¹⁷⁵ Kline. "Political Broadcast Advertising in Canada." page 265.

¹⁷⁶ Stephen Kline. et al. "Political Broadcast Advertising In Canada." page 233.

¹⁷⁷ Ibid.

advertising that directly or indirectly supports or opposes a party. The NCC purchased advertising time from U.S. border broadcasters. The \$44,000 advertising blitz, nicknamed "Radio Free B.C." was a reference to "Radio Free Europe", a U.S. backed enterprise that sent news programming to Communist-bloc countries during the Cold War. The NCC ads said: "Welcome to TV Free B.C.. We're broadcasting to you from the U.S. because the NDP effectively banned us from doing so in B.C."¹⁷⁸ This is one example of how resourceful third parties can be in circumventing regulations.

BANNING THIRD-PARTY ADVERTISING

The final position on third-party advertising is to restrict it altogether. Or as one critic of advocacy advertising noted during the Lortie Commission hearings: "ban the buggers".¹⁷⁹ The argument in favor of this view is that it is the most effective way of ensuring the integrity of spending limits for candidates and parties.

With respect to infringement of free speech, proponents of this model argue that advocacy groups already have total freedom to speak and advertise their points of view between elections. Consequently, a ban on their advertising for a four-week period about every four years simply should not be seen to be a major denial of freedom of expression. Moreover, it is argued that if third-party advertising were unrestricted and party advertising was restricted, real harm would result. For example, a third-party advocacy group could advertise for the first 28 days of a campaign that "a candidate wasn't fit to sleep with pigs" and, as the law is now written, the candidate could not respond to such charges if they had already used up their advertising time allocation.¹⁸⁰

¹⁷⁸ Les Leyne. "Guerrilla Campaign Fights NDP Election Law." *Times Colonist*. May 14, 1996.

¹⁷⁹ Canada. Royal Commission on Electoral Reform and Party Financing. *Reforming Electoral Democracy*. Final Report. Volume 2. page 190.

¹⁸⁰ Romanow, "Negative Political Advertising", page 187.

Proponents of this model also argue that elections could be "bought" by interest groups with the greatest resources (Canadian business), or the single-issue groups (on abortion for example), thus distorting political reality, which tends to be multi-issued and complex. It is argued as well that "banning really does not mean banning", since if advocacy groups wanted to advertise, they can organize as political parties and register as such. Therefore, in that status, they could participate on equal terms with their political opponents.¹⁸¹

Another argument put forward for banning third party advertising is that these advocacy groups are not accountable, as politicians are, and may have a short life span. Consequently, they have no incentive to tell the truth. A campaign without them would be less distorted and more informative. However, opponents of banning advocacy group advertising maintain that "truth" can be subjective. For example, what if certain third parties are labeled as misinformers simply because they believe in different or less pleasant "truths". Who is to say that some of the shock literature distributed by pro-lifers or animal protectionists is a distortion that voters should not see? At the same time, should racist literature or pornographic material of women and children be legal for distribution?

Overall, the problem with an outright ban on third party advertising is the constitutional difficulty of demonstrating under section 1 of the Charter that there is no way of allowing third parties to spend money to promote their policy views while ensuring that the electoral process is fair and equitable for registered parties.

¹⁸¹ Ibid.

WHAT IS THE SOLUTION?

Clearly, the matter of third-party advertising raises some very thorny issues, among which is the need to find a balance between the competing principles of freedom of political speech and a democratic electoral process. To reiterate, the principal questions are whether organizations other than registered political parties should be granted unlimited access to the purchase of broadcast time during the election period in order to address issues of public importance, and whether certain restrictions that apply to political party advertising should similarly be applied to third-party advertising. Generally, the news media, for the most part, focus their attention on political parties. The legitimate concerns of third-party groups on a number of important political, economic, and social issues are often ignored by the media. How then are interest groups to convey their message to the Canadian public, other than through advertising? The recent court decision which ruled that regulating third party advertising was unconstitutional will most likely be appealed by the federal government to the Supreme Court. If the Supreme Court upholds the Alberta Court of Appeals decision, then the regulatory model will not be applicable. In effect, the libertarian model will continue to be in effect. This would not be fair to political parties and candidates who are subject to strict spending limits on advertising. Therefore, the current law should be changed to allow for one overall election spending limit to include all campaign expenditures. There should be no separate limit for advertising. This way, parties and candidates have the flexibility to decide how much to spend on advertising, subsequently also allowing them the opportunity to respond to third party advertising.

