

# FAIRNESS IN THE ELECTORAL PROCESS



## FAIRNESS AS THE PRE-EMINENT VALUE IN THE ELECTORAL PROCESS

OUR CANADIAN POLITICAL tradition has long recognized the freedoms of expression and association for election debate and competition among political parties. Even before Confederation, these features of electoral democracy were well established for essentially two reasons. First, they were implicit in the right of British subjects to representative government. Representative government implied elections with freedom of political expression about issues and candidates; it also implied freedom to organize political factions or parties. Second, the competing forces from the earliest days of representative government in the British North American colonies represented powerful and influential interests. The struggles for responsible government before Confederation were not contests between a cohesive political establishment and the masses but rather competitions between opposing political elites. Freedom of expression and freedom of association thus reflected both the constitutional principles of parliamentary government and the fragmentation of political power and influence.

At the outset, the competing elites who organized and dominated the institutions of parliamentary government did not consider universal suffrage and full access to elected office necessary to representative and responsible government. As a consequence, acceptance of these fundamental rights grew incrementally. First came the elimination of 'plural voting' – which had given those possessing property in more than one constituency more than one vote – so that each voter would have only one vote at any election. Second, the franchise was gradually extended to eliminate discrimination on the basis of property, race or sex.

With successive developments, our political system has matured to the point where the fundamental equality of citizens has been acknowledged. The adoption of the *Canadian Charter of Rights and Freedoms* was clearly our most explicit effort in this regard. The Charter did not establish new democratic rights and freedoms, since these were in accord with contemporary values, norms and practices. The right of every citizen to vote and to be qualified for membership in the House of Commons was considered so fundamental a characteristic of our democracy that the relevant section of the

Charter was explicitly protected from the notwithstanding clause. (s. 33 of the Charter)

Central to the recognition of these rights and freedoms is the principle of equality. Canadians are to be treated equally in their claim to these freedoms and rights; each possesses the same status. This equality of status is not meant to be a mere formality. Rather, the purpose of the Charter recognition of these rights and freedoms is that they be secured equally by all citizens. This purpose cannot be realized simply by a declaration of formal equality.

Laws are required to give meaningful expression to the equality principle implicit in these Charter rights and freedoms. The constitutional recognition of these rights and freedoms constitutes a necessary but insufficient condition if citizens are to have an equal opportunity to exercise meaningful influence over the outcome of elections. For this fundamental equality of opportunity to be realized in the electoral process, our electoral laws must also be fair. In other words, the Charter establishes the equality of citizens; only if electoral processes themselves have the property of fairness, however, can this outcome be achieved in practice. This accords with the predominant view of Canadians that the federal electoral process must first and foremost reflect and promote fairness. (Fortin 1991 RC)

Fairness is thus the central value that must inform electoral laws if they are to promote the desired outcome of the equality of citizens in the exercise of their democratic rights and freedoms. In this sense, fairness gives meaningful effect to rights and freedoms by setting a standard that the law must meet in regulating behaviour or providing benefits. Electoral laws are fair only to the degree that they promote the meaningful exercise of the rights and freedoms essential to a healthy electoral democracy.

In the case of the democratic right to vote, as discussed elsewhere in this report, this means a number of conditions beyond the constitutional provision of the universal franchise. Canadian election law, accordingly, provides that each voter may vote only once. Furthermore, the law governing the drawing of constituency boundaries states that constituencies must have reasonably equal populations. Election laws governing the registration of voters and access to the voting process are also meant to facilitate the exercise of the franchise. It has long been unacceptable, for instance, to have only one polling station in a constituency; closing the list of voters at the issuance of the election writ is equally unacceptable. The successive reforms that have occurred over the course of our history clearly demonstrate that the meaningful exercise of the right to vote demands fair election laws and administrative mechanisms.

The meaningful exercise of the right to be a candidate for election demands that access to candidacy not be restricted by unreasonable laws or practices. Canadian election law and administrative procedures in this regard have long been relatively open, at least for qualified voters. Gone, for instance, are the days when constituency returning officers could rig elections by failing to notify a party when nominations were to be made or

by holding a meeting for the official nomination of candidates at remote places. Property qualifications were also removed in the last century, as was the practice of taxing candidates to finance the election. The deposit required of candidates, furthermore, has not been increased since 1882. The number of signatures required for a nomination has never been excessive.

Canadian election law has generally had little effect on freedom of association. Indeed, only in the last two decades has the law formally acknowledged that Canadian elections involve political parties. Previously, the law applied essentially to voters and candidates. Since Canadian election law has generally been silent on parties or other political groups, its effect on freedom of association with regard to the electoral process has been minimal. There are two exceptions: a 1919 law that was used to prosecute members of the Communist Party in the 1930s until its repeal in 1936 and the order to disband the Fascist Party of Canada during the Second World War under the *War Measures Act*. The advent in 1970 of formally registered parties under the *Canada Elections Act* did not fundamentally alter this state of affairs, as the registration criteria and procedures, with some exceptions, have not been onerous.

Finally, in the case of freedom of expression, it is worthy of note that 40 years before freedom of expression was entrenched in the Charter in 1982, the Supreme Court of Canada recognized that it was one of the most fundamental rights in a liberal democracy. In the Court's view, the importance of free debate to representative government was undeniable. (*Reference re Alberta Statutes* 1938) The entrenchment of freedom of expression in the Charter recognized and reaffirmed the importance of free speech to the Canadian polity. However, free speech, like all other protected rights, is subject to reasonable limitations that can be imposed when rights conflict with competing fundamental values and other protected rights.

Canadian law has long regulated the role and use of the broadcasting media through both election and broadcasting laws. The justification for such regulation has been based on the particular characteristics of radio and television media, for which, because airtime is by definition finite, rules relating to access and broadcast time are required. From the outset, the regulation of radio and television access and time had to recognize that the freedom of expression of parties had to be limited in some respects to secure the meaningful exercise of this freedom by parties and the right of voters to hear a reasonable representation of the points of view of all parties. This required an explicit 'fairness doctrine' to provide access to and to allocate time on these media. (Courtney 1978, 41, 43)

Since 1974, freedom of expression has been further affected by the spending limits imposed on candidates and registered parties and by the restrictions on independent election spending by other individuals and groups under the *Canada Elections Act*. The adoption of these limits and restrictions sought to ensure the equal opportunity of each candidate and party to exercise freedom of expression in the electoral process in a

meaningful manner. This was achieved by limiting the capacity of one or more candidates or parties, or others who might directly promote or oppose them, to dominate election discourse simply because they could afford to buy more media time or space. The 1974 law also sought to enhance fairness in the opportunities of candidates and parties to attain meaningful freedom of expression by providing partial reimbursements for candidate and party election expenses and income tax credits for political contributions. In addition to supporting the right of individuals to candidacy and the right of individuals to participate through political parties, these provisions recognized that public funding was important to allow candidates and parties a fair opportunity to mount effective campaigns through the mass media.

Electoral laws promote fairness in the exercise of freedom of expression only to the extent that there are reasonable opportunities for citizens, particularly candidates, as well as political parties to present their case to other voters. Freedom of expression in this respect is crucial to the realization of the fundamental objectives of our electoral democracy. In addition to a meaningful right to vote, to be a candidate and to join with others through political parties to promote shared political aims, voters must be able to influence the outcome of an election by communicating freely to other voters their own views about candidates and parties. Freedom of expression in this sense is both a democratic right in itself and a means to the realization of other democratic rights. Free and democratic elections are not possible without freedom of expression.

Freedom of expression in the electoral process, however, cannot be meaningfully achieved unless the laws that govern this process explicitly seek to promote fairness in the exercise of this freedom. In this critical respect, the electoral law should not presume that all participants will have equal resources to communicate with the electorate. To do so would be to ignore the fact that different participants draw on different bases of political support to finance their electoral campaigns. Nor should electoral law assume that inequalities among participants are irrelevant to the outcome of elections. To do so would be to ignore the known effects of political communication: the capacity to communicate often, to use different media and to develop messages with the assistance of marketing and advertising experts is a significant factor in the political persuasion of voters.

In these respects, the electoral process must not be equated with the economic marketplace. A fundamental and inherent feature of democratic rights is that, unlike economic assets, they are universally distributed. They are acquired and exercised freely without any monetary charge, and they cannot be bought and sold. For instance, electoral laws explicitly state that a voter may not 'sell' her or his vote in exchange for any benefit. The marketplace prescribes an equality of opportunity to participate but allows relatively free rein for individuals and groups to advance their economic self-interests by accumulating unequal amounts of resources. In direct contrast, at the

heart of the electoral process lies the principle of the equality of voters. The importance of this principle has been captured by the eminent political scientist, Robert Dahl: "If income, wealth, and economic position are ... political resources, and if they are distributed unequally, then how can citizens be political equals? And if citizens cannot be political equals, how is democracy to exist?" (1989, 326)

How and where a democratic society draws the line between the domain of democratic rights and that of the marketplace are matters of continuing debate. There is an inherent tension between the freedom to do fully as one wishes to advance one's political interests or political cause, with whatever resources one has at one's disposal, and the rights of others to participate equally in the governance of their political society. This tension has long been recognized by political philosophers and jurists alike, and exists in theory as well as in the making and adjudication of laws. (Jenson 1991a RC) Decisions in this regard will always be subject to controversy and debate because "human goals are many, not all of them commensurable, and in perpetual rivalry with one another". (Berlin 1969, 171) Some will dispute the decision about which value deserves primacy, while others will challenge where the line has been drawn.

It is remarkable how the evolution of both democratic theory and institutions is testimony to the degree to which fairness, as equality of opportunity, has increasingly come to be regarded as fundamental. The principle of fairness does not override basic rights and freedoms, for that would imply the rights and freedoms are not themselves contained within the basic notion of justice. But, in certain circumstances, fairness may justifiably restrict the exercise of certain freedoms in the pursuit of justice itself.

The principal means whereby Canadians actively participate in elections is as supporters of candidates and members of political parties. Political parties provide opportunities for individuals who share similar values to promote their common objectives. Although political parties co-ordinate and channel individual expression and participation in the electoral process, individuals and groups other than candidates and parties can also express their views independently. The expression of such views is important during elections when assessments of issues, candidates, parties and governments are most likely to evoke response and provide the basis for voters to judge those who seek to represent them and to govern. Freedom of expression is essential if there is to be meaningful debate on important and contentious issues.

There is, therefore, no question of the importance and justification of freedom of expression. At the same time, the capacity to spend money on advertising campaigns to publicize an individual's or group's views on election issues, parties or candidates is not an appropriate measure of whether individuals or groups have sufficient opportunities to exercise their right to freedom of expression. The ability to spend significant amounts of money to promote one's view is not, in itself, a requisite for freedom of expression.

Because discrepancies in resources directly affect the ability to acquire media time or space to communicate a message, unrestricted freedom to express political views during an election cannot prevent some electoral communications from overwhelming the communications of others, thereby advantaging one political point of view. As Robert Mutch has written, "Limits cannot increase the speech opportunities of the nonwealthy majority, but they do reduce the degree to which the debate is dominated by wealth." (1988, 64)

The objective of fairness in the regulation of election spending, therefore, is neither to control the costs of elections for the principal 'players', namely candidates, parties and their partisan supporters, nor to advantage them over other independent individuals or groups. Rather, it is to ensure that some are not able to dominate election discourse because of their financial resources. In the words of the noted political theorist, John Rawls:

Those similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social classes.... The liberties protected by the principle of participation lose much of their value whenever those who have greater means are permitted to use their advantage to control the course of public debate. (1972, 225)

In the 1960s, Canadian legislators recognized the need to limit election expenditures. While the rising costs of election campaigns were a major concern, the 1966 report of the Committee on Election Expenses (the Barbeau Committee) and the subsequent reform legislation of 1974 testified to the increasing awareness that fairness in the electoral process could not be realized without a new regulatory framework. The framework that emerged from legislative changes in the 1970s, along with subsequent amendments to it, contained three principal elements: (1) limits on the election expenses of candidates and registered political parties; (2) restrictions on the independent election spending of all other individuals and groups; and (3) broadcasting regulations on when, how and to what extent political parties and candidates could advertise on television and radio. This regulatory framework applied only during the election period.

The need to promote fairness in the electoral process to give full meaning to democratic rights and freedoms was regarded as a legitimate and pressing concern; the means chosen were judged the most appropriate and effective, as well as the least restrictive of freedom of expression and association. Canadian political parties, unlike those in countries such as Great Britain and France, were not barred from purchasing time on the electronic media; rather, to allow a reasonable opportunity for the various parties to be heard, limits were placed on the amount of advertising time any one party could buy. Moreover, each of the three elements of the 1974 reforms was considered an essential pillar of the framework. Although not without shortcomings in promoting fairness, this framework placed Canada at the leading edge of

western democratic political systems in securing the rights and freedoms of Canadians as they applied to electoral democracy.

Restrictions on the election expenditures of individuals or groups other than candidates or parties were central to the attempt to ensure that the financial capacities of some did not unduly distort the election process by unfairly disadvantaging others. The objective of these restrictions on independent expenditures was to ensure that money was not spent in ways that would nullify the effectiveness of spending limits on candidates and political parties. If individuals or groups were permitted to run parallel campaigns augmenting the spending of certain candidates or parties, those candidates or parties would have an unfair advantage over others not similarly supported. At the same time, candidates or parties who were the target of spending by individuals or groups opposed to their election would be put at a disadvantage compared with those who were not targeted. Should such activity become widespread, the purpose of the legislation would be destroyed, the reasonably equal opportunity the legislation seeks to establish would vanish, and the overall goal of restricting the role of money in unfairly influencing election outcomes would be defeated. At issue was not the protection of candidates or parties from critical assessments by individuals or groups but rather limits on the ability of individuals or groups to incur election expenses to directly or indirectly influence the outcome of elections.

To avoid unfair outcomes, it was considered imperative that there be limits on the spending of individuals and groups who might directly or indirectly support the election of one or more candidates or a party. The need for such restrictions was recognized by the Barbeau Committee in 1966, which recommended that all groups other than registered parties and candidates be prevented from using paid advertisements that directly promoted or opposed a candidate or party during the election:

The Committee has no desire to stifle the actions of such groups in their day-to-day activities. However, the Committee has learned from other jurisdictions that if these groups are allowed to participate actively in an election campaign any limitations or controls on the political parties or candidates become meaningless. In the United States, for example, *ad hoc* committees such as "Friends of John Smith" or "Supporters of John Doe" commonly spring up to support a candidate or party. Such committees make limitation on expenditures an exercise in futility, and render meaningless the reporting of election expenses by parties and candidates. (Canada, Committee on Election Expenses 1966, 50)

The Barbeau Committee's reference to the "day-to-day activities" of groups remains relevant. Where it has been enacted, the regulation of independent expenditures has not been intended to silence debate. Rather, the regulation is intended to restrict the ability of an individual or an advocacy group to launch an advertising campaign on an issue that is central to the campaign,

independently of a candidate or a party. Even if the advertising campaign avoided directly endorsing or opposing a particular candidate or party, it could help the chances of one side and hinder the chances of another. In these direct and indirect ways, such spending on an issue central to the campaign would in effect augment the spending of one or more candidates or parties. While all candidates and parties would be subject to the election spending limits, those who did not benefit from groups making independent expenditures on behalf of the issues the candidates or parties support might well be put at a disadvantage; the same would apply to candidates and parties whose policies became the target of negative advertising by individuals or advocacy groups.

In 1984, Judge Medhurst of the Alberta Court of Queen's Bench ruled that the particular provisions of the 1974 law, as amended in 1983 to prohibit *all* independent election spending to directly promote or oppose a particular candidate or party, was an unjustified restriction on freedom of expression. (*National Citizens' Coalition Inc.* 1984) The federal government decided not to appeal the judgement or to amend the law in a manner consistent with the Charter. Elections Canada decided not to enforce the law outside Alberta during the 1984 and 1988 general elections, even though the judgement was not binding on courts outside Alberta. These decisions destroyed the overall effectiveness of the legislative framework for promoting fairness in the exercise of freedom of expression and of democratic rights during Canadian elections. The experience of the 1988 general election clearly demonstrates this. The gaping hole in our existing framework in relation to independent expenditures is patently unfair. The conundrum that this development presents for electoral reform is now widely acknowledged. Without fairness, we may continue to have a 'free' society, but we would certainly diminish the 'democratic' character of our society. The Charter couples these two dimensions. It is essential that both Parliament and the courts acknowledge this fundamental fact.

Given the centrality of fairness as a fundamental condition of equality of opportunity in the electoral process, the electoral regulatory framework must be rebuilt. This requires a law with provisions that promote fairness by limiting the election expenses of candidates and parties, by securing access to the broadcast media, and by also limiting, but not ruling out, the opportunity for other individuals and groups to spend independently of candidates and parties during the election period in ways that may directly or indirectly affect the election outcome for at least one candidate or party.

## LIMITING ELECTION EXPENSES

### Background to the 1974 Legislation

The issue of limiting spending in federal elections was not seriously considered until the 1960s. The 1874 *Dominion Elections Act*, which was modelled fairly closely on the British *Corrupt Practices Act* of 1854, introduced requirements for candidates to appoint an agent and to report on their election expenditures. In 1883, Great Britain introduced statutory spending limits



for candidates as part of the *Corrupt and Illegal Practices Prevention Act*. In this case, as Leslie Seidle has noted, Canada did not follow the British example: "Canadian elections in the nineteenth century were often associated with extravagant expenditure, but no single election approached the excesses of the 1880 British contest. There was some awareness of the principles which had been introduced in the 1883 Act, but no one campaigned for a drastic rewriting of the Canadian law along British lines." (1980, 286–87)

The cost of Canadian elections began to stimulate debate in the 1930s. Some complained that candidates' campaigns were unnecessarily costly because there were too many paid workers. At the national level, spending increased as the parties began to rely on the services of advertising agencies. (Seidle 1980, 170) In 1938, C.G. Power introduced a private member's bill that proposed limitations on candidates' expenditures and annual reporting of political parties' spending and contributions. Power reintroduced his bill in the following session; it was studied by a special committee but not adopted. In 1949, he tabled a similar bill, which received second reading but went no further.

In the absence of support from the national parties, isolated efforts such as Power's had no impact. The situation began to change in the late 1950s. From 1957 to 1963, four general federal elections were held. Although in each case the large national political parties were able to obtain significant amounts of money to conduct their campaigns, each election was successively more costly, in large part because of increased spending on television advertising, first used in the 1957 general election. The widespread concern about the rising cost of elections, particularly for the national political parties, led to the establishment in 1964 of the Committee on Election Expenses. The Chair of the Committee was Alphonse Barbeau, who had helped develop the 1963 reforms to Quebec's electoral law, which introduced election spending limits for the first time in Canada. The Committee comprised persons who had been active in the Liberal, Progressive Conservative and New Democratic parties, as well as a prominent political scientist.

In its report, the Committee stated that "a body of evidence presented to [the Committee] supports the need ... for some form of control of, and limitation on, election expenditure". (Canada, Committee on Election Expenses 1966, 49) The Committee's approach to the issue was threefold.

First, as a way of limiting election costs, the Committee recommended parties and candidates be prohibited from advertising on television or radio and from using paid print media except during the four weeks immediately preceding election day. Political parties were also to be barred from purchasing any paid advertising time on television or radio that was additional to their share of six hours of subsidized paid time each broadcaster would be obliged to provide during that period.

Second, the Committee recommended a limit of \$0.10 per voter on candidates' spending on broadcast and print advertising. The Committee rejected a "total dollar limitation" for candidates because it assumed that

“any attempt to place such a limitation could be easily circumvented”. (Canada, Committee on Election Expenses 1966, 49) It did not favour any form of statutory spending limits for political parties, preferring to rely on disclosure as a form of discipline: “The Committee suggests that as a first step reports on expenditures, and the attendant publicity, (provided the system adopted is rigorous enough), would oblige parties to put wise limits on their expenditures.” (Canada, Committee on Election Expenses 1966, 32) A related recommendation was that the doctrine of agency be extended to political parties.

Third, the Barbeau Committee recognized that the restrictions on the purchase of broadcast time by parties and the advertising spending limits for candidates it proposed would be effective only if accompanied by regulations on the expenditures of other individuals and groups. The Committee recommended that all groups other than registered parties and candidates be prevented from using paid advertisements that directly promoted or opposed a candidate or party during the election.

Parliament did not begin to consider the issues addressed by the Barbeau Committee until October 1970, when a special committee of the House of Commons, known as the Chappell Committee after its chair, Hyliard Chappell, was appointed to consider amendments to the *Canada Elections Act*. In its report, the Chappell Committee adopted a much more comprehensive approach to spending limits: it proposed limits on the ‘election expenses’ (not just the advertising expenses) of candidates *and* of parties. (Canada, House of Commons 1971) In May 1972, just before Parliament was dissolved, Bill C-211 was introduced but not adopted. The bill included advertising spending limits for candidates only and a maximum of six and one-half hours of broadcast advertising time for purchase by the parties. Clearly, Members of Parliament saw the need for more comprehensive reform than the senior organizers and executives of the national parties.

The 1972 election returned a minority Liberal government. Calls for reform came from the New Democratic Party, which held the balance of power in the House of Commons, and, increasingly, from Canadians whose concern about party finance and election spending was stimulated by the Watergate revelations in the United States.<sup>1</sup> (Mutch 1991 RC) This led to the introduction of legislation, adopted as the *Election Expenses Act*, which came into effect on 1 August 1974.

The Act provided for overall limits on the election expenses of both candidates and parties. A candidate’s election expenses could not exceed the aggregate of: \$1.00 for each of the first 15 000 voters on the preliminary list for the constituency; \$0.50 for each voter between 15 001 and 25 000; and \$0.25 for each additional voter. Amendments adopted in 1977 and 1983 permit additional spending in constituencies where the number of voters is less than the average in all constituencies and in geographically large constituencies.

The limit for a registered political party's election expenses was determined by multiplying \$0.30 by the number of voters on the preliminary lists in constituencies where the party had officially nominated candidates. In the 1979 election, the average spending limit for candidates was \$27 744; the spending limit for a registered party with candidates in all constituencies was \$4 459 249. Since amendments adopted in 1983 the candidate and party limits have been adjusted on 1 April each year to reflect the change in the consumer price index during the previous 12 months.

The Act also explicitly recognized that limiting spending by candidates and parties would require the regulation of spending by other individuals and groups. Consequently, under what was then section 70.1 of the *Canada Elections Act* (now section 259), individuals or groups were prohibited from incurring expenses during elections to directly promote or oppose candidates or parties, except if authorized by the official agent of a candidate or party (in which case the spending had to be counted against the election expenses limit of the candidate or party concerned). At the same time, the legislation (s. 70.1(4)) attempted to strike a balance between the integrity of spending limits generally and the ability of non-registered participants to spend money to promote 'policy issues' by establishing a 'good faith' defence from prosecution. Individuals and groups were allowed to incur expenses to promote or oppose a registered party or candidate if they could establish that the expenditures were incurred for the purpose of gaining support for their views on policy issues or for advancing the aims of a non-partisan organization.

It soon became apparent that enforcing this good faith defence was problematic. Not only was there uncertainty about what kinds of activities were entitled to the defence, but court decisions extended it to explicitly partisan messages that included no articulated policy position. For example, an advertising banner flown from an airplane during a by-election with the message "O.H.C. Employees 767 C.U.P.E. vote but not Liberal" was interpreted by the court as a legitimate attempt to oppose the government's anti-inflation program, even though it did not specify any policy position.<sup>2</sup> (*R. v. Roach* 1978) Within five years, the chief electoral officer had good reason to warn Parliament that the law on independent spending was inadequate and had the potential to undermine the effectiveness of the spending limits for candidates and parties.

In 1983, Parliament responded to these concerns and amended the *Canada Elections Act* by removing the good faith defence. As a result, section 70.1 effectively prohibited individuals or groups from incurring independent expenditures to directly promote or oppose candidates or parties during elections. However, the legislation did not prohibit groups or individuals from incurring expenses to promote 'issues' as long as their messages did not directly promote or oppose a party or candidate. Members from the three parliamentary parties recognized during the debate in the House of Commons that the amendments might conflict with a strict

interpretation of freedom of expression but justified them as necessary to preserve the principles of fairness and equity in elections. (Canada, House of Commons, *Debates*, 25 October 1983, 28295–99)

The amended legislation was challenged by the National Citizens' Coalition. The decision, rendered in 1984 by a lower Alberta court, held that the government had not demonstrated the justification for limiting the freedom of expression of individuals or groups during elections to the degree provided by the amended section 70.1. This decision was handed down before the Supreme Court of Canada had articulated a set of rules for determining the reasonableness of legislation that conflicts with a protected right. (*R. v. Oakes* 1986) The judgement in the *National Citizens' Coalition* case, which held that limits could be justified only where "a real likelihood of harm to a society value" would occur without the impugned legislation (1984, 264), set a far more stringent test than the one subsequently relied on by the Supreme Court. However, the 1984 decision, handed down on the eve of an election, was not appealed by the federal government; nor was alternative legislation enacted. Moreover, although the decision was binding only in Alberta, Elections Canada decided not to enforce the law elsewhere in the country.

### Comparative Experience

The comparative experience of major western democracies in limiting election spending illustrates a variety of approaches. In Great Britain, for instance, candidate spending limits have been in effect since 1883. Party spending is not subject to statutory limits, but there is a ban on purchasing time on television and radio for election advertising; this constitutes an indirect, yet no less effective, limit on spending by political parties. The *Representation of the People Act* also prohibits individuals or groups from spending money at the constituency level "with a view to promoting or procuring the election of a candidate" or "disparaging another candidate" unless authorized in writing by the candidate's agent (in which case the spending counts against the candidate's limit). Moreover, groups participating in national campaigns may not advertise on radio or television; like parties, they may advertise only in newspapers.

In France, there are candidate spending limits for National Assembly and presidential elections, but no limits on political party spending. However, there is a ban on all paid political advertising during the election period on radio and television and in newspapers. This ban encompasses paid political advertising by individuals or groups.

