5

Aboriginal Constituencies
Implementation

INTRODUCTION

ABORIGINAL SEATS SHOULD not be guaranteed. The reasons behind this conclusion are discussed in Volume 1, Chapter 4. However, Aboriginal constituencies could be created by a process that would be guaranteed in the *Canada Elections Act*. This process would provide for the creation of one or more Aboriginal constituencies in a province whenever sufficient numbers of Aboriginal voters choose to register on an Aboriginal voters list. This number of Aboriginal voters would not be less than 85 per cent of the provincial quotient to ensure that the minimum size of the electorate in an Aboriginal constituency is not less than the minimum size of other constituencies in the province. Once an Aboriginal constituency is created, the procedures to be followed would, in almost all respects, be the same as those in general constituencies and would respect the equality of the vote for all voters in a province.

Aboriginal constituencies would be the same as general constituencies in the following respects:

- provisions respecting candidates;
- the appointment and functions of election officials for the constituency;
- powers, duties and responsibilities of the returning officer;
- principles and procedures for the registration of voters – enumeration, revision and election-day registration;
- principles and procedures for advance and election-day voting;
- principles and procedures for regular and mobile polling stations;
- principles and procedures for special ballots; and
- the counting of ballots and the reporting of results.

All election laws governing offences under the *Canada Elections Act* and all provisions relating to election and party finances would also apply.

The following pages give particular attention to certain aspects of our proposal which differ from the general regime we recommend for general constituencies.

ELECTION ADMINISTRATION

Once an Aboriginal constituency has been created, a returning officer who is a voter in that constituency would be appointed. This returning officer

would be assisted in the performance of his or her duties by officials, all of whom, with the possible exception of enumerators, would have to be voters from the constituency. As outlined in Volume 2, Chapter 1, a returning officer could appoint enumerators who are not voters.

Under our recommendations, the returning officer would be responsible for planning and preparing for the election before an election call. Nowhere would this be more appropriate and important than in an Aboriginal constituency, which would cover a large area and require the use of the complete range of measures available to returning officers.

The returning officer would consult with registered constituency associations, Indian bands and Aboriginal organizations to recruit assistant returning officers, deputy returning officers, poll clerks, constables, enumerators, supervisory enumerators, revising officers and revising agents. After appointing these officials, the returning officer, with the assistance of the Canada Elections Commission, would train them.

Polling divisions for the constituency would be established on the basis of the known concentrations of Aboriginal voters. The returning officer would work with Indian bands to determine where to place polling stations and advance polling stations on reserves. He or she would also work with Indian bands and Aboriginal organizations to identify other areas with sufficient numbers of Aboriginal voters to need polling stations and advance polling stations. The returning officer would secure premises for polling stations, which could be located in band offices, Métis locals or friendship centres, or other suitable locations.

The returning officer would arrange with appropriate Aboriginal media to publicize the election and to advise Aboriginal voters to call a toll-free number to obtain more information. As well, notices could be posted at the offices of Indian bands and Aboriginal organizations, or on community bulletin boards. In large urban areas, daily or weekly newspapers could be used; unfortunately, most Aboriginal newspapers do not publish that frequently.

The Canada Elections Commission would determine where services in Aboriginal languages should be provided. The Commission and the returning officer in each province, in consultation with Indian bands and Aboriginal organizations, would develop specific standards for providing Aboriginal language services. The Commission would be responsible for providing these services.

Recommendation 2.5.1

We recommend that the Canada Elections Commission, in consultation with Indian bands and Aboriginal organizations, develop standards for the provision of Aboriginal language services in Aboriginal constituencies.

VOTER REGISTRATION

An Aboriginal constituency is created in a province when a sufficient number of Aboriginal voters register for the purpose of creating an Aboriginal constituency before the province's constituency boundaries are redrawn. This procedure is discussed later in this chapter. Unless a general election was held less than a year after this special registration process, the information on the register of Aboriginal voters would be too dated for use as a preliminary voters list for the election. Moreover, because the register would not be used often enough to justify continual updating, we do not propose creating a permanent Aboriginal voters list in any province.

Given that Aboriginal voters would be dispersed across a province, the registration of voters, especially in the enumeration phase, would require the adoption of methods not normally used in general constituencies.

In addition to an enumeration of Aboriginal voters on all Indian reserves and in other areas where there are high concentrations of Aboriginal voters, the returning officer could also work with Indian bands and Aboriginal organizations to actively search for voters. Mail-in registration forms could be placed in newspapers so that Aboriginal voters could register themselves. These forms would be identical to the mail-in enumeration cards that would be left at residences by enumerators. In areas where there are high concentrations of Aboriginal and non-Aboriginal voters, the returning officer for the Aboriginal constituency and the returning officer for the general constituency would each assign one enumerator who would then work in pairs.

Voters absent from their residences during enumeration would be left a numbered mail-in enumeration card, as recommended in Chapter 1 of this volume. In provinces with an Aboriginal constituency, this card would have a box where an Aboriginal voter could indicate that he or she wished to be registered to vote in the Aboriginal constituency or in the general constituency. The card would be mailed to the returning officer for the general constituency, who would forward it to the returning officer for the Aboriginal constituency. If necessary, the returning officer for the Aboriginal constituency would contact the Aboriginal voters who had indicated they wished to be registered to vote in that constituency.

In areas where Aboriginal voters are concentrated and enumerators for the Aboriginal constituency are conducting their enumeration, the return address on the mail-in enumeration card would be that of the Aboriginal constituency's returning officer. Voters, including Aboriginal voters, who wish to register to vote in the general constituency in which they reside would mark the box accordingly. The Aboriginal constituency returning officer would then forward these cards to the returning officer for the general constituency.

Recommendation 2.5.2

We recommend that

(a) all Aboriginal voters in Aboriginal constituencies be enumerated in areas where there are concentrations of Aboriginal people;
(b) in co-operation with the returning officer for a general constituency, a joint enumeration be conducted in those polls with concentrations of both Aboriginal and non-Aboriginal voters; and
(c) eligible Aboriginal voters be permitted to register by mail using a registration form published in newspapers.

As elsewhere, when the enumeration process has been completed, Aboriginal voters missed during the enumeration period could still register with a revising officer for the Aboriginal constituency or in person at an office of the Aboriginal constituency returning officer. A revising officer could also send revising agents to the homes of Aboriginal voters when they know such voters have not been enumerated. In addition, the returning officer would have the power to undertake a new enumeration of one or more areas that were missed or poorly enumerated.

As in general constituencies, Aboriginal voters would be permitted to register on election day at an Aboriginal polling station if they presented the prescribed identification and swore an oath or made an affirmation about their identity.

Finally, Aboriginal voters could register and apply for a special ballot in person at the office or sub-offices of the Aboriginal constituency returning officer, at the office(s) of any returning officer in the province or, in remote areas, at designated government offices. In all these cases, the general provisions of the special ballot would apply. Aboriginal voters living abroad or away from their home constituency would also be able to avail themselves of the general provisions for the use of the special ballot.

The process for verifying voters lists would be the same as in general constituencies, except there could also be a challenge to a voter's right to vote in an Aboriginal constituency on the grounds that the voter did not self-identify as an Aboriginal person and did not have Aboriginal ancestry or was not accepted as Aboriginal by her or his community. Given these conditions of eligibility to vote in an Aboriginal constituency, the Canada Elections Commission would appoint one or more Aboriginal voter eligibility panels for each Aboriginal constituency. These panels would be composed of a revising officer and two other voters. This panel would rule on any objections. As in general constituencies, the burden of proof would rest with the person making the objection.

Recommendation 2.5.3

We recommend that a revising officer and two other voters, appointed by the Canada Elections Commission from a list of elders and other voters in consultation with Indian bands and Aboriginal organizations, constitute Aboriginal voter eligibility panels to decide on objections to the right of a voter to be registered on an Aboriginal voters list on the grounds of his or her Aboriginal status.

VOTING PROCESS

Our recommendations for mobile polls (Volume 2, Chapter 2), including advance mobile polls, would increase voter participation by making it much easier for Aboriginal voters to get to a polling station to vote. Because Aboriginal constituencies would cover a large area, they should be designated as remote constituencies, as defined in Volume 2, Chapter 2. This designation would allow even more flexibility in voting generally and in obtaining and returning a special ballot in particular. Taken together, these recommendations will help to remove the barriers to enumeration and voting identified by Aboriginal people in our public hearings and in the report of the Committee for Aboriginal Electoral Reform. (Canada, Royal Commission 1991, Vol. 4)

Recommendation 2.5.4

We recommend that the *Canada Elections Act* designate Aboriginal constituencies as remote constituencies.

CANDIDATE SPENDING LIMITS AND PUBLIC FUNDING

As the Committee for Aboriginal Electoral Reform noted in its report, the financing of elections in Aboriginal constituencies "raises the concerns of how to facilitate meaningful campaigns over vast areas by people largely of limited means". (Canada, Royal Commission 1991, Vol. 4) These concerns must be reflected in the spending limits for candidates in Aboriginal constituencies and the public funding for which the candidates might qualify.

The *Canada Elections Act* already allows additional spending in sparsely populated constituencies – that is, those where there are fewer than 10 voters per square kilometre. This provision allows candidates to incur additional 'election expenses', and hence acquire correspondingly larger reimbursements, in the geographically largest and most remote constituencies. In 1988, the average expense limit in 91 such constituencies was $48 501, compared with $46 167 in the more densely populated constituencies.

As part of our recommendations on spending limits, we propose that the additional allowable spending per square kilometre in the sparsely populated constituencies be raised to 30 cents (from the present 15 cents)

and that the maximum amount by which the total 'election expenses' limit can be adjusted upward be 50 per cent (compared with the present 25 per cent). This represents an increase of 26.3 per cent over the average limit in those constituencies if an election were held before 1 April 1992.

None of the Aboriginal constituencies that might be created has a population density greater than one person per square kilometre. Based on our recommendations for general constituencies, all would be classified as sparsely populated constituencies. We therefore propose that the provisions for sparsely populated constituencies also apply to Aboriginal constituencies. The same definition of election expenses would apply, as would the exclusions from the spending limits we recommend. This would mean, for example, that 'personal expenses', including the cost of the candidate's travel, would not be counted against the spending limit.

Recommendation 2.5.5

We recommend that the limit for the election expenses of a candidate in an Aboriginal constituency be calculated based on the formula for sparsely populated general constituencies.

A second issue is the funding of the campaigns of candidates in Aboriginal constituencies. In its report, the Committee for Aboriginal Electoral Reform (Canada, Royal Commission 1991, Vol. 4) notes that candidates would face difficulties because of the smaller pool of resources within the Aboriginal community and because the political contribution tax credit provides little incentive to Indians living on reserves, since they are not subject to taxation. While it is to be hoped that political parties will provide assistance, not all Aboriginal candidates can be expected to run under a party banner. To parallel the provisions pertaining to spending limits, the post-election reimbursement to candidates should be the same as for candidates in sparsely populated constituencies.

Recommendation 2.5.6

We recommend that candidates in Aboriginal constituencies be reimbursed according to the same provisions that apply to candidates in sparsely populated general constituencies.

The principle behind reimbursements is that qualifying candidates receive a measure of public funding to help defray their campaign costs. However, some candidates, for example, women, may find it difficult to raise the funds to mount even a modest campaign. Similarly, some people in Aboriginal communities might not be able to afford to offer their alternative viewpoints as candidates, and the range of representation from within the Aboriginal population would be diminished. An additional measure of public funding

during the campaign itself, rather than afterward, would encourage fuller debate and fairer competition within Aboriginal constituencies.

One approach would be to publish a booklet under the authority of the Aboriginal constituency returning officer. This booklet could include a statement from each Aboriginal candidate outlining his or her election platform. A number of U.S. jurisdictions distribute similar publications, sometimes called 'voters guides', which may also include basic information about voter registration and the location of polling places. An information booklet about the options presented to voters was distributed to residents of northern Quebec, who are mostly of Inuit origin, before the 1987 referendum on the options for drafting a constitution for their regional assembly.