CHAPTER 6

CONCLUSION

Without money, political parties and candidates would not be able to run campaigns. Rules about who can spend money, and how much, and where and how parties can get the necessary revenues, are crucial. Money is the means which allows parties and candidates to inform citizens about their positions and to try to convince them to vote in a certain way, which is what an election campaign is about. As Elster has argued, the forum is to politics what the market is to the economy. Therefore, rules about how that forum should be structured, and how communication between parties and candidates, on the one hand, and voters, on the other hand, should take place, are fundamental.¹⁸²

The basic justification of public regulation of spending and public funding of campaigns is to ensure that all voters, parties and candidates compete on a more equal footing. In addition to levelling the playing field somewhat, public law respecting elections also has the implicit objective of encouraging better quality contests. The basic objection is the same argument third parties use to oppose regulation of third party expenditures - that it is an inappropriate reduction of voters', parties' or candidates' freedom of expression. Regulating electoral finance runs counter to the individualistic

¹⁸² Andre Blais. Elizabeth Gidengil. *Making Representative Democracy Work: The Views Of Canadians*. Royal Commission On Electoral Reform And Party Financing. Volume 17. Toronto: Dundurn Press, 1991. page 113. and in Jon Elster. "The Market And The Forum: Three Varieties Of Political Theory." *Foundations Of Social Choice Theory*. Jon Elster. Aanund Hylland. (eds). Cambridge: Cambridge University Press, 1986.

goal of minimizing restrictions on individual autonomy. The debate about electoral finances is also very much a debate about the proper role of the state.

Overall, the principle of limits on spending is almost unanimously accepted in Canada. A 1990 survey study by Blais and Gidengil for the Royal Commission on Electoral Reform and Party Financing, found that 88 per cent of Canadians supported the idea of limiting party spending. Those surveyed in Manitoba and Saskatchewan were 90 per cent in favor of spending limits.¹⁸³ Support for spending limits has always been high in Canada. Gallup surveys as early as 1949 reported that those with an opinion thought that "there should be a limit on the amount each party can spend in an election campaign;" the percentage rose to 91 per cent in 1961 and 89 per cent in 1972.¹⁸⁴ As shown in chapter 3, there is no question that the regulatory regime has constrained the election campaign spending "arms race" for political parties as measured by official election expenses and advertising expenses. As tables 1 and 3 reveal, the *Elections Finances Act* has constrained the growth of election expenses as the increases in spending have been moderate.

However, the system of party and campaign financing now in place also has certain problems or deficiencies. According to Manitoba's Chief Electoral Officer, Richard Balasko, one of these "problems" is with the definition of "election expenses."¹⁸⁵ This definition is fundamental to the *Elections Finances Act* and it impacts directly on three central features, namely spending limits, reimbursement and financial disclosure. Under section 45(1) of the Act, "election expenses" mean:

- (a) money spent and liabilities incurred; and

¹⁸³ Blais and Gidengil. *Making Representative Democracy Work*. page 85.

¹⁸⁴ Ibid. page 84 and *Gallup Report*. May 27 1972.

¹⁸⁵ Balasko. Interview.

- (b) the value of donations in kind accepted, prior to or during an election period for the purpose of supporting or opposing a candidate or registered political party in the election.¹⁸⁶

It would be helpful if the scope of the definition was expanded to include **all** money spent during the election campaign. Currently, such items as research costs, policy formulation and development and the production costs of commercials not used in the campaign are excluded from official election expenses. Quebec's definition of an election expense is more specific. In part, the Quebec definition specifies as election expenses the cost of any goods or services used during an election period to promote or oppose, directly or indirectly, the election of a candidate or candidates of a party.¹⁸⁷ However, if every expenditure made during the election period were to be included in the definition of an election expense, then existing spending limits and reimbursement levels might need to be raised in order to reflect the reality that there are more items encompassing the definition of an election expense. There is a similar problem with the *Canada Elections Act*. Again, there is a discrepancy between the Chief Electoral Officer's interpretation of "election expense", and the ability of parties to shift "election expenses" outside the period in which they are limited by law.¹⁸⁸ Basically, two aspects of the present definition require clarification. The first is the operational meaning to be given to the phrase "... in respect of goods and services provided during the election period for the purposes of supporting or opposing." It is not clear whether this phrase intends that the actual goods must be used or services provided in order for expenditures to become election expenses. The second issue relates to the phrase "supporting or opposing a candidate or registered political party". The terms "supporting or opposing" are not

¹⁸⁶ *Elections Finances Act*, Section 45(1). page 26 of the Act.