In Germany, there are no spending limits on candidates or parties, but there are low limits on the amount of paid political advertising that political parties may purchase. Although the German law contains no specific prohibitions on independent advertising expenditures, such advertising has not been evident to any great extent in German elections. It may be that broadcasters and publishers consider it would be inconsistent to allow

a significant amount of independent advertising expenditures when they must respect restrictions on advertising by political parties.

In the United States, congressional and presidential spending limits, enacted by the *Federal Election Campaign Act* of 1971, as amended in 1974, were struck down by the U.S. Supreme Court in 1976. In *Buckley* (1976), the Court declared that spending limits were a violation of First Amendment guarantees of free speech, except when such limits were linked to the acceptance of public funding, which was then and remains part of the framework for presidential elections. (Given this exception, the Canadian law limiting the election expenses of candidates and parties would be valid in the U.S. context, since these limits are linked to a system of public funding.) The Court referred to the expenditure limits as “substantial rather than merely theoretical restraints on the quantity and diversity of political speech” (*Buckley* 1976, 19) and concluded that:

The First Amendment denies government the power to determine that spending to promote one’s political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people – individually as citizens and candidates and collectively as associations and political committees – who must retain control over the quantity and range of debate on public issues in a political campaign. (*Buckley* 1976, 57)

At the same time, the U.S. Supreme Court did not question contribution limits, expressing the view that the “major evil” associated with rapidly increasing campaign expenditures was the danger of candidates becoming dependent on large contributions. (*Buckley* 1976, 55) This emphasis was also reflected in a 1980 decision of the District Court for the District of Columbia on independent expenditures. The judges considered the prevention of corruption “the singular interest justifying” campaign finance regulations and that “spending money can just not be equated with *giving* money as a source of possible corruption”. (*FEC v. AFC* 1980, 494, 498, emphasis in original)

As a consequence, independent expenditures in the United States may be made for or against candidates, and there are no limits on the amount of independent expenditures political action committees (PACs) or any other group or organization may incur. In the 1987–88 election cycle, PACs alone spent U.S. \$20.3 million on independent expenditures, about U.S. \$16.0 million of which was spent by ‘non-connected’ (most often single-issue) PACs; there were U.S. \$13.6 million and U.S. \$6.7 million in independent expenditures in relation to the presidential and congressional races, respectively. In 1990, total independent expenditures in relation to candidates seeking election amounted to U.S. \$4.1 million. The vast majority of this spending came from non-connected PACs (U.S. \$1.9 million) and trade, membership and health organizations (\$1.8 million). In addition, PACs play a major role

in funding the campaigns of congressional candidates, who are not subject to spending limits.

The issue of independent expenditures has raised several concerns in the United States. Although such expenditures have not consistently influenced election outcomes (Magleby and Nelson 1990, 58), they have had some impact as a result of the targeting of candidates. Independent expenditures since 1982 have been primarily in support of candidates, although there have been prominent examples of independent expenditures being the source of negative advertising against candidates. Herbert Alexander (1991 RC) brings to light one such example:

Michael Dukakis' campaign was hurt by explosive ads highlighting a felon named Willie Horton, who, while on a prison furlough program in Massachusetts, had escaped and brutally raped a Maryland woman. These commercials, designed to question Dukakis' record on crime, were produced and aired not by the Bush campaign, but by two independent expenditure groups [PACs], and were widely shown on television news programs.

The issue of independent expenditures raises further questions because it is often not clear that the PAC is separate from the candidate's campaign. For example, most voters did not know that the PAC 'Americans for Bush' had no connection with George Bush's campaign for the presidency in 1988. In fact, there have been many allegations that these expenditures are not truly independent of the candidate's campaign; however, only a few such expenditures have been judged illegal by the Federal Election Commission. Furthermore, this form of spending reinforces the incumbency bias of PAC contributions. In congressional elections since 1984, independent expenditures, as well as PAC contributions to candidates, have greatly favoured incumbents over challengers. (Magleby and Nelson 1990, 55)

## **The Canadian Experience**

### *Candidates and Parties*

During our public hearings, over four-fifths of the interveners who addressed the issue of spending limits spoke in favour of the general principles enshrined in the present federal electoral law. This mirrored the results of our major attitudinal study, in which 93 per cent of respondents supported spending controls on political parties; this level of support did not vary significantly by region. (Blais and Gidengil 1991 RC) Among practitioners, support for spending limits is also strong: 79 per cent of respondents to our survey of constituency association presidents said they found the rules for limiting the election spending of federal candidates and parties "very satisfactory" or "satisfactory". (Carty 1991a RC) While opinion surveys indicated Canadians were strongly in favour of spending limits even before they were adopted at the federal level,<sup>3</sup> the effects of spending limits on

the dynamics of subsequent election campaigns have illustrated that greater fairness was not an abstract goal. This experience has reinforced public support for spending limits and helps explain why Canadians believe limits must remain a cornerstone of federal electoral law.

We were also told that another objective of democratic government – namely, accessibility to the electoral process – is enhanced by diminishing the significance of financial resources for those who are considering running for office. Spending limits lower barriers to participation faced by those who do not have generous financial backing or personal wealth. Limits also provide a form of ‘insurance policy’: if a campaign becomes heated, they allow the candidate to resist pressure to spend ever greater amounts (a problem frequently faced in the United States, where, except for presidential elections, there are no election spending limits). Our research indicates that candidates in the 1988 Canadian election spent a higher proportion of their limit in the more competitive races. (Heintzman 1991 RC) Candidates who come close to spending their limit are obliged to rely on other means, such as more effective mobilization of volunteers and voters – a sound and constructive outcome. In the absence of limits, spending in the most competitive contests would likely escalate significantly. Because spending limits prevent such escalation, those with fewer resources are not put at a direct disadvantage relative to those with better-financed campaigns. This, in turn, can encourage a greater number and variety of people to become candidates, leading to increased representation from the diversity of groups that constitute the body politic.

A number of interveners commented, during our hearings, on this relationship between spending limits and accessibility to elected office. Harry Katz, representing five Metropolitan Toronto Progressive Conservative associations, said:

It seems some people have, let's say, more access to funds than others.... And that maybe in the interest of having a good cross-section of representation in our parliament, that money should not be as big a barrier.... There shouldn't be a barrier at all, hopefully, to people running for election. (Toronto, 30 May 1990)

In a similar vein, Judy Erola told our symposium on the active participation of women in politics that the 1974 legislation “has led to the growth of [the number of] women in the House of Commons”. (Montreal, 1 November 1990)

Our research confirmed that the financial situation of women is a major barrier to their seeking election. In her survey of a sample of women candidates in the 1988 election, Janine Brodie found that lack of funding ranked as the most significant obstacle faced by women candidates. (1991 RC) Not surprisingly, many advocates of spending limits link this issue of accessibility to the democratic rights protected by the *Canadian Charter of Rights*

*and Freedoms.* By mitigating financial barriers, limits encourage more people to seek elected office, thus adding meaning to the right to stand as a candidate guaranteed by section 3 of the Charter. This reflects the strong support of Canadians for measures to ensure their constitutional rights are fully protected and can be effectively exercised. The increased number of women candidates and elected Members of Parliament since 1974, while the result of numerous factors, has obviously been enhanced by the presence of spending limits.

A telling point in the Canadian experience is the empirical evidence of the effects of spending limits on electoral competition. Contrary to the argument often heard in the United States that spending limits diminish electoral competition, the evidence since the introduction of spending limits in Canada in 1974 is that there has *not* been a decline in electoral competitiveness. During the 1974–1988 period, 6.0 per cent of the members of the U.S. House of Representatives were defeated. Moreover, the rate of defeat for members of the House of Representatives has actually been dropping and has been below 5 per cent since 1982. In Canada, however, the average rate of defeat during the four general elections since the spending limits came into effect was 24.9 per cent; the average defeat rate for the last three elections to which spending limits did not apply (1968, 1972, 1974) was 20.3 per cent (adapted from Atkinson and Docherty 1991, Table 1). Although a number of factors affect electoral competition, it is evident that Canadian federal elections since the introduction of spending limits have become more, not less, competitive, and incumbency rates for the House of Commons during that period have been markedly lower than for the U.S. House of Representatives.

The conclusion that must be drawn from all of the above considerations is that spending limits during election campaigns constitute a significant instrument for promoting fairness in the electoral process. They reduce the potential advantage of those with access to significant financial resources and thus help foster a reasonable balance in debate during elections. They also encourage access to the election process. This adds meaning to the fundamental right of candidacy by enhancing the opportunity for a more representative House of Commons. Finally, spending limits (as designed in our electoral law) help achieve these democratic objectives without diminishing electoral competition.

The evidence from the Canadian experience also supports spending limits for both candidates and political parties. A few interveners at our hearings suggested retaining spending limits for candidates but abolishing them for parties. Such an arrangement, it was suggested, would result in a regulatory scheme similar to that of Great Britain, where candidate spending is limited by law but party spending is not subject to statutory limit. This proposal ignores the fact that in Great Britain there is a ban on purchasing time on television and radio for election advertising. Limiting only candidate spending while preserving the right of parties to purchase



broadcasting time for election advertisements would leave a very important part of the election contest unregulated. The objective of fairness in the electoral process would thus be diminished greatly. Furthermore, if the parties had free rein and candidates did not, there could be potential for abuse. For example, a party could concentrate its advertising spending in ways that benefited certain candidates – perhaps those in a particular region – while stopping short of direct advocacy of those candidates. As a result, the integrity and purpose of candidate spending limits would be compromised.

### *Independent Expenditures by Individuals and Groups*

At our public hearings, more than 150 interveners argued that to protect the integrity of candidate and party spending limits, some form of regulation for individual or group election activity was necessary. Regulation could be through financial limits on spending, restrictions on the nature of advertisements or rules concerning the timing of advertisements. Only 33 interveners said no restrictions should be imposed on the independent spending of groups or individuals. An attitudinal survey conducted in 1991 reflected what interveners told us at our hearings: 75 per cent of those interviewed support spending limits for those who “represent specific group interests”. (Frizzell 1991)

The issue of spending limits for individuals and groups other than candidates and political parties became a salient one in the 1988 election. In that general election, individuals and groups, for the first time since their activities were restricted in 1974, incurred significant independent expenditures during a campaign. Individuals, corporations, labour unions and other groups spent more than \$4.7 million on advertising. (Hiebert 1991b RC, Table 1.1)

The vast proportion of independent expenditures was directed at the issue of free trade. Moreover, four times as much money was spent to promote free trade as was spent to oppose it. (Hiebert 1991b RC) Most of the advertisements paid for by individuals and groups, particularly those promoting free trade, were confined to advocacy and information about this issue, without direct partisan reference. Most of the 1988 independent advertisements thus would have been within the bounds of the legislation as amended in 1983. Nevertheless, the lopsided nature of the independent campaign on free trade raised a new question about the relationship between independent expenditures on issues and candidate and party spending limits.

Until the 1988 election, the underlying assumption of regulatory attempts to limit the election advertising of individuals and groups was that it was necessary to prohibit only directly partisan advertisements. It was assumed that the advocacy of issues did not represent a threat to the integrity of candidate and party spending limits. The 1988 election experience clearly demonstrated that advertisements promoting an issue but not explicitly exhorting voters to vote for a particular candidate or party could themselves be grossly unfair because they can constitute an endorsement of a particular

party, if one party can be clearly distinguished from others on the basis of its stand on a central election issue.

It cannot be expected that roughly equal amounts of money will be spent to promote both sides of an issue. The free trade issue in 1988 was a clear example of how one side of a debate can spend considerably more money than the other. Only one of the three largest parties, the Progressive Conservative Party, supported free trade. This meant that the benefits of money spent by individuals and groups accrued mainly to that party. Groups and individuals promoting free trade spent \$0.77 on advertisements for every \$1.00 of the entire advertising budget of the Progressive Conservative Party, whereas independent expenditures on advertisements against free trade accounted for only \$0.13 for each \$1.00 of the total advertising budgets of the two large parties opposing free trade. (Hiebert 1991b RC) Richard Johnston, using data from the 1988 Canadian National Election Survey, has shown that independent interest group advertising may have affected the outcome to the advantage of the Progressive Conservative Party. (Johnston et al. 1991)

Although most of the advertising supporting free trade sponsored by individuals and groups focused on the issue without referring explicitly to a candidate or party, there were some examples of partisan advocacy. Because partisan advocacy conveys an explicit exhortation to action, it represents a direct assault on the fairness principle. An advertisement that targets a candidate for assuming the 'wrong' position on an issue conveys a corollary message to vote against that candidate. Conversely, an advertisement that promotes a particular issue and clearly identifies the candidate most sympathetic to that issue carries an equally direct message that the best way to promote the issue is to elect that particular candidate.

In the 1988 election, advertisements against free trade attempted to convince voters that the proposed agreement was not good for Canada. Among these advertisements was a comic book entitled "What's The Big Deal?", which was distributed in 24 daily newspapers. The comic book combined messages about the dangers of free trade with unflattering caricatures of members of the governing party, framed to instil doubt that voters could take at face value these leaders' words about the benefits of the agreement for Canada. (Pro-Canada Network 1988) The National Citizens' Coalition, on the other hand, sought to convince voters to vote for free trade by giving critical assessments of the leaders of the Liberals and NDP, who opposed free trade.

There were also examples of partisan advocacy at the constituency level, primarily by groups that waged a personal and direct attack on candidates. For example, Campaign Life Coalition, the political wing of the pro-life movement in Canada, targeted candidates in more than 30 constituencies and mailed materials or canvassed against candidates who were perceived to be pro-choice. A considerable amount of Campaign Life political campaigning was low budget – pamphlets and canvassing. (Hiebert 1991b RC)

However, there were also examples of broadly directed advertising on the issue of abortion. In the November 1988 edition of its publication *Vitality*,

the Coalition for the Protection of Human Life identified 125 candidates from the Progressive Conservative, Liberal and New Democratic parties who supported the position of Campaign Life on abortion (the candidates' position was based on the response to a questionnaire); the publication was distributed beyond the Coalition's membership. (Tanguay and Kay 1991 RC) In addition, the Saskatchewan Pro-Life Association reportedly spent \$40 000 on a province-wide advertising campaign in addition to publishing a special issue of its newsletter. (Spencer 1988)

Based on an assessment of 14 major Canadian daily newspapers and information provided by the newspapers or advertisers, it is evident that during the 1988 election more than \$100 000 was spent on newspaper advertisements on issues other than free trade and abortion. A number of the campaigns were oriented mainly toward issues, but some also criticized parties or party leaders. The Friends of Portage Program for Drug Dependence spent more than \$45 000 in major Montreal and Toronto dailies on advertisements calling for drug abuse to be made a key election issue and claiming that the prime minister, party leaders and parties had ignored the problem. The peace movement, under the general rubric of the Canadian Peace Pledge Campaign, accounted for more than \$28 000 of the total advertising expenditure in the newspapers surveyed. The campaign's most expensive advertisement, which appeared in the *Toronto Globe and Mail* (15 November 1988, A-11), reported the positions of the three largest parties on arms control and disarmament, denounced the government's policies in this area and urged voters to "vote for peace-supporting candidates". In our survey of constituency association presidents, half the respondents indicated that in the 1988 election single-issue groups had actively supported or opposed candidates. (Carty 1991a RC)

### **Defining Election Expenses**

Limits on the election expenses of candidates and parties and of other individuals and groups are necessary to promote the meaningful realization of democratic rights and freedoms in the electoral process. Spending limits on candidates and parties have clearly enhanced fairness by reducing the likelihood that candidates and parties with access to significant financial resources are unduly advantaged over those with less access. The result is a more reasonable balance in the election discourse. In addition, spending limits for candidates enhance fairness by promoting access to candidacy and thus elected office. Moreover, spending limits do not discourage electoral competition; rather, if both reasonable and effective, they encourage competition.

Spending limits on individuals and groups are also essential if election outcomes are not to be unduly influenced by independent advertising campaigns. Since the purpose of all election spending, including independent election spending, is to influence the outcome of elections, that is, the election of candidates and indirectly the formation of the government,

independent spending must be subject to some limit. However, it would be unfair, as well as unconstitutional, to ban all independent election spending. Some independent participants consider it essential to meaningful election expression that their messages refer explicitly to candidates or parties and that they be able to identify candidates and parties in their advocacy of particular issues. Moreover, independent groups can enrich the election debate by bringing their issues into the election discourse.

Nonetheless, Canadian experience, especially the 1988 general election, as well as U.S. experience demonstrates clearly that independent election spending can influence the outcome of elections by subjecting voters to election advertising skewed to one point of view. Canadian and comparative experience also demonstrate that any attempt to distinguish between partisan advocacy and issue advocacy – to prohibit spending on the former and to allow unregulated spending on the latter – cannot be sustained. At elections, the advocacy of issue positions inevitably has consequences for election discourse and thus has partisan implications, either direct or indirect: voters cast their ballots for candidates and not for issues.

For the definition of election expenses to be effective in limiting such expenses, it must encompass all the election-related expenditures of candidates, parties, other individuals and groups to directly or indirectly influence the outcome of an election. First, the definition of election expenses must obviously include spending that seeks to promote or oppose, directly or indirectly, the election of a candidate, since it is candidates who are seeking elected office.

Second, the definition of election expenses must include spending to promote or oppose a registered party or the program or policies of a candidate or registered political party. The central role political parties play in election campaigns means that spending to promote or oppose a registered party must be counted as an election expense. At the same time, candidates offer themselves as individuals and, in the vast majority of cases, as standard bearers of a registered party with programs and policies that indicate to the electorate what they represent. The vitality of electoral democracy is dependent on candidates and parties with clearly defined programs and policies. The greater the degree to which elections are characterized by competing programs and policies, the greater the extent to which individuals and groups are likely to incur election expenses on the issues raised, thereby promoting or opposing particular candidates and parties.

Third, the definition of election expenses must encompass spending to approve or disapprove a course of action advocated or opposed by a candidate, registered party or leader of a registered party, since candidates, parties and their leaders are expected to take public positions on salient issues of public policy. The approval or disapproval of a course of action by a candidate, party or party leader will normally be explicitly or implicitly encompassed within a candidate's or party's program or policies. However, during elections issues may emerge or be reformulated in ways not fully

treated by a program or policy platform. It is thus essential that the definition of election expenses encompass spending to approve or disapprove the positions taken in response to the events of an election campaign.

### **Recommendation 1.6.1**

**We recommend that 'election expenses' be defined to include "the cost of any goods or services used during an election:**

- (1) to promote or oppose, directly or indirectly, the election of a candidate;**
- (2) to promote or oppose a registered party or the program or policies of a candidate or registered party; or**
- (3) to approve or disapprove a course of action advocated or opposed by a candidate, registered party or leader of a registered party;**

**and include an amount equal to any contribution of goods or services used during the election."**

The scope of election expenses, as defined above, is discussed in Volume 2, Chapter 6.

### **The Level of Spending Limits**

#### *Spending Limits for Candidates*

Under the *Canada Elections Act*, as we have noted, the spending limits for candidates are based on a formula that is tied to the number of voters on the preliminary voters list in each constituency. Since the 1983 amendments, this maximum is adjusted on 1 April each year to reflect the change in the consumer price index during the previous 12 months. The Act allows additional spending in sparsely populated constituencies (those with fewer than 10 voters per square kilometre) and those where the number of voters is less than the average of all constituencies. In the 1988 election, this meant that the average maximum allowable election expense for a candidate was \$46 887. Based on indexation since then and Elections Canada estimates of the increase in the electorate since the 1988 election, if a general election were held before 1 April 1992, the average spending limit would be \$55 155. To assess the adequacy of the present limits, we must consider three issues.

The first issue is whether the limits are now too restrictive, as shown by the degree to which candidates have been spending near the limit. Since 1979, the reported spending of candidates of the Progressive Conservative, Liberal and New Democratic parties has fluctuated, as indicated in Table 6.1. However, the proportion of these three parties' candidates who spent more than 90 per cent of the limit rose from 20.7 per cent in 1979 to 31.5 per cent in 1988. In the case of Progressive Conservative candidates, 30.5 per cent spent more than 90 per cent of the limit in 1979, whereas 50.2 per cent did

so in 1988. The proportion of NDP candidates spending more than 90 per cent of the limit rose from 3.2 per cent in 1979 to 19.1 per cent in 1988. For the Liberals, the proportion remained about the same: 28.4 per cent in 1979 and 25.1 per cent in 1988.

In comparison, in the 1989 Quebec provincial election, 84 per cent of the candidates of the Parti libéral du Québec spent more than 90 per cent of the limit, as did 90 per cent of Parti québécois candidates. In Ontario, which has higher limits than the federal and Quebec limits (see Table 6.7), 12 per cent of the candidates of the three largest parties spent more than 90 per cent of the limit in the 1990 provincial election.

**Table 6.1**  
Average spending by candidates as a percentage of the 'election expenses' limit

	1979	1980	1984	1988
Progressive Conservative Party	77.6	72.4	89.0	85.8
Liberal Party	79.8	77.5	79.0	70.0
New Democratic Party	34.4	38.4	37.8	52.8

Source: Stanbury 1991 RC, Table 12.19.

The largest component of candidates' election spending is print advertising, which includes newspaper advertising, brochures, flyers and other printed publicity. For Progressive Conservative and Liberal candidates, the percentage spent on print advertising has risen since 1980 (see Table 6.2). Office expenses are the second largest component of candidates' election expenses, averaging 23 per cent of candidates' spending for the three largest parties in 1988. Radio and television advertising account for a small share of candidates' election expenses and this has been declining for candidates from all three of these parties.

The second issue in assessing the level of candidates' spending limits is the degree to which they would have to be adjusted to cover spending that is not now subject to the limits but would be if the definition of election expenses we recommend is adopted in legislation. At present, 'other expenses', as defined in Volume 2, Chapter 6, are not subject to the limits. As indicated in Table 6.3, most candidates in the 1988 election for whom data are available reported 'other expenses' that were not very large. In some cases, however, the amounts were significant. For example, 48 per cent of Progressive Conservative candidates reported spending more than \$5000 on 'other expenses', as did 29 per cent of the Liberal candidates and 11 per cent of NDP candidates. Further, 9 per cent of Progressive Conservative candidates, 3 per cent of Liberal candidates and 0.6 per cent of NDP candidates reported spending more than \$20 000 on 'other expenses'.

**Table 6.2**  
**Candidates' advertising spending as percentage of total 'election expenses', 1980-88**

Category	Party	1980	1984	1988
Print advertising	Progressive Conservative Party	48.7	50.7	55.0
	Liberal Party	43.0	47.5	53.2
	New Democratic Party	43.7	42.5	41.4
Radio and TV advertising	Progressive Conservative Party	13.3	8.7	7.9
	Liberal Party	13.1	10.7	7.3
	New Democratic Party	12.5	8.4	5.3
Total advertising	Progressive Conservative Party	62.0	59.1	62.9
	Liberal Party	56.1	58.2	60.5
	New Democratic Party	56.2	50.9	46.7

Source: Stanbury 1991 RC, Table 12.16.

**Table 6.3**  
**Other expenses of candidates, 1988 election**

Amount of other expenses (\$)	Progressive Conservative	Liberal Party (N)	New Democratic	Others (N)	Total (N)
	Party (N)		Party (N)		
Less than 1 000	48	69	69	73	259
1 001- 3 000	38	61	53	13	165
3 001- 5 000	36	35	25	2	98
5 001- 7 000	21	25	10	1	57
7 001-10 000	28	14	4	1	47
10 001-15 000	30	12	3	0	45
15 001-20 000	11	8	0	1	20
20 001-25 000	8	3	1	0	12
25 001-40 000	11	3	0	0	14
More than \$40 000	2	2	0	0	4
Number of candidates*	233	232	165	91	721
Average other expenses	\$7 496	\$4 486	\$1 946	\$939	\$4 430

Source: Stanbury 1991 RC, Table 12.22.

\*Information available only for candidates who had a surplus.

The third issue is the degree to which annual indexation of the spending limits may have fallen behind price increases of major components of candidates' campaigns. During our hearings, a number of party representatives addressed this issue. Most agreed that the annual indexation based on the

consumer price index had not kept pace with certain key costs. Our research has confirmed this. As shown in Tables 6.4, 6.5 and 6.6, the increases in costs of advertising on television and in daily and weekly newspapers have been about double the rise in the consumer price index since 1980 (the appropriate comparison date: the spending limits were indexed retroactively to 1980 as a result of amendments in 1983).

**Table 6.4****Increase in the cost of television advertising and consumer price index, 1980-88**

(per cent)

Period	Change in consumer price index	Change in television advertising costs local / national	Differential rate of increase
1980-84	37.5	59	+21.5
1984-88	17.5	60	+42.5
1980-88	61.6	119	+57.4

Source: Royal Commission Research Branch.

**Table 6.5****Increase in cost of advertising in major daily newspapers and consumer price index, 1980-88**

(per cent)

Period	Change in consumer price index	Change in daily (Mon.-Fri.) advertising costs	Differential rate of increase
1980-84	37.5	73.50	+36.0
1984-88	17.5	40.00	+22.5
1980-88	61.6	143.72	+82.1

Source: Royal Commission Research Branch.

Note: Based on transient cost per line (black and white). Sample includes *Toronto Star*, *Ottawa Citizen*, *Le Devoir*, *Halifax Chronicle-Herald*, *Vancouver Sun* and *Winnipeg Free Press*.

**Table 6.6****Increase in cost of local weekly newspaper advertising and consumer price index, 1980-88**

(per cent)

Period	Change in consumer price index	Change in local weekly advertising costs	Differential rate of increase
1980-84	37.5	41.1	+3.6
1984-88	17.5	70.3	+52.8
1980-88	61.6	124.5	+62.9

Source: Royal Commission Research Branch.

Note: Based on cost per line (black and white). Sample includes *Assiniboia Times*, Saskatchewan; *Altona Red River Valley Echo*, Manitoba; *Kingston This Week*, Ontario; *Le Réveil à Chicoutimi*, Quebec; and *Scotia Sun*, Nova Scotia.