If a booklet of this kind were made available in Aboriginal constituencies, candidates would submit the statements in the language of their choice and these would be reproduced 'as is'; it would be necessary, however, to develop minimum standards to follow in preparing the statements. (The New York City Campaign Finance Board (1990) has a set of regulations for candidates, and statements are reviewed to ensure they are not libellous.) A photograph of each candidate would also be useful. A copy of the booklet should be sent by the returning officer to each Aboriginal voter. Additional copies should be distributed to Indian bands and Aboriginal organizations and should be available in the office and sub-offices of the Aboriginal constituency returning officer. The Canada Elections Commission would cover the costs of producing and distributing the booklet. In this way, all candidates would have at least one opportunity to communicate with the entire Aboriginal electorate.

Recommendation 2.5.7

We recommend that

(a) during the period between the close of nominations and the seventh day before election day, the Aboriginal constituency returning officer mail to each person on the Aboriginal voters list a booklet with a statement from and a photograph of each candidate who wishes to participate;
(b) the returning officer distribute the booklet as widely as possible; and
(c) the Canada Elections Commission cover the costs of producing and distributing the booklet.

CREATING ABORIGINAL CONSTITUENCIES

As outlined in Volume 1, Chapter 4, one or more Aboriginal constituencies could be created in a province whenever sufficient numbers of Aboriginal voters choose to register as Aboriginal voters in that province. The number

of Aboriginal constituencies that could be established would be determined before a province's electoral boundaries were redrawn, after a redistribution of seats or a general election.

If the process to create Aboriginal constituencies in the provinces where they don't yet exist were in place for the election immediately following the next adjustment of constituency boundaries, the following procedures would be followed. To determine the number of Aboriginal constituencies that could be established in a province, the estimated number of Aboriginal voters from the last census would be divided by the quotient for that province. Once this information was available, the Canada Elections Commission would publish the potential number of Aboriginal constituencies that could be established in each province. In provinces where one or more Aboriginal constituencies might be created, a special registration of Aboriginal voters in the provinces concerned would have to be completed as soon as possible.

The Registration of Aboriginal Voters

The first step in the process would be to determine the number of Aboriginal voters in a province who wished to vote in an Aboriginal constituency. The Canada Elections Commission would have to establish a registration office in each province where it was estimated that one or more Aboriginal constituencies could be created. This office would be headed by a registration officer appointed by the Commission. This official should be a voter who intends to register as an Aboriginal voter. In co-operation with Indian bands, Aboriginal organizations and the Aboriginal media, the Commission would undertake a special Aboriginal voter registration drive. A variety of communications techniques could be used, including videos and portable displays with information in Aboriginal languages. A community education program could deal with issues such as the purposes of Aboriginal constituencies, how they could be created and how voters could be registered on the register of Aboriginal voters.

Recommendation 2.5.8

We recommend that the Canada Elections Commission establish a voter registration office in each province where Aboriginal constituencies could be created to register eligible Aboriginal voters who wished to vote in an Aboriginal constituency.

Four approaches could be used to enable Aboriginal voters to register on the Aboriginal voters register. Although these approaches are similar to the ones used for registering voters before an election, they are modified so they can be used independently of an election.

First, enumerators appointed by the provincial registration officer could enumerate in areas where there are concentrations of Aboriginal persons. Second, newspaper advertisements could be published in Aboriginal and

other print media with a mail-in registration form. Voters who used these forms to register would be required to provide their name and address so that a registration officer could verify the identity of voters if necessary. Third, the voter registration office could undertake an active search for Aboriginal voters and communicate with them. The provincial registration officer would work with Indian bands and Aboriginal organizations to complete this search. Fourth, the voter registration office could also organize a final 'registration-day' drive in co-operation with Indian bands and Aboriginal organizations, advertised through both Aboriginal and non-Aboriginal media, to encourage voters to register at various registration locations throughout the province. This last provision would be analogous to election-day registration during an election.

This process would be designed not only to enable Aboriginal people to register with the greatest possible ease, but also to identify and register Aboriginal voters who have not been inclined to register or vote in a general constituency but who might wish to register and vote in an Aboriginal constituency.

Recommendation 2.5.9

We recommend that for the purposes of registering Aboriginal voters to determine whether one or more Aboriginal constituencies would be created in a province:

(a) an enumeration of voters be conducted in areas where there are concentrations of Aboriginal persons;
(b) eligible voters be permitted to register by mail;
(c) the voter registration office undertake an active search for eligible voters; and
(d) the Aboriginal voter registration office organize a final registration-day drive.

At the conclusion of the registration process, the provincial registration officer would be required to prepare a register of Aboriginal voters with the name and address of each eligible voter. To respect a voter's right to privacy, the voter's address would not be published if a voter so requested. On completion, the register would be open for inspection by registered Aboriginal voters at the office of the registration officer.

Recommendation 2.5.10

We recommend that

(a) a registered voter be permitted to give the address of an Indian band office, Métis local or friendship centre or the Aboriginal

voter registration office in place of her or his actual place of residence to ensure that individual's privacy; and

(b) the register of Aboriginal voters be open for inspection by registered Aboriginal voters at the provincial registration office.

After the registration of Aboriginal voters has been completed and the register made available for inspection, any voter whose name appears on the register should be permitted to object to the right of any other voter to be included in the register. An objection must be made in writing to the provincial registration officer within two weeks of the register being made open for inspection. The objection must identify the person making the objection and give her or his address and phone number. The objection must state the name of the person being objected to and grounds for the objection. The objection must be dated and signed by the person making the objection.

Where it is determined by the registration officer, or an agent designated by her or him, that a prima facie case has been made against a registered voter, the voter being objected to must immediately be informed of the objection. The Canada Elections Commission would then appoint a panel or panels to hear and decide on objections. These panels would be chaired by the registration officer, or her or his designate, and include two other Aboriginal voters selected by the Canada Elections Commission from a list drawn up in consultation with Indian bands and Aboriginal organizations in the province. Voters appointed to a panel should come from the same Aboriginal group as the voter being objected to; for example, an objection to a voter who claims Métis identity would be heard by a panel whose two appointed members were Métis voters. These panels would sit to hear objections no later than one week after the deadline for the receipt of written objections. These panels would be required to hear presentations from or on behalf of the person whose right to be registered as an Aboriginal voter has been challenged. The person making the objection would have the burden of proving that the person should be removed from the register of Aboriginal voters. On application, a panel could grant intervener status to other Aboriginal voters or to any Indian band or Aboriginal organization having sufficient interest in the case. Following a hearing to hear objections, a panel would have two days to render its decision.

Recommendation 2.5.11

We recommend that

(a) Aboriginal voter eligibility panels, chaired by the provincial registration officer, or her or his designate, decide on objections to a voter on the register of Aboriginal voters; and

(b) each panel include two registered Aboriginal voters appointed by the Canada Elections Commission from a list of elders and other qualified men and women drawn up in

consultation with Indian bands and Aboriginal organizations in the province.

Any party to the proceedings should have a right to have a court of law review the decision of an Aboriginal voter eligibility panel. We propose that the Federal Court of Canada be designated for this purpose. On application, the Federal Court of Canada could grant intervener status to other Aboriginal voters or to any Indian band or Aboriginal organization having sufficient interest in the issue requiring adjudication.

Recommendation 2.5.12

We recommend that a decision of an Aboriginal voter eligibility panel be subject to review by the Federal Court of Canada.

Each provincial boundaries commission should complete the register of Aboriginal voters before drawing the electoral boundaries. This should be completed within three months following the passage of the legislation to establish a process for creating Aboriginal constituencies or the start of a constituency boundaries adjustment in a province. A further one-month period should be allowed to permit objections to be decided on. After this period, the provincial Aboriginal registration officer would place a completed register before the electoral boundaries commission for the province and the chief electoral officer. The latter would be responsible for determining the number of Aboriginal constituencies to be created. This would be accomplished by dividing the number of voters whose names appear on the register of Aboriginal voters in a province by the number equal to 85 per cent of the provincial quotient.

The foregoing procedures would be required only when no Aboriginal constituencies exist in a province. Where they exist, no special registration would take place because the determination of the number of Aboriginal constituencies would be made on the basis of the number of voters registered on the final voters lists for Aboriginal constituencies for the previous election, just as the electoral quotient and boundaries for each general constituency are established.

Drawing Aboriginal Constituency Boundaries

Under present legislation and our proposals, boundaries commissions for each province are chaired by a judge appointed by the Chief Justice of that province. The Speaker of the House of Commons chooses the other two members. In a province where only one Aboriginal constituency would be created, the boundaries of the province would serve as the boundaries of that Aboriginal constituency.

Where the chief electoral officer has determined that more than one Aboriginal constituency would be created, Aboriginal voters should be

represented on a commission for the determination of the boundaries of the Aboriginal constituencies. This could be done by having the Speaker of the House of Commons appoint two registered Aboriginal voters from the province to this commission. These two members, along with the chair of the boundaries commission, would be appointed to draw the boundaries of the Aboriginal constituencies only. The procedures to be followed for drawing the boundaries of Aboriginal constituencies would be the same as for general constituencies, namely, publishing proposed constituency boundaries, conducting public hearings, revising boundaries and submitting reports to the Canada Elections Commission for transmittal to the Speaker of the House of Commons. The report of the electoral boundaries commission on Aboriginal constituency boundaries would be an integral part of the commission's report for the entire province.

Aboriginal constituencies would be designed on the basis of comparable population and community of interest criteria. Depending on circumstances, Aboriginal constituencies could be created on a geographical basis or to reflect different communities within the Aboriginal population of a province. In the latter case, the territory of the Aboriginal constituencies may very well encompass the whole province and even overlap.

Recommendation 2.5.13

We recommend that where more than one Aboriginal constituency is to be created in a province, a special boundaries commission be created, composed of the chairperson of the boundaries commission for the province, who shall also act as chair for this special commission, plus two Aboriginal voters appointed by the Speaker of the House of Commons, with the mandate to determine the boundaries and names of the Aboriginal constituencies.

6

Applying the Regulatory Framework for Election Expenses and the Reporting of Political Finance

INTRODUCTION

Consistent with our objectives of achieving greater fairness and strengthening the integrity of the electoral process, we recommend in Volume 1 reforms to the regulatory framework for party and election finance, including its extension to require registration of constituency associations and disclosure of their finances, spending limits for those seeking nomination as a candidate or the leadership of a registered political party, and disclosure of contributions to and spending during leadership and nomination campaigns.

The recommendations on party and election finance in Volume 1 are relatively specific, but they do not include the technical and procedural details needed to apply the regulatory framework we propose. In this chapter we provide recommendations on these matters, which in turn constitute the rationale for several sections of our draft legislative proposal in Volume 3.

This chapter contains several references to the *Report* of the Accounting Profession Working Group on Election/Party Finance Reporting at the Local Level. (Canada, Royal Commission 1991a) This Working Group included representatives from the major Canadian professional accounting organizations: the Canadian Institute of Chartered Accountants, the Certified General Accountants Association of Canada and the Society of Management Accountants of Canada. It was chaired by Denis Desautels, who was subsequently appointed Auditor General of Canada. We asked the Working Group to review the current legislation and procedures for reporting on candidates' expenses and contributions during federal elections, and to consider legislation and procedures that could apply to the ongoing activities of constituency associations.

The Working Group presented an initial proposal for discussion at our symposium on election and party financing at the constituency level in Winnipeg in November 1990. The participants at this symposium included official agents and other persons who have been active at the constituency level. Participants discussed the Working Group's proposal in detail and generally supported the approach that had been taken. The final report of

the Working Group, submitted in February 1991, reflected comments from participants at the Winnipeg symposium and from others with experience in this area. The conclusions of the Working Group provided valuable guidance on a number of matters discussed in this chapter.