¹⁸⁷ Elections Manitoba, *Annual Report On the Elections Finances Act, 1990*, page 38.

¹⁸⁸ Stanbury. "Regulating the Financing of Federal Parties and Candidates." page 389.

precise. In some cases, whether an expenditure supports or opposes a candidate or political party is a matter of interpretation.

As examined in chapter 5, another "problem" with the *Elections Finances Act* is with independent expenditures. The activities of third parties during campaigns appear to threaten the integrity of the regulatory regime's constraints on expenditures and on the timing of advertising messages during the campaign period. At the same time, stringent regulation of the activities of third parties inevitably conflicts with the protection of the right of freedom of expression under the *Charter of Rights and Freedoms*. The issue of third party advertising during election campaigns is one of the most difficult to address. While a ban on third party advertising would violate freedom of expression, placing a limit on expenditures by independent groups during an election has also been ruled unconstitutional. Furthermore, any limit other than the amount for a political party running a full slate of candidates would be arbitrary. Also, even if limits were set for third parties, political parties could still get around their "election expenses" by "inspiring" advocacy groups to support their policies. The current situation is unfair to political parties who are subject to spending limits. A candidate or political party may be at a disadvantage when having to respond to groups with virtually unlimited amounts of money to spend on advertising. According to Barb Biggar, the Conservative party was considerably outspent in the 1995 election because of third party advertising.

Perhaps the only solution is to have only one overall spending limit for political parties and candidates in order that they have the flexibility to campaign reasonably equally with third parties during the election period. Political parties would still be subject to spending limits, but would at least be in a position to compete with third party groups. While the parties themselves would rather see the separate spending limit for advertising continue to be in place and have third party advertising regulated, all agree that the separate spending limit for advertising should be eliminated if third party advertising is going to continue to be unregulated. According to Robert Drummond: "If

they're not going to do anything about third parties then they should get rid of the spending limit for advertising ... but I would rather see them develop a rule ... restricting third party advertising ... regulate third party advertising or get rid of the spending limits."¹⁸⁹

Overall, the issue of third party activity during election campaigns is one of the most difficult to address. A balance must be struck between the regulation of these activities in order to preserve the integrity of the controls of "election expenses" by parties and candidates and the constitutional protection of freedom of expression in the *Canadian Charter of Rights and Freedoms*. According to Robert Gabor, who served as Commissioner for the Royal Commission on Electoral Reform and Party Financing, with third parties thrown into the election arena "we will see the steady erosion of compliance of the spending limits by the political parties and they will play more games than they play right now."¹⁹⁰ Third party advertising pushes the overall spending of elections up as political parties struggle to compete to get their message heard within the confines of spending limits. In order to allow the political parties to compete within their own arena, it may be necessary to eliminate the separate advertising limit. The question of what role interest groups should play in an election must be addressed. If third parties are not regulated this would be unfair to political parties who do have spending limits imposed on them. On the other hand, regulating and banning third party advertising has been declared unconstitutional by the courts. No government will likely want to pass legislation regulating third party advertising and invoke section 33 of the Charter. Currently, Canada's justice minister has indicated that he intends to appeal the recent Alberta Appeals Court ruling to the Supreme Court of Canada.

¹⁸⁹ Drummond. Interview.

¹⁹⁰ Robert Gabor. Former Commissioner of the Royal Commission On Electoral Reform and Party Financing. Interview. August 7, 1996.

While third party advertising is something that political parties would like to see gone during election campaigns, they themselves are increasingly relying on political advertising to get their message out. Political parties are also utilizing a variety of modern campaign technologies which have substantially reduced the more traditional modes of electioneering. Campaign specialists have been brought in to professionally manage the "modern campaign" which relies on television advertising, polling, direct mail and the latest in computer technology. According to Robert Gabor, elections have changed completely and "the thing that's changed them is technology ... and technology means money." Campaigns are becoming increasingly capital-intensive as opposed to labour-intensive. They are also being run more centrally as political parties are using the various technologies available to them to "control the message." Campaigns are now highly synchronized operations that deliver a coherent and consistent message through many different avenues and voices. The *Elections Finances Act* has also served to make campaigns more centralized. The reasons include, first, the economies of scale. A lot of campaign activity is performed centrally because of the cost efficiency. Second, the *Elections Finances Act* requires political parties and candidates to file returns and give out tax receipts. A great deal of these activities are done centrally in order to reduce the possibility of error. Also, the returns have to be submitted on time to Elections Manitoba. But according to Robert Drummond: "technology influences [the centralized campaign] a lot more because you need people just to manage television spots, or radio spots or the computer ... that takes a lot of manpower and a lot of specialized knowledge ... but the *Elections Act* does not affect how they do it. It has an affect on their accounting." Similarly, Wendy Gerecke of the NDP acknowledged: "everything is shifting the way of technology ... as technology increases, it shifts away from people ... the cost is still there, but the cost is not going to the people, the cost is going to the cost of the technology."