Together, these points lead to a number of conclusions. A significant and increasing number of candidates are spending close to the limit: nearly one-third of the candidates of the three largest parties spent more than 90 per cent of their limit in the 1988 election. This may well indicate the limits need to be raised to ensure candidates are able to put forward their program effectively. Second, spending on 'other expenses' must be considered in light of our recommendation for a more inclusive definition of election expenses. Some allowance should be made for candidates' campaign costs that are now classified as 'other expenses' but would become subject to limitation – for example, the remuneration of poll agents and the costs of public opinion polling and research. The former is significant in some campaigns, and the latter, while not now a major item for most candidates, could become so with changes in campaign techniques and technological developments (see Volume 2, Chapter 6).

In addition, it is necessary to address the failure of the present indexation rule to keep up with the increase in major campaign costs. Raising the present average candidate limit of \$55 155 by 25 to 30 per cent would help redress this situation and allow room for 'other expenses' that would be brought within the spending limits. In many respects, this higher limit would not mean the actual spending allowed would be much greater, only that additional elements of spending in recent campaigns would fall under the more encompassing definition and be fully reported.

Two other matters must be addressed: the scale of the spending limits and the amount allowed per voter at the intervals on the scale. At present the intervals on the scale are from 0 to 15 000 voters, 15 001 to 25 000 voters, and more than 25 000 voters. In the 1974 base formula the amount per voter was \$1.00 for the first interval, \$0.50 for the second and \$0.25 for the third.

While the *amount allowed per voter* must be adjusted to raise the limit to the new average level, the *scale* itself must also be adjusted. The total electorate grew by nearly 30 per cent between 1974 and 1988; the average number of voters per constituency rose from 51 398 to 59 793, an increase of 16 per cent. If each cut-off point on the scale were raised by 5000 voters, that is from 15 000 to 20 000 and from 25 000 to 30 000, these changes would capture the growth in the number of voters.

Using this scale, and doubling the rates of the 1974 base formula, we would raise the present average limit to \$69 197, an increase of 25.5 per cent. Doubling the amounts per voter stipulated under the 1974 legislation has the advantage of being straightforward, even with future indexation. The allowable spending per voter would rise to \$1.16, which is still lower per voter than in all provinces that have limits except for Quebec and Ontario (see Table 6.7).

A related issue is the allowance for additional spending in geographically large constituencies. At present, the Act allows candidates in constituencies with, on average, fewer than 10 voters per square kilometre to incur additional election expenses of \$0.15 cents for each square kilometre;

the maximum by which the spending limit can be increased is 25 per cent (the amount of additional spending allowed for each square kilometre has been indexed since the 1983 amendments). In the last election, this provision affected 91 constituencies, including those that are the largest and most remote.

**Table 6.7**

**Candidate election expense limits per voter (for an election held before 1 April 1992)**  
(dollars)

Jurisdiction	Allowable spending per voter
Nova Scotia	3.53
Saskatchewan	3.41
New Brunswick	2.04
Manitoba	2.00
Prince Edward Island	1.51
<b>Canada (recommendation)</b>	<b>1.16</b>
Ontario	1.00
<b>Canada (present limits)</b>	<b>0.93</b>
Quebec	0.90

*Source:* Royal Commission Research Branch.

During our hearings, we were told that candidates in northern and remote constituencies face particular difficulties. In many cases, more than one campaign office is needed, which is not usually so in smaller, particularly urban, constituencies. However, our research indicates that even with the additional spending allowed, candidates in the sparsely populated constituencies do not spend a much greater share of the limit than elsewhere: the average proportion of the limit spent by all candidates in the sparsely populated constituencies in the 1988 election was 46.4 per cent, compared with 41.0 for the remaining constituencies. At the same time, an examination of candidates' post-election returns indicated that travel expenses in the 91 constituencies that fall under the sparsely populated rule are on average almost twice what they are in the other constituencies. Even though a candidate's travel expenses are exempted from the limits (and will continue to be under our recommendations), provision must be made to accommodate the travel costs of key campaign staff.

It is important that the spending limits reflect the diversity of conditions across the country so that candidates can run competitive campaigns and reach as many voters as possible. Accordingly, we propose that in these sparsely populated constituencies, the additional allowable spending per square kilometre be raised to \$0.30 and that the maximum upward

adjustment be doubled from 25 to 50 per cent. Based on Elections Canada estimates of the electorate, the average limit in these 91 constituencies would rise to \$71 280 – an increase of 26.2 per cent (compared with 25.5 per cent for the other constituencies) over the average limit in these sparsely populated constituencies if an election were held before 1 April 1992.

At present, the *Canada Elections Act* also allows additional spending in constituencies where the number of voters is less than the average in all constituencies. In such cases, for the purpose of calculating the spending limit, the number of voters for the constituency is increased by one-half the difference between the number of voters on the preliminary list in that constituency and the average number of voters in all constituencies. The new formula for calculating candidates' maximum election expenses will largely eliminate the need to retain an additional upward adjustment, except in the case of constituencies with fewer than 30 000 voters. Based on current estimates of the size of the electorate, there are eight such constituencies, and their average spending limit for an election held before 1 April 1992 would be \$47 687. Under the proposed formula, the average allowable spending in those constituencies would rise to \$55 716 – an increase of only 16.8 per cent relative to the 1988 election. This difficulty could be resolved by stipulating in the legislation that any constituency with fewer than 30 000 voters be 'deemed' to have 30 000 voters.

One final matter must be considered for calculating the spending limit. The *Canada Elections Act* now stipulates that the limits, subject to the two exceptions already discussed, are determined by the number of names on the preliminary lists of voters. In the 1988 election, for the country as a whole, the number of names on the final lists was 2.9 per cent greater than the number of names on the preliminary lists; in certain constituencies, the difference was considerably greater. If the spending limits were based on the final number of registered voters, they would take into account the actual electorate. Candidates and parties would still plan their campaign budgets largely on the basis of the preliminary lists but could expect to be able to spend somewhat more. This is also relevant to the nomination spending limits discussed later, as they will be set as a proportion of the candidate's election spending limits in the constituency.

### **Recommendation 1.6.2**

**We recommend that a candidate's 'election expenses' not exceed the aggregate of:**

- **\$2.00 for each of the first 20 000 registered voters for the constituency;**
- **\$1.00 for each registered voter between 20 001 and 30 000;**
- and
- **\$0.50 for each additional registered voter.**

### Recommendation 1.6.3

We recommend that

- (a) for calculating a candidate's election expenses limit, any constituency where the number of voters is less than 30 000 be deemed to have 30 000 voters; and
- (b) candidates in constituencies with, on average, fewer than 10 voters per square kilometre be allowed to incur additional election expenses of \$0.30 for each square kilometre, but that the additional permitted spending not exceed 50 per cent of the election expenses limit that would otherwise apply.

#### *Spending Limits for Political Parties*

The present legislation stipulates that a registered political party's maximum 'election expenses' are not to exceed \$0.30 per voter in the constituencies where the party has candidates; this is indexed to changes in the consumer price index. Based on this formula, in the 1988 election registered political parties could spend \$0.47 per voter. The limit for the Progressive Conservative and New Democratic parties was \$8 005 799 each, as they nominated candidates in all constituencies. The limit for the Liberal Party was \$7 977 679 because it did not have a candidate in one constituency. If a general election were held before 1 April 1992, the spending limit for a registered party with candidates in all constituencies would be \$0.54 per voter; based on Elections Canada estimates of the increase in the electorate since 1988, the limit would be approximately \$10 044 000.

Since the 1979 election, the reported election expenses of the three largest parties have risen significantly. The Progressive Conservative Party's spending rose from 87.7 per cent of the limit in 1979 to 99.96 per cent in 1984, then dropped slightly to 98.95 per cent in 1988. Spending by the Liberal Party rose from 86.2 per cent of the limit in 1979 to 98.5 per cent in 1984, then dropped to 85.7 per cent in 1988. The New Democratic Party's reported election expenses rose the most and at every election: from 49.1 per cent in 1979 to 88.2 per cent in 1988. On four occasions a party reported spending more than 95 per cent of the limit: the Progressive Conservatives in 1980, 1984 and 1988, and the Liberals in 1984.

Advertising counts for the greatest share of these parties' reported election expenses. In the 1988 election, the three parties' spending on television, radio and print advertising averaged 53.4 per cent of their total election expenses; television advertising alone accounted for an average of 30 per cent of their election expenses (Table 6.8).

Given our recommendation that all major items specifically related to a party's election campaign be covered by the definition of 'election expenses' and, with a few specific exceptions, be subject to limitation, it is necessary to consider to what degree the limits for parties would have to be raised to

cover those items now excluded from the limits. Unfortunately, there are no publicly reported data on the extent to which the annual operating expenses of these political parties include spending during the writ period on items excluded from the definition of 'election expenses'. The parties do report their spending on various items, but, on the basis of these reports, it is not possible to determine when such spending occurred. However, our research and consultations with the representatives of the parties have provided us with estimates of the scale and timing of spending on excluded items.

**Table 6.8**  
**Parties' spending on advertising as a percentage of total election expenses, 1980–88**

Category of spending	Party	1980	1984	1988
Television advertising	Progressive Conservative Party	42.6	27.5	30.8
	Liberal Party	41.9	26.9	29.6
	New Democratic Party	37.8	24.5	35.3
Radio advertising	Progressive Conservative Party	14.8	19.3	19.6
	Liberal Party	15.1	17.0	15.0
	New Democratic Party	7.6	10.4	6.8
Print advertising	Progressive Conservative Party	13.1	3.2	10.2
	Liberal Party	10.4	12.1	11.9
	New Democratic Party	13.8	3.3	2.2
Total advertising	Progressive Conservative Party	70.5	50.1	59.5
	Liberal Party	67.5	56.0	56.5
	New Democratic Party	59.2	38.2	44.3

Source: Royal Commission Research Branch.

Under our recommendations, for example, the parties' spending on public opinion polling during the campaign would be counted as an election expense and encompassed by their spending limits. Based on interviews with party officials, we estimate that the largest federal parties each spent up to \$750 000 on polling during the 1988 election. Our recommendations would also encompass what the current guidelines refer to as "research and analysis" conducted during the election period, as well as "direct mail" to all but party members. Each of these activities is clearly related to the election, and the costs of both should be counted as election expenses. We estimate the three largest parties each spent up to \$500 000 on these two activities during the 1988 election.

The preferable course is to have the limits cover all the major aspects of election spending – including activities that flow from our recommendations, such as communicating with voters abroad – and to ensure full reporting. Based on the above estimates, the spending limits for registered parties must be adjusted upward. If spending on the major items referred to in our discussion had not been excluded, our assessment is that the party spending limit for the 1988 election would have been about 10 to 15 per cent higher.

As with candidates, revised spending limits for parties should reflect that the costs of major components of campaigns, particularly advertising, have risen more rapidly than the consumer price index (see Tables 6.5 and 6.6). The present party election expense limit would have to be raised by about 20 per cent to capture the major part of the lag of advertising costs behind the consumer price index.

**Table 6.9**  
**Party election expense limits per voter (for an election held before 1 April 1992)**  
(dollars)

Jurisdiction	Allowable spending per voter
Prince Edward Island	5.48
Nova Scotia	1.61
New Brunswick	1.25
Saskatchewan	0.87
Manitoba	0.87
<b>Canada (recommendation)</b>	<b>0.70</b>
<b>Canada (present limits)</b>	<b>0.54</b>
Ontario	0.42
Quebec	0.26

Source: Royal Commission Research Branch.

We must also consider the growth of the electorate. If the amount per registered voter stipulated in the legislation were set at \$0.70, the spending limit for a registered party with candidates in all constituencies would be \$12.63 million, compared with the present estimated limit of \$10.044 million. This represents an increase of 26 per cent (based on an Elections Canada estimate of an electorate of 18.1 million). At this rate, federal limits on party spending per voter would remain lower than the limits of five of the seven provinces, and the ranking in Table 6.9 would not change.

#### **Recommendation 1.6.4**

**We recommend that a registered party's election expenses not exceed the aggregate of \$0.70 for each registered voter in constituencies where the party has candidates.**

#### *Limits on Independent Election Expenditures*

The current *Canada Elections Act* contains a provision that prohibits independent election spending "for the purpose of promoting or opposing, directly and during an election, a particular registered party, or the election of a particular candidate". This provision was declared unconstitutional by a lower court in Alberta in 1984 and is no longer applied anywhere in

Canada. This provision did not place a limit on independent election spending by individuals and groups other than candidates and parties; it banned independent election spending outright. At the same time, it allowed unlimited independent election spending on issues that were not considered to directly promote or oppose a particular registered party or the election of a particular candidate.

Our approach in limiting independent election spending proceeds from two fundamental assumptions. First, any regime that seeks to limit election spending by individuals and groups other than candidates and parties must allow for meaningful freedom of expression. A fair law could not ban such expenses outright. Second, individuals and groups that seek to advocate a position on an issue must also be able to link candidates and parties with the issue. Since voters do not vote directly for issues but rather for candidates, it is essential that messages be permitted to refer explicitly or implicitly to candidates' or parties' positions or views on the issues being promoted. Any law that sought to confine independent spending on advertising or other communications only to messages about an issue, with no reference to candidates or parties and their positions on the issue, would be an unfair restriction on meaningful freedom of expression during an election.

At the same time, any regime based on the premise that individuals and groups can be equated with candidates and registered political parties and thus be subject to a uniform election finance regime would be defective. At a minimum, such an approach would require a comprehensive, intrusive and expensive registration, disclosure and regulatory structure. The lesson from the United States, where such regulation is in place, is that a significant administrative burden would be imposed on individuals and groups, at considerable cost to taxpayers, because an elaborate enforcement machinery is required.

Equally significant, such a regime would not secure fairness in the realization of rights and freedoms because no distinction would be made between the roles in the electoral process of candidates and parties, on the one hand, and individuals and groups, on the other. If the limits imposed on individuals and candidates and on groups and parties were comparable, participants could pool their resources, up to their limits, to support or oppose the election of one or more candidates or parties. Since it cannot be expected that all political interests would have the same ability to gain access to resources, the likely consequence is that the election outcome would be influenced by those with greater access to funding. One set of participants would thus have an unfair advantage over other sets of participants.

Such a regime, even if it banned the pooling of resources by participants and subjected groups to a spending limit comparable to that of registered political parties, could not eliminate the possibility of a group subdividing into smaller groups, thereby multiplying, to increase the amount that could be legally spent in support of a shared election objective. By definition,

however, neither candidates nor political parties could adopt this tactic to augment their spending limits. Since voters cast their ballot for only one candidate in each constituency, a single candidate obviously cannot 'multiply' to augment her or his spending limit. For the same reason, a registered political party cannot subdivide to augment its spending limit.

At best, then, such a regime would simply secure transparency in contributions and expenditures. In this respect, it is important to recall that the U.S. regime does not include spending limits for congressional elections; rather the regime seeks to control undue influence and thus relies on limiting the size and source of contributions. For reasons outlined in the following chapter, we do not recommend that there be limits on the size or source of contributions from Canadian voters or groups.

Considering these difficulties, a regulatory approach that seeks to promote the fundamental value of fairness in securing the right of individuals and groups to participate in an election campaign by incurring election expenses must acknowledge that individuals and groups cannot be equated with candidates and political parties in the design of spending limits. The regulatory treatment of independent expenditures must respect the essential and primary role of candidates and political parties in elections by recognizing the nature and potential impact of independent expenditures.

The recognition of the primary role performed by political parties and candidates does not mean that the regulatory regime cannot accommodate independent expenditures. Given the capacity for groups to subdivide into smaller groups, however, any limit on independent election expenses must be the same for individuals and groups. Different spending limits for individuals and groups would merely invite groups to 'multiply', thereby defeating the purpose of spending limits.

We recognize that without precedents to inform a recommended spending limit for independent election expenditures, any recommendation on the spending level can only be an 'educated guess'. In reaching a decision on this limit, we considered three factors. First, we examined the pattern of political contributions to candidates and political parties by individuals and groups. Second, we examined the costs of various forms of election advertising. Third, we considered the likely effects of various levels of spending limits in relation to the limits we are recommending for candidates and political parties. On the basis of these considerations, we propose that each individual or group other than registered parties and candidates be permitted to spend up to \$1000 on 'election expenses' during the election period.

Within the Canadian context and experience, \$1000 represents a significant political commitment on the part of individuals wishing to spend money independently of the official campaigns of registered participants. The average size of contributions from individuals to the three largest political parties in 1988 was \$112; the average donation to the candidates of these parties in the election that year was \$135. Indeed, 98 per cent of contributions from individuals to candidates in the 1988 election were less than



\$1000; and 92 per cent of contributions from business and 71 per cent of contributions from trade unions were below \$1000. (Padget 1991 RC)

The \$1000 limit for independent expenditures would permit an individual or group to engage in a significant amount of election activity – for example, by issuing pamphlets and other promotional materials, placing signs, producing and distributing election materials and advertising on local radio, newspapers and, in some places, television. Examination of the evidence brought forward in the *Roach* (1977), *Risdon* (1980) and *Publicis communicateur conseil* (1981) cases – the only cases in which alleged violations of the independent expenditures provisions were brought to court – indicates that the spending in these cases would likely have been within or close to this limit.<sup>4</sup>

A spending limit of \$1000 for independent expenditures would also permit individuals and groups to engage in *meaningful* freedom of expression, denied by the 1983 legislation, by allowing them to promote or oppose candidates and parties either directly or indirectly when advocating election positions, as long as their election expenses did not exceed \$1000. As noted in Volume 2, Chapter 6, this limit would not apply to free broadcasting time, time on a public affairs program or space in the print media for similar purposes.

The effect of this limit would most likely be to restrict the amount of money spent on media advertising. Although this amount is insufficient for those who wish to mount national media campaigns to promote issues or to assess the positions of political parties, 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 independent candidates) or by forming a political party and fielding candidates. Moreover, federal election campaigns are relatively short and would be shorter still under our recommendations (less than 50 days). Outside this period, individuals and groups would face no restrictions on the type or amount of spending they wished to incur to promote issues or to criticize parties or elected members.

Restrictions on independent expenditures should in no way impair the right of corporations, unions and other groups to exhort their shareholders, members or employees to act in particular ways during elections. This kind of activity is not, and should not be seen as, a violation of the fairness principle as long as the communications are exclusively with members of the organization. Although groups could not spend more than their legal limit to communicate with persons *outside* their organizations, the right of employers and union leaders to discuss election issues with their shareholders, employees or members must be clearly recognized. There is no reason to presume that a limit on this form of communication is necessary to ensure fairness. Furthermore, labour laws that put restrictions on these rights are clearly in violation of both the spirit and letter of the Charter and should be amended accordingly, since the experience in jurisdictions that

do not impose such severe constraints clearly demonstrates they are not essential.

The scope and level of spending we recommend for independent partisan advocacy during elections would be acceptable under the *Canadian Charter of Rights and Freedoms*, which guarantees rights and freedoms and yet establishes principles for imposing limits on them. Limits on these rights and freedoms must meet certain fundamental tests, as established in the *Oakes* case.

First, legislation that limits a right or freedom can be justified only if its objective is related to concerns that are, in the words of the *Oakes* case, "substantial and pressing" in a free and democratic society. (1986, 140) In legislation that limits freedom of expression through measures that impose limits on election expenses by candidates, parties, individuals and groups, the pressing and substantial concerns relate to realizing an equality of opportunity for citizens to exercise their rights to freedom of expression, as well as their democratic rights to vote and to stand as a candidate, in a meaningful way during the election. The standard that must be applied in relation to the limits on the freedom of expression of individuals and groups is the probability that independent expenditures will have an unfair influence on the outcome of the election by advantaging one or more candidates or parties over other candidates or parties. Spending limits for candidates and parties, which have as their objective the promotion of the central value of fairness, cannot achieve this effect by themselves if others face no restrictions at all on their spending during the election period. The experience of the 1988 general election clearly demonstrates this.

Second, a spending limit on independent expenditures is 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. It would apply to all those who wish to engage in any activity covered by our proposed definition of 'election expenses'. At the same time, an expenditure limit on all forms of electoral communication with the public is necessary. Any measures to restrict only certain forms of communications would simply result in other forms of communications being used. For instance, if there were restrictions on advertising in the broadcasting media, advertising could be shifted to the print media; if restrictions applied to all mass or public media, communications could be shifted to direct mail; or, if restrictions included direct mail, individuals or groups could shift to advertising campaigns by way of picketing, posters or campaign leaflets. Alternative means of communications can always be found, as the evolving techniques of electoral campaigning demonstrate. Similarly, the expenditure limit must extend to both direct and indirect messages. Experience, especially that of the 1988 general election, conclusively demonstrates that any attempt to differentiate or distinguish between direct and indirect or partisan and issue advocacy cannot be sustained.

Third, given the seriousness of the objective of promoting fairness in the electoral process generally, the proposed spending limit on independent expenditures also passes the proportionality test set in the *Oakes* (1986) case. It would be impossible to increase substantially the spending limit for independent expenditures and, at the same time, to secure the objective of fairness that candidate and party spending limits are meant to realize. For example, if the limit were twice as high, 35 individuals or groups could spend an amount that would rival what a candidate would be legally entitled to spend under the revised limits we are proposing. If the limit were five times as high, a coalition of 10 interest groups could co-ordinate spending and launch an advertising campaign in a major national newspaper. Moreover, in either case, the individual or group might well spend the money on only one issue. In contrast, in their campaigns, candidates and parties have higher limits but must take positions on and promote or oppose a range of issues of interest to the entire electorate. In addition, under our recommendations, access to candidacy and access to registered political party status are enhanced considerably beyond what are already extremely accessible requirements. In comparative terms, there would be greater opportunities for access to the electoral process than in most, if not all, other western democracies.

Fourth, our proposals also meet the criterion in the *Oakes* (1986) case that the means should impair freedom of expression "as little as possible". A \$1000 spending limit, coupled with the freedom of corporations, employers, unions and groups to communicate directly with their shareholders, employees or members on election issues, represents the least restrictive way of limiting freedom of expression while promoting the objective of fairness in electoral competition process. Unlike the 1983 legislation challenged in court, our recommendation allows explicit partisan advocacy and thus does not restrict either the intent or the nature of expression. Although our recommendation imposes a limit on the amount of election expenses individuals or groups may incur, this limit is justified because any greater ability to incur independent expenditures would irreparably weaken the effectiveness of the spending limits for candidates and parties, and thus undermine the central objective of fairness these limits are meant to achieve.

While it is possible that, in certain circumstances, a \$1000 spending limit might jeopardize the effectiveness of candidate and party spending limits, the risk that fairness would be compromised by spending at this level would not be so significant as to justify a lower limit, provided that individuals or groups not be permitted to combine resources to augment the spending limit. The regulation of independent expenditure thus must include an explicit restriction against individuals or groups pooling their financial resources to overcome the spending limit. Without such a restriction, the effectiveness of spending limits on individuals and groups could easily be destroyed.

Consistent with our recommendations for sponsor identification of print and broadcast advertising by candidates and registered parties, found in Volume 2, Chapter 6, there should be a requirement that all other distributed advertisements identify the name of the sponsor. This would mean that major violations of the spending limit – for instance, significant spending on commercial television advertising, direct mail, or newspaper, radio or magazine advertisements – would be readily apparent to election participants and election officials. Enforcement of regulations would rely on complaints from participants or voters or the initiative of officials charged with enforcing the election law. In either case, the Canada Elections Commission would have the power to issue a ‘mandatory injunction’ or ‘cease and desist’ order instructing the individual or group to comply with the law.

Finally, it is necessary to regulate the timing of any advertisements sponsored by those incurring independent expenditures within the limit we recommend to ensure conformity with the blackout period that applies to candidates and parties. In 1988, some groups advertised on the eve of the election, when candidates and parties are legally incapable of responding. To ensure fairness, it is essential that groups or individuals who seek to assess or criticize candidates and parties do so only when candidates and parties are legally capable of responding. The reasons that justify the blackout period are sufficiently compelling that they must apply to everyone.

#### **Recommendation 1.6.5**

**We recommend that there be no statutory restrictions on the ability of groups, associations, unions and employers to communicate directly and exclusively with their bona fide members, employees or shareholders on election issues.**

#### **Recommendation 1.6.6**

**We recommend that**

- (a) election expenses incurred by any group or individual independently from registered parties and candidates not exceed \$1000;**
- (b) the sponsor be identified on all advertising or distributed promotional material; and**
- (c) there be no pooling of funds.**

#### **Recommendation 1.6.7**

**We recommend that the blackout period for election advertising at the end of the election period include advertising by groups and individuals.**

### *Indexation of Spending Limits*

The increases in the spending limits we are recommending are intended to reflect increases in major campaign costs and, more important, to ensure the limits are comprehensive. The limits must remain realistic, however, so that they do not become artificially low and thus tempt participants to seek ways around them. Indexation is therefore required.

As discussed, several interveners at our hearings argued that the consumer price index is not the best measure of changes to the key costs of campaigns. In their submission to the Commission, representatives of the Progressive Conservative Party and the New Democratic Party noted that increases in their parties' major campaign costs – for example, travel and accommodation – had exceeded the increase in the consumer price index. They recommended that the limits be indexed annually based on the cost increases for the component expenditures.

Proposals for an alternative index based on the relevant cost increases raise a number of issues. First, there is no objective and reliable measure of the increase in costs of major campaign activities such as advertising. Second, political parties allocate their expenditures in different ways, and thus a single index might not be appropriate to all parties. Third, our research revealed considerable variations in cost increases across the country; too rigid an index could work to the disadvantage of some candidates while advantaging others.

An alternative would be to provide for indexation of spending limits but not according to a set formula. The Canada Elections Commission would be given responsibility for determining adjustments to the limits. This could be done according to the following procedure:

- during the first three months of each year, the Commission would determine what adjustments were required to reflect changes in the prices of key goods and services used in campaigns;
- a notice of the adjustments would be published in *The Canada Gazette*, and interested parties could then make submissions to the Commission, including at public hearings if the Commission so decided; and
- the revised limits would come into effect on 1 May and apply to any election for which the writ was issued during the following 12 months.

This procedure has a number of advantages. The Commission could survey the most relevant cost increases and variations across the country. Its recommended increases in the limits would probably reflect the increased cost of campaigns more accurately than the consumer price index. This approach would also mean that the spending limits would not lag behind key costs and thus invite evasion.

## Recommendation 1.6.8

We recommend that

- (a) the Canada Elections Commission annually determine adjustments to the spending limits for candidates, registered parties, individuals and groups;
- (b) the adjustments reflect changes in the costs of major goods and services used in election campaigns; and
- (c) the adjustments be in effect from 1 May each year and apply to any election for which the writ was issued during the following 12 months.

### Spending Limits for Nomination Contests and Leadership Selection

#### *Nomination Contests*

At present, the *Canada Elections Act* does not limit spending by those seeking nomination as a candidate (nomination contestants), with one exception: under section 214, “the amount that may be spent for notices of meetings to be held for the principal purpose of nominating a candidate” is limited to 1 per cent of the limit for a candidate’s election expenses in that constituency for the previous general election. This section applies to notices sponsored by a person seeking the nomination during the writ period.

This limit in section 214 applies to only a small part of the potential spending of nomination contestants. Moreover, a recent court decision suggests the provision may not be effective in controlling spending even on such advertising.<sup>5</sup> But a more fundamental issue is at stake here. Because nomination spending during the election period can promote a person who subsequently becomes a candidate, there is a serious gap in the regulation of election spending. Substantial nomination spending calls into question the election expense limits: although such spending is possibly directly related to the election, it falls outside the limits. This can allow evasion of the limits and runs counter to the objective of fairness on which the election spending limits are based. The Accounting Profession Working Group proposed a way of limiting nomination spending during the writ period: if, in seeking a nomination, a person who subsequently became a candidate spent more than 10 per cent of the amount a candidate was entitled to spend in that constituency in the previous general election, the excess would have to be reported as an election expense of the candidate and be deducted from the candidate’s election spending limit. (Canada, Royal Commission 1991a, Part 2)

The question of nomination spending must, however, be seen in a broader context. In Volume 1, Chapter 3, we recommend that there be nomination spending limits no matter when the nomination contest takes place, to encourage fairness in the electoral process and encourage access for those

seeking nomination as a candidate. Constituency associations can take further steps to promote fairness. For example, they can hold meetings where all nomination contestants may present their positions, or they can encourage community newspapers and cable television channels to provide such exposure.

We suggest in Volume 1, Chapter 5 that political parties should take greater responsibility for regulating party activities linked to the election process. For example, the constitution of a party could include rules for regulating the financial activities of the nomination process throughout the party. Alternatively, the constituency associations might choose to develop rules that would be tailored to their particular situation. In either case, there should be requirements that each nomination contestant not spend more than a defined amount and submit a preliminary report on his or her spending and contributions no later than the day of the nomination meeting. This would provide important information to the party members choosing a candidate.

For the reasons outlined in Volume 1, Chapter 3, and because public funding will be involved, the *Canada Elections Act* should contain a minimum set of rules in relation to the nomination process, namely, spending limits, disclosure procedures and a requirement that each nomination contestant appoint an agent.

The present spending limits for candidates apply during a set period, that of the election. For limits on nomination spending to be equitable and practicable, they, too, must apply to a set period. Some constituency associations now require that members be notified at least 30 days before a nomination meeting is to be held. A nomination period of a maximum of 30 days, during which the limits would be in effect, is reasonable.

The statutory limits should be high enough to allow competitive campaigns but low enough to ensure that those with access to greater resources do not have an unfair advantage. Because nomination costs can vary from constituency to constituency, it would be preferable to set nomination limits as a percentage of candidates' spending limits rather than at a set amount. This would allow additional spending in, for example, geographically large constituencies. In addition, because election spending limits would be indexed, nomination limits set as a percentage of those limits would be adjusted correspondingly without requiring an amendment to the legislation.

The possible level of nomination spending limits was addressed in our survey of constituency association presidents. Those who favoured statutory spending limits for nomination contests were asked what would be a reasonable limit; the median response was \$5000. (Carty 1991a RC) In Janine Brodie's survey of women candidates from the 1988 election, 79 per cent of respondents suggested the limit be below \$5000. (Brodie 1991 RC, Table 2.15) Based on our recommendations and if nomination spending limits were set at 10 per cent of the election expense limits for candidates, the average nomination spending limit would be \$6920. As noted in Volume 1, Chapter 5, we propose that, as a condition of registration, parties be required

to submit financial rules for nomination campaigns. Although any party could choose to set a lower spending limit, the *Canada Elections Act* should provide that in no case would a nomination contestant be allowed to spend more than 10 per cent of the election expenses limit in effect for a candidate in that constituency at the time of the nomination meeting. As with candidates, there should be specific legal penalties for persons exceeding the nomination spending limit.

A related issue is spending for nomination meetings held during the election period. In sponsoring such meetings, constituency associations may spend a significant amount of money. Even if the expenses are not directed toward supporting a particular nomination contestant, they may provide publicity and exposure for the contestants, including the one who is chosen and becomes the candidate. During an election, excessive spending on nomination meetings could run counter to the intent of the election spending limits and diminish fairness. We therefore propose that, in sponsoring a nomination meeting during the writ period, a constituency association be prohibited from spending more than 10 per cent of the election spending limit for candidates in that constituency.

Consistent with our recommendation that the definition of candidates' election expenses be comprehensive, the nomination spending limit should fully cover relevant spending on goods and services during the nomination period. For this purpose, the legislation should stipulate that 'nomination expenses' have the same meaning as 'election expenses'.

### **Recommendation 1.6.9**

**We recommend that**

- (a) spending by those seeking the nomination of a registered constituency association not exceed 10 per cent of the limit for a candidate's election expenses in that constituency in effect at the time of the nomination meeting, except if the rules of the registered party provide for a lower limit;**
- (b) this limit apply during a nomination period of a maximum of 30 days; and**
- (c) during an election period, the expenses incurred by the constituency association or registered party for the nomination of a candidate not exceed 10 per cent of a candidate's allowable election expenses in that constituency.**

A number of other issues are related to our recommendation to regulate spending during the nomination process. Among these are the reporting rules for the financial activities of those seeking nominations and the issuing of tax receipts for contributions to nomination campaigns. Proper accountability must be achieved without creating additional administrative structures.



Our recommendations for the registration of constituency associations provide the basis for such accountability.

We propose that, as a condition of registration, each constituency association be required to appoint a constituency agent. As the linchpin of the reporting procedures for constituency associations, this person should also play a role in the framework for the nomination process. Once the association announced the date of a nomination meeting, the nomination period would begin. Nomination contestants would indicate to the constituency agent their intention to run, in accordance with the rules in the constitution of the party or association.

To ensure financial control and accountability, nomination contestants, like candidates, would be required to appoint an agent. This agent would have responsibilities similar to those of the official agent of a candidate. He or she would be required to authorize all spending on behalf of the nomination contestant. Any unauthorized spending to promote the contestant should be counted against the nomination contestant's limit. The nomination agent would receive a form (approved by the Canada Elections Commission) for recording nomination spending and contributions.

Contributions to a nomination contestant's campaign would be eligible for income tax credits. However, only the constituency agent would be allowed to issue receipts to that effect. It is essential that a limit be placed on the amount of tax credits that could be claimed by those donating to nomination campaigns; otherwise, nomination contestants might be able to solicit contributions well in excess of what they were allowed to spend, which would represent an undue drain on public funds. We therefore propose that, for each nomination contestant, no further tax receipts be issued once the value of contributions for which the constituency agent issues income tax receipts has reached the nomination spending limit.

The agent of the nomination contestant would be required to submit a final financial report to the Canada Elections Commission within a month of the nomination meeting. However, if the nomination takes place during the writ period, it may not be reasonable to require the contestant who is nominated as the candidate, who will be in the midst of an election campaign, to submit his or her nomination financial report within a month. In such cases, the latter report could be filed with the candidate's post-election return. Further details relating to the reporting requirements of nomination contestants are discussed in Volume 1, Chapter 7.

These procedures would require the co-operation of political parties and local associations. Their introduction would oblige those involved to adapt – just as was the case when election spending limits were introduced in the 1970s – and the initial experience with nomination limits may point out the need for some adjustments. In this regard, we propose that the Canada Elections Commission report to Parliament after the first election to which nomination spending limits apply.

## Recommendation 1.6.10

We recommend that

- (a) those seeking the nomination of a registered constituency association be required to notify the constituency association agent of their intention to do so, in accordance with the rules in the constitution of the registered party or association;
- (b) each nomination contestant be required to appoint an agent, with responsibilities similar to those of the official agent of a candidate;
- (c) contributions to a nomination contestant's campaign be eligible for income tax receipts issued by the constituency agent, but that once the value of contributions to any contestant for which receipts are issued reaches the amount of the nomination spending limit, no further receipts be issued with respect to this nomination contestant;
- (d) as a condition of registration, a party or constituency association submit to the Canada Elections Commission its by-laws or rules concerning the financial activities of nomination contestants, including an obligation to disclose contributions, spending limits and a requirement that, no later than the day of the nomination meeting, each nomination contestant submit to the association a preliminary report on his or her nomination expenses and contributions;
- (e) no later than a month after the nomination meeting, nomination contestants be required to submit to the Canada Elections Commission a report on their spending and contributions during the nomination period, except if the nomination takes place during the election period, in which case the contestant nominated as the candidate be required to submit the report no later than the date for submission of his or her post-election return; and
- (f) after the first election to which nomination spending limits apply, the Canada Elections Commission report to Parliament on the initial experience with the limits.

### *Leadership Selection*

In Volume 1, Chapter 5, we recommend spending limits for leadership selection based on similar principles. The limits would be set at 15 per cent of the registered party's limit at the previous election and would be in effect during the period from the announcement of the date of the election of a new leader and the day of the vote. Each leadership contestant would be required to appoint an agent, who would be responsible for ensuring financial control and preparing the necessary financial reports – an interim report

(required by party rules) by the day before the vote for the leader is held and a final return (required by law) within three months of the vote. Again, there would be a limit on tax credits issued: once the value of contributions for which income tax receipts were issued equalled the leadership contestant's spending limit, no further receipts could be issued. In addition, if tax receipts were issued for contributions up to the limit but the leadership contestant spent less than the limit, he or she would have to transfer to the party, its foundation or a registered constituency association, the difference between the spending limit and the amount spent.

The procedures outlined above are intended to secure fairer processes for the selection of candidates and party leaders. Spending limits and tax credits for donations to their campaigns would provide greater access, and disclosure requirements would ensure accountability to party members and the public. We are confident these measures will broaden access and thus enhance the representativeness of political parties and of the House of Commons.

## **PUBLIC FUNDING OF ELECTION PARTICIPANTS**

### **Reimbursements to Parties and Candidates**

At present, public funding of federal political parties and candidates is provided indirectly through income tax credits and directly through election reimbursements. Both forms of public funding were introduced in 1974, although the rules relating to reimbursements were subsequently amended.

Under the 1974 legislation, registered political parties were reimbursed for 50 per cent of their election expenses on television and radio advertising. In 1983, the rules were changed; since then, all registered parties have been reimbursed 22.5 per cent of their total election expenses provided they have spent at least 10 per cent of their limit. Candidates qualify for reimbursement by meeting the following requirements: they must have been elected or have obtained at least 15 per cent of the valid votes in the constituency; they must also have submitted their post-election report on spending and contributions and the accompanying auditor's report.

The original legislation provided for a reimbursement of the lesser of the candidate's election expenses and the aggregate of the following: the cost of one first-class mailing to each person on the preliminary list of voters, \$0.08 for each of the first 25 000 voters on the list, and \$0.06 for each additional voter. In 1983 the formula was amended, and qualifying candidates now receive a reimbursement equal to 50 per cent of the sum of their election expenses and personal expenses up to 50 per cent of the spending limit.

At the heart of this reimbursement system lies the belief that candidates and parties perform important and necessary functions during elections in a democratic system; it is therefore in the public interest for the state to provide public funds to support these functions. Reimbursement

also lessens candidates' and parties' reliance on large donations from a few donors and helps ensure that candidates and parties are able to conduct effective campaigns. Finally, reimbursement lowers the cost of running for office, thereby facilitating access to the system.

Although the value of candidate and party reimbursements to our electoral democracy has been clearly established in principle, there remains the question of whether the current system fulfils its purpose. The way in which public money is spent in elections should instil confidence in the electorate. For such confidence to exist, the public must perceive that the candidate and party reimbursement system distributes public funds fairly and equitably. In evaluating the current reimbursement system, we thus must determine whether the current reimbursement system meets the goal of fairness in the electoral process.

Those who favour maintaining the present system claim it has achieved its stated goals and that it exhibits a certain fairness in the way it distributes public funds. The system, they argue, enables candidates with sufficient popular support to spend enough money to run a competitive campaign, secure in the knowledge that they will be reimbursed 50 per cent of their expenses. In the same way, parties able to spend 10 per cent of their limit can be similarly secure in spending more, because they can count on a 22.5 per cent reimbursement. As for fairness, some argue that the 15 per cent popular support threshold for candidates and the 10 per cent spending threshold for parties ensure that frivolous candidates and parties are not given public money for their efforts.

We do not accept these arguments. Fairness in elections requires that the present system be reassessed on two grounds. First, the thresholds candidates and parties now face represent a significant hurdle for election participants and exclude a number of legitimate parties and candidates from access to a reasonable share of public funding. Second, the present reimbursement system for both candidates and parties is based on the amount they spend, rather than on their level of popular support.

During our hearings, we were told that the 15 per cent vote threshold for candidate reimbursement is too high. In an electoral system where the winning candidate may need less than 40 per cent of the vote, a rule that defines 10 or even 14 per cent of the vote as insignificant is difficult to defend. The 15 per cent candidate threshold is also an all-or-nothing rule that fails to reflect the relative popular support of candidates. In its brief to the Commission, the Ontario New Democratic Party pointed out that the present system can lead to "the situation of one candidate with 15.1% of the vote receiving a reimbursement of approximately \$20–\$25,000, while another candidate with 14.9% [does not receive] any public support." (Brief, 1990)

The requirement in the party reimbursement provisions that parties must spend 10 per cent of their spending limit ignores a party's level of popular support entirely. It rewards only the well-financed parties. This has implications for the legitimacy of the public funding rules:

There is no doubt that the current Canadian election-finance legislation based on the registration of political parties and reimbursement for campaign and media expenses strengthens the position of those already "on the inside" and creates severe hindrances to the introduction of new parties or the expansion of small ones. (Jenson 1991b RC)

The two thresholds send a clear message to smaller parties and their candidates as well as to independent candidates: their participation is not welcome. This may also contribute to unwarranted rigidity in the Canadian party system, an effect that should not be underestimated. According to Joseph Wearing,

The discrimination against smaller Canadian parties appears to ignore the contribution made by such parties through much of our political history. Independent Labour parties, the Progressives, Social Credit, the CCF, the Reconstruction Party, the Bloc populaire, and others would have been at a severe disadvantage if they had entered the electoral scene under the present law. (Wearing 1991, 333)

The record shows that candidate reimbursement has been almost strictly the privilege of candidates for the Progressive Conservative, Liberal and New Democratic parties, leaving virtually all other party and independent candidates with no public funding at elections (see Table 6.10). In the four elections since the legislation came into effect, 2404 candidates from the three largest parties were reimbursed, compared with only 51 candidates from other parties and four independent candidates. On no occasion have the candidates of more than one party other than the three largest parties been reimbursed; in 1988, for instance, 11 of the Reform Party's candidates qualified, but not one of the candidates of any other smaller party did so. In the four elections in question, the proportion of candidates not receiving reimbursements has ranged between 53 per cent in 1979 and 57 per cent in 1980. Among those candidates not reimbursed under the present system were several whose electoral support approached, but fell short of, the 15 per cent threshold. In the 1984 and 1988 elections, for example, 226 candidates received more than 10 per cent of the vote but were not reimbursed.

This pattern can also be seen in the distribution of the money allocated through reimbursement over the past four elections. Of the \$41 946 841 allocated to candidate reimbursement since 1979, only \$736 449 (1.76 per cent of the total reimbursed) has gone to candidates from other than the three largest parties.

The reimbursements to registered parties tell a similar but more striking story. Since the introduction of the 10 per cent threshold in 1983, only one party other than the three largest parties has qualified for reimbursement: the Christian Heritage Party, in 1988. Under the previous rules, in the 1979 and 1980 elections, the Social Credit Party was the only small party

**Table 6.10**  
**Reimbursements to candidates, federal general elections, 1979–88**

Party	1979		1980		1984		1988	
	(N)	Cost (\$)	(N)	Cost (\$)	(N)	Cost (\$)	(N)	Cost (\$)
Progressive Conservative Party	219	2 867 691	215	2 871 029	282	5 117 066	293	6 055 597
Liberal Party	273	3 594 244	275	3 656 074	238	4 081 353	264	4 655 526
New Democratic Party	147	1 670 601	152	1 884 863	140	1 917 095	170	2 839 253
Social Credit Party	29	359 273	8	111 802	—	—	—	—
Reform Party	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	11	162 122
Christian Heritage Party	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	—	—
Parti Rhinocéros	—	—	—	—	—	—	—	—
Union populaire	—	—	—	—	N.A.	N.A.	N.A.	N.A.
Libertarian Party	—	—	—	—	—	—	—	—
Marxist-Leninist Party	—	—	—	—	N.A.	N.A.	N.A.	N.A.
Confederation of Regions Western Party	N.A.	N.A.	N.A.	N.A.	3	28 870	—	—
Communist Party	—	—	—	—	—	—	—	—
Green Party	N.A.	N.A.	N.A.	N.A.	—	—	—	—
Party for the Commonwealth of Canada	N.A.	N.A.	N.A.	N.A.	—	—	—	—
Parti nationaliste	N.A.	N.A.	N.A.	N.A.	—	—	N.A.	N.A.
Independent	2	25 972	—	—	1	26 340	1	22 070
Total	670	8 517 781	650	8 523 768	664	11 170 724	739	13 734 568

Source: Canada, Chief Electoral Officer 1979a, 1979b, 1980a, 1980b, 1984a, 1984b, 1988, 1989.

Note: N.A., not applicable – party did not run candidates in year indicated.

to receive more than \$270 in reimbursement payments. Moreover, the Social Credit Party was reimbursed only a total of \$9518 following these two elections, compared with the average amount of \$762 263 paid out to each of the three largest parties in the same two elections. Over the past four elections, parties other than the Progressive Conservative, Liberal and New Democratic parties together received a total of \$58 835 (0.44 per cent of the \$13 460 246 paid out) even though they won 3 to 6 per cent of the vote in every election (see Table 6.11).

**Table 6.11**  
**Reimbursements to political parties, federal general elections, 1979–88**  
 (dollars)

Party	1979	1980	1984	1988
Progressive Conservative Party	793 967	977 835	1 437 512	1 782 391
Liberal Party	718 020	909 923	1 415 921	1 538 972
New Democratic Party	496 350	677 481	1 064 413	1 588 627
Social Credit Party	7 769	1 749	—	—
Christian Heritage Party	N.A.	N.A.	N.A.	48 906
All others	143	268	—	—
Total	2 016 248	2 567 256	3 917 846	4 958 896

Source: Canada, Chief Electoral Officer 1979b, 1980b, 1984b, 1988.

Note: N.A., not applicable – party was not registered in year indicated.

The case of the Christian Heritage Party in 1988 clearly illustrates this shortcoming of the present party reimbursement system. In that year, the Christian Heritage Party was reimbursed \$48,906, having spent more than 10 per cent of its spending limit. But the Reform Party, which won almost three times as many votes as the Christian Heritage Party and had 11 candidates qualify for reimbursement, received no reimbursement whatsoever because it did not spend more than 10 per cent of its limit. The 10 per cent spending threshold therefore makes the system of public funding of election participants inaccessible to emerging parties, except those able to spend enough money to reach that threshold.

In short, the present reimbursement system has disproportionately overcompensated the three largest parties and their candidates and undercompensated the smaller parties, their candidates and independent candidates. This is in large part the result of the thresholds, although the fact that reimbursements are based on amounts spent rather than on popular support is also a factor.

In contrast, many western European countries have vote-based funding systems in which public financial support of election participants depends on the level of electoral support. In Germany, for example, all political parties winning more than 0.5 per cent of the vote are reimbursed through a system of annual payments at a rate of DM 5 per vote received. Italy's system of party funding, instituted in 1974, provides public funds according to votes won. In elections for the National Chamber, parties must run candidates in two-thirds of the ridings, and win either at least one seat or at least 2 per cent of the popular vote to receive public funding. Austria provides public funding to any party receiving more than 2.5 per cent of the vote.

In European countries such as these, vote-based public funding and low thresholds have contributed to a greater flexibility within the electoral system. In these cases, Jenson notes, "the existing parties have not used

their positions of strength to block innovators. Instead, the parties have ensured that equality of opportunity is part of the regulatory package." (Jenson 1991b RC)

A reimbursement system based on electoral support, and not the ability to spend money, would lead to a fairer distribution of public funding to election participants by introducing greater equity. At the same time it would recognize the relative differences in popular support. The electoral system would be more responsive, giving emerging parties a fair opportunity to grow and lowering the obstacles many candidates now face. For these reasons, we support changing the present reimbursement system to a vote-based reimbursement system for both parties and candidates.

The issue of the proportion of election public funding provided to parties on the one hand and to candidates on the other must also be addressed. Over the post-1974 period as a whole, average proportions were 76.3 per cent for candidates and 23.7 per cent for parties. As Table 6.12 indicates, reimbursements to parties, although the amounts are significant, account for a relatively small share of total direct public funding.

**Table 6.12**  
Federal election reimbursements to parties and candidates, federal general elections, 1979–88 (dollars)

Election	Total reimbursements	Total reimbursements to parties	Total reimbursements to candidates
1979	10 534 029	2 016 248 (19.1%)	8 517 781 (80.9%)
1980	11 091 024	2 567 256 (23.1%)	8 523 768 (76.9%)
1984	15 088 570	3 917 846 (26.0%)	11 170 724 (74.0%)
1988	18 693 464	4 958 896 (26.5%)	13 734 568 (73.5%)

Source: Canada, Chief Electoral Officer 1979b, 1980b, 1984b, 1988.

Payments under the present reimbursement system do not reflect the needs of candidates and parties. This is indicated by surpluses from candidates' election campaigns. Following the 1988 election, for instance, the total surpluses of candidates, including reimbursements received, amounted to \$9.6 million. (Canada, Chief Electoral Officer 1991, 10) More than 75 per cent of Progressive Conservative and Liberal candidates had surpluses after the 1988 election, as did more than half the New Democratic Party candidates (see Table 6.13). The surpluses averaged \$20 080 for Progressive Conservative candidates, \$12 727 for Liberal candidates and \$10 421 for New Democratic Party candidates. For the 11 candidates who raised more than \$100 000 in that election, the surpluses ranged from \$38 236 to \$96 284. (Stanbury 1991 RC, chapter 12)

In this context, it is not surprising that transfers from national parties to candidates' campaigns declined after adoption of the 1974 reforms. The



Liberal Party, for example, transferred \$2.6 million to its candidates in 1974, but only about \$300 000 in the 1979 election and \$485 000 in 1988. (Stanbury 1991 RC, chapter 5) The Progressive Conservative Party transferred about \$1.7 million to candidates in the 1974 election; this dropped to \$450 000 in 1979 (Seidle and Paltiel 1981, 257) and totalled \$232 000 in the 1988 election. (Stanbury 1991 RC, Table 4.7) The national parties recognize that candidates generally, given the benefit of the tax credit and the likelihood of reimbursement, have needed less financial assistance since the 1974 legislation. As noted in Volume 1, Chapter 5, the New Democratic and Liberal parties have 'taxed' some of the surplus funds from candidates' campaigns by requiring that a certain proportion be paid to the federal level, a practice that is bound to accelerate unless a better balance is found in the allocation of public funding through reimbursements.

**Table 6.13**  
**Analysis of surpluses reported by candidates, 1988 federal general election**

Party	Number of candidates	Number reporting a surplus	Number receiving reimbursement <sup>a</sup>	Candidates reporting a surplus (%)	Total surplus reported <sup>b</sup> (\$)	Average surplus reported <sup>c</sup> (\$)
Progressive Conservative Party	295	231	230	78	4 639 000	20 080
Liberal Party	294	234	220	80	2 978 000	12 727
New Democratic Party	295	167	143	57	1 740 000	10 421
Reform Party	72	21	11	29	140 000	6 650
Christian Heritage Party	63	31	0	49	104 000	3 368
Confederation of Regions Western Party	52	9	0	17	2 400	262
Communist Party	52	8	0	15	1 800	223
Green Party	68	9	0	13	1 300	143
Libertarian Party	88	8	0	9	1 900	242
Social Credit Party	9	1	0	11	N.A. <sup>d</sup>	81
Parti Rhinocéros	74	0	0	0	—	—
Party for the Commonwealth of Canada	61	0	0	0	—	—
Independent	154	4	0	3	N.A.	63

Source: Stanbury 1991 RC, Table 12.33.

<sup>a</sup>Number of candidates reporting a surplus who *also* received reimbursement.

<sup>b</sup>Surplus = contributions - election expenses - personal expenses - campaign expenses + reimbursement.

<sup>c</sup>Only for those candidates reporting a surplus. Amounts may vary slightly because of rounding.

<sup>d</sup>N.A.: not available.

To ensure that candidates and parties are able to fulfil their functions within the electoral process, we need to consider both the criteria by which

election participants qualify for reimbursement and the level at which each should be so funded. The system of public funding should ensure that the reimbursement of candidates and parties applies only to those who receive a minimum level of electoral support. Based on our review of the practice in other jurisdictions and our commitment to fairness in electoral competition, we propose that the threshold for registered parties be 1 per cent of the valid votes cast nationally (in 1988, this would have been 131 756 votes) and that any candidate who receives 1 per cent of the valid votes cast in a constituency qualify for reimbursement.

We propose that registered parties that receive at least 1 per cent of the valid national vote be reimbursed \$0.60 for each vote and that candidates who receive at least 1 per cent of the valid votes in a constituency be reimbursed \$1.00 for each vote received. In all cases, qualifying parties or candidates would not receive a reimbursement greater than 50 per cent of their election expenses.

To ensure the new reimbursement formula is equitable, adjustments are required (as is the case for spending limits) for candidates in geographically large constituencies and constituencies with a small electorate. Candidates' 1988 post-election returns indicated that candidates in the 91 sparsely populated constituencies spent twice as much on 'personal expenses' as other candidates, largely as a result of travel costs. Candidates in the 25 sparsely populated constituencies that would be designated as 'remote' under our proposals (see Volume 2, Chapter 2) spent almost twice as much on 'personal expenses' as the candidates in the remaining 66 constituencies, and their 'personal expenses' were about 18.4 per cent of their 'election expenses'.

The additional costs these candidates face should be reflected in the reimbursement formula. We therefore propose that qualifying candidates in sparsely populated constituencies receive \$1.25 for each vote received and those in remote constituencies receive \$1.50 for each vote received. Finally, to allow a reasonable level of reimbursement, we propose that qualifying candidates in constituencies with fewer than 30 000 voters receive a reimbursement equal to the amount obtained by multiplying their share of the vote by 30 000 times the amount per vote that would otherwise apply. (Based on the 1990 estimated electorate, there are eight such constituencies; four of these fall in the 'remote' category and one other is sparsely populated.)

Table 6.14 illustrates the pattern of reimbursements that would have been obtained if our recommended system had been in place for the 1988 election. The total reimbursements to parties would have risen by 53 per cent (from \$4.96 million to \$7.59 million). Unlike under the present rules, the Reform Party would have qualified for reimbursement, but the Christian Heritage Party (which received less than 1 per cent of the national vote) would not have qualified. Based on our recommendation, the candidates' total reimbursements would have been 90.5 per cent of the total reimbursements to candidates in 1988. However, 1157 candidates would have qualified for reimbursement, an increase of 57 per cent. All candidates of

the Progressive Conservative, Liberal and New Democratic parties would have received a reimbursement, as would all but one of the candidates for the Reform Party. In addition, 202 other candidates would have qualified, including 20 independent candidates; in 1988, only one candidate not affiliated with a registered party (an independent) was reimbursed.

**Table 6.14**  
**Reimbursements under present rules and under recommendations**

Party	Number of candidates reimbursed (1988)	Total reimbursements to candidates (1988) (\$)	Number of candidates reimbursed (recommendation)	Total reimbursements to candidates (recommendation) (\$)	Reimbursements to parties (1988) (\$)	Reimbursements to parties (recommendation) (\$)
Progressive Conservative Party	293	6 055 597	295	5 243 445	1 782 391	3 400 538
Liberal Party	264	4 655 526	294	4 046 048	1 538 972	2 523 043
New Democratic Party	170	2 839 253	295	2 659 943	1 588 627	1 611 185
Reform Party	11	162 122	71	301 434	0	56 184
Other	1	22 070	202	179 227	48 906*	0
Total	739	13 734 568	1 157	12 430 097	4 958 896	7 590 949

Source: Royal Commission Research Branch.

\*Christian Heritage Party.

Based on Elections Canada estimates, the electorate would be 5 per cent greater if an election were held in late 1992. If turnout were the same as in 1988, we estimate the total cost of reimbursements under our recommendations would be about \$20 021 046, which represents a moderate increase over the total cost in 1988 (\$18 693 494). Although it is impossible to predict accurately the pattern of reimbursements in a future election, these proposed changes would ensure that national parties receive increased reimbursements and that a considerably greater number of candidates would qualify for reimbursement.

The total reimbursements assigned to candidates would be lower than in the past. This is a function of the amount per voter we propose, not of the basis of the formula. The tax credit, paired with spending limits, has strengthened the capacity of candidates to finance their campaigns. In the future, constituency associations would be able to issue tax receipts on an ongoing basis, and their healthier finances would further benefit candidates, which is the justification for the proposed amount per voter. What is most important is that our proposed system is much fairer because the benefits of public funding for candidates as well as for registered parties would be distributed based on their electoral support.

### Recommendation 1.6.11

We recommend that

- (a) registered political parties that receive at least 1 per cent of all the valid votes cast be reimbursed \$0.60 for each vote received but that no party be reimbursed an amount greater than 50 per cent of its election expenses;
- (b) candidates who receive 1 per cent of the valid votes in a constituency be reimbursed \$1.00 for each vote received, except that
  - (1) candidates in constituencies with, on average, fewer than 10 voters per square kilometre be reimbursed \$1.25 for each vote received;
  - (2) candidates in 'remote' constituencies be reimbursed \$1.50 for each vote received; and
  - (3) candidates in constituencies with fewer than 30 000 voters be reimbursed the amount obtained by multiplying their share of the vote by 30 000 times the amount per vote that would otherwise apply; but that no candidate be reimbursed an amount greater than 50 per cent of his or her election expenses;
- (c) after each election, the Canada Elections Commission review the scale of the reimbursements; and
- (d) any adjustments to the scale of the reimbursements be made through a regulation of the Commission.

#### **Independent Candidates and Independent Members of Parliament**

Our recommendations for changing the system of public funding for elections would give independent candidates a greater chance to qualify for reimbursement. There are two additional issues of fairness that relate to the situation of independent candidates and independent Members of Parliament.

The *Canada Elections Act* now obliges candidates of registered parties to transfer any surplus after an election to the registered party or a local association; any other candidate must transfer a surplus to the Receiver General for Canada. This means that a candidate of a registered party, including a Member of Parliament, who runs in a subsequent election may be able to benefit from a surplus through a transfer from the registered party or constituency association. However, this opportunity is not open to independent candidates.

This anomaly should be corrected to ensure greater fairness in electoral competition. This can be done by having the surplus funds of any candidate not nominated by a registered constituency association kept in trust by the Canada Elections Commission. If the person contested the next

election or a by-election during the period leading to that election, the surplus would be remitted to the financial agent of the candidate; if a constituency association was registered in the former candidate's constituency before the next election, the surplus could be remitted to it upon the request of the former candidate; otherwise, the funds would revert to the federal Receiver General. A candidate nominated by a registered constituency association should be obliged to transfer any surplus after an election to that association.

### **Recommendation 1.6.12**

#### **We recommend that**

- (a) following an election, the surplus of any candidate other than those nominated by a registered constituency association be held in trust by the Canada Elections Commission; and**
- (b) if she or he is a candidate in the subsequent general election or a by-election during the intervening period, the funds be transferred to the financial agent of the candidate; if a constituency association is registered in her or his constituency, the funds be transferred to that constituency association upon the request of the former candidate; and, if not, the funds be transferred to the Receiver General for Canada.**

A final question is whether associations to support independent Members of Parliament should be allowed to register. Funds raised by the constituency party association of a Member of Parliament may benefit the Member at the time of re-election – for example, through a transfer or loan from the association to the candidate's campaign organization. However, our recommendation that the associations of registered parties acquire the right to issue tax receipts between elections would put independent Members of Parliament at a disadvantage in running against other candidates because they could not benefit from the incentive to fund raising that this right would provide. This would be unfair and could be resolved by following the example of Alberta, where an association of an independent member of the Legislative Assembly is allowed to register.

The association of an independent Member of Parliament should retain its registration only as long as the Member remains in office. Otherwise, there would be potential for abuse through the issuing of tax credits. We therefore propose that the association of an independent Member of Parliament be de-registered if the Member retires, does not stand for re-election or is defeated. It would be consistent with our above recommendation to allow the funds of the association, once de-registered, to be held in trust.

If the former independent Member of Parliament was a candidate at the following general election or at a by-election during that period, the funds held in trust would be transferred to the candidate's financial agent; otherwise, the funds would revert to the Receiver General for Canada.

### **Recommendation 1.6.13**

**We recommend that**

- (a) constituency associations of independent Members of Parliament be eligible to register as local associations and be authorized to issue income tax receipts for political contributions;**
- (b) any such association be de-registered as soon as the Member of Parliament retires, indicates she or he will not stand for re-election or is defeated, and its funds be held in trust by the Canada Elections Commission; and**
- (c) if the former independent Member of Parliament is a candidate at the following general election or at a by-election during that period, the funds held in trust be transferred to the financial agent of the candidate and, if not, the funds be transferred to the Receiver General for Canada.**

## **ACCESS TO BROADCASTING**

### **Introduction**

The issue of equitable access to broadcast time for parties and candidates has been controversial in Canada since the 1930s. Indeed, it was evident to the Barbeau Committee (Canada, Committee on Election Expenses 1966, 331) that questions of election spending were in large part questions about access to media. Any examination of fairness in electoral competition, of campaign costs or of public confidence in the electoral process must come to terms with the central role of the modern mass media. As David Taras has put it, "Virtually every aspect of the election campaign will involve the media; in fact, to a large degree the media are the stage on which the election is fought." (Taras 1990, 152) Indeed, the 1988 Canadian Election Study refers to the most recent Canadian federal election as "a media event *par excellence*". (Johnston et al. 1991, 1:17)

In addition to spending limits and public subsidies, our tradition of electoral democracy includes limits on the use of certain expensive campaign activities, such as paid advertising, and on access to free-time political broadcasts. These measures help to ensure fairness in the system. In comparing western democracies, Goldenberg and Traugott concluded that the closer broadcast regulations are to creating a free market, the greater the likely imbalance in media access among opposing candidates. (1987, 454)

Fairness in electoral competition requires that the contenders be given reasonable access to those media channels that are likely to be most effective in carrying their arguments to voters. Since the emergence of political broadcasting, there have been numerous investigations and discussions about which contenders should have access to the air waves and how the available time should be divided among them. Over the years there has emerged a system of 'regulated competition' in which 'recognized political parties' are allocated broadcast time.

*Forms of campaign communication*

<b>Unmediated</b>	<b>Partially mediated</b>	<b>Mediated</b>
Paid time	Leaders debates	News coverage
Free time	Interview shows	Public affairs
Direct mail		
Telemarketing		

In examining these issues, distinctions must be made among the various media. It is important to distinguish between the broadcast media, which have been regulated almost since their inception, and the print media, which have not (though they are subject to some legal restrictions of general application, such as the laws of libel and slander). It is also essential to distinguish between those forms of campaign communication that allow the parties relatively direct access to voters and those that are filtered through journalists and commentators. There is considerable demand from both parties and voters for more unmediated communication. As Table 6.15 shows, there is also considerable support for increased programming that permits direct access.

The emergence of party politics in the nineteenth century was accomplished in part through the efforts of the partisan press. In Canada, the partisan press was a major feature of the political landscape until well into the second half of this century. From 1867 until the 1950s, voters could for the most part be divided into partisan groupings. They looked to the newspaper aligned with the party for the positions they should take and the candidates for whom they should vote. Press coverage thus tended to reinforce existing loyalties. Changes in the newspaper industry and the advent of the broadcast media, with their regulated impartiality, helped to erode these party ties. By 1960, the overtly partisan press was on its way out in Canada, though some newspapers still have partisan leanings. (Desbarats 1990a, 83–85; Charron 1991 RC; Rutherford 1978, 38–76) With a few exceptions, Canadian newspapers strive for non-partisan news coverage, though many respond to political events from an ideological perspective that sometimes makes them closer to one party than to others.

**Table 6.15**  
**Public assessment of voter information sources during election campaigns**  
 (per cent)

	Very useful/ somewhat useful	Not very useful/ not at all useful	Don't know
Debates on specific issues on the Parliamentary Channel	74.9	21.6	3.5
More free-time broadcasts for political parties	61.5	36.0	2.5
More broadcasting advertising for political parties	40.0	57.5	2.5
More televised leaders debates	78.4	19.8	1.9
More phone-in shows with party spokesperson on radio and television	75.7	21.2	3.2
Party policy position papers mailed to all voters	64.8	32.0	3.3

Source: Frizzell 1991.

Note:  $N = 1\ 743$ .

Percentages may not add to 100 due to rounding.

Wording of the question:

"How useful would you say the following would be in providing voters information during election campaigns? Would you say they were very useful, somewhat useful, not very useful or not at all useful?"

The decline of the overtly partisan press, accompanied by increased geographical mobility after 1950, created a problem for political parties. The party newspaper and interpersonal networks in the community had always been enough to mobilize their core supporters. With those channels declining in effectiveness, the party strategists had to seek out other means. Paid advertising, especially broadcast advertising and party political broadcasts, was the obvious alternative. The parties looked first to radio and later to television to meet these needs. Advertising and free-time broadcasts had several advantages for the parties: (1) they were under direct party control; (2) they reached beyond the core vote and could be used to recruit new supporters and mobilize old ones; and (3) they were not immediately counteracted by another party's competing message. (Smith 1981, 182–83) While effective, broadcast advertising is costly; professional assistance is required for optimal effectiveness.

Despite the increased reliance on advertising, the parties continue to rely on news coverage as the major means for reaching voters, especially where opportunities for advertising are restricted. Political parties in the industrial democracies have increasingly found it necessary to court "media exposure by doing and saying what the media will deem worth covering". This development, accompanied by the increasingly commercial nature of the broadcast media, has led to a situation in which "the politician's right to state [a] case in the media is more circumscribed than it once was". (Smith 1981, 183) The loss of these partisan channels, combined with the increasing brevity of broadcast news reports, encouraged the parties to look for alternative means to reach both core voters and possible converts or recruits.



Broadcasters have traditionally accepted considerable responsibility for educating their audiences on the issues of the day. Indeed, one of the major reasons for the creation of public broadcasting in the 1930s was to take advantage of the educational potential of radio. The obligation to present diverse perspectives on public questions was written into the 1936 *Broadcasting Act* and has been retained in subsequent versions (1991 *Broadcasting Act*, s. 3). (Peers 1969, 44–47) The obligation to inform voters about important issues is accepted by serious journalists, and the CBC acknowledges its special responsibilities in this regard. (Canada, Task Force on Broadcasting Policy 1986, 107) The emergence in recent decades of a common set of journalistic practices that transcend public-private distinctions (Gilsdorf and Bernier 1991 RC) and the increasing dependence of the CBC on advertising (Canada, Task Force on the Economic Status of Canadian Television 1991, 102) have eroded this commitment somewhat. The central tension of political journalism – between its obligation to provide the public with a continuing education in public affairs and the need of the news media to perform their ‘merchandising function’ to survive – has become an important fact of life for public as well as private broadcasters. Even in Quebec, where the Société Radio-Canada has been “at the heart of all the debates ... that have stirred Quebec society over the past 30 years” (Canada, Task Force on Broadcasting Policy 1986, 209), the commitment to traditional election coverage appears to have declined. (Desbarats 1990a, 24; Frizzell and Westell 1989, 86; Charron 1991 RC)

In the early days of political television, candidates were given considerable broadcast time to communicate their messages to the public. Political leaders were able to talk directly to voters through party broadcasts on radio and television and to appear on interview shows. On the television news shows, with their larger audiences, campaign reports routinely ran longer than two minutes. More important, segments of uninterrupted speech from a party leader – ‘sound bites’ in broadcast jargon – were much longer than they are today. For example, in the 1968 U.S. presidential campaign, the average sound bite was 42.3 seconds; in 1988, it had shrunk to 9.8 seconds. (Adatto 1990, 20) “By 1988,” Kiku Adatto concludes, “television’s tolerance for the languid pace of political discourse, never great, had all but vanished.” In the absence of a comprehensive Canadian television archive, comparable research in this country has not yet been done. However, one 1984 study found that of almost six hours of broadcast time on CBC’s *The National*, only 12 per cent – a little over 42 minutes – was devoted to the party leaders speaking. (Comber and Mayne 1986, 92)

CBC figures indicate that Canadian party leaders were allocated somewhat longer clips on *The National* during the 1988 campaign. *The National* carried 8696 words spoken by the leaders during the seven weeks of leaders tour coverage. The average number of words spoken by each leader per newscast was about 60, but they were not evenly distributed over the seven weeks. In response to criticism, the CBC monitored the word count closely and increased

the length of the clips over the campaign. The average was only about 38 words during the first week, when public interest is thought to be less, but rose to 92 words for each leader in the final week. A sound bite of 60 words is the equivalent of about 20 seconds, with 92 words closer to 30 seconds.<sup>6</sup>

Data from the National Media Archive indicate that during the 1988 federal election campaign party leaders were, however, given considerably less opportunity to speak than journalists. The number of 'statements' attributed to journalists on the two English-language television newscasts outnumbered those from the Progressive Conservative, Liberal and New Democratic party leaders combined by more than two to one (see Table 6.16). These data illustrate clearly that television reporters spend more time commenting on the words and actions of candidates than reporting them. A recent study on U.S. electoral coverage revealed that the amount of time journalists spent in assessing the performance of politicians jumped dramatically from 6 per cent in 1968 to 52 per cent in 1988. (Adatto 1990, 21)

**Table 6.16**  
**Source of statement by program, 1988 federal election campaign**

Source of statement	CBC – The National		CTV National News	
	N	(%)	N	(%)
Party leaders*	186	(19.7)	121	(19.1)
Local candidates	56	(5.9)	43	(6.8)
Party spokesperson	67	(7.1)	47	(7.4)
Journalists	378	(40.1)	290	(45.7)
Other	256	(27.1)	134	(21.1)
Total	943	(100.0)	635	(100.0)

*Source:* Based on data reported in National Media Archive 1991.

\*The sum of all statements by the leaders of the Progressive Conservatives, Liberals and NDP.

Although party leaders have considerable capacity to influence the agenda of political coverage, they have little control over the tone. When they do have an opportunity to put their appeals directly to the electorate, the leaders tend to get a generally positive response, as our research on the leaders debates shows. (Barr 1991 RC)

Surveys show that Canadians are reasonably satisfied with the political news coverage available to them, despite some misgivings. (Canada, Royal Commission 1981, 33–38) Table 6.17 indicates that, for coverage of federal election campaigns, most Canadians believe the media are generally accurate and fair in their campaign coverage. As in the 1981 survey, however, there were doubts. For example, many respondents felt that the smaller parties did not receive sufficient coverage, as shown in Table 6.18. This view was held not only by supporters of smaller parties but also by substantial numbers of respondents who regarded themselves as supporters of one of

the three largest parties. (Blais and Gidengil 1991 RC) A separate survey of local constituency activists found them to be generally less satisfied with the coverage. Although most were "somewhat satisfied" with the coverage of the campaigns they were involved in, the overall response was unenthusiastic, with supporters of the smaller parties most dissatisfied. (Carty 1991a RC)

**Table 6.17**  
**Assessment of media coverage: fairness and accuracy**  
(per cent)

	Very good	Good	Poor	Very poor	Don't know
Accuracy <sup>1</sup>	11.6	61.1	17.9	4.9	4.5
Fairness <sup>2</sup>	6.9	53.3	28.6	6.3	4.9

Source: Blais and Gidengil 1991 RC.

Note: N = 2 947.

Wording of the questions:

"1. How good a job do you feel the media does in accurately reporting on federal election campaigns? Do they do a very good job, a good job, a poor job, or a very poor job?"

2. How good a job do you feel the media does in treating all the federal political parties fairly? Do they do a very good job, a good job, a poor job, or a very poor job?"

**Table 6.18**  
**Mention of political parties in news coverage, by medium, 1988 federal election**  
(per cent)

Parties mentioned	Television N = 78	Daily newspapers N = 205	Community newspapers N = 242
No party mentioned	—	.5	2.5
Three largest parties only*	85.9	79.5	51.7
Smaller parties only	2.6	6.8	13.2
Both types	11.5	13.2	32.6
Total	100	100	100

Source: Hackett 1991 RC.

\*Progressive Conservative, Liberal and New Democratic parties.

The relative lack of coverage of smaller parties during the 1988 campaign, especially in the broadcast media, is shown in Table 6.19. These data illustrate a gap between journalistic practices and public demand. The media have been slow to adapt to the increase in the number of registered parties since 1974 and, in particular, to the increased public interest in what they have to say. The public demand for greater attention to smaller parties, though fuelled by short-term concerns regarding specific issues, is also part of a general process of expanding participation. Many voters wish to hear views not encompassed by the largest parties. (Blais and Gidengil 1991 RC)

Analyses of voter attitudes suggest that a sense of involvement in the electoral process and participation are likely to be enhanced by a greater diversity of communication channels and perspectives. (MacDermid 1991 RC)

**Table 6.19**  
**Assessment of media coverage: attention to small parties**  
 (per cent)

Too much	2.8
Too little	53.7
About the right amount	38.3
Don't know	5.2

Source: Blais and Gidengil 1991 RC.

Note:  $N = 2\,947$ .

Wording of the question:

"What about small parties that don't win many votes? Does the media pay them too much, too little, or about the right amount of attention?"

As a result of commercial pressures and changes in journalistic practices, the commitment of the Canadian media to political education has diminished. As we were told at our media seminar, media values are not driven by political education; instead, they respond to the expressed wants and needs of the audience. We were also told that the media do not share a commitment to an election as a process. Indeed, although they take special care to provide balanced coverage of the three largest parties, they maintain that normal news values should apply to election coverage. News coverage based on criteria of human interest and convenience is unlikely to meet the information needs of some significant groups of voters. Although the French-language media continue to provide more political analysis than their English-language counterparts, there are still important gaps in the coverage. (Charron 1991 RC) Thus, while the news media continue to play a vital role in disseminating campaign information, this analysis makes clear the need to supplement news media coverage with campaign information from other sources.

Political broadcasting in Canada has been formally regulated since the establishment in 1932 of the forerunner of the CBC, the Canadian Radio Broadcasting Commission (CRBC). From 1932 to 1936, the CRBC provided its own national radio service and also supervised the broadcasting activities of others. Its successor, the CBC, then performed these same functions from 1936 to 1958, at which time a policy decision was made that a broadcaster should not also be the regulator of other broadcasters. In 1958, an independent regulatory authority separate from the CBC, namely, the Board of Broadcast Governors (BBG), was established. When Canadian broadcasting experienced expansion with the advent of cable, there was a perceived need to create a regulatory authority with a wider mandate and responsibility. Consequently, the Canadian Radio-Television Commission was created in

1968. This evolved into the Canadian Radio-television and Telecommunications Commission (CRTC) in 1975 to accommodate still further changes in the communication industry.

These regulatory bodies have developed in tandem with legislation concerning political broadcasting and broadcasting policy in general. The main principles have been set out in the *Canadian Broadcasting Act 1936* (and subsequent versions), the 1958, 1968 and 1991 *Broadcasting Act* and the *Canada Elections Act*. The primary principle underlying political broadcasting is contained in the *Broadcasting Act* (1991, subsection 3(1)(i)(iv)): the programming by the Canadian broadcasting system should "provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern". This provision expresses clearly the expectation that the broadcast media will play an important role in educating voters on public issues.

The 1988 Public Notice issued by the CRTC summarizes the main principles governing the need for balance in controversial broadcasting, of which political broadcasting has been described as an "offshoot". (Boyer 1983, 437) The principles are:

- (a) CRTC regulation, as a general rule, should not constrain or inhibit the ways and means of presenting controversial issues.
- (b) Broadcasters have a responsibility to become involved in controversial issues of public concern.
- (c) Broadcasters should devote a reasonable amount of air time to the coverage of controversial public issues and should provide an opportunity for the presentation of differing points of view.
- (d) The public, through the presentation by broadcasters of the various points of view in a fair and objective way, should be placed in a position to make its own informed judgement on controversial issues.
- (e) It is for the broadcaster in the first instance to determine what is a reasonable, balanced opportunity for the expression of differing views, subject to review by the Commission....

Once a licensee chooses to give free time, it must allocate some time to all political parties duly registered under the applicable legislation. (CRTC 1988)

The right of the public to be informed in a "fair and objective way" has been a constant theme throughout the evolution of political broadcasting in Canada. The regulatory authorities periodically remind broadcasters of their obligation to provide equitable treatment. Equitable, however, does not mean equal. It pertains to the fact that "all candidates and parties are entitled to some coverage that will give them the opportunity to expose their ideas to the public". (CRTC 1988)

The "equitable principle" applies within each of what the CRTC considers the four categories of political campaign broadcasts: paid-time, free-time, news and public affairs programs (at least to the extent that the last

two categories broadcast campaign debates and constituency profiles). Although the CRTC does not provide any fixed rule on defining equity, it suggests there are signposts to help broadcasters determine whether they are indeed providing equitable election coverage. These signposts are found in the *Canada Elections Act* regarding factors to be considered by the broadcasting arbitrator in the allocation of paid and free time. The factors involve the percentage of seats and popular vote received by the political parties at the last general election and the number of candidates each party ran at that time.

During the election period, compliance with the rules on equitable coverage has depended largely on the broadcasters themselves, since the CRTC lacked suitable sanctions under the 1968 *Broadcasting Act*. Threats of problems with licence renewal or of prosecution are generally out of proportion to the complaints received about election broadcasting. However, broadcasters do not want to alienate the regulator and are concerned with their public image. Therefore, a complaint forwarded to a broadcaster by the CRTC is usually acted on.

At each federal general election, the CRTC is required, no later than three days after the issue of the writs, to prepare and send to the broadcasting arbitrator a set of guidelines regarding the applicability of the *Broadcasting Act* and its regulations concerning the conduct of broadcasters and network operators during a general election. Within the next two days the broadcasting arbitrator is to issue to broadcasters and network operators guidelines on time allocation under the *Canada Elections Act*, booking procedures for broadcast time, the aforementioned CRTC guidelines and any other pertinent matters. The information is published according to the requirements of the *Canada Elections Act*. The amount of time is determined by the broadcasting arbitrator under rules set out in this Act. The guidelines issued by the arbitrator apply only to political parties; the CRTC retains authority over the rules governing individual candidates and other kinds of political broadcasting.

For complaints during election campaigns, the CRTC has relied primarily on mediating between complainants and broadcasters. Its normal procedures, geared to public hearings, are not well suited to the pace of election campaigns. A concern that CRTC procedures were too slow caused the parties to seek the creation of the post of broadcasting arbitrator (established in 1983), but this perception resulted primarily from problems with the allocation of paid and free time among the parties. The CRTC generally deals quickly with complaints and, with the co-operation of broadcasters, is usually able to bring about a resolution. It is a complaint-driven process. The guidelines the CRTC circulates to Members of Parliament, all broadcasters and the registered parties include the names and phone numbers of the officials designated to deal with interpretations of the guidelines. These officials respond to complaints by contacting the broadcaster, usually within 30 minutes of receiving the complaint, and seeking a resolution.

The problems arise in those very few cases where agreement cannot be reached. The 1991 *Broadcasting Act* gives the CRTC the power to issue mandatory orders but only after a public hearing, with due notice to all interested parties. This procedure will assist the CRTC to deal with general issues after the campaign and to prepare for the next election but provides no direct redress during campaigns.<sup>7</sup>

It became clear from our public hearings that parties and broadcasters are generally aware of the regulations and procedures governing election broadcasting, but many candidates are not. The Canada Elections Commission and the CRTC should work together to refine the guidelines and ensure that all candidates receive them. It should be made clear to all candidates that they have the right to complain to the CRTC when they feel they have not been treated equitably (as defined in the guidelines). Complaint procedures should be explicit.

The CRTC has spent many years refining the regulations for political broadcasting under the *Broadcasting Act*. These regulations apply at all times, not just during the federal elections, and it would not be efficient to involve the Canada Elections Commission in their administration. There are, however, particular issues of free and paid time that arise only during elections. These matters have previously been handled by the broadcasting arbitrator. The Canada Elections Commission should take on these responsibilities and make whatever arrangements it deems appropriate to deal with them. Moreover, it will be necessary for the Commission and the CRTC to work together to refine the guidelines, make the rights and obligations of registered parties and candidates clear to them, and ensure that the guidelines are distributed in good time, preferably on a regular basis as well as after the writs are issued.

### **Paid Time**

Concern with political broadcasting dates to 1928 when the Royal Commission on Radio Broadcasting (the Aird Commission) recommended that it be "very carefully restricted". (Canada, Royal Commission 1929, 13) Problems with paid time moved to the forefront during the 1935 election, with the violation of Canadian Radio Broadcasting Commission rules requiring parties to pay in advance for airtime. (Canada, Committee on Election Expenses 1966, 363)

Over time, regulatory responsibility for political broadcasting has been vested with different bodies. Since 1958, public and private stations alike have been required to provide time for the transmission of political messages in election campaigns. A key principle has always been fairness in the allocation of time so that all main points of view may be heard. The CBC had a policy of offering free, but not paid, time for political parties until directed by the 1974 and 1977 changes to the *Canada Elections Act* to make paid time available. (Boyer 1983, 427) Now all broadcasters, including the CBC, must make a total of six and one-half hours available for purchase by parties

during election campaigns. The aim of these provisions was to ensure that parties had access to the broadcasting system for unfiltered messages.

Paid time is important in federal elections, given the high level of volatility in the Canadian electorate and the effectiveness of paid time in reaching undecided voters. Over the last five elections, an average of approximately 43 per cent of Canadian voters made their vote decisions during the campaign, responding mainly to the issues of that campaign rather than to longer term ideological or partisan commitments. (Clarke et al. 1991, 110) Volatility was particularly high in 1988. For example, one survey indicated that in the 1988 election more than 60 per cent of voters reported making their vote decisions during the campaign itself. (*Maclean's/Decima* 1988, 19) Further, more than 25 per cent of voters stated that they had changed their voting intentions at least once during the campaign. The 1988 Canadian Election Study concluded after examining opinion poll data that there were significant shifts in vote intention during the campaign period in eight of the last 10 federal elections. (Johnston et al. 1991, chapter 2)

Paid time has become increasingly important to parties not only because it mobilizes supporters and converts undecided voters, but also because it avoids the filtering process of the news media. The decreasing opportunities for parties to reach voters with their own messages through news coverage have increased the importance of paid time not only for the parties but also for the electorate. Despite the brevity and the nature of the messages, the advertisements reflect the party's own views of what they have to offer voters and are, therefore, useful information for the electorate (see Table 6.20).

**Table 6.20**  
**Public assessment of paid election advertising**  
(per cent)

Do without advertising	31.3
Need advertising	66.1
Don't know	2.6

Source: Blais and Gidengil 1991 RC.

Note: N = 2 947.

Wording of the question:

"Which of the following statements comes closer to your opinion?"

We could do without party advertising, because it doesn't really inform us about what the parties stand for.

We need party advertising because it is the only way that parties can get their message directly to the voter."

Research in the 1970s in the United States indicated that many voters learned more about policy issues from the party advertisements than from news coverage. (Patterson and McClure 1976, 3–24) This finding has been confirmed in more recent studies. (*The Economist* 1991, 21) Recent studies in Canada suggest that many voters, especially those who do not follow politics closely, become aware of issues and party positions and form impressions of the leaders from party advertisements. (Johnston et al. 1991, chapters 1, 4, 6



and 8) The attention-grabbing and repetitive nature of advertising promotes learning. Most of the 1988 party advertisements, for example, had at least some policy content, and the most effective of them distilled a central policy argument.<sup>8</sup> Although the points were made dramatically and not argued in detail, the outlines of the debate were presented in the paid time. Interested voters, having learned of the competing positions, could turn to other sources for further information.

### *Comparative Perspectives on Paid Time*

Several western democracies have a system of paid time operating along with a free-time system. France, Great Britain and Sweden provide free time only. (Gerstlé 1991 RC; Semetko 1991 RC; Siune 1991 RC) Almost all the jurisdictions with paid time have wrestled with the question of the amount of time each political party would be permitted to purchase. The exception is the United States, which places no limits on the time that can be bought. (Graber 1991 RC) In the most recent German election, parties were permitted to buy time on the commercial television and radio stations at cost price (i.e., the labour, quality control and production costs incurred by the broadcaster in the scheduling and transmitting of party advertisements). The two parties with the most seats in the Bundestag were allocated up to 25 minutes each; the smaller parties were given a maximum of 12.5 minutes. (Schoenbach 1991 RC) The Australian Parliament is currently addressing a proposal to ban paid time altogether. In a two-year trial period there, paid-time purchases were de-regulated, resulting in soaring advertising costs and a demand for bringing back regulation. Before deregulation, broadcasters were permitted an extra minute per hour of advertising where full broadcasting schedules would not otherwise permit reasonable opportunities to all political parties to present their messages before polling day. (Warhurst 1991 RC) In many democracies, the issues of controlling election advertising costs and of appropriate rules for access to paid time for political parties have been matters of concern in recent years.

### *The Current Paid-Time System*

The present paid-time system in Canada is complex and cumbersome, prompting many complaints. The system contains many restrictions that arose from a desire for fairness among all parties, a fear that wealth would otherwise dominate the air waves, and the expressed need of the parties for some control on increasingly expensive advertising costs, especially television advertising. The desire to control Canadian electoral broadcasting and election spending led to a prohibition on using broadcasting stations outside Canada for political advertising.

As already mentioned, the current system outlined in the *Canada Elections Act* is overseen by the broadcasting arbitrator. The arbitrator is either unanimously selected by the registered political parties or, failing unanimity, chosen by the chief electoral officer. The arbitrator plays a key decision-making

role, overseeing the allotment of time to each party and, if necessary, any negotiations with the broadcasters. The position was established to help speed the process of dealing with these matters.

The Act stipulates that political parties entitled to purchase paid time are permitted to broadcast such material only within a defined period during the general election campaign. This period of advertising is restricted to 28 days, beginning Sunday the 29th day before polling day and ending at midnight on the second day before election day. During the permitted paid-time advertising period, every broadcaster must, subject to *Broadcasting Act* regulations and its own conditions of licence, make available for purchase by all registered political parties a total of six and one-half hours (390 minutes) of prime-time broadcasting. In addition, every broadcaster must make available for purchase by unregistered political parties a total of up to 39 minutes: each such party is entitled to an amount equal to the lesser of six minutes or the smallest portion of broadcasting time made available to any of the registered political parties under the paid-time allocation formula. Broadcasters are expected to pre-empt previously scheduled commercials to provide this time to the parties.

The allocation of the paid time is determined by the application of four rules. If the parties themselves can agree on a division of time, that becomes the governing allocation. In the absence of agreement, three other rules come into play: (1) the formula set out in the Act; (2) the prohibition on any one registered party receiving more than 195 minutes, which represents 50 per cent of the total broadcasting time; and, (3) the discretion of the arbitrator to change the allocation if the arbitrator considers the time allotted to be unfair to any of the registered parties or contrary to the public interest.

A party's allocation under the paid-time formula for each election campaign is based on that particular party's activities in the *last* election. Under the formula, equal weight is given to (1) the percentage of seats in the House of Commons held by each of the registered parties and (2) the percentage of the popular vote at the previous election of each registered party; half of the weight given to these two factors is given to a third factor – the number of candidates endorsed by each of the registered parties at the previous general election expressed as a percentage of all candidates endorsed by all registered parties at that election. The entitlements under the formula for the 1984 and 1988 elections and the allocation established by the broadcasting arbitrator for an election held before 1992 are shown in Table 6.21.

The effect of this allocation, should an election be called under the existing rules, is to place an upper limit of seven minutes on the amount of time that can be bought from any broadcaster by any party other than the three largest parties. Since broadcasters are forbidden to sell more than the amount allocated, this allocation would not allow any smaller party to run an effective advertising campaign on the broadcast media, regardless of its capacity to raise funds. Although such a party could buy as much print

advertising as it could afford, it would not be able to compete on television or radio, the most potent instruments of modern election campaigns. The unfairness of the existing system lies not only in the imbalance shown in Table 6.21, but also in its clear bias against emerging parties, regardless of popular support and resources.

**Table 6.21**  
**Allocation of paid broadcast time by party, 1984, 1988 and 1991**  
(minutes)

Party	1984	1988	1991
Progressive Conservative Party	129.0	195.0	178.0
Liberal Party	173.0	89.0	113.0
New Democratic Party	69.0	67.0	73.0
Parti Rhinocéros	8.0	7.0	5.0
Communist Party	5.5	3.0	—
Libertarian Party	5.5	5.0	—
Pro-Life Party	5.5	—	—
Green Party	5.5	4.0	5.0
Confederation of Regions Western Party	5.5	4.0	—
United Canada Concept Party	5.5	—	—
L'Action des hommes d'affaires	5.5	—	—
Parti nationaliste	—	6.0	—
Party for the Commonwealth of Canada	—	4.0	4.0
Social Credit Party	—	3.0	—
Christian Heritage Party	—	3.0	5.0
Canada Party	—	3.0	—
Reform Party	—	3.0	7.0
Student Party	—	3.0	—
The Western Canada Concept Party	—	3.0	—
Western Independence Party	—	3.0	—
Total	417.5	405.0	390.0

*Source:* Report of the Broadcasting Arbitrator 1984 and 1989 (see Canada, Chief Electoral Officer 1984a, 1989) and Royal Commission Research Branch.

*Note:* The 1991 figures are those announced by the broadcasting arbitrator at the annual meeting of the registered parties held in Ottawa, 3 May 1991. The meeting is required by the *Canada Elections Act*, section 314. Since the parties could not agree on an alternative allocation, the entitlements established by the broadcasting arbitrator are binding for any election held before the next annual meeting. Under the current rules, they could change slightly to accommodate new parties.

To control campaign costs and to alleviate concerns that some broadcasters would charge high rates for party advertising, the paid-time system also contains a stipulation requiring broadcasters not to charge political

parties more than their most favoured rate. This rate is defined as the lowest rate charged by that broadcaster for an equal amount of equivalent time on the same facilities at any time during the period. (*Canada Elections Act*, s. 321)

Finally, the present paid-time system has a 10-day booking period. Not later than 10 days following the issuance of the writs, political parties entitled to time must notify in writing each broadcaster and network operator from whom it intends to purchase broadcasting time of its daily and hourly preferences, along with its preferences on the proportion of commercial and program time to be made available to it. The provisions of the *Canada Elections Act* are generally interpreted according to the rule that broadcast messages of two minutes or less are considered commercial time (paid time), whereas those longer than two minutes are deemed to be program time (usually free time, although parties and candidates may purchase program time). In recent elections, however, the regulators have classified free time allocated to the parties as program time, regardless of length.

### *Reforming Paid Time*

Although there was criticism of the paid-time system during the public hearings, few interveners called for its abolition. In fact, there exists considerable public support for the retention of paid time. Two-thirds (66.1 per cent) of respondents to our attitudinal survey agreed with the following statement: "We need party advertising because it is the only way that parties can get their message directly to the voter." (Blais and Gidengil 1991 RC) Less than a third (31.3 per cent) agreed with the following statement: "We could do without party advertising because it doesn't really inform us about what the parties stand for" (see Table 6.20). Canadians also strongly support restrictions on the amount of money political parties can spend on advertising: 74.8 per cent agreed with the view that "We should limit spending on party advertising, otherwise parties with more money will have an unfair advantage." In contrast, only 22.6 per cent of respondents favoured the statement that "Freedom of speech is such a fundamental right that parties should be allowed to advertise as much as they wish" (Table 6.22).

**Table 6.22**  
**Paid advertising: limits**  
(per cent)

Freedom	22.6
Limits	74.8
Don't know	2.6

Source: Blais and Gidengil 1991 RC.

Note:  $N = 2\,947$ .

Wording of the question:

"Which of the following two statements comes closer to your own opinion?"

Freedom of speech is such a fundamental right that parties should be allowed to advertise as much as they wish.

We should limit spending on party advertising, otherwise parties with more money will have an unfair advantage."

Research, numerous submissions and our Toronto symposium on media and elections have convinced us that the current paid-time broadcasting system must be changed to accommodate the needs of the electorate, the political parties and the broadcasters. We consider the ability of political parties to communicate with the electorate too important to be left entirely to the discretion of the broadcasting industry. We agree with the general statement by the CRTC in 1987 that the "broadcaster does not enjoy the position of a benevolent censor who is able to give the public only what it 'should' know. Nor is it the broadcaster's role to decide in advance which candidates are 'worthy' of broadcast time." (CRTC 1987) It is, in our view, reasonable to require licensed broadcasters, as part of their public-service obligations, to make time available to the parties. This obligation arises only every four years or so, under normal circumstances, and lasts only about four weeks. At the same time, a less complex and more easily administered system would help alleviate many genuine concerns and actual problems.

*Advertising Period* To adapt the system to the shorter campaign we propose, we recommend that the advertising period begin 11 days after the election is officially called and end at midnight on the second day before election day. To ensure an orderly process, the registered parties would be required to book their paid time as soon as possible after the writs are issued. The advertising period would remain approximately four weeks. If the registered parties and the broadcasters could not agree on bookings within 10 days after the writs are issued, the Canada Elections Commission would be given the mandate to resolve any disputes immediately.

Delaying the start of advertising in this way would serve three important purposes. First, it would place all parties on a level playing field for the broadcasting of election advertising. In other words, a party in power would not have an unfair advantage over the other parties as a result of knowing the date the election would be called. Second, the proposed advertising period would allow sufficient time for the parties to plan their media campaign and produce a first series of broadcast messages; this would minimize the disruption that the broadcasters face in having to reschedule up to 360 minutes of advertising time. Third, the ban would encourage parties to begin their campaigns through other avenues. The same rules should apply to by-elections.

#### **Recommendation 1.6.14**

**We recommend that**

- (a) an advertising period be designated to begin 11 days after the day the writs are issued and to end at midnight on the second day before election day;**

- (b) the registered parties and broadcasters seek agreement on the scheduling of paid campaign advertising time by the end of the tenth day after the writs are issued; and
- (c) failing agreement, the Canada Elections Commission establish a schedule.

*Eligibility* As is currently the case, every broadcaster should be obligated to make paid time available for the parties, subject to regulations set out in the *Broadcasting Act* and to the broadcaster's own licensing conditions. We recognize and adopt the expanded scope given to the definition of "broadcaster" in the *Canada Elections Act* as a result of the passage of the new *Broadcasting Act*. The new definition is broadened to include the pay and specialty channels in the obligation to make paid time available for purchase.

The current provision in the *Canada Elections Act* that each broadcaster must make a set amount of time available to the parties should also be retained. We propose that only registered parties be entitled to purchase the paid time made available by these provisions. The current Act allows unregistered parties to exercise an entitlement to broadcasting time. We believe this should be eliminated, not only because it is unfair to those parties meeting registration requirements but also because, as observed by the former broadcasting arbitrator, it gives "groups of all kinds [the ability] to organize themselves ... as 'parties' in order to obtain both paid and free broadcasting time during an election". (Canada, Chief Electoral Officer 1984a, 83)

### **Recommendation 1.6.15**

**We recommend that only registered parties be eligible to purchase the paid time broadcasters are obliged to make available under the *Canada Elections Act*.**

*Broadcasting Time for Advertising by Registered Parties* Since the 1974 reforms, the *Canada Elections Act* has in effect expropriated (at the most favoured rate) 390 minutes of paid time from each broadcaster to be allocated among the political parties for partisan advertising during the final four weeks of the campaign. To determine the amount of time that broadcasters should be required to make available to registered political parties during the advertising period, we examined both the purchases made by the parties in 1988 and the time required by a political party to mount an effective broadcast advertising campaign.

The total party allocation per broadcaster is divided by agreement between each network and its individual affiliates based on requests from the registered parties. (s. 307(2), *Canada Elections Act*) Based on data from the parties, it appears that no party purchased its maximum allocation on any television station. The maximum was reached on a small number of radio stations. However, the NDP approached its limit on the CBC Windsor

television station, the only television outlet in a hotly contested area. This occurred because the party made a major network purchase and therefore had only limited time available for local advertising on that station. The Liberal Party also approached its limit on that television station, buying mainly local time; the time purchased by the Progressive Conservatives was somewhat less. The Liberal Party was allocated 89 minutes of paid time in 1988, and its purchases approached the upper limit for only two television outlets (of 59 from which it purchased time) and only 14 radio stations (of 212). Data for the Progressive Conservative Party were available only for the CBC and selected CBC affiliates, but it appears likely that with 195 minutes per broadcaster available to it, the party did not approach its upper limit in many cases, if at all. It did not do so on any CBC television station. The limits on campaign spending precluded any of these parties that aspired to run a national campaign from buying anything approaching its paid-time upper limit on more than a handful of stations.

**Table 6.23**  
**Estimated paid television time needed for effective campaigning, one political party**

City	GRP objectives <sup>a</sup>			Average GRPs per spot (30 seconds) <sup>b</sup>	Number of spots (30 seconds)	Number of minutes <sup>c</sup>
	Network	Non- network	Total			
Vancouver	824	576	1 400	5.5	255	127.5
Calgary	816	184	1 000	8.1	123	61.5
Winnipeg	896	104	1 000	7.1	141	70.5
Toronto	800	600	1 400	3.3	424	212.0
Montreal (English)	1 136	64	1 200	10.0	120	60.0
Montreal (French)	784	616	1 400	11.6	121	60.5
Halifax	752	248	1 000	6.9	145	72.5

Source: Cossette 1991.

<sup>a</sup>Gross rating point (GRP) is a measure of advertising effectiveness. The GRP figure is calculated by multiplying the estimated audience reach of an advertisement (expressed in rating points, that is, the percentage of potential audience reached) by the frequency of appearance of the advertisement (or spot). The GRP objective is the number of GRPs required to run an effective advertising campaign.

<sup>b</sup>Expected number of GRPs per 30-second spot, based on audience data for each area.

<sup>c</sup>Number of minutes required in each metropolitan area on all available stations. In practice, a party would allocate this total among several stations.

To assess the viability of the allocation, projections were made of the amount of broadcast time a political party needs to make its case effectively to the voters. (Cossette 1991) These projections were based on the amount of broadcast time needed in major markets, where time required is likely to be highest because of competing messages. That analysis was based on the assumptions that the party would already be known and that its strategy would be similar to recent practices (using television as the

major medium, radio as a supplement, and a mix of network and local station time that would vary by market).

This study established the number of minutes of paid advertising such a hypothetical party would require to reach the maximum number of voters during the four-week advertising period in any given market. It was calculated that the largest amount of time purchased by a party on any station in the markets studied would be 85 minutes (the share of the 212 minutes in Toronto that would go to the most popular station). The purchase of additional time beyond that level would be very unlikely because it would produce diminishing returns for the party.

On the assumption that in any given federal election there would be no more than the equivalent of four competitive parties seeking advertising time in a particular market, the analysis indicated that the maximum time required would be 340 minutes. Because parties need flexibility to adjust to changing conditions, the broadcasters should be required to provide 360 minutes of paid-time, to be allocated among the parties.

We have already noted the unfairness of the current allocation formula. The current formula draws distinctions among the parties that are clearly inequitable. Equity and cost control can be ensured by the spending limits as long as any party is prohibited from purchasing more than a fixed proportion of the total time made available. As a consequence, there will no longer be any need for the complex allocation formula that now exists in the Act; each party would be at liberty to determine how much it wants to spend on television and radio advertising, subject only to the spending limits and the cap on the amount of time it can purchase from any one broadcaster.

A cap on the amount of time that any one party can purchase is necessary for several reasons. Without such a limit, some form of allocation mechanism would be needed to deal with situations where the parties taken together wished to purchase more time from a particular station than it was required (and willing) to provide. Otherwise the complications and inequities of the existing system would remain. The cap will also prevent a party from saturating one area of the country to the point where national parties would be placed at a distinct disadvantage. If no restriction is placed on the ability of a party to buy as much of the available time in a particular region as it wished, the national parties would not be able to compete because of the overall spending limit and the imperative that they campaign across the country. The dynamics that such behaviour would set in motion are clearly not in the long-term interest of the nation.

We propose that the cap be 100 minutes, which is about 30 per cent of the time required to be made available by broadcasters. No party would be permitted to purchase more than that amount of time on any broadcasting outlet. Should the total time requested by the registered parties from any broadcaster exceed the amount required to be made available, the broadcaster would have the option of selling more time than required (as long



as no party exceeded the cap) or not exceeding the required amount and negotiating an equitable allocation with the parties concerned. If the parties failed to reach an agreement, the Canada Elections Commission would determine the time for each party.

In estimating the paid broadcast advertising time needed by a party for effective campaigning, our consultants also projected the likely costs of the time for the next election. (Cossette 1991) These projections reflect fairly accurately the costs incurred for broadcast advertising by the registered parties in 1988, adjusted for increased rates. This means that the time made available corresponds with the proposed spending limits and gives us added confidence in the projections. The time required and the party cap for any broadcasting outlet meet the cost-control objectives of the 1974 reforms, greatly simplify the process and provide fair access to paid time for all parties. The time available to each party will meet the needs of the parties in both crowded major markets and smaller markets with limited broadcast outlets and will encourage a national focus for Canadian federal election campaigns.

Radio is still used to a significant degree during election campaigns. Our projections indicate that the paid time on radio to run an effective campaign should be considerably more than for television. There are, however, many more radio than television outlets, and radio is, according to party strategists, used more selectively. (Cossette 1991) The 1988 party purchases indicated only a few instances where time purchased on radio approached the maximum. There is, therefore, no compelling reason to make a distinction between radio and television broadcasters. The required paid time provision should, therefore, remain the same for radio and television.

In the opinion of the broadcasting arbitrator, it is a technical violation of the *Canada Elections Act* (s. 307(1)) for party advertisements to be broadcast outside of prime time during the advertising period. (Canada, Chief Electoral Officer 1984a, 83–84) Under a ruling by the Commissioner of Elections, however, the parties were permitted, with the agreement of the broadcasters involved, to schedule advertising at other times in both 1984 and 1988. With the increasing fragmentation of broadcasting audiences and the growing capacity of party strategists to target party advertising to specific groups of voters, it is likely that parties will continue to request that some of the advertising time they are permitted to purchase be scheduled outside of prime time. There is no reason to deny the parties this flexibility. We recommend that parties be permitted to request and broadcasters to schedule party advertising outside of prime time during the election period. (Canada, Chief Electoral Officer 1984a, 83–84, 91–92)

### **Recommendation 1.6.16**

**We recommend that each broadcaster be required to make 360 minutes available in prime time (or such other time**

**as mutually agreed on) for purchase by registered parties during the advertising period, subject to a maximum of 100 minutes for purchase by any registered party from any broadcaster.**

*Broadcasting From Outside Canada* Since the *Canada Elections Act* applies only to Canadian broadcasters, the upper limit of advertising any broadcaster may allow each party to purchase would remain effective only if parties are restricted to purchasing advertising time from broadcasters within Canada. Otherwise, a party, provided it had the funds and would not exceed its spending limit, could purchase a significant amount of time from a U.S. border station and defeat the purpose of the cap. This would run counter to the fairness principle. Therefore, it is necessary to retain the existing prohibition against the purchase of paid time from broadcasters operating outside Canada.

### **Recommendation 1.6.17**

**We recommend retaining the prohibition in the *Canada Elections Act* against the purchase of time from broadcasting stations outside Canada during an election.**

*Advertising Rates* Advertising costs remain a major element in campaign spending and a barrier to entry for new parties. To assist in controlling these costs, as well as to make it easier for emerging parties to participate in the paid-time campaign, we recommend that broadcasters be required to make paid time available at 50 per cent of the lowest commercial rate. Such a discounted rate recognizes that paid time serves an important function not only for parties but also for voters. Given its genuinely valuable role in providing information to voters, it is in the public interest to facilitate party access to this means of communication.

So that this requirement does not constitute an excessive burden on broadcasters, we recommend that half of the paid time carried by any broadcaster whose commercial sales time is limited by regulation be considered as program time and not counted against the commercial time limit as established by the CRTC for that broadcaster. The maximum commercial time permitted for most television broadcasters is 12 minutes per hour. (CRTC 1986, s. 11) Specialty programming undertakings and FM radio stations have individual limitations as part of their conditions of licence. This recommendation reflects the 1988 practice in which the one- and two-minute free-time party television spots, though presented in the style of advertising, were considered program time.

This recommendation has several advantages. It recognizes that parties currently do not receive the discounts available to most commercial advertisers. It also recognizes the public interest in having effective party advertising at reasonable cost. In addition, it maintains a uniform rate for all registered

parties, an important goal of previous reforms. For the broadcasters, it reduces the need to pre-empt commercial advertisers and provides more flexibility in scheduling. The inconvenience of rescheduling advertising already booked is therefore reduced. This will be particularly important for the specialty services, many of which are permitted fewer advertising minutes per hour than other broadcasters. For the past two years, AM radio operators have had no limits on their commercial time and therefore do not face problems of pre-emption or opportunity costs when they carry party advertising. Finally, the financial impact on broadcasters is negligible.

Individual candidates also make use of broadcast advertising, albeit not to the same extent as the largest parties. It is important, therefore, to ensure that candidates who choose to purchase paid time have fair access. Under current rules, broadcasters are not required to make time available. If, however, a broadcaster chooses to sell time to any candidate, it must provide equitable access to all candidates and must sell the time at the most favoured rate. That is, broadcasters must charge for paid time sold to candidates for election advertising the lowest rate that they would charge to any other person for equivalent time on the same facilities. (*Canada Elections Act*, s. 321) This regulation is essential to ensure that all candidates are treated fairly.

### **Recommendation 1.6.18**

**We recommend that**

- (a) each broadcaster be required to provide time to registered parties at 50 per cent of the most favoured rate at which comparable time is sold to other advertisers;**
- (b) notwithstanding any provision in the *Broadcasting Act*, CRTC regulations or conditions of licence, each broadcaster be permitted to classify one-half of the paid political advertising sold during the advertising period as program time, not to be counted against its maximum permitted advertising time; and**
- (c) each broadcaster that makes available paid time to individual candidates must do so on an equitable basis and at a rate that does not exceed the lowest rate charged for an equal amount of time on the same facilities to any person at any time in the same period.**

*Role of Canada Elections Commission* To deal effectively with the administrative matters arising from these recommendations, it will be necessary for the Canada Elections Commission to undertake the functions currently performed by the broadcasting arbitrator, which include dealing with issues arising from paid-time scheduling. To this end, we recommend that the

Commission issue election broadcasting directives and guidelines annually, informing the registered parties and the broadcasters of their rights and obligations. This should include informing the parties of normal broadcasting booking and cancellation procedures. For political parties to have the best opportunity to communicate their messages to voters, it is essential that the parties continue to be able to place their advertising at preferred times. Parties will be required to meet the booking deadline already noted – the end of the tenth day after the writs are issued – and to provide appropriate notice for cancellations. To simplify matters in the shorter period recommended, parties should book network time first to allow affiliates to respond effectively to requests for the remaining time on local stations. These proposals were made in the reports of the broadcasting arbitrator (see Canada, Chief Electoral Officer 1984a, 1989).

### **Recommendation 1.6.19**

#### **We recommend that**

- (a) the Canada Elections Commission issue directives and guidelines regarding the booking and cancellation of paid time and its fair distribution among parties; these should reflect normal commercial practices, with due regard for the urgent needs of election campaigns and the need to make every effort to accommodate the scheduling requests of parties; and**
- (b) the Commission assume the functions currently performed by the broadcasting arbitrator.**

*Educational and Community Broadcasters* Under current rules, provincial educational broadcasters and community radio stations are not required to make paid time available to the parties. This exemption is based on their educational role and non-commercial status. To the extent that educational broadcasters do not sell advertising to political parties, federal regulations should not apply. In other words, so long as these broadcasters stick to their mission and do not voluntarily become enmeshed in the electoral campaign by selling time for election advertising, the rules would not apply to them. However, if these broadcasters sell advertising to political parties during the election period, then they will become subject to the same rules that apply to commercial broadcasters. Educational broadcasters are subject to provincial control as well as federal regulation. However, the federal provision pertains to a central objective of the *Canada Elections Act*, it is limited to the election period, and it applies only when such a broadcaster has sold time to political parties and thus does not constitute an invasion of provincial jurisdiction.

### **Recommendation 1.6.20**

**We recommend that any community broadcaster or provincially operated educational broadcaster that sells advertising time to any registered party or candidate during the election period be automatically subject to the requirements of the *Canada Elections Act*.**

*Liability* Broadcasters have often expressed concern about litigation that might result from bumping scheduled advertisements of commercial clientele as a result of the requirements of the *Canada Elections Act*. To alleviate their concerns, we recommend that the Act specifically protect them from liability. Broadcasters would, of course, have additional protection against lawsuits if they included a clause in their standard commercial contracts with advertisers protecting themselves against such a possibility. Further, we concur with the CBC that party paid-time advertisements should be in the language of the network or station.

### **Recommendation 1.6.21**

**We recommend that**

- (a) broadcasters be explicitly protected from liability for the bumping of commercial advertisements by party advertisements if such occurrence arises from the requirements of the *Canada Elections Act*; and**
- (b) broadcasters not be required to accept advertisements from parties in languages other than the language in which they normally broadcast.**

### **Free Time**

As early as 1934, the question of political parties being given free radio time was raised by William Lyon Mackenzie King in the House of Commons:

Radio ... plays such an important part in all matters affecting public opinion that it would be quite proper that some provision should be made whereby, for example, each political party which has a representative following should be entitled to have broadcast at the expense of the state one or two addresses which would set forth its platform or policies before the people. (Canada, House of Commons, *Debates* 30 June 1934, 4511)

With the decision of the CBC in 1944 to allocate one half-hour (later extended to one hour) of free time monthly on its national networks to all parties represented in the House of Commons, guidelines were first established regarding the distribution of this time. If there were only two parties

represented in the House of Commons, the time was divided between the two parties equally. If the House included representation from more than two parties, the 40/60 rule came into play, namely, that two-fifths of the time was given to the governing party and the remaining three-fifths divided up among the opposition parties. (CBC 1944; Peers 1969, 342)

The 1958 *Broadcasting Act* gave the Board of Broadcast Governors the power to require licensees to broadcast public-interest programs and to make regulations regarding the equitable allocation of time for partisan political messages, although the Board did not have the power to actually require public or private network operators to allocate free time. The CBC, as part of its mandate, made free time available to what it considered bona fide national parties – those that not only had representation in the House of Commons but also reflected a substantial body of opinion in the country, had policies on a wide range of issues, had a recognized national leader, had a nationwide organization, sought the election of candidates in a minimum of three provinces, and fielded a minimum of one candidate for every four constituencies. (CBC 1944) The criteria for access to free broadcast time varied over time, until they were superseded by the definition of a registered party in the 1974 revisions to the *Canada Elections Act*, but they always represented an attempt to identify the “serious” parties.

Free-time political broadcasts in Canada have had a number of objectives. In particular, the CBC offered the time in lieu of paid time, which it did not wish to provide. The CBC wished to ensure that all parties had a reasonable opportunity to explain their positions on the issues and that no one, because of position or wealth, was in a position to dominate the air waves. (Soderlund et al. 1984, 118–19; LaCalamita 1984) These rationales also applied to political party broadcasts between elections. To this day, the CBC refuses advocacy and controversial advertising, preferring to offer free time and news coverage, and makes paid time available to political parties during the advertising period of campaigns only because it is required to do so by law. Private broadcasters, obligated to provide time for public-service programming, often chose to provide free time to parties and candidates while also selling them other time.

With the advent of television, free time was offered on that medium also. On radio the broadcasts had attracted reasonable audiences, so the transition from radio to television was a concern for party strategists. Parties at first rejected the time and then presented themselves as if on radio (the infamous “talking heads”). This format did not attract substantial audiences, especially in light of the rapid proliferation of alternative program choices. As Dalton Camp put it, “if the format was right for politics [in that it promoted issue-oriented presentations], it was wrong for television” and it soon became clear that “if the parties were to use television, it would have to be on television’s terms.” (Camp 1981, xv)

Although longer free-time broadcasts had reasonable audiences in the 1970s, the parties opted in 1988 for shorter items, almost indistinguishable

from spot advertisements. The items were two minutes in length for the three largest parties and one minute for the smaller parties. They could be inserted easily into ongoing programming, much like paid time, and therefore were likely to be viewed by a greater number of uncommitted voters than more traditional free-time formats. In fact, because the networks controlled the scheduling, they attempted as a courtesy to place them like spot advertisements in isolation from competing partisan political messages. In content, for the largest parties at least, they tended to be extended versions or clusters of the paid advertisements.

Indeed, CTV noted in its report to the CRTC on its coverage of the 1988 election that "while designated in the Act as a form of 'free' program time ... this amount of time ... is in fact unpaid commercial time [for] the registered parties". (CTV 1989, 9) The original intention, as the CTV report noted, was to "ensure that all parties contesting an election, regardless of their economic capacities, would be entitled to time [on] licensed conventional networks". In this spirit, CTV through its own facilities and those of its affiliates provided production assistance to smaller parties without compensation. The CBC provided a similar courtesy. The CBC recommended a minimum length of three to four minutes for free-time blocks, noting that "the original intent of free time was to ensure that the parties would have access to the airwaves for discussing, in a more profound way than is possible in a 30 or 60 second 'commercial', the major issues of the campaign". (Brief 1990, 15)

Critics have argued that brief broadcasts do not serve the purpose of promoting issue-oriented discussion as the more traditional free-time formats were intended to do. They have also argued that free-time segments should have a minimum length. Longer segments, especially when clustered into free-time programs, do not have the most attractive feature of paid time, namely, unintended viewing by possibly uncommitted voters. The two-minute segments could be considered more successful to the extent that they were more like spot advertisements. Because they are less easily aimed at specific voter types and are scheduled by the networks, however, they are still regarded by party strategists as at best a supplement to paid time.

There is a clear need for direct communication between politicians and voters. This appears to be a major consideration in the public support for mandatory leaders debates and in the general support for other unmediated sources. In addition, as Blais and Gidengil put it, "there is ... widespread sentiment that the system should be more open to small parties". (1991 RC) A free-time system that provides meaningful access for smaller parties appears to us to be the best alternative to intrusive regulations. The provision of alternative forms of direct access to national audiences promotes fairness and diversity in electoral communication without raising concerns about traditional media freedoms.

In the course of our discussions on this issue, it became clear that the whole concept of free-time broadcasts required reconsideration. If the free-time segments continue to shrink in size and to be placed in ongoing programming,

the only thing distinguishing them from paid advertisements, apart from production costs, would be the fact that they are free. If a minimum length were required, on the other hand, they would have to be clustered to avoid excessive disruption of broadcast schedules, would generally attract relatively small audiences, and would not be regarded as a priority for the parties, other than smaller parties lacking the resources to purchase time. The central question, therefore, is whether they have outlived their usefulness or could be reformed to serve their original purposes.

### *Essential Features of the Current Free-Time System*

As with paid time, free time is to occur within the legislated advertising window, namely, from the 29th day before election day to the second day before election day. Free time is not considered an election expense incurred by political parties. Unlike paid time, free time need not be broadcast in prime time. While all broadcasters in Canada must make paid time available to registered parties, the provision of free time is required only of those network operators that (1) reach a majority of Canadians whose mother tongue is the same as that in which the network broadcasts; (2) are licensed for more than the carriage of a particular series of programs or type of programming; and (3) are not involved in distribution undertakings such as cable. Because of ambiguous wording in the *Canada Elections Act* (s. 316), there is arguably a fourth criterion: only those network operators who offered free time in the last election are required to offer it in subsequent elections. This question arose in the 1988 election when a network operator not in existence in the previous election wondered whether it was obligated to provide free time. The Quatre Saisons network decided to comply with the spirit of the legislation and provide the time, but the incident did prompt the broadcasting arbitrator to suggest the Act be changed to stipulate an express minimum free-time requirement not based on the previous election. (Report of the Broadcasting Arbitrator 1989; see Canada, Chief Electoral Officer 1989, 64) To date, the radio networks offering free time have been CBC-AM English, CBC-AM French, Radiomutuel and Télémedia; the television networks have been CBC English, CBC French, CTV, TVA and Quatre Saisons.

Free time is allocated according to a formula stipulated in the Act (s. 316(2)): two minutes is to be given to every registered party and to every political party that waives its right to paid time. The rest goes to all registered parties that have been allocated paid time in the same proportion established under the paid-time allocation. There is also the additional proviso that no network operator can make available less free time than it did in the previous election. In the 1988 election, CBC English, CBC French and CTV offered a total of 214 minutes of free-time broadcasting; TVA and Quatre Saisons networks allocated 62 minutes each. The English and French CBC-AM networks offered 120 minutes; Radiomutuel and Télémedia offered 62 minutes each. Table 6.24 indicates how the free time was allocated on the CBC television network in the 1984 and 1988 elections. Allocations on other networks were similar.



Table 6.24

**Allocation of free broadcast time by party, 1984-88**

(minutes per station on CBC-TV [English], Radio-Canada TV [French] and CTV)

Party	1984	1988
Progressive Conservative Party	64.9	101
Liberal Party	87.0	46
New Democratic Party	34.7	35
Parti Rhinocéros	4.9	4
Communist Party	2.75	2
Libertarian Party	2.75	3
Pro-Life Party	2.75	—
Green Party	2.75	2
Confederation of Regions Western Party	2.75	2
United Canada Concept Party	2.75	—
L'Action des hommes d'affaires	2.75	—
Parti nationaliste	—	3
Party for the Commonwealth of Canada	—	2
Social Credit Party	—	2
Christian Heritage Party	—	2
Canada Party	—	2
Reform Party	—	2
Student Party	—	2
The Western Canada Concept Party	—	2
Western Independence Party	—	2
Total	210	214

Source: Reports of the Broadcasting Arbitrator (see Canada, Chief Electoral Officer 1984a, 1989).

### *Comparative Experience*

Free time is widely used in democratic societies and is often seen as a way to provide fair access to minority points of view. Of the nine democracies we examined most closely, only one, the United States, does not provide free time for the broadcasting of messages by political parties during election campaigns. (Graber 1991 RC) Australia, Denmark, France, Germany, Great Britain, Israel, Norway and Sweden all have free-time systems, with each country having its own unique time allocation formula.

Australia allocates time to those parties that contest at least 10 seats and show evidence of popular support. A party demonstrates popular support by either electing a member to the Commonwealth Parliament at the previous election or polling at least 5 per cent of the valid votes for either federal or lower state house in the preceding general or state election. These

free-time broadcasts usually consist of two-minute slots plus the policy speeches of the leaders at the launching of the election campaign. (Warhurst 1991 RC)

Denmark gives equal access to all parties that have collected signatures amounting to 1/175 of the valid votes cast in the previous election. The equal-treatment principle relates to specific prime-time election programs broadcast on radio and television, such as panel debates with representatives from all parties. (Siune 1991 RC)

France allocates equal and comparable access during presidential and legislative elections. The formula for legislative elections allocates equal amounts of free time to the leaders of the governing party and to all the opposition parties taken together, with the latter time being allocated among them according to the number of members each has in the National Assembly. Parties with no Assembly members are entitled to a few short broadcasts. In the most recent presidential run-offs, the two presidential candidates received two hours each on television and radio, spread over four programs. (Gerstlé 1991 RC)

The free-time ratio in Great Britain for parties represented in Parliament is based on the proportion of votes cast in the previous general election. Any party not represented in the House of Commons is eligible to receive one five-minute segment if it contests 50 or more seats. (Semetko 1991 RC)

Norway gives equal time if the party has been represented in the Parliament during one of the last two election periods, has a current national organization and runs candidates in a majority of the districts. Parties not qualified for equal treatment will be given time in short programs combining statements by party representatives and questioning by journalists. (Siune 1991 RC)

The Swedish free-time rule is to give equal access to parties represented in the Parliament. Small parties not represented in the Parliament have only limited access to national broadcasting. (Siune 1991 RC)

In the German system, each party running in the election is granted at least one free commercial on public radio and television stations. Extra free-time spots are determined by a party's level of representation in the *Bundestag*, being roughly proportional to the number of seats that party holds. The segments are usually broadcast immediately before or after prime-time news shows and must not exceed two and a half minutes. (Schoenbach 1991 RC)

In Israel, the public broadcaster provides one half hour of television each night, prior to the national news at 9 p.m., for the last 30 days of the campaign (one hour of radio time), allocated among the parties according to seats held in the previous House. (Elizur and Katz 1979, 230) The parties receive time slots up to 10 minutes long, allocated by an impartial committee. (Elizur 1986, 186; Arian 1985, 258) The two largest parties have in recent elections interspersed light entertainment and policy documentaries with clips from speeches and other material. As in most other jurisdictions,

the broadcast time is free to the parties, but they must pay for production. (Elizur 1986, 190)

Even in the one country that does not provide for free time, the United States, proposals have recently emerged for some form of free-time broadcasting during presidential campaigns. For example, *Washington Post* political reporter Paul Taylor has proposed that the presidential candidates of the Democratic and Republican parties be given five minutes of free time on all networks on alternative nights during the last month of the campaign. (Taylor 1990, 267–84) More recently, the Joan Shorenstein Barone Center on the Press, Politics and Public Policy, Harvard University, put forward a proposal for a series of 90-minute programs on all major television channels (“Nine Sundays”) that would combine candidate debates and exploration of issues. (*New York Times* 1991, A-19) In each case, the proposals are designed to provide more substantive information to citizens and thus counter growing cynicism about electoral politics.

### *Reforming Free-Time Broadcasts*

In response to the need expressed by voters and the parties for more unmediated communication and to ensure that greater direct access be given to all political parties, we conclude that the present free-time system needs to be changed. Our objective is a free-time structure that would provide both enhanced access to national broadcast media for the parties and better campaign information for voters. Further, if the free time were required to be scheduled in prime time, there would likely be greater efforts by the parties to ensure that their segments were informative and appealing.<sup>9</sup> A new free-time structure should provide an alternative to news and public affairs coverage, as well as party paid-time broadcasts and additional leaders debates. It should duplicate neither the efforts of the news media nor the existing communications channels available to parties. Rather, it should supplement other sources of campaign information and other means of campaigning for parties.

In examining such programming in other countries, we were impressed by the lively debate in the British party election broadcasts and the Israeli free-time programs. Some Canadian programming from past elections, when segments were longer, also showed considerable creativity and popular appeal. For example, in 1984, the NDP presented a four-minute segment entitled “Mouseland”, an animated version of a speech by the late Tommy Douglas, long-time leader of the party. The segment, though inexpensively produced, received a positive public response, according to party officials.

Although Canadian campaigns and the broadcasting environment are quite different from those in most European countries, given our vast program choice and the availability of paid time, extended free-time broadcasts would broaden public debate in Canada. This appears to be the view of the networks, as already noted. At its best, a new free-time system could provide a forum for extended debate and controversy over the future directions

of the country and attract a new generation of interested voters to such interchanges. Much would depend on the willingness of the parties to make creative use of such extended segments.

One option would be providing 5- or 10-minute segments each night, perhaps restricted to a "talking heads" format.<sup>10</sup> Although this model would probably enhance the issue content of presentations, it is unlikely to attract significant audiences or promote lively interchange. Neither would it fit easily into network schedules. In the highly competitive North American media, regularly scheduled longer programs are more likely to attract a politically attentive audience. Other audiences would be reached by the paid time.

The benefits of a reformed free-time system are significant. To explain policy proposals and, in the case of the governing party, to defend its record, the largest parties require access in longer segments than are suitable for paid time or permitted by current journalistic practices. The smaller parties, lacking the resources for extensive paid time and generally receiving little news coverage, need such direct access to a national audience. In addition, free-time broadcasts provide an alternative to requiring access for the leaders of the smaller parties to televised leaders debates or to news coverage, with all the difficulties that would accompany those options. Free time is needed, in summation, as a supplement to paid time, news and public affairs coverage to provide at least some access to national broadcasting for all registered parties.

### **Recommendation 1.6.22**

#### **We recommend that**

- (a) the current provision on the free-time political broadcasting system set out in the *Canada Elections Act* be abolished; and**
- (b) a free-time broadcasting regime be established, with programs to begin on a date after the writs to be set by the Canada Elections Commission and to end on the second day before election day, with the following characteristics:**
  - (1) television and radio network operators, as well as specialty broadcast undertakings presenting primarily general news and public affairs programs, be required to provide to the Canada Elections Commission ten 30-minute free-time broadcasts in prime time (at least 24 minutes of which would be available to parties);**
  - (2) networks broadcasting in French whose primary audience is in Quebec and those networks reaching a majority of Canadians outside Quebec whose primary language is French be required to provide to the Canada Elections Commission five 30-minute free-time broadcasts in prime**

time (at least 24 minutes of which would be available to parties); and

(3) the specific days and times of these broadcasts be mutually agreed upon by the networks and registered parties, and in the event there is no agreement by the first day of the free-time broadcasting period established by the Canada Elections Commission, the Commission be mandated to establish forthwith the specific days and times for the programs.

Under the current rules, the three major television networks, CBC English, CBC French and CTV, provide 214 minutes of free time. Under the proposal, each would be required to provide ten 30-minute programs (or 300 minutes) to the Canada Elections Commission which, in turn, would be required to give 24 minutes of this time to registered parties. The total time turned over to the parties would thus be 240 minutes, or slightly more than is provided by CBC and CTV now, but in a form less disruptive to network scheduling. The two French-language private networks currently provide 62 minutes and would be required to provide five 30-minute programs, or 150 minutes. The parties would receive 120 minutes. It is reasonable to require broadcast networks to contribute to voter information in this way. The time would, of course, be considered program time and Canadian content, with the networks being permitted to sell advertising time before and after the program.

It is our intention that the format of these programs be as innovative as possible. We suggest only a framework. At the latest, on the 11th day after the writs are issued, all network operators (and specialty broadcast undertakings presenting primarily news and public affairs programs) would provide two 30-minute free-time broadcasts per week in prime time, to be broadcast simultaneously by all participating broadcasters. The times should be negotiated with the registered parties. The Parliamentary Channels would be required to repeat the French and English programs at other times, and others would be invited to do so.

### **Recommendation 1.6.23**

**We recommend that**

- (a) participants in the broadcasts include all registered parties;**
- (b) the broadcasts be a magazine show format made up of party segments of approximately four minutes each; and**
- (c) the Parliamentary Channels be required to repeat each of the French and English broadcasts a minimum of three times, and broadcasters have the option of repeating these broadcasts except during the blackout period at the end of the election period.**

To grasp the possible benefits of the free-time proposal, it is helpful to imagine what the political parties might do with their segments. The early broadcasts might feature the leaders of the largest parties, as is done in Great Britain and Australia. The leaders of the smaller parties could respond or use their segments to focus on a competing set of issues. Standard features, like profiles of party leaders and other prominent candidates, could be supplemented by other, perhaps creative, materials that highlighted differences among the parties or drew attention to particular strengths and weaknesses. More simply, parties could present highlights of their leaders' campaign speeches, providing the substance and detail that they often complain is lacking in news coverage. It would also be possible to prepare 'documentaries' on particular problems they wish to address, using visuals, graphics, 'experts' and other forms of argument or endorsement. As a supplement to paid-time programs and campaign news, these programs have the potential to provide a new linkage between parties and voters.

### *Allocating Free Time*

In devising an allocation formula for the free-time broadcasts, we need to balance the claims of fairness and equity and those of the voters' need for information. We propose the registered parties each receive an allocation of one or more four-minute segments. These segments could be combined but not divided to ensure a minimum length per segment and to encourage a clear differentiation from paid time. No party would be able to program more than 12 minutes in any 30-minute show, ensuring that the programs would be in a 'magazine' format, with messages from at least two parties appearing on each program. This would provide the opportunity for comparison, which voters have identified as a priority.

Our proposed formula would provide emerging and smaller parties greater access than they have had in the past and also would provide more time to those parties that achieved significant levels of popular support in the previous election. By providing a minimum amount of time for all parties, our proposal ensures that all registered parties have a guaranteed minimum of national exposure, regardless of their capacity to purchase paid time. The time to be made available to the smaller parties would be significantly greater than under the current formula and would be in prime time. This increased access responds to the concerns of these parties that they are not likely to be represented in televised leaders debates or to be given much news coverage. By providing additional time based on the popular vote in the previous election, we also have provided a platform for the parties with established voter support. Parties with the organizational capacity to contest at least half the seats are given additional time, as are parties with representation in the House of Commons when the writs are issued. To recognize the claims of emerging parties that have gained representation in the House of Commons, the allocation formula provides for

additional time for any party that did not contest the previous election or did not receive more than 5 per cent of the popular vote but has at least one member in the House of Commons.

These provisions are based on a realistic assessment of electoral competition. Parties that are serious participants in the electoral process will, under the procedures we have proposed, be registered before an election is called. The use of the popular vote in the previous election to determine the allocations, as is done in Great Britain, ensures that parties with a representative following are given ample opportunity to put their messages before the voters. By providing additional time to registered parties with candidates nominated in more than half the constituencies, the formula provides some scope for emerging national parties.

Moreover, the formula would ensure that the truly competitive parties have sufficient broadcast time to promote themselves to the Canadian electorate by allocating at least 40 per cent of the total time made available to those registered parties that received more than 5 per cent of the popular vote in the last general election. Where such an adjustment results in an allocation that is less than two full four-minute segments, those parties that did not receive more than 5 per cent of the popular vote in the last general election should have the option of presenting one four-minute segment and a shorter segment or one longer segment. The 5 per cent threshold effectively distinguishes those parties that have established a core of popular support among voters from those that have not.

The French networks, with smaller potential audiences, are required to provide only five programs. Although some networks, perhaps especially the CBC (Société Radio-Canada), might well choose to offer more, the smaller number of programs necessitates flexibility in the allocation of time among the registered parties. We recommend, therefore, that the same basic formula apply to all networks but that the Canada Elections Commission be empowered to modify the allocation for the French programs in the interests of fairness, taking into account the number of constituencies contested by each party in the coverage area of each network or specialty service.

Table 6.25 shows the free-time allocation that the parties received in 1988 under the current formula, the time they would have been given in 1988 (on the basis of the 1984 popular vote) and a hypothetical allocation for the next election (based on the 1988 vote). The CBC allocation for 1988 is used as an example (the proportions were the same on all networks). It is, of course, difficult to predict how many registered parties there will be for the next election.

To understand the formula, it is helpful to consider a hypothetical example. The formula provides each new party with a basic allocation, one four-minute segment. If the party has candidates in half the constituencies, it receives an additional segment. If it has achieved representation in the House of Commons before the writs for the general election have been issued, another segment is allocated. Thus, the maximum allocation for

a new party is three segments. Had the party been registered for the previous election, it would have gained a further segment, for a total of four. Thus, a party that failed to gain 5 per cent of the popular vote can, under the formula, qualify for additional segments through organizational activity between general elections.

Table 6.25

## Free time allocation to federal political parties: 1988 actual and proposed formula

Party	Actual	Proposed		Proposed	
	1988 allocation	formula based	on 1984 vote	formula based	on 1988 vote
	CBC minutes	minutes <sup>a</sup>	(segments) <sup>b</sup>	minutes	(segments)
Progressive Conservative Party	101	72	(18)	63	(15)
Liberal Party	46	42	(10)	49.5	(12)
New Democratic Party	35	30	(7)	31.5	(7)
Canada Party	2	7	(2)	7	(2)
Christian Heritage Party	2	7	(2)	7	(2)
Party for the Commonwealth of Canada	2	7	(2)	7	(2)
Communist Party	2	7	(2)	7	(2)
Confederation of Regions Western Party	2	7	(2)	7	(2)
Green Party	2	7	(2)	7	(2)
Libertarian Party	3	7	(2)	7	(2)
Parti nationaliste	3	7	(2)	7	(2)
Reform Party	2	7	(2)	7	(2)
Parti Rhinocéros	4	7	(2)	7	(2)
Social Credit Party	2	7	(2)	7	(2)
Student Party	2	7	(2)	7	(2)
Western Canada Concept Party	2	7	(2)	7	(2)
Western Independence Party	2	7	(2)	7	(2)
Total	214	240	(59)	242	(60)

Source: Canada, Chief Electoral Officer 1989; Royal Commission Research Branch.

<sup>a</sup>The allocations have been adjusted to comply with the rule that the total free time to be allocated among parties that failed to receive more than 5 per cent of the popular vote in the previous election does not exceed 96 minutes (40 per cent of the total). In the example shown here, one minute was taken from the allocation for each smaller party and added to the time available for allocation among those parties that did achieve the 5 per cent threshold (divided in proportion to their share of the popular vote). The objective of this rule is to ensure that an increase in the number of registered parties would not result in an allocation of time to those parties that had established themselves as contenders in the previous election that was too small to permit them to communicate their positions effectively to the electorate.

A party that had achieved representation in the House of Commons at dissolution would be allocated additional time. In addition, any party that nominated candidates in at least half the constituencies for an upcoming election would receive more time.

<sup>b</sup>In many cases, the time allocated to a registered party cannot be divided evenly into four-minute segments. Parties may add the remaining time to another segment or present one shorter segment.



**Recommendation 1.6.24**

We recommend that

- (a) broadcast time on the free-time programs be allocated as follows:
  - (1) one program segment to all registered parties;
  - (2) one additional segment to all parties registered by the issue of the writs that were registered at the previous general election but received less than 5 per cent of the vote;
  - (3) one additional segment to all registered parties with candidates nominated in more than half the constituencies;
  - (4) one additional segment to any registered party represented in the House of Commons (that is, at least one Member of Parliament) when the writs are issued, if the party was not registered or did not receive more than 5 per cent of the vote in the previous general election; and
  - (5) the remaining segments to be allocated among those registered parties that received more than 5 per cent of the vote in the previous general election, in proportion to the votes each received;
- (b) if the total time allocated to those parties that did not reach the 5 per cent threshold in the previous election exceeds 40 per cent of the total time made available, individual party allocations be reduced proportionately to remain within that cap; and
- (c) for the French networks, the time be allocated to each registered party on a similar basis as for other networks, with due consideration for fairness and the number of candidates endorsed by each party in the area these networks are licensed to serve.

To ensure smooth administration and encourage high production values, a producer for each official language is required. These producers would administer the programs, prepare opening and closing announcements and promotional materials, and be available to work with the parties and networks to produce the most effective broadcasting possible. Neither the Canada Elections Commission nor the producers would be responsible for the content of the party segments, but the producers would be available to assist and advise parties on request. Given the partisan nature of the program, the Canada Elections Commission should seek the advice of the registered parties before appointing producers. It would be helpful if the producers were selected before the writs are issued.

### **Recommendation 1.6.25**

**We recommend that**

- (a) to ensure high production values for free-time broadcasts, the Canada Elections Commission appoint a producer for each official language, after consulting with the registered parties; and**
- (b) the producers oversee the programs and assist the parties on request.**

The programs that we envision would involve a wide variety of styles. The parties should be encouraged to be innovative and to enter into the debate as fully as possible. The Israeli programs involve charge and counter-charge, as well as issue discussions. The twice-weekly frequency that we propose permits such interchanges. As the Barbeau Committee put it,

Effective political programming will be controversial, almost by definition. It must arouse public interest and discussion in order to justify its necessarily high costs. If it fails to do this, then it is useless to politicians and burdensome to broadcasters and the public. (Canada, Committee on Election Expenses 1966, 375)

It is our hope that these programs become major events in Canadian federal election campaigns.

The time when party segments are broadcast will be important to the participants. However, it would be undesirable to establish rules in the abstract. Given that parties may well have differing tactical preferences, the parties and the producers should negotiate the schedule. It would be desirable for the segments presented by any given party to be spread throughout the campaign. If there is no agreement, the Canada Elections Commission should decide the schedule. It would not be unreasonable to allocate the segments by lot, as is normally done for speaking order in the televised leaders debates. For the programs to be effective, the schedule must be established as soon as possible after the writs are issued.

### **Recommendation 1.6.26**

**We recommend that**

- (a) the schedule of broadcast for party segments in the free-time broadcasts be decided by negotiation among those parties participating and the producers; and**
- (b) if there is no agreement, the schedule be decided forthwith by the Canada Elections Commission.**

The free-time broadcasts of 30 minutes each would offer a real alternative to other forms of campaign communications, such as the increasingly expensive paid-time commercials. They would also meet the expressed needs of the parties and voters for direct and unmediated access to voters and provide a real opportunity for the parties to communicate their policies. Simultaneous carriage on the major networks would build audiences; repeats on the Parliamentary Channels, and possibly by other broadcasters, would allow the registered political parties to reach more of the Canadian electorate.

### **Leaders Debates**

Although televised leaders debates began with the Kennedy–Nixon debates in 1960 and first appeared in Canada soon after (in the Quebec provincial election of 1962 and in the federal election of 1968), they did not become a common feature of election campaigns in industrial democracies until the late 1970s. By 1980, such debates had been held in national elections in at least 10 countries. (Smith 1981, 174–75) They became even more common over the next decade. Televised leaders debates were staged in the last four U.S. presidential elections and in three of the last four Canadian federal elections.

Canada's first televised leaders debate was held in Quebec in November 1962, after long and difficult negotiations that almost did not succeed. The debate aroused considerable interest in other provinces and at the federal level, but emulation was slow, and in Quebec itself there was a long hiatus, despite the central role of television in subsequent Quebec politics. (Charron 1991 RC) Nevertheless, there was a televised debate in the 1968 federal election and the 1971 Ontario election, and by the 1980s such debates were common. With the debates in Saskatchewan and British Columbia in 1991, it is now possible to report that at least one televised leaders debate has been held in every province. Although debates have not been held in every recent provincial election, they are now a regular feature of most provincial elections, and party leaders risk popular disapproval if they refuse to participate. (Bernier and Monière 1991 RC)

Well on their way to becoming institutionalized, debates are by no means codified. The experience in Canada and elsewhere has been that, at every election, agreement among parties and broadcasters on such matters as timing, format and rules of participation has been difficult to achieve. Although past agreements undoubtedly shape future ones, each negotiation seems to produce variations. Indeed, the negotiations do not always succeed. When debates are not held, it is usually because parties and broadcasters cannot agree on some aspect of format or timing, or because participation is perceived by one of the large parties as too risky. In some cases, broadcasters are concerned about costs. It is not surprising, therefore, that the debates have been the subject of considerable discussion and controversy here and abroad.

As Anthony Smith put it a decade ago, "The television age has introduced the notion that direct debate ... is the natural climax of an election campaign and that without it the electorate has been denied some essential proving of the candidates." (1981, 185) In all the countries we examined, debates attract large audiences. They stimulate interest in politics, help voters determine the basic issues of the campaign, increase awareness of parties and leaders, and help to legitimize political institutions. (Bernier and Monière 1991 RC) Our research indicates that the 1984 and 1988 Canadian debates increased voter information, especially among less-informed voters, and stimulated voter interest. (Barr 1991 RC) The potential of debates to have significant effects on voter preferences was clearly shown by the post-debate polls in 1984 and 1988, though their capacity to produce significant change in the longer term distribution of voter preferences depends on many other factors. (Barr 1991 RC; Clarke et al. 1991, 101-4) In addition, it appears that televised debates have an overall positive influence on voters' evaluations of all participating leaders. (Barr 1991 RC) Such direct leader-to-voter communication is, therefore, beneficial.

Often promoted as political spectacles, debates draw large audiences in all of the democracies, far larger than any other campaign event. Our research confirms previous studies: about two-thirds of adult Canadians watched at least one debate in 1984 and 1988 (Table 6.26). Voters not only watch them, they also regard them as important and useful. (Bernier and Monière 1991 RC) Indeed, asked to indicate what innovations would be useful in providing voter information, 78 per cent of a national sample supported additional leaders debates and 75 per cent favoured debates on specific issues on the Parliamentary Channels (Table 6.15).

**Table 6.26**  
**Audience for leaders debates**  
(per cent)

Yes	64.4
No	34.2
Don't know	1.4

Source: Blais and Gidengil 1991 RC.

Note: N = 2 947.

Wording of the question:

"In the last two federal election campaigns, in 1984 and 1988, there were leaders debates on TV. Did you happen to watch any of them?"

### *Public Concerns and Proposals*

A lack of consensus characterizes the central issues. For instance, interveners from different parties called for the inclusion in the *Canada Elections Act* of a requirement that one or more televised leaders debates take place at every election. Others, especially from the media, said debates are information programming and should not be regulated but rather left up to the networks and the parties. Experienced politicians were to be found on both

sides of the issue. The capacity of a party with a substantial lead in the polls, usually the incumbent, effectively to veto the holding of debates was held to be unfair by Peter Desbarats, Dean of Journalism at the University of Western Ontario, and others. Representatives of the three large parties argued that the process was working well and should be left as open as possible.

Media representatives were unanimous in the view that journalists are best suited to ensure impartiality and fairness and to determine the scope and nature of debates. As the CBC put it in its submission,

Leaders' debates have traditionally been initiated by the broadcast networks and the formats negotiated with the participants well in advance. Particular attention has been paid to the need for both apparent and real equity, as well as to the fact that circumstances dictate a need for flexibility, for a dynamic approach designed to recognize the public's right to assess both the parties' platforms and their leaders' abilities to explain and defend those platforms in a scrupulously fair context. (Brief 1990, 12)

The brief argues that the networks must be free to invite leaders to take part whenever their parties have "gained an appreciable level of public approval and support" (1990, 13), as has been done at both federal and provincial levels in the past.

The appropriate role for emerging parties was a major point of discussion. A number of interveners called for participation by the leaders of all registered parties; others, concerned that too many participants would reduce the utility and appeal of the debates, called for some other form of access to broadcast time for leaders of smaller parties. The most common suggestion was for a separate debate for these party leaders, perhaps a round-table discussion with simultaneous translation, or for some form of compensatory free time. Several interveners suggested that parties not included in televised debates should receive additional free time. Preston Manning, leader of the Reform Party, noted that a debate involving 10 or 12 party leaders would be impractical and suggested that provision should be made for some other form of national exposure for other party leaders. (Calgary, 22 May 1990) This position had broad support in the hearings. Questions of format and timing were also raised in the public hearings, but there was no consensus. The format that has emerged in Canada, however, is highly regarded elsewhere. (Bernier and Monière 1991 RC)

### *Public Support for Leaders Debates*

Our national attitudinal survey indicated there is considerable public support for mandated debates with broad participation. As shown in Tables 6.27 and 6.28, more than half of respondents favoured a legal requirement that televised leaders debates be held and half wanted all registered parties to participate. André Blais and Elisabeth Gidengil found 40 per cent of their respondents to be consistently positive toward debates and 23 per cent

consistently negative. (1991 RC) Those respondents most likely to approve of mandatory debates are the less well informed – for whom debates are a convenient source of information – and those who are less trusting of politicians. The demand for direct access to the views of all parties is notable. Studies in several countries indicate that debates increase the public's knowledge of politics and politicians. (Bernier and Monière 1991 RC)

The popular appeal of televised leaders debates derives not only from the dramatic confrontation they provide but also from the fact that they allow voters to compare leaders directly, unmediated by journalists. As Bernier and Monière put it, "the unique characteristic of televised debates is that they offer citizens an inexpensive, first-hand source of comparative information". (1991 RC) The debates provide direct and convenient access to information about the priorities of the major contending parties and the personalities of the leaders. Other campaign activities do not provide such quick and easy access to such rich, comparative information.

**Table 6.27**

**Public assessment of whether debates should be mandatory**  
(per cent)

Yes	56.5
No	40.5
Don't know	3.0

Source: Blais and Gidengil 1991 RC.

Note: N = 2 947.

Wording of the question:

"Do you think the law should require party leaders to participate in a televised debate at each election?"

**Table 6.28**

**Leaders debates: public assessment of who should participate**  
(per cent)

Leaders of three major parties	23.3
Leaders of all parties in Parliament	19.8
Leaders of all ten registered parties	50.0
Some other combination	1.8
Don't know	5.1

Source: Blais and Gidengil 1991 RC.

Note: N = 2 947.

Wording of the question:

"As you may know, in federal elections there are usually about ten registered parties. Who do you think should participate in the debate: the leaders of the THREE MAJOR parties, the leaders of all parties WITH MEMBERS IN PARLIAMENT, or the leaders of ALL TEN REGISTERED PARTIES?"

### Conclusions

In light of the obvious usefulness of televised leaders debates, we considered a range of questions. Should broadcasters be required to carry debates?

Should party leaders be required to participate? Should there be regulations or guidelines regarding who should be invited, and how often and when debates should be held?

In answering these questions, we must balance the claims of fairness with the practicalities of organizing effective, appealing and informative debates, as well as the right of voters to have the information to make a clear choice among those who have a chance of forming the government.

In our examination of the practices of other democracies, we found that debates are now an accepted part of campaigns but direct regulation is rare. In no countries are broadcasters required to carry leaders debates. Nor are there any instances of required participation by party leaders, except for the state of New Jersey, which requires candidates to participate in a series of debates if they accept any of the public funds available to subsidize campaign costs. (New Jersey Statutes, Title 19, Elections)

The Quebec *Election Act* of 1984 was interpreted in 1985 as requiring a televised leaders debate to include "all the leaders of the parties represented in the National Assembly or which have obtained at least 3% of the valid votes at the last general election". (1984, c. 51, s. 427) The networks proposed various formats that they believed would not dampen audience interest, but none was acceptable to all the party leaders and no debate was held. After careful consideration, the Quebec *Election Act* was amended in 1989 to exclude from its provisions debates between party leaders. (1989, c. 1, s. 88) In short, after a limited attempt at regulating this area, the National Assembly decided to leave organization of the debate to the networks and the political parties. (Bernier and Monière 1991 RC)

The debates have evolved without direct regulation and are now deemed to be an important part of the campaign process. Regulation of the debates might ensure their utility to voters in the short term but at the expense of the capacity to adapt them to changing technologies and the specific circumstances of particular campaigns. The capacity to adjust to the emergence of a new national party or an influential regional party is part of daily journalism but is not easily incorporated into a regulatory structure.

We support the general principles expressed in the CRTC guidelines (CRTC 1988 13):

In the case of so-called 'debates,' it may be impractical to include all rival parties or candidates in one program. However, if this type of broadcast takes place, all parties and candidates should be accommodated, even if doing so requires that more than one program be broadcast.

Bernier and Monière suggest that the leaders of parties not invited to participate in the primary debates be offered the opportunity to participate in a program focused on these parties, perhaps in the form of a round-table discussion with questions from journalists. (1991 RC) This option should be considered by the networks in the interests of fairness and as a way to broaden the range of issues discussed in campaigns.

Despite the undoubted value of televised leaders debates in modern democracies, there are good reasons why direct regulation remains rare. Once begun, regulation would require the development of a detailed legal framework or delegation of authority to a regulatory body. Such a legal framework, with requirements for network broadcast, rules for selecting participants and guidelines on format, would inhibit flexibility and the evolution of the process. Debates have become institutionalized without regulation, and it is our expectation that they will continue to evolve as a result of the interests and concerns of the networks, political parties and voters. The risk exists that no debate will be held in any particular campaign or that emerging parties will feel themselves unfairly excluded. At the same time, however, leaving the matter to the networks and the parties will allow for the most rapid adjustment to changing political realities.

Negotiations leading up to leaders debates are difficult and politically sensitive and carry a substantial risk of failure. The competing interests of the political parties and the networks make for complex discussions. Negotiations among the parties and the networks are often long and arduous and sometimes fail to produce agreement. Protracted negotiations in many countries and the risk of failure have led many commentators to call for established procedures. (Bernier and Monière 1991 RC) Several interveners, some of whom had participated in such negotiations, indicated that having a neutral person preside over the discussions would be beneficial. The parties participating in the debates and networks should agree on the selection of a chairperson in the first five days after the issuance of the writs.

We believe in the value of televised leaders debates and we strongly urge the networks and the political parties to do all they can to ensure that they are held. Further, they should be accessible to the maximum number of Canadians, including those with hearing disabilities. For this reason, all televised leaders debates should be closed-captioned, and sign language should also be provided. In the interests of fairness, the leaders of *all* registered parties should have an opportunity to express their views through the broadcast media. The new free-time provisions recommended above would help restore equity in this regard.

### **Recommendation 1.6.27**

#### **We recommend that**

- (a) televised leaders debates not be required by law;**
- (b) all matters of organization continue to be negotiated among the networks and the parties, subject to the appropriate CRTC regulations and guidelines;**
- (c) parties participating in the debates and networks select a chairperson by the fifth day following the issue of the writs; and**



**(d) televised leaders debates be closed-captioned, and sign language also be provided.**

**Government Advertising during Election Campaigns**

The ability of the governing party to direct government advertising is perceived as giving that party an unfair competitive advantage. Concern has already been expressed at the federal level. For example, the 1986 federal *White Paper on Election Law Reform* recommended new provisions to restrict government advertising during an election. (Canada, Privy Council Office 1986, 18)

The only provision contained in the present *Canada Elections Act* concerning government advertising is that contained in section 48(1), which makes it an offence for persons acting on behalf of registered political parties to procure or acquiesce in the publication in a government publication of material promoting or opposing a particular party or candidate.

Two provinces, Saskatchewan and Manitoba, have much broader prohibitions on government advertising during election campaigns. Saskatchewan prohibits all government boards, departments, commissions, agencies and Crown corporations from publishing in any manner "any information or particulars of the activities of the department, board, commission, Crown corporation or agency except in the case of an emergency where public interest requires the publication of any such information or particulars". (*Election Act*, s. 229) The measure was introduced in the 1970s and has not met with controversy or caused administrative difficulties. The Saskatchewan government issues internal guidelines outlining examples of ongoing activities exempt from the prohibition and reminds the civil service that the phrase "in case of an emergency" in the Act is to be interpreted rigidly.

A similar measure exists in the Manitoba *Elections Finances Act*, which reads,

- 56(1) No department of the government of Manitoba and no Crown agency shall
- (a) during an election period for a general election, publish or advertise in any manner; or
  - (b) during an election period for a by-election in an electoral division, publish or advertise in any manner in the electoral division;
- any information concerning the programs or activities of the department or Crown agency, except
- (c) in continuation of earlier publications or advertisements concerning ongoing programs of the department or Crown agency; or
  - (d) to solicit applications for employment with the department or Crown agency; or

- (e) where the publication or advertisement is required by law; or
- (f) where the publication or advertisement is deemed necessary by the Chief Electoral Officer for the administration of an election.

The Manitoba Act also provides the opportunity for anyone to file a complaint with the chief electoral officer if that person believes the prohibition on government advertising has been violated. The Manitoba chief electoral officer is to provide details of all justified complaints in the annual report to the Speaker of the Assembly.

Because governing parties may be perceived to have an unfair advantage because of their access to public funds, it is important that measures to ensure fairness in electoral competition address this perception.

### **Recommendation 1.6.28**

**We recommend that all federal government advertising during the election period be governed by the following rules:**

- (a) no department of the government of Canada and no Crown agency or corporation shall during an election period publish or advertise in any manner in the area where the election is held any information concerning the programs or activities of the department or Crown agency or corporation except**
  - (1) in continuation of earlier publications or advertisements concerning ongoing programs; or**
  - (2) to solicit applications for employment or to solicit tenders for goods and services; or**
  - (3) where the publication or advertisement is required by law; or**
  - (4) where the publication or advertisement is deemed necessary by the Canada Elections Commission for the administration of an election; and**
- (b) on receipt of a complaint, the Canada Elections Commission shall consider the alleged violation of these prohibitions, investigate the matter if it is deemed necessary, and, if it so judges, issue a cease-and-desist order.**

### **NOTES**

1. In June 1972, members of the campaign committee to re-elect Richard Nixon were caught burgling the offices of the Democratic National Committee. Subsequent investigations revealed major violations of election law, notably illegal contributions from corporations and foreign nationals, cash contributions and reporting irregularities. Media revelations and congressional

investigations eventually resulted in President Nixon's resignation. (Mutch 1991 RC)

2. The accused, D.V. Roach, was president of the Ontario Housing Corporation Employees' Union, affiliated as Local 767, Canadian Union of Public Employees.
3. In a 1949 Gallup poll, 78 per cent of respondents who had an opinion agreed "there should be a limit on the amount each party can spend in an election campaign"; in 1972, the corresponding level of support was 84 per cent. (Gallup Report 1972)
4. Brian Risdon had issued leaflets during a by-election denouncing David Crombie, a candidate, for alleged dishonesty as mayor of Toronto in firing Risdon from his position as the city's chief plumbing inspector in 1977. The leaflet read, "Crombie Lied ... Is this the kind of man you want in Ottawa??" Risdon was found guilty of incurring an unauthorized election expense and fined \$50. In 1981, Publicis communicateur conseil was found guilty of sponsoring six billboards during the 1980 general election in the constituency of Langelier. The billboards read, "Oui à Trudeau". The firm pleaded guilty and was fined \$600. On the *Roach* case, see note 2.
5. Grant MacLaren sought a party nomination in the constituency of Vancouver South after the writs were issued for the 1988 election. MacLaren spent \$4477 on advertisements in five community newspapers distributed free of charge. The Supreme Court of British Columbia determined that MacLaren was not guilty of an offence against section 214 for the following reasons: according to Elections Canada guidelines, the limit in that section applies only to notices in the electronic or print media; on the basis of section 213 of the Act, the print media (not defined in the Act) are considered "periodical publications"; however, because the definition of "periodical publication" in the Act stipulates that the latter is "printed for sale" and the community newspaper was distributed free of charge, section 214 did not apply. (*R. v. MacLaren* 1991)
6. The word counts reported here were generously provided by the CBC. They are used for illustrative purposes, in the absence of comparable data for other networks. The estimates for the length of sound bites are based on a consensus that the average number of words per second in a news clip is approximately three. The CBC radio show "Commentary" has estimated that its speakers average about 2.2 spoken words per second. However, the program's lecture style presentations are slower than normal television discourse, as in interviews, scrums and press conferences. These bring the average to about three words per second.
7. The CRTC does not keep a record of complaints, most of which are received by telephone, or of their resolution. The experience of the Legal Division is that there have been one or two complaints a day during recent campaigns, down from 15 to 20 in the 1970s. The decline appears to be a result of broadcasters and candidates becoming more aware of the regulations. Nearly all complaints are from candidates and involve allegations of inequitable treatment.

8. The Canadian Election Study 1988 reported that the television advertisements placed by the three largest parties had considerable issue content, focusing mainly on the free trade agreement, but raising other issues as well. Although there was emphasis on the party leaders and a tendency for the spots to become more negative as the campaign progressed, the advertisements provided a clear sense of the priorities of the parties. (Johnston et al. 1991, 4: 14-17)
9. Some recent trends in broadcasting indicate that the free-time broadcasts might well have a reasonable degree of audience appeal. At a time when North American network audience shares have been declining, Canadian news and current affairs programs have recorded significant increases in viewing. The audience share for Canadian programming increased by nearly 30 per cent from 1984-85 to 1988-89. Information programming, mostly news and public affairs, constituted 41 per cent of prime-time Canadian viewing in 1988-89. (Ellis 1991, 26-33) The recent Environics Media Study survey data indicate that this trend is likely to continue. (Adams 1991) If the parties make effective use of the time, it seems likely that significant numbers of voters who want to discover the priorities of the parties will tune in.
10. Television is the dominant medium not only because of its audience appeal but also because of its structure. As Johnston and his colleagues note, "If a party's objective is to direct - or redirect - a national campaign then it has little choice but to work through television. Of the mass media, only television is sufficiently centralized to have a unidirectional effect on the whole electorate." (1991, 4:4)