THE SCOPE OF THE SPENDING LIMITS

Definition of Election Expenses

To be effective in pursuing fairness in the electoral process, statutory election spending limits must be linked to a definition of 'election expenses'. The definition describes the scope of spending limits, that is, which aspects of campaign spending are to be controlled. Having a clear definition is critical. Vague or ambiguous language can lead to confusion about just what expenses are included in the limits; this could allow parties or candidates room to exempt certain items so their spending does not exceed the limit. If this happens, fairness in the electoral process will be undermined.

In addition, election campaigns involve thousands of Canadians who, as a rule, are genuinely concerned that the law be respected and that they not become personally involved in situations where their integrity would be questioned. Because the concept of 'election expenses' is such a key part of the spending limits framework, an ambiguous definition runs counter to the objective of promoting the active participation of Canadians in the electoral process. An unclear definition is also unfair to Canadians who work on election campaigns because it may put them at risk. This concern, voiced most strongly by official agents, is legitimate.

In Canada, approaches differ at the federal and provincial levels for defining election expenses. Under one approach, sometimes referred to as 'inclusive', an initial broad definition of election expenses is followed by a few specific exclusions and, in some cases, inclusions. Of the seven provinces that have statutory spending limits, five have adopted this inclusive approach (Quebec, Ontario, Nova Scotia, New Brunswick and Prince Edward Island). In contrast, the federal definition of election expenses entails an initial statement followed by a list of several items considered to be election expenses; the list, although not intended to be exhaustive, helps give meaning to the definition (see the appendix to this chapter).

Even the most carefully drafted definition may not be clear on all points, and changes in campaign practices may raise questions about whether the definition applies or not. It is thus not unusual to rely on guidelines or regulations to explain or clarify the definition of election expenses, particularly its exclusions or inclusions. Quebec's *Election Act* allows the chief electoral officer to issue regulations, and in Ontario the Commission on Election Expenses has the authority to issue guidelines. In contrast, the *Canada Elections Act* does not specifically provide for issuing either regulations or guidelines. However, guidelines were developed through an informal process and, in practice, have played a major role in determining the meaning of the definition of election expenses.

Not long after the *Election Expenses Act* came into effect, the chief electoral officer invited officials of the political parties represented in Parliament to a meeting to discuss implementation of the new Act. This led to the establishment of what came to be referred to as the Ad Hoc Committee. This Committee met regularly, and a number of its recommendations were incorporated in Bill C-5, enacted in 1977. The Committee also prepared, before the 1979 federal election, guidelines and procedures on election expenses. This document, intended for candidates and their official agents, explained certain aspects of the definition of election expenses. In this way, the work of the Ad Hoc Committee helped pave the way for the first election held under the new rules. Following discussions within the Ad Hoc Committee, the guidelines have been revised before each subsequent election. In 1984, a separate publication, *Guidelines Respecting Election Expenses of Registered Political Parties*, was issued; a revised version of this was prepared for the 1988 election. (Canada, Elections Canada 1988b)

In developing the guidelines, the wording of the definition of election expenses was significant. In particular, the definition includes what has been called a purpose test: election expenses are incurred "for the purpose of promoting or opposing, directly and during an election, a particular registered party, or ... candidate".

Although the guidelines did not have the force of law, they reflected legal opinions and, in certain cases, jurisprudence. For example, the chief electoral officer concluded there was little advantage in giving a strict interpretation to the legislation if this would not stand in court, particularly since some judges have tended to give a broad interpretation to the election expenses provisions of the *Canada Elections Act*.[1]

The guidelines have also been relevant to enforcement: they specifically state that adherence to them will protect candidates and parties from legal action, as indicated in the 1988 *Guidelines and Procedures Respecting Election Expenses of Candidates*: "[These guidelines] represent a sort of insurance policy for the candidate and official agent. Compliance with these guidelines will ensure no prosecution will be initiated by the Commissioner [of Canada Elections]." (Canada, Elections Canada 1988a, 1) (The guidelines for registered parties included a similar statement.)

Based on the guidelines and specific provisions of the *Canada Elections Act*, the following items are not considered election expenses of *candidates*:

- any material that is not used and remains on hand at the end of the election;
- volunteer labour;
- the salary of those poll agents who are paid less than the commercial value of their services, as well as reimbursement of their expenses (for example, meals and transportation);
- the cost of printed material used to directly promote the election of a candidate before the issue of the writs;

- nomination expenses;
- the candidate's deposit;
- the cost of victory parties held after the polls close;
- auditors' fees;
- charges for legal services; and
- the costs of preparing returns required by the Act.

In addition, under the *Canada Elections Act*, a candidate's personal expenses are considered election expenses for the purposes of reimbursement, but they are not subject to the spending limit. A number of the above items are exempted from the definition of election expenses under the legislation in certain provinces and thus are not covered by the spending limits (see, for example, the Ontario and Quebec definitions found in the appendix to this chapter).

Under the present Act, federal candidates are nonetheless expected to report all election-related spending. There are three categories: (1) election expenses; (2) personal expenses; and (3) spending on goods and services that are excluded from the limits. This last category, which is not defined in the *Canada Elections Act* or explained in the guidelines, is referred to as campaign expenses or other expenses. In a 1989 publication, the chief electoral officer described campaign expenses as a "default concept which refers to anything not an election expense". (Canada, Elections Canada 1989, 1) Such spending is to be reported in a separate part of the candidate's post-election return. However, based on the Act's requirements for publishing in a newspaper after each election a summary of each candidate's election spending, the chief electoral officer has included only the election expenses and personal expenses.

Based on the guidelines, the definition of election expenses as it applies to *political parties* does not include the following main items:

- developing the party's policies or programs;
- developing the party's strategies;
- carrying out research and analyses relating to the [above two] activities;
- public opinion polling;
- training the party's candidates, official agents and workers;
- 50 per cent of the costs of fund-raising activities, including direct mail, that both solicit funds and promote and/or oppose a party;
- normal administrative costs of maintaining the party as an ongoing entity (the costs of staff and facilities as election expenses are to be allocated "reasonably"); and
- all other internal costs not incurred as an integral part of endeavours furthering the external exposure of the party. (Canada, Elections Canada 1988b, 2–9)

These federal exclusions for political parties differ much more from the legislation and practice in many provinces than do the federal exclusions for candidates. However, in large measure this reflects the wording of the

federal definition of election expenses. Quebec's definition has a broader scope because spending to promote or oppose, directly *or indirectly*, the election of a candidate or candidates is considered an election expense under the Quebec *Election Act* (see the appendix to this chapter). Quebec's definition is considered one of the most comprehensive in Canada and has worked well (Quebec adopted spending limits in 1963).

While the purpose test in the federal definition is central to determining what is and is not an election expense for political parties, the guidelines provide additional interpretation based on the "primary objectives of a political party", namely:

> (a) attracting adherents to [the party's] policies;
> (b) soliciting others to join with them as members of the party; and
> (c) attracting voters for candidates of the party in an election. (Canada, Elections Canada 1988b, 2)

The guidelines then state:

> We consider all activities which directly promote these primary objectives during an election to give rise to election expenses of a political party. All other party activities, such as formation of policy and training of workers, are secondary to the primary objectives and are not election expenses. (Canada, Elections Canada 1988b, 3)

This rationale explains certain of these exclusions. In relation to polling, for example, the guidelines state: "The cost of collecting and analysing survey information is not an election expense as the activity does not result in the direct promotion of a party, its leader, candidates, members, programs or policies and therefore does not directly support the primary objectives of the party." (Canada, Elections Canada 1988b, 7) Needless to say, these Jesuitical rationalizations are not convincing!

The present definition of election expenses in the *Canada Elections Act* and the guidelines issued by Elections Canada raise a number of issues. First, the process used to develop these guidelines has been criticized, especially for the ways in which ambiguities about the definition have been resolved. The Ad Hoc Committee has always met in private, its minutes are confidential and it does not include political parties not represented in Parliament. Except when its recommendations have led to amendments to the Act, agreements reached by the Committee have not been subject to public or parliamentary debate. Yet, as noted above, the guidelines have had considerable authority in relation to enforcement.

Second, the definition of election expenses, particularly the words "for the purpose of promoting or opposing, directly", has allowed major items that would be covered by a more inclusive definition to be exempted from the spending limits. The legislation on spending limits in most provinces relies

on a more inclusive definition. This is particularly the case for parties because the addition of the primary objectives test in the federal guidelines has narrowed the scope of the statutory spending limits even further.

Third, the division of candidates' election-related spending into three separate categories has not only caused complications for their official agents, but also has led some to question the effectiveness of the spending limits. The significant amounts sometimes reported as other expenses highlight this concern. The transparency of reporting procedures is also diminished by these categories because these 'other expenses' are not included in the chief electoral officer's post-election publications.

In considering the definition of election expenses, the Accounting Profession Working Group concluded that:

> The current definition of election expenses has proven confusing and difficult to enforce. The definition, as found in the current *Canada Elections Act* and interpreted by the current *Guidelines*, provides a lengthy list of what is meant by election expenses. The Working Group has rejected this approach. Instead, it favours a broadly worded inclusive definition that will include all expenses incurred by political entities. (Canada, Royal Commission 1991a, Part 1, 4–5)

A clear, straightforward and comprehensive definition of election expenses is essential. The definition must meet this standard because election campaigns, particularly at the constituency level, involve thousands of volunteers who need clear rules they can follow with relative ease. Such rules also help ensure that candidates and political parties fully respect the intent of the spending limits, and in so doing give Canadians reason to be confident that the limits are effective and apply to all contestants. As for the wording of the definition, we have given due consideration to relevant legislation at the provincial level and in other countries, and have reviewed a number of proposals, including that of the Working Group (see the appendix to this chapter). Accordingly, we recommend in Volume 1, Chapter 6 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 shall include an amount equal to any contribution of goods or services used during the election.

Subsections 1 to 3 would cover virtually all spending specifically relating to an election. The final part of the definition makes it clear that goods or

services provided to a candidate or party and used during the election would have to be counted as election expenses because they are the equivalent of spending on behalf of the candidate or party. In its report, the Accounting Profession Working Group suggested that "for the purpose of calculating election expenses, the value of inventory consumed during the campaign period should be included". (Canada, Royal Commission 1991a, Part 1, 6) We agree with this approach, which means that the cost of materials and the depreciation of equipment owned by a constituency association and used by a candidate would be counted as election expenses of the candidate.

As noted above, at the federal level and in the seven provinces that have spending limits, electoral law stipulates a number of exclusions and/or inclusions in defining election expenses. In most cases, this determines which expenses are covered by the limits. The Accounting Profession Working Group recommended that *all* election-related spending be covered by the definition of election expenses and fully reported. Nonetheless, certain items, including personal expenses (as defined), would continue to be excluded from the spending limits. These would be reported separately from the expenses that would be subject to limits. This approach would provide full accountability and a high degree of transparency.

The final issue in considering the scope of the spending limits is what items should be specifically excluded from the limits. We have reviewed the relevant provincial legislation, guidelines and regulations, as well as the list proposed by the Accounting Profession Working Group.

Recommendation 2.6.1

We recommend that the *Canada Elections Act* provide for the following exclusions from the election spending limits:
(1) expenses incurred by or on behalf of a candidate in seeking nomination;
(2) a candidate's performance guarantee;
(3) expenses incurred in holding a fund-raising function, except if a deficit is incurred, in which case the deficit be counted against the limit;
(4) transfers of funds to a candidate, a registered party or a registered constituency association;
(5) expenses incurred exclusively for the ongoing administration of the registered party or registered constituency association;
(6) expenses incurred for post-election parties held and thank-you advertising published after the close of the polls;
(7) professional fees or labour required to help comply with the Act;
(8) the costs of communications addressed exclusively to members of the registered party or registered constituency association;

(9) interest accrued during the election on any loan lawfully granted to a candidate or official agent for election expenses; and

(10) the personal expenses of a candidate, meaning only the reasonable expenses incurred by or on behalf of the candidate during the election for

(i) the cost of care paid on behalf of a child or other family member for whom the candidate is normally directly responsible;

(ii) travelling costs to and within the constituency;

(iii) the cost of rental of the candidate's temporary residence necessary for the election;

(iv) the cost of lodging, meals and incidental charges while travelling to and within the constituency;

(v) expenses that result directly from a candidate's physical disability, including the services of a person required to assist a candidate to perform the functions necessary to seeking election; and

(vi) other expenses the Canada Elections Commission determines from time to time are personal expenses of a candidate.

Items 1 to 6 and item 10 in recommendation 2.6.1 are based on the proposal of the Accounting Profession Working Group. Items 1, 2 and 6 are currently exemptions at the federal level and in Ontario (nomination spending limits are discussed in Volume 1, Chapter 6). Item 3 is an exemption under the Ontario legislation. The costs of raising funds should not count against the candidate's limit, although the net amount raised should be reported as a contribution. To ensure this exemption is not abused, however, where a fund-raising function incurs a deficit, the amount of the deficit should be counted against the candidate's spending limit. In addition, transfers of funds within a party, item 4, should not be counted against the limit, although these transfers would have to be reported as contributions.

For item 5, the federal guidelines now exclude the "normal administrative costs of maintaining the party as an ongoing entity". Political parties and at least some constituency associations will continue to incur ongoing administrative costs during an election campaign. These should not be counted against the spending limit; however, any additional administrative costs incurred for election purposes should be counted against the spending limits. Item 7 has been included because costs of complying with the legislation should not be counted against the spending limit. Auditing and accounting fees are an exclusion under the Ontario Act, and the federal guidelines currently exclude auditors' fees and the costs of preparing returns required by the Act. In addition, the chief electoral officer previously ruled that lawyers' services related to complying with the Act should not be counted against the limits.

Although communications addressed to party members may have the effect of promoting a candidate or party, we propose in item 8 that the costs of such communications be exempted, if these communications are addressed *only to party members*. This means, for example, that the costs of a mailing that solicits funds would be excluded from the spending limit provided the letters were not addressed to anyone beyond the party membership. This is consistent with our proposal that communications with the members of interest groups and other non-registered participants not count against the spending limit for independent expenditures. However, if the communications were addressed to others who are not party members, as is often the case with direct mail campaigns, the entire cost would count against the spending limit. Print or electronic media advertisements would not fall under this exemption.

Quebec's *Election Act* exempts interest on loans from the beginning of the election period until 90 days after polling day. Although many candidates benefit from transfers from the constituency association or registered party, this is not always the case; independent candidates, for example, do not have access to such benefits. Candidates who are obliged to take out a loan for their campaign should not be put at a disadvantage in relation to candidates with greater access to financial resources. We therefore propose (item 9) that interest on loans be excluded from the spending limits. The list of personal expenses (item 10) follows the proposal of the Accounting Profession Working Group, with some modifications.

We recommend the above approach because it is essential to have full reporting of all election-related expenses. From experience at the federal and provincial levels, however, certain items should be excluded from the spending limits. These exclusions should be clearly stated and not so numerous or significant as to lead to what would be, in effect, a partial spending limit.

Recommendation 2.6.2

We recommend that candidates and registered parties be required to report all election expenses but that spending on items 1 to 10 listed in recommendation 2.6.1 be excluded from the relevant spending limit.

Other Definitions Related to Election Expenses

Effective application of the election expenses provisions requires that related matters be defined in the Act. Certain definitions found in the proposed legislation need to be explained. (Canada, Royal Commission 1991, Vol. 3)

Contribution of Goods or Services

Political parties and candidates receive contributions in the form of donations of goods or services and discounts on goods required for the election campaign. Contributions other than money must be counted as expenses

because they are, in fact, spending on behalf of the campaign that would otherwise have to pay for the goods or services. This matter is currently covered by the lengthy definition of election expenses in the *Canada Elections Act*. That definition includes as election expenses

> *(c)* the commercial value of goods and services donated or provided, other than volunteer labour, and
> *(d)* amounts that represent the differences between amounts paid and liabilities incurred for goods and services, other than volunteer labour, and the commercial value thereof where they are provided at less than their commercial value.

In essence, these parts of the current definition of election expenses define what is a contribution of goods or services; item (d) really defines what is normally called a discount. We recommend a more straightforward and inclusive approach to defining election expenses. This objective would be easier to achieve if separate definitions of related matters were provided. The Accounting Profession Working Group proposed the following separate and comprehensive definition of contribution of goods or services:

> Contribution of goods or services includes,
> (a) a contribution by way of donation, advance, deposit, discount or otherwise of any tangible personal property, except money, or of services of any description, whether industrial, trade, professional or otherwise, but does not include
> (b) any goods produced or services performed for any political party, electoral district association or candidate by volunteer labour. (Canada, Royal Commission 1991a, Part 2, 2)

We find this proposed wording broadly acceptable. This definition exempts volunteer labour. A further issue is whether there should be an exemption for goods or services that have a commercial value below a certain threshold. The present definition of commercial value stipulates that if the aggregate commercial value of goods or services donated by someone is less than $100 the value is deemed to be nil; as a result, such a contribution of goods or services does not count as an election expense. This exemption means that the official agent does not have to assign a value to or count as an election expense smaller donations of goods or services – such as the case of someone who donates a few pounds of coffee to the campaign organization or offers to make a few hundred photocopies. The threshold for this exemption was set at $100 in 1974 and remains at the same level. This should be adjusted and we propose that, as with the threshold for disclosure of contributions, the exemption be raised to $250. It would also be preferable for this exemption to be part of the definition of contribution of goods or services rather than in a separate section of the *Canada Elections Act*.

The *Canada Elections Act* now stipulates that "the commercial value of any free broadcasting time ... [provided] to a ... political party ... shall not be taken into consideration in calculating its election expenses." We agree that free time should continue not to be counted as an election expense. Free broadcasting time should therefore be added as an item not considered a contribution of goods or services. Similarly, the value of any time provided on a regular or public affairs program or free advertising space or editorial content in a publication during the election should be excluded.

Recommendation 2.6.3

We recommend that the *Canada Elections Act* stipulate that a contribution of goods or services is:
(1) a contribution by way of donation, advance, deposit, discount or otherwise of any tangible personal property, except money, or of services of any description, whether industrial, trade, professional or otherwise; but not
(2) any goods produced or services performed by volunteer labour or goods or services that have a commercial value, in the aggregate and during any reporting period, of less than $250; the value of any broadcasting time provided on a regular or public affairs program; free advertising space in a newspaper, periodical or printed matter provided that it is made available on an equitable basis to all participants; editorials, news, interviews, columns, letters to the editor, commentaries or public affairs programs as part of a bona fide publication in a periodical or a broadcast by a radio or television station; or books produced, promoted and distributed at fair market value that were planned to be put on sale regardless of the election.

Volunteer Labour
Our proposed definition of contribution of goods or services excludes "any goods produced or services performed by ... volunteer labour". Volunteer labour must therefore be defined in the Act. Volunteer labour is now defined in the *Canada Elections Act* as:

> any service provided free of charge by a person outside of that person's working hours, but does not include a service provided by a person who is self-employed if the service is one that is normally sold or otherwise charged for by that person.

As a result of questions raised by parties and candidates, this definition had to be amplified by the *Guidelines and Procedures Respecting Election Expenses of Candidates* produced by Elections Canada. The guidelines (1988a, 19) provide examples of volunteer labour, among them the services of a secretary on "unpaid leave of absence working as a secretary in the campaign office;

a self-employed insurance [salesperson] working for the campaign free of charge doing door to door canvassing; and unemployed or retired persons working anytime". The guidelines indicate that donated labour must be reported as a contribution and as an election expense. An example of donated labour given in the guidelines is a secretary employed by an insurance agent who is paid her or his salary while working as a secretary for a campaign. (1988a, 20) The guidelines are relatively clear on these matters, but the Act should specify that volunteer labour does not include labour provided by a person whose services are made available by an employer or who is receiving remuneration for goods produced or services performed. This would mean, for example, that the services of a union organizer assigned to work on a campaign whose salary continues to be paid by the union would not be considered volunteer labour and therefore would constitute an 'election expense'. However, the services of someone who had taken an unpaid leave of absence to work on a campaign would be considered volunteer labour.

As for self-employed 'volunteers', the guidelines stipulate that "the services of a person who is self-employed are not volunteer labour if the service is one for which that person is normally remunerated". (1988a, 19) An example given is printing services provided free of charge by a self-employed printer. The issue of services provided by self-employed people was raised during our hearings. One witness made the following comment:

> The definition of volunteer labour discriminates between self-employed individuals and individuals employed by a corporation or other organization. For example, a sign painter employed by a corporation could paint signs for a campaign and not have his labour counted as an election expense provided he performed this service outside his normal working hours. On the other hand, a self-employed sign painter could not provide the identical service at any time without such service being counted as an election expense. (Harry Katz, Brief 1990, 13–14)

Although the witness raised a legitimate concern, the issue must be seen in a broader context. More and more Canadians are self-employed, and in a number of cases the work they do may be useful to campaign organizations. Many political consultants and pollsters, as well as writers and editors, are self-employed; they rely on contracts with their clients. A blanket exemption for services provided by self-employed people would create an inequity. Campaigns that could draw on a range of such people to produce the goods or perform the services they normally sell or charge for would have an advantage over campaigns that could not. Campaigns that do not have access to such contacts would be required to pay for such services or, if they were paid for by the person's employer, the service would be counted as a contribution and an election expense. We therefore propose that the Act continue to exclude from the definition of volunteer labour the goods or services provided by self-employed people who normally produce or

sell such services. This would not, however, prevent self-employed people from participating in campaigns in other ways; and in such cases, their participation would be considered as volunteer labour.

This issue should also be seen in the context of our recommendation that professional fees required to help comply with the Act not be subject to the spending limits. This means, for example, that the cost or value of the services of an accountant or lawyer advising the official agent or candidate on the application of the election expenses provisions of the Act would not be counted against the limit; this would apply whether the accountant or lawyer was employed by a firm or self-employed. Because most campaigns rely on such services in one form or another, this should not lead to any considerable measure of inequity. For the definition of volunteer labour, we accept the proposal of the Accounting Profession Working Group.

Recommendation 2.6.4

We recommend that 'volunteer labour' be defined in the *Canada Elections Act* as any labour provided by an individual for which no remuneration or direct material benefit is received either during an election or otherwise, but does not include labour provided by:
(1) a person who is self-employed if the goods produced or services performed are normally sold or otherwise charged for by that person; or
(2) a person whose services are made available by an employer.

Commercial Value

Goods or services are frequently provided free of charge to election campaign organizations. At present, the *Canada Elections Act* requires that the value of these goods or services be recorded as election expenses if certain criteria are met. The Act defines the commercial value of goods or services donated or provided at less than their commercial value as meaning:

> *(a)* where the person by whom the goods or services are so donated or provided is in the business of supplying those goods or services, the lowest amount charged by him for an equivalent amount of the same goods or services at or about the time they are so donated or provided, and
>
> *(b)* where the person by whom the goods or services are so donated or provided is not in the business of supplying those goods or services, the lowest amount charged for an equivalent amount of the same goods or services at or about the time that the goods or services are so donated or provided by any other person providing those goods or services on a commercial basis in the market area in which the goods or services are so donated or provided if the amount charged is equal to or greater than one hundred dollars, and if the amount charged is less than one hundred dollars, a nil amount.

This lengthy definition makes a distinction between goods or services provided by someone who is in the business of supplying them and someone who is not. The Accounting Profession Working Group addressed this issue and concluded such a distinction is not necessary. The Working Group proposed that the commercial value of goods or services reflect the lowest price charged for such goods or services in the market area. We endorse this straightforward approach.

Recommendation 2.6.5

We recommend that the *Canada Elections Act* stipulate that commercial value in relation to goods or services means the lowest price charged for an equivalent amount of the same goods or services in the market area at the relevant time.

MAILINGS BY MEMBERS OF PARLIAMENT DURING THE ELECTION PERIOD

The *Canada Post Corporation Act* currently provides that Members of Parliament may send a 'householder' to their constituents, free of charge, up to 10 days *after* the writs are issued. Under the chief electoral officer's guidelines, if a householder "directly promotes or opposes a registered party or the election of a candidate", the cost of the mailing, as well as the preparation and printing costs, are to be considered election expenses. (Canada, Elections Canada 1988a, 11) Based on our proposals, the cost of such mailings would have to be claimed as an election expense because the householder would at least indirectly promote a candidate. Even so, this publicity for an outgoing Member of Parliament may be seen as providing incumbents with an advantage not available to other candidates. This potential advantage runs counter to the goal of fairness in the electoral process; such mailings should not be allowed once an election is called.

Recommendation 2.6.6

We recommend that

(a) the *Canada Post Corporation Act* be amended to disallow outgoing Members of Parliament from mailing printed material free of charge to their constituents as of midnight the day Parliament is dissolved; and
(b) such material be defined as any printed matter without further address than 'householder', 'boxholder', 'occupant' or 'resident' (as in paragraph 35(3) of the *Canada Post Corporation Act*).

THE ROLE OF AGENTS

The position of official agent has been part of Canada's federal electoral law since 1874, although the agent's responsibilities expanded considerably with adoption of the *Election Expenses Act*. The official agent is the linchpin of the regulatory framework for candidates' election spending and financing. The agent most often acts as treasurer or financial controller of the candidate's campaign, must authorize the payment of all expenses, is responsible for keeping spending within the limit, and, after the election, must report to the chief electoral officer (via the returning officer) on spending on behalf of the candidate as well as contributions received. The official agent must attest that the post-election return is accurate and is subject to penalties for contravening the law. As R.K. Carty noted, "this makes agents both an integral part of the local campaign apparatus and a key element in the state's enforcement mechanism." (1991b RC)

A candidate must appoint an agent as part of the nomination process. By definition, the task is of relatively short duration: once the election is over, the return is filed with the returning officer, the accounts are closed and the position disappears. As a result, official agents, like most of the thousands of others involved in constituency campaigns, are usually volunteers. Moreover, Carty's research indicates that only a small proportion of those acting as official agents in the 1988 general election had previously done so: 46 per cent of agents for Progressive Conservative candidates who responded to the questionnaire had previous experience, as did 24 per cent of Liberal and New Democratic Party agents. (1991b RC, Table 2.5) Our recommendation that professional fees or labour required to help comply with the Act not be counted against the candidate's spending limit is relevant here.

This exemption from the spending limit means that a candidate would not be penalized for choosing to have a professional accountant act as official agent. As a result, the number of official agents with relevant expertise could be expected to rise.

The *Canada Elections Act* refers to an official agent of a candidate as 'an individual', which could preclude a corporate body, such as a firm of accountants, from acting in that capacity. At the national level, both the Progressive Conservative and the Liberal parties rely on corporations to fulfil the function of chief agent. This approach could be useful to candidates and, in particular, to constituency associations, which under our recommendations would be obliged to report on their financial activities. At the same time, the requirement that the agent provide written consent before assuming the position should be retained. If a firm or corporation were to be appointed as agent, then a partner or officer of the firm would have to provide the consent to act.

Recommendation 2.6.7

We recommend that the *Canada Elections Act* permit an individual or a corporate body to act as the official agent of a political

party, candidate, constituency association, nomination contestant or leadership contestant.

Because the position of official agent is so central to election campaigns, it is important that the parties and those responsible for administering the law provide the necessary support to help official agents carry out their duties. As noted above, since the 1979 general election, the first held under the 1974 reforms, Elections Canada has provided *Guidelines and Procedures Respecting Election Expenses of Candidates* for candidates and agents (Canada, Elections Canada 1988a); guidelines for registered parties were also issued prior to the 1984 and 1988 elections. The guidelines have helped provide an understanding of how to apply the Act's election expenses and reporting provisions. We have reservations about the process through which they were developed, but the practice of issuing guidelines has helped clarify areas where the Act is not sufficiently detailed and allows flexibility as circumstances change from one election to another. After our proposed *Canada Elections Act* comes into force, new guidelines for candidates and registered parties will be required.

We recommend that all constituency associations of registered parties be required to register with the Canada Elections Commission. As a condition of registration, associations would have to appoint a constituency agent. This person's role would be analogous to that of the official agent, although the responsibilities would continue outside an election period. These responsibilities would include filing twice-yearly reports on all contributions totalling more than $250 from any source; submitting a full annual return on the association's income and spending, as well as a similar post-election return; and issuing tax receipts for contributions to the association and to nomination contestants. It is essential that guidelines be prepared and distributed to assist constituency agents and other officers of associations in adapting to these new requirements. It is important that the new procedure for registering constituency associations is carried out smoothly. We recommend many changes, however, in the regulatory framework for candidates and registered parties and the regulatory regime for nomination and leadership selection. The Canada Elections Commission should therefore hold hearings on draft guidelines to allow participants and interested Canadians to comment before the guidelines are finalized.

Recommendation 2.6.8

We recommend that the Canada Elections Commission

(a) develop new guidelines for official agents and candidates, constituency agents, nomination contestants and political parties; and

(b) hold public hearings on these guidelines before putting them into effect.

In Volume 1, Chapter 7, we recommend that the Canada Elections Commission have the power to issue policy statements and to respond to requests for advance rulings or interpretation bulletins. Advance rulings and interpretation bulletins should allow for timely resolution of difficulties not addressed by the guidelines or issues that apply to some but not all participants. Candidates, party officials and agents would benefit from this new procedure and revised guidelines, but it is important that those involved also receive the necessary training.

Since the period before the 1979 election, major parties and Elections Canada have sponsored training sessions for agents. Our research indicates there was considerable variation among the three largest parties: 71 per cent of agents for Progressive Conservative candidates who responded to Carty's survey indicated they had attended training sessions; the response for agents of the Liberal and New Democratic parties was 44 and 63 per cent respectively. At the same time, a much higher proportion, 45 per cent, of agents reported being trained by a party than by Elections Canada (24 per cent). (Carty 1991b RC, Table 2.6)

During our hearings, a number of interveners commented on the training for agents provided by auditors and accountants under contract with Elections Canada. One witness praised the quality of the presentation made to agents, but commented that the seminar he attended a month after the election was called would have been much more useful if it had been held earlier in the campaign. Carty found that more than 70 per cent of agents selected between January and June 1988 had attended an Elections Canada training session; for agents chosen after the election was called, the proportion was less than 40 per cent. He offered the following observation: "As long as candidates are being nominated in the midst of an election campaign it may be organizationally difficult for the staff of Elections Canada to provide training sessions for all those newly named agents, or for these individuals to arrange to attend a session while the campaign they are responsible for controlling is going on." (Carty 1991b RC)

The political parties have considered training one of their responsibilities, but their capacity to provide it may vary; moreover, they have no role in relation to independent candidates. The practice of Elections Canada has been to hold most training sessions during the election period, around the time of nomination day, to reach as many candidates as possible. This approach was understandable in the circumstances, particularly since a team of some 14 people was responsible for holding the training sessions across the entire country. It is essential, however, that official agents, constituency agents and the agents of nomination contestants have full access to adequate and timely training.

Recommendation 2.6.9

We recommend that the Canada Elections Commission provide an opportunity for official agents to attend a training session on the relevant aspects of the *Canada Elections Act* as soon as possible after an election is called; and that training sessions be provided for agents of constituency associations and nomination contestants.

SPONSOR IDENTIFICATION OF ADVERTISEMENTS

Print Advertisements

Identifying the sponsor of an election advertisement helps ensure accountability and assists in enforcing restrictions on election spending. Without such requirements, those wishing to sponsor advertisements to promote or oppose a party or candidate could hide behind the cloak of anonymity; it would be possible, for example, to supplement the efforts of a particular campaign without the costs being counted against the relevant spending limit.

An indirect form of sponsor identification was introduced in a 1908 amendment to the *Dominion Elections Act*. Under section 34, printed advertisements, including any "hand bill, placard, poster or dodger" were required to bear the name of the printer or publisher. At the time that the *Election Expenses Act* was adopted, section 72 of the *Canada Elections Act* read as follows:

> Every printed advertisement, handbill, placard, poster or dodger having reference to an election shall bear the name and address of its printer or publisher, and everyone printing, publishing, distributing or posting up, or causing to be printed, published, distributed or posted up, any such document unless it bears such name and address is guilty of an offence against this Act and, if he is a candidate or the official agent of a candidate, is also guilty of an illegal practice.

This section could serve to identify the sponsor of a printed advertisement only indirectly: someone who wanted to know who had paid for a particular advertisement could ask the printer or publisher whose name appeared on it. In the 1983 amendments to the *Canada Elections Act*, section 72 was revised to require any printed advertisement to bear the name of the registered agent of the party or official agent of the candidate who had authorized the advertisement. It subsequently read:

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

of the candidate, as the case may be, and bear the registered agent's or official agent's name.

(2) Every person who prints, publishes, distributes or posts up, or who causes to be printed, published, distributed or posted up, any document referred to in subsection (1) is, unless it bears the name and authorization required under that subsection, guilty of an offence.

Table 6.1
Print advertising requirements, provincial comparisons

Jurisdiction	Requirements/conditions
British Columbia	No provisions in provincial legislation.
Alberta	Section 133 (1)(2) Name and address of the sponsor (does not apply to a printed advertisement, handbill, placard or poster bearing only one or more of the following: the colours and logo of a registered political party, name of a registered political party or the name of a candidate).
Saskatchewan	Section 196 Name and address of the person who printed or produced it by any other process; name and address of the person who authorized it to be produced, published or distributed.
Manitoba	No provisions in provincial legislation.
Ontario	Section 23 (5) Name of the registered constituency association, registered political party, person, corporation or trade union authorizing the political advertising.
Quebec	Section 421 Name and address of printer or manufacturer and the name and title of the official agent or deputy who caused it to be produced. Newspapers or other publications in which an advertisement is published must indicate the name and title of the official agent or deputy who caused it to be published.
Nova Scotia	Section 160 (1)(2) Name and address of the printer and the person on whose behalf it was printed or published.
New Brunswick	Section 73 (2)(4) Name and address of the printer and the name of the registered political party or the candidate on whose behalf it was ordered. If not ordered by a chief agent or an official agent or person authorized by a chief or official agent, advertisement must bear the name of the person who ordered its publication.
Prince Edward Island	Section 7 (1)(2) Name and address of the printer and the person on whose behalf it was printed or published. Newspaper or other publication must mention name and address of person who has it published.
Newfoundland	Section 116 (1) Name and address of its printer and publisher and any person printing, publishing, distributing or posting up, or causing to be printed, published, distributed or posted up.

Source: Alberta *Election Act* (1980), Saskatchewan *The Elections Act* (1978), Ontario *Election Finances Act, 1986*, Quebec *Election Act* (1989), Nova Scotia *Elections Act* (1967), New Brunswick *Political Process Financing Act* (1978), Prince Edward Island *Election Expenses Act* (1983), Newfoundland *Election Act* (1970).

Subsection 2 was not intended to ban print advertising during an election if the advertising was sponsored by anyone other than registered parties or candidates. Indeed, this subsection was to be read with section 70.1(1), which provided that only registered parties and candidates could incur election expenses. Advertisements sponsored by others but that did not promote or oppose a registered party or candidate were not supposed to

be affected. In addition, as indicated in Table 6.1, eight provinces have sponsor identification requirements for print advertising during an election. In 1984, however, section 72, along with section 70.1(1), was challenged in the Alberta Court of Queen's Bench by the National Citizens' Coalition. (*National Citizens' Coalition Inc.* 1984)

As a result of the decision in this case (known as the Medhurst decision), the current section 261 of the *Canada Elections Act* requiring identification of the agent who authorizes printed election advertisements on behalf of a registered party or candidate is no longer being applied. This situation could lead to abuse: freedom of expression does not mean that those who intervene in elections should be allowed to hide their identity. The three largest parties agreed to comply voluntarily with this section in the 1984 and 1988 elections, but the statutory gap must be corrected. This issue should also be seen in the context of our recommendations on independent expenditures. We propose that anyone who undertakes independent expenditures be subject to a spending limit of $1000; this could include printed advertisements. To enforce the $1000 spending limit for independent expenditures, it is essential that there be sponsor identification of any person who authorizes printed political advertisements during an election. In the case of registered parties, registered constituency associations and candidates, the financial or official agent would be identified as the sponsor; in other cases, the sponsor should be an individual or a legally constituted organization.

Recommendation 2.6.10

We recommend that every printed advertisement, handbill, placard or poster related to an election that is published, displayed or distributed during an election indicate the name of its sponsor, whether an agent of a registered political party or registered constituency association, the official agent of a candidate or any other person, and that it was authorized by the sponsor.

Broadcast Advertisements

Sponsors of partisan broadcast advertising during election and referendum campaigns have been required to identify themselves in the advertisements since 1936. The provision first appeared in the *Canadian Broadcasting Act* of 1936 in response to the "Mr. Sage" radio advertisements of the previous year.[2] However, section 19(2) of the 1968 *Broadcasting Act* was omitted in the 1991 revisions to that Act. The section read as follows:

> A licensee shall identify the sponsor and the political party, if any, on whose behalf a program, advertisement or announcement of a partisan character in relation to a referendum or an election of a member of the House of

Commons, the legislature of a province or the council of a municipal corporation is broadcast or received, as the case may be,

(a) both immediately preceding and immediately after the broadcast thereof where the program, advertisement or announcement is of more than two minutes duration; and

(b) either immediately preceding or immediately after the broadcast thereof where the program, advertisement or announcement is of two minutes or less duration.

Table 6.2
Broadcast advertising identification requirements: provincial comparisons

Jurisdiction	Requirements/conditions
British Columbia	No provisions in provincial legislation.*
Alberta	No provisions in provincial legislation.*
Saskatchewan	No provisions in provincial legislation.*
Manitoba	No provisions in provincial legislation.*
Ontario	Section 23 (5) Name of the registered constituency association, registered political party, person, corporation or trade union authorizing the political broadcast or telecast advertising.
Quebec	Section 421 Name and title of the official agent or deputy [official agent], as the case may be, at the beginning or at the end of any radio or television advertisement.
Nova Scotia	Section 160 (2) Name and address of the person who sponsors an advertisement at the beginning or at the end of any sponsored radio or television program.
New Brunswick	Section 73 (3)(4)(c) Name and address of the registered political party or the candidate on whose behalf it was ordered. If not ordered by a chief agent or an official agent or person authorized by a chief or official agent, an advertisement must indicate the name of the person who ordered the broadcast, at the beginning or at the end of any sponsored radio or television broadcast.
Prince Edward Island	Section 7 (2) Name and address of the sponsor of an advertisement at the beginning or at the end of any sponsored radio or television program.
Newfoundland	No provisions in provincial legislation.*

Source: Ontario *Election Finances Act, 1986*, Quebec *Election Act* (1989), Nova Scotia *Elections Act* (1967), New Brunswick *Political Process Financing Act* (1978), Prince Edward Island *Election Expenses Act* (1983).

*The former s. 19(2) of the *Broadcasting Act* (1968) applied in relation to provincial elections.

This sponsor identification provision was intended mainly as a "check on anonymous, scurrilous and untrue" advertisements and the provision helped election officials police the system to ensure compliance with spending limits and other aspects of the law. (Boyer 1983, 410) Five provinces have legislative requirements for sponsor identification of broadcast election advertising (see Table 6.2). In addition, the United States *Federal Election Campaign Act* requires that an advertisement on any broadcasting station clearly state the name of the candidate, authorized political committee or other person who "makes an expenditure for the purpose of financing

communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution." In discussion of the issue at our symposium on the media and elections, party representatives suggested that anonymity on Canadian broadcast facilities could lead to the production of "scurrilous" advertisements. (Canada, Royal Commission 1991, Vol. 4)

As the new *Broadcasting Act* no longer obliges sponsor identification, the next election campaign could include anonymous political advertisements on television and radio, thereby weakening accountability and financial disclosure.

Recommendation 2.6.11

We recommend that the *Canada Elections Act* require sponsor identification of all broadcast political advertising during an election.

REPORTING OF SPENDING AND CONTRIBUTIONS

Categories of Contributors for Reporting Purposes

In Volume 1, Chapter 7 we recommend broadening disclosure requirements for political contributions and providing fuller and more timely information about contributions. A remaining question relates to the categories for reporting political contributions.

The Act now prescribes the following reporting categories: individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital other than trade unions, and unincorporated organizations or associations other than trade unions. Based on the statutory power of the chief electoral officer to prescribe forms, that list was modified to require reporting according to the following five categories: individuals, business or commercial organizations, governments, trade unions and other organizations.

The Accounting Profession Working Group reviewed these reporting requirements and proposed certain adjustments. The Working Group recommended two separate categories for business contributions: (1) corporations; and (2) "unincorporated organizations or associations engaged in business or commercial activity". The current category, business or commercial organizations, is very broad, covering contributors ranging from large public corporations such as chartered banks to small owner-operated businesses. Separating contributions from corporations and unincorporated businesses would provide a more accurate picture of the funding basis of parties and candidates, as would our recommendation in Volume 1, Chapter 7 about contributions from numbered corporations.

The Working Group omitted governments from its list of categories. This category was included in the Act to provide for the reporting of in-kind

contributions from a government to a party or candidate – for example, the value of the salary of a ministerial assistant working full- or part-time on an election campaign. To the degree that such practices may continue, contributions from governments should continue to be reported and a separate category for that purpose should therefore remain.

Recommendation 2.6.12

We recommend that contributions to registered parties, registered constituency associations, candidates, party leadership contestants and nomination contestants be reported according to the following categories:

- **individuals;**
- **corporations;**
- **unincorporated organizations or associations engaged in business or commercial activity;**
- **trade unions;**
- **not-for-profit organizations or associations;**
- **governments; and**
- **other contributors.**

Reporting by Registered Constituency Associations

Our recommendations would require that registered constituency associations, along with registered parties, file an unaudited report of contributions for the first six months of the fiscal year and a full audited return on their financial activities for the entire fiscal year. All reports and returns would have to be filed within three months of the end of the reporting period and be prepared in accordance with generally accepted accounting principles.

The requirements for submitting an annual audited return should be adjusted during an election year. A constituency association's financial activities may well be relevant to a candidate's campaign. Any election expenses incurred by an association would have to be reported as such by the candidate's official agent; but an association might also spend money on items that are not election expenses but that nevertheless assist the candidate, for example, sponsoring events to help raise the candidate's profile. In addition, an association may spend money before a writ is issued to promote a person selected as its candidate.

In such cases, disclosure of the constituency association's financial activities should occur sooner than in a non-election year. This is reflected in the Ontario legislation, which requires post-election reports from constituency associations; in Quebec, if the deadline for the annual report of a constituency association falls during an election, it is deferred, which means the report also includes election-related financial activity. We propose that, for an election year, associations be required to submit an audited return

within three months of election day and that this return cover its financial activities from 1 January until election day; it should then submit a second return covering the period from the day after election day to 31 December. If election day falls between 1 November and the end of the year, the two returns should be combined; if an election is called in one calendar year (for example, in late November) and election day occurs in the next (for example, in mid-January), the return should cover the full year during which the election was called and the part of the election period that fell during the following year.

Recommendation 2.6.13

We recommend that the agent of a registered constituency association be required to submit audited returns of the association's financial activities for the following reporting periods:
(1) if no election is held within a year, for the year;
(2) if an election is held during a year, for the period from 1 January to election day and for the period from the day after election day until 31 December;
(3) if election day falls between 1 November and 31 December, the two returns referred to in (2) be combined; and
(4) if part of an election period falls in the year following the year when the writs for the election were issued, for the period from 1 January of the year the writs were issued to election day.

Under our proposals constituency associations will become registered entities, with responsibility for public accountability; the contents of their reports therefore deserve some comment. The Accounting Profession Working Group recommended that, in addition to reporting income, expenses and information on contributions, constituency associations should report their assets, liabilities and surplus as of the end of the reporting period. We agree with this recommendation. Reporting the three items in the last category is necessary to ensure full accountability. The cost of fixed assets acquired by a registered constituency association should be recorded; depreciation should be listed on fixed assets; and if an asset is sold or otherwise disposed of, the transaction should be recorded and the accounts adjusted accordingly. In certain cases, the constituency agent will need to attach notes to the statements regarding these items. Financial statements should be prepared according to generally accepted accounting principles. In addition, to allow flexibility, it should be possible for the Canada Elections Commission to require that the reports include other information. Finally, some registered constituency associations may have little financial activity in a reporting period; it would be reasonable, as recommended by the Accounting Profession Working Group, to allow an association to file a

short-form return; we propose this be permitted where both its income and expenses are less than $5000. The Canada Elections Commission should have the authority, however, if circumstances warrant, to require an association to submit a full return.

Recommendation 2.6.14

We recommend that

(a) reports on the financial activities of registered constituency associations include the following:
- **the assets, liabilities and surplus as of the end of the reporting period;**
- **the income received and expenses incurred during the reporting period;**
- **all required information respecting contributions received during the reporting period;**
- **notes on the statements as necessary; and**
- **any other information prescribed by the Canada Elections Commission; and**

(b) where the income and expenses of the registered constituency association are both less than $5000 during a reporting period, a short-form return, as prescribed by the Canada Elections Commission, may be filed, but the Commission have the power to request a full return.

Candidates' Post-Election Returns

The *Canada Elections Act* requires that, within four months of the election, the official agent of a candidate submit to the returning officer a "return respecting election expenses", along with the auditor's report on the return. This practice will continue under our proposals, although, as with all other financial reports governed by the new legislation we propose, the deadline for submitting the report would be three months.

The reporting requirements for candidates should be similar to those for constituency associations. For example, the return should set out the assets, liabilities and surplus of the candidate's campaign as of the date the return is prepared. This is not required at present but is necessary to provide the full picture. There should also be provision for a short form to be filed by candidates whose campaigns have had only a small amount of financial activity.

Rules are also required to govern the benefit candidates may receive by using the fixed assets of their constituency association. A candidate who can use the association's computer or facsimile machine during the campaign has a financial advantage over other candidates who must rent or buy such equipment. As the Accounting Profession Working Group concluded, part

of the value of any fixed assets of the constituency association used in a candidate's campaign should be charged to the candidate and shown as an election expense. For fixed assets other than real estate and fixtures, a charge of 10 per cent of the depreciated value would be reasonable. (The association's annual financial reports would reflect depreciation of fixed assets.) As for real estate and fixtures, the charge against the candidate's election expenses should be the fair market value of rental of premises equivalent to those owned by the constituency association.

Recommendation 2.6.15

We recommend that

(a) the post-election returns of candidates submitted by the official agent include the following:
- **the assets, liabilities and surplus at the date the return was prepared;**
- **all election expenses, including those not subject to limitation;**
- **all information required to be disclosed on contributions received from the date a writ is issued to the date the return is prepared;**
- **notes on these statements; and**
- **any other information prescribed by the Canada Elections Commission;**

(b) where a candidate's campaign organization uses the fixed assets of a registered constituency association, the following be considered election expenses of the candidate: for fixed assets except real estate and fixtures, 10 per cent of the depreciated value; for real estate and fixtures, the fair market value of premises equivalent to those owned by the constituency association; and

(c) where the income and expenses of the candidate are both less than $5000, a short-form return, as prescribed by the Canada Elections Commission, may be filed, but the Commission have the authority to request a full return.

The Role of Auditors

As part of the 1977 amendments, the following definition of 'auditor' was added to the *Canada Elections Act*:

> a person who is a member in good standing of an association or institute of professional accountants of a province and who is recognized by that association or institute as qualified to carry out the duties of a public accountant or an auditor in that province, and includes a firm, every partner of which is such a person.

In 1983, the definition was amended to read as follows:

> a person who is a member in good standing of any corporation, association or institute of professional accountants, and includes a firm, every partner of which is such a person.

We received comments about the present definition during our hearings and at the symposium on election and party financing at the constituency level. The present definition was criticized because, unlike the version adopted in 1977, it does not specify that those called on to audit financial reports required by the *Canada Elections Act* should be experienced in the practice of public accounting, including performing independent audits of financial statements. Because registered parties and registered constituency associations would be required to submit audited financial statements, we agree with the Accounting Profession Working Group that the definition should include such a requirement.

A further issue is whether the Act should specify that an auditor must be a member of an association or institute of accountants incorporated under provincial legislation. Concerns have been raised that, in the absence of such a requirement, auditors may be chosen from among accountants who have insufficient experience in carrying out the type of auditing required. At the federal level, the *Bank Act*, the *Trust Companies Act* and the *Loan Companies Act* all require that an auditor be a member in good standing of an institute or association of accountants incorporated by or under the authority of the legislature of a province.[3] We agree with the Accounting Profession Working Group that the *Canada Elections Act* should include a similar requirement and accept the Working Group's proposed definition of auditor, which was endorsed unanimously by the representatives of the three national professional accounting organizations on the Working Group.

Recommendation 2.6.16

We recommend that, for the purposes of the *Canada Elections Act*, 'auditor' be defined as "a professional member in good standing of an institute, society or association of accountants incorporated by or under an act of the legislature of a province, whose normal professional activities include the performance of independent audits of financial statements, and shall include a firm of accountants that has such persons as partners or shareholders."

In Volume 1, Chapter 7 we recommend that candidates' post-election returns, returns submitted by leadership contestants, as well as the returns of registered parties and registered constituency associations (but not the twice-yearly reports on contributions), be audited in accordance with

generally accepted auditing standards. Again, there may be examples of minimal financial activity; in these cases it would be reasonable to waive the audit requirement. To ensure effective enforcement, however, the law should allow the Canada Elections Commission to require that an audit be performed after it has reviewed an unaudited return.

Recommendation 2.6.17

We recommend that returns of the financial activities of registered parties, registered constituency associations and leadership contestants, and candidates' post-election returns be subject to audit unless the income and expenses during a reporting period are both less than $5000, but that the Canada Elections Commission, after reviewing any such report or return, may require that it be audited.

The position of auditor requires independence to ensure the credibility of auditors' reports. This independence might be compromised if the same person acted as both agent and auditor for a particular candidate, registered party, registered constituency association or leadership contestant, or if the same firm of accountants acted in both positions (even though the same person did not perform the two functions). The Act should therefore stipulate that the same person or firm cannot be appointed to both positions for any one of these registrants.

Recommendation 2.6.18

We recommend that no person or firm acting as the agent of a candidate, registered party, registered constituency association or leadership contestant be appointed as the auditor of the same candidate, registered party, registered constituency association or leadership contestant, as the case may be.

The *Canada Elections Act* provides for a payment from public funds to those who audit candidates' returns. The amount to be paid is the lesser of $750 and 3 per cent of the candidate's election expenses but cannot be less than $100. The principle behind these payments – which assist in enforcement of the Act – remains valid. However, the criteria for determining the amount of this payment require adjustment for inflation. In addition, we recommend that an audit of the financial returns of constituency associations be required if either the income or expenses of the association exceed $5000 during a reporting period. To assist in implementing our proposed framework for financial reporting, we propose that such payments also be made to auditors of registered parties, constituency associations and leadership contestants.

The Accounting Profession Working Group proposed that the payment to auditors of the returns of candidates and constituency associations be the lesser of $1000 and the amount the auditor charged. We agree with this straightforward approach.

Recommendation 2.6.19

We recommend that the auditor of the return of a candidate, registered constituency association, registered party or leadership contestant receive a payment from public funds equal to the lesser of $1000 and the amount of the auditor's fee.

PROVISIONS FOR BY-ELECTIONS AND POSTPONED ELECTIONS

At present, the election expenses of a candidate in a by-election must not exceed the amount allowed in that constituency during a general election. The registered party may spend an additional amount determined by multiplying the number of people on the preliminary voters lists in that constituency by the per-voter election expenses limit that applies in a general election. If more than one by-election is held on the same day, the party's permitted spending is based on the number of voters on the lists for all the constituencies.

In Quebec provincial elections, different rules apply: a candidate's election expenses limit in a by-election is double the limit for a general election, but any election spending by the candidate's party counts against the candidate's limit.

We evaluated these two approaches. The Quebec legislation has the advantage of providing clear accountability because all election expenses must be included in a single report. However, the federal approach gives parties greater flexibility if more than one by-election occurs on the same day. For example, a party might want to focus more of its resources on one of the by-election campaigns than on the others; it would be constrained in doing so by the Quebec law (although its total election expenses on behalf of the candidates cannot exceed the limit noted above). We therefore prefer to retain the current federal principles for limiting election expenses in by-elections.

As for reporting by-election spending, we see a need for improvement. At present, candidates must report on spending and contributions within four months, but any spending on the candidate's behalf by the party is reported in the party's annual return (which must now be submitted within six months of the end of a year). To improve accountability, each registered party with a candidate in a by-election should also be required to report on its election expenses on behalf of the candidate. When more than one by-election is held on the same day or the election periods for more than one by-election overlap, a reasonable course would be to have a party with candidates in more than one constituency submit a single return detailing

its spending on behalf of all its candidates. The deadline for these post-election returns should be the same as the deadline we recommend for general elections, namely three months.

Recommendation 2.6.20

We recommend that

(a) the limit for the election expenses of a candidate in a by-election be the same as for a general election;
(b) the limit for the election expenses of a registered party on behalf of a candidate in a by-election or on behalf of candidates in by-elections held on the same day be equal to the limit per voter that would apply in a general election times the number of voters on the final voters lists in the constituency or constituencies;
(c) within three months of a by-election, a registered party with a candidate in the by-election submit a return of its election expenses on the candidate's behalf;
(d) where more than one by-election is held on the same day, a registered party with candidates in more than one of the constituencies submit a single return on its election expenses on behalf of the candidates; and
(e) where the election periods for more than one by-election overlap, a registered party with candidates in more than one of the constituencies submit a single return of its election expenses on behalf of the candidates within three months of the last of the by-elections.

Our recommendations provide for a postponed election if a nominated candidate dies during the last 28 days of a campaign or if there is a tied result in any constituency; the new election would take place 21 days after the new nomination day. The election period for a postponed election would be combined with the portion of the original election period that had elapsed. In the case of an election postponed because of the death of a candidate, bearing in mind that the extension of the election period would be about half the length of the election period for general and by-elections, it would be reasonable to increase the spending limit for the continuing candidates by 50 per cent of the spending limit that would otherwise apply. Any new candidate would face some of the costs any candidate must bear to launch a campaign – for example, publishing new communication materials – and should therefore be allowed to spend the same amount on election expenses as a candidate in a regular election.

If an election is postponed as a result of a tie, all the candidates must run an extended campaign and therefore should have a spending limit equal to

150 per cent of the limit that would otherwise apply. Reimbursements for candidates in postponed elections, where applicable, would reflect the same principles. The other provisions in the Act relating to election finance should apply without change to candidates in a postponed election.

Recommendation 2.6.21

We recommend that

(a) if a postponed election is held because of the death of a candidate, the limit for the election expenses of any new candidate be equal to the limit that would otherwise apply and, if the candidate receives 1 per cent or more of the valid votes, he or she be reimbursed the same amount that would otherwise be reimbursed;

(b) if a postponed election is held because of the death of a candidate, the limit for the election expenses of the continuing candidates be equal to 150 per cent of the limit that would otherwise apply, and all such candidates who qualify be reimbursed 150 per cent of the amount that would otherwise be reimbursed; and

(c) if a postponed election is held because of a tied result, the limit for all candidates be equal to 150 per cent of the limit that would otherwise apply, and candidates in such an election who receive 1 per cent or more of the valid votes be reimbursed 150 per cent of the amount that would otherwise be reimbursed.

DEREGISTRATION OF CONSTITUENCY ASSOCIATIONS, REGISTERED PARTIES AND PARTY FOUNDATIONS

A further issue relates to the financial situation of registered entities that are de-registered. In Volume 1, Chapter 5, we recommend that a constituency association be de-registered in specific circumstances: if the national party to which it belongs is de-registered; if the registered party requests de-registration of an association; or following any readjustment that changes the boundaries of the constituency in such a manner that the constituency association disappears or is merged with one or more other constituency associations. We also recommend that the Canada Elections Commission have the power to de-register an association if it violates the terms of its constitution (submitted as a condition of its registration) or fails to comply with the requirements of the Act.

On deregistration, an association should be required to file a closing statement detailing its assets, liabilities and surplus. (A similar statement is one of the requirements for registration of an association.) The disposition of the funds of a de-registered constituency association was addressed

by the Accounting Profession Working Group. We agree with its proposal that these funds be held in trust by the registered party. However, when associations are de-registered as a result of their party being de-registered, the association funds should be held in trust by the Canada Elections Commission. If the association or a successor association of the same party becomes registered by the time the next general election is called (the party would have to be re-registered), the funds held in trust should be paid to the association; if a de-registered association is not re-registered before the next election, and the party remained registered or has re-registered, the funds should be paid to the party. If a party is no longer registered by the time the next general election is called, the funds of any association that was de-registered would revert to the Receiver General.

When associations are registered after a boundaries readjustment, the registered party should again act as trustee, and the relevant funds would be distributed to the new or reorganized constituency associations. Because there may be some ambiguities following a major boundaries readjustment, the registered party should have the power to determine the distribution of funds. In all these cases, the Canada Elections Commission should be responsible for determining the date when the deregistration of any constituency association is to take effect.

Recommendation 2.6.22

We recommend that

(a) when a constituency association is de-registered, all funds of the constituency association be paid over to the registered party and held in trust for the association;

(b) when a constituency association is de-registered as a result of the deregistration of a registered party, all funds of the association be paid over to the Canada Elections Commission and held in trust;

(c) funds held in trust under (a) or (b), together with any accumulated interest, be disposed of as follows:

(1) if the association or a successor association of the same registered party becomes registered by the time the writs for the next general election are issued, the funds be paid to the association;

(2) if the association or a successor association of the same registered party is not registered by the time the writs for the next general election are issued, and the party has remained registered or has re-registered, the funds be paid to the party;

(3) if the party that had endorsed the association is no longer registered by the time the writs for the next general election

are issued, the funds of any de-registered association revert to the Receiver General for Canada;

(d) when an association of an independent Member of Parliament is de-registered, all funds be paid over to the Canada Elections Commission and held in trust;

(e) with reference to (d), 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 returned to the candidate; if not, the funds be transferred to the Receiver General;

(f) when an association is de-registered following a boundaries readjustment, its assets be held in trust by the registered party and transferred to the appropriate successor constituency associations following their registration;

(g) the registered party have the power to determine, if necessary, how the funds of constituency associations de-registered under (f) are to be distributed; and

(h) the Canada Elections Commission determine the date when the deregistration of any constituency association is to take effect.

Because they benefit from public funding, arrangements are also required to cover the deregistration of political parties and party foundations. In the case of registered parties, we propose that, on deregistration, all the funds of a party be held in trust by the Canada Elections Commission. If the party does not become registered by the time the next general election is called, the funds should revert to the Receiver General. For party foundations, whose registration status would depend on the party with which they are associated remaining registered, a workable approach would be to adopt rules to the same effect as those we propose for constituency associations, with one exception. We recommend in Volume 1, Chapter 5 that registered party foundations be obliged to comply with the requirements for charitable organizations under the *Income Tax Act*. In cases when a foundation is de-registered, it would be reasonable to allow it to keep its funds, rather than have them paid over to the registered party or the Canada Elections Commission, provided it was in compliance with the *Income Tax Act* requirements.

Recommendation 2.6.23

We recommend that

(a) if a registered party is de-registered, all the funds of the party be paid to the Canada Elections Commission and held in trust;

(b) if the party becomes registered by the time the writs for the next general election are issued, the funds be returned to the party; and
(c) if the party does not become registered by the time the writs for the next general election are issued, the funds revert to the Receiver General for Canada.

Recommendation 2.6.24

We recommend that:

(a) when a party foundation is de-registered, all funds of the party foundation be paid over to the registered party and held in trust for the foundation;
(b) when a party foundation is de-registered as a result of the deregistration of the registered party with which it is associated, all funds of the foundation be paid over to the Canada Elections Commission and held in trust;
(c) funds held in trust under (a) or (b), together with any accumulated interest, be disposed of as follows:
(1) if the foundation becomes registered no later than six months after the next general election, the funds be paid to the foundation;
(2) if the foundation is not registered by six months after the next general election and the party has remained registered or has re-registered, the funds be paid to the party; and
(3) if the party is no longer registered by the time the writs for the next general election are issued, the funds of the foundation revert to the Receiver General for Canada; and
(d) when a party foundation is de-registered, it be allowed to keep all funds that would otherwise be paid over to the registered party or the Canada Elections Commission provided the foundation complies with the requirements for charitable organizations under the *Income Tax Act*.

NOTES

1. In two cases, it was alleged that the candidate had exceeded the permitted limit for election expenses in the 1984 general election. The judge in each case pointed to the difficulty of even the official agent being aware of the financial activities of all those involved in a campaign and to the need to prove the candidate was personally negligent. (*R. v. Roman* 1986; *Baillargeon* 1987)

2. During the 1935 general election, a series of anonymous dramatized broadcasts organized by the Conservative Party sparked a controversy. The first

two broadcasts, which did not identify the sponsor, featured a character known as Mr. Sage who, acting as a shrewd observer/village philosopher, made disparaging comments about Liberal leader Mackenzie King and converted lifelong Liberals to the Conservative Party. In response to criticism, the last four broadcasts had a weak form of sponsor identification: they merely gave the name R.L. Wright (an employee of the advertising agency) rather than that of the Conservative Party itself. (Peers 1969, 166)

3. The same requirement is found in the following proposed legislation, which was before Parliament in autumn 1991: Bill C-4 (*Trust and Loan Companies Act*), Bill C-19 (*Bank Act*) and Bill C-28 (*Insurance Companies Act*).

APPENDIX: DEFINITIONS OF ELECTION EXPENSES

Canada Elections Act

"Election expenses" means

(a) amounts paid,
(b) liabilities incurred,
(c) the commercial value of goods and services donated or provided, other than volunteer labour, and
(d) amounts that represent the differences between amounts paid and liabilities incurred for goods and services, other than volunteer labour, and the commercial value thereof where they are provided at less than their commercial value,

(all of which are in this definition referred to as "the cost") for the purpose of promoting or opposing, directly and during an election, a particular registered party, or the election of a particular candidate, and without limiting the generality of the foregoing, includes

(e) the cost of acquiring the right to the use of time on the facilities of any broadcasting undertaking, or of acquiring the right to the publication of an advertisement in any periodical publication,
(f) the cost of acquiring the services of any person, including remuneration and expenses paid to the person or on behalf of the person, as an official agent or registered agent or otherwise, except where the services are donated or provided at materially less than their commercial value,
(g) the cost of acquiring meeting space, of provision of light refreshment and of acquiring and distributing mailing objects, material or devices of a promotional nature, and
(h) the cost of goods or services provided by a government, crown corporation or any other public agency,

when such costs are incurred for a purpose set out in this definition.

Ontario Election Finances Act, 1986

"Campaign expense" means any expense incurred for goods or services in relation to an election by or on behalf of a political party, constituency association or candidate registered under this Act for use in whole or in part during the period commencing with the issue of a writ for an election and terminating on polling day, other than,

(a) expenses incurred by a candidate in seeking nomination in accordance with the *Election Act, 1984*,
(b) a candidate's deposit as required under the *Election Act, 1984*,
(c) auditor's and accounting fees,

(d) interest on loans authorized under section 36,
(e) expenses incurred in holding a fund-raising function referred to in section 24,
(f) expenses incurred for "victory parties" held and "thank you" advertising published after polling day,
(g) expenses incurred in relation to the administration of the political party or constituency association,
(h) transfers authorized under section 28,
(i) fees paid in respect of maintaining a credit card facility,
(j) expenses relating to a recount in respect of the election, and
(k) child care expenses of a candidate and other expenses not of partisan value that are set out in guidelines provided by the Commission under clause 4(1)(j),

but shall be deemed to include the value of any goods held in inventory or any fees or expenses for services for any candidate or political party, and any contribution of goods and services to the political party, constituency association or candidate registered under this Act, for use in whole or in part during the period commencing with the issue of the writ for an election and terminating on polling day.

Quebec *Election Act*

402. The cost of any goods or services used for the following purposes during an election period is an election expense:

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

403. In the case of goods or services used both during and before an election period, the part of the cost thereof which constitutes an election expense shall be established according to a method based on the frequency of use during the election period compared to the frequency of use before and during the election period.

404. The following are not election expenses:

(1) the cost of publishing articles, editorials, news, interviews, columns or letters to the editor in a newspaper, periodical or other publication, provided that they are published without payment, reward or promise of payment or reward, that the newspaper, periodical or other publication is not established for the purposes or in view of the election and that

the circulation and frequency of publication are as what obtains outside the election period;

(2) the cost at fair market value of producing, promoting and distributing a book that was planned to be put on sale at the prevailing market price regardless of the election order;

(3) the cost of broadcasting by a radio or television station of a program of public affairs, news or commentary, provided that the program is broadcast without payment, reward or promise of payment or reward;

(4) the necessary costs of holding a meeting in an electoral division for the selection of a candidate, including the cost of renting a hall, of convening the delegates and of the publicity made at the meeting; the costs cannot exceed $3000 nor include any other form of publicity;

(5) the reasonable costs incurred by a candidate for attending a meeting to select a candidate in an electoral division; the costs cannot include any publicity except that made by the candidate at the meeting;

(6) the reasonable expenses incurred by a candidate or any other person, out of his own money, for meals and lodging while traveling for election purposes, if the expenses are not reimbursed to him;

(7) the transportation costs of a candidate, if not subject to reimbursement;

(8) the transportation costs of any person other than a candidate, paid out of his own money, if the costs are not reimbursed to him;

(9) the reasonable expenses incurred for the publication of explanatory commentaries on this Act and the regulations thereunder, provided the commentaries are strictly objective and contain no publicity of such a nature as to favour or oppose a candidate or a party;

(10) the reasonable ordinary expenses incurred for the day-to-day operations of not more than two permanent offices of the party the addresses of which are entered in the register of the chief electoral officer;

(11) interest accrued from the beginning of the election period to the day occurring ninety days after polling day, on any loan lawfully granted to an official representative for election expenses, unless the official agent has paid the interest and declared it as an election expense in his return of election expenses.

Accounting Profession Working Group (Canada, Royal Commission 1991a, Part 2, 2)

"... Election expenses ... means any expense incurred by or on behalf of a registered party or registered electoral district association, or nominated candidate, for goods or services for use in whole or in part during the campaign period, and shall include,

(a) the value of inventory at the beginning of the campaign period after deducting the value of inventory at the end of the campaign period; and

(b) an amount equal to any contribution of goods or services for use during the campaign period...."

7

COMMUNICATION ISSUES

INTRODUCTION

ISSUES RELATED TO new communication technologies and special information needs must be addressed in any comprehensive electoral reform. First, the electoral system and regulatory framework must be adapted to technological innovations in communication. These changes have created new challenges and opportunities not only for parties and candidates, but also for election officials and the news media. They cannot be ignored. Second, much more careful attention must be paid to the needs of voters who have difficulty making use of conventional media and of voters in the North, where communication and transportation pose a particular challenge.

EXPANDING THE CHANNELS

Introduction

We are in a period of rapid change in communication technologies and practices. These changes seem likely to revolutionize campaign communication in the next few decades. (Abramson et al. 1988, chapter 1; Axworthy 1991 RC) New technologies – such as direct mail and videotaped messages – are opening new channels for parties and candidates and bringing changes to the media. As with the introduction of radio and television, each new technology can change the focus of campaigning by altering prevailing concepts of time and space or of public and private communication. The choices made in the next few years, by the parties, the media and the regulators, will influence campaign communication profoundly.

In considering new technologies, it is important to leave as much room as possible for innovation while trying to discourage less desirable developments. New channels to improve the information flow from parties and candidates to voters should be encouraged. A broader and more diversified flow of information might bring younger voters – who are less likely to vote than their elders – into the campaign discourse, along with others who lack confidence in or feel alienated from the electoral process.

Specialty Services

Campaign practices and regulations must be adapted to deal with the specialty cable services that have emerged in the past decade. These services are now available to more than 5 million English-speaking subscribers (TSN, MuchMusic, CBC Newsworld, and the Youth, Vision, and Weather networks)

and 1.5 million French-speaking subscribers (Réseau des Sports, Musique Plus, Canal Famille, Météomédia). As these outlets fall under the definition of programming undertakings in the 1991 *Broadcasting Act*, there is no convincing reason not to treat them like any other broadcaster.

Recommendation 2.7.1

We recommend that

(a) specialty cable services be subject to the same rules regarding paid political party broadcast time that apply to other broadcasters (subject to their conditions of licence); and
(b) specialty cable services devoted primarily to news and public affairs programming, such as CBC Newsworld, that are available to a majority of cable subscribers whose primary language is the same as the language in which the service provides programming be required to provide free time on the same basis as licensed networks.

Although some 25 per cent of voters do not yet have access to these channels, they do reach segments of the electorate not usually reached through other channels. They therefore provide the prospect of more involvement in the process for some voters and a greater diversification of campaign communication channels for the parties.

Given an appropriate economic and regulatory environment, we can expect to see several new forms of broadcasting services before the end of the century. These will undoubtedly include new cable and satellite services. Although it has proved difficult to predict accurately the rate of diffusion and implications of new technologies, some trends are generally accepted: audience fragmentation and narrowcasting; possible loss of the economic base of major news organizations; more live coverage (i.e., on-location footage); and decline in public debate as electoral communication becomes more individualized. (SECOR 1990; Axworthy 1991 RC; Abramson et al. 1988) It is important that the regulatory framework adapt to these developments.

Indeed, several new broadcasting services are already emerging, such as pay-per-view and other interactive services and various satellite delivery systems. It is important that the Canadian Radio-television and Telecommunications Commission (CRTC) consider the implications of any new service for political broadcasting. The free-time and paid-time requirements and the limitations on advertising rates that apply to broadcasters should, for example, apply to all programming undertakings, regardless of how their signals are delivered. Almost all specialty cable services are available to most Canadian households – or at least to a majority of households whose primary language is the same as that of the programs typically transmitted –

and thus more closely approximate networks than individual broadcasting stations. It is clear that such television services should be subject to the same election broadcasting rules as network operators. Services that permit new forms of advertising should, where appropriate, be available to parties and candidates (for example, services that