Increasingly, television has become the dominant campaign medium. Declining print media readership and the relative credibility and perceived impact of television have

made it the preferred medium. Party strategists prefer television to other media, not only because of its larger audiences, but also because of its greater emotional impact and ability to persuade. But advertising is expensive, as are other campaign technologies. This is another reason why there should only be one spending limit. Parties should be given the flexibility to decide for themselves where to focus their campaign resources. This way the parties would not have to advertise before the election campaign, as a way to get around the election spending laws, at a time when the public is less attentive and thus the message is not as effective.

This thesis has examined the use of political advertising by both political parties and independent groups in Manitoba. The thesis also offered an analysis of the impact of campaign technologies and election laws on the structure of campaigns. It concludes that both factors have led to greater centralization in the management of political parties, particularly with respect to communication, which is probably the most important activity of parties. New technologies have enabled party managers to collect, control, format and dispatch information instantaneously to all candidates, volunteers, and voters.

Chapter two of the thesis discussed Canada and Manitoba's election finance laws in a historical context. This chapter reviewed how laws governing election campaigns have evolved over time. Interest in the topic of electoral reform, however, has been sporadic. Historically, scandal has often been the catalyst for reform.

Chapter three examined the trends in election spending. The figures demonstrate that the election finance laws have been relatively successful in keeping spending from rapidly accelerating with each election. Having studied the empirical evidence, however, the recommendation is made that the separate spending limit for advertising should be abolished. Given the trend toward the use of capital-intensive technologies and the fact that third party advertising is unregulated, one spending limit would allow the political parties the flexibility to channel their resources where they want throughout the election campaign.

Chapter four discussed the use of political advertising by parties and the increasing utilization of modern technologies in election campaigns. Communication and advertising are exploding into a hi-tech and targeted multimedia approach based on the use of polling, focus groups, computers and other new technologies. In Manitoba, the political parties have already, to varying degrees of sophistication, developed research procedures and activities, as well as intelligence and information systems which allow them to monitor issues, opinions and attitudes of voters, their characteristics, and their voting intentions. The trend of adopting new technologies and media to manage electoral campaigns is accelerating. New technologies have already made it possible for a party to provide instant, standardized and specific information to all members, volunteers, and candidates on various issues and elements of the platform. This has resulted in greater centralization of the structure of campaigns. The argument for abolishing the separate spending limit for advertising is also discussed in chapter four. Given the use of new technologies in campaigning, several consequences have been widely predicted. For example, the decline of printing, replaced by videotex. Political campaigning could shift from a broadcasting approach in which general messages are sent to a broad audience, to a targeted "narrow-casting" approach where specific messages are sent to narrowly defined audiences through such media as cable television, teletex, videotex and computerized direct mail. Where do these technologies fit in terms of election spending? For example, should direct mail be counted as an advertising expense or be grouped under printing with "other" election expenses. Having one election expense would clarify such confusion.

Chapter five considered the controversial issue of third party advertising in Manitoba and in other jurisdictions. Three models are developed in order to decipher the various positions for or against third party advertising. It is concluded that since banning and regulating third party advertising was ruled unconstitutional by the courts, the

separate spending limit for advertising imposed on political parties should be eliminated in order to allow them the flexibility to respond to third party advertising.

In the final analysis, the ultimate goal of political parties is to win elections. The most important factor in any election campaign is to get the right message out to voters. This cannot be done without money. Capital and resources have always been critical components of political power. However, money has acquired a special significance as the election campaigns of today are increasingly becoming capital-intensive. Developments in election technology - television advertising, polling, direct marketing, and the use of experts to manage these technologies - have changed the nature of political communication. They will continue to do so.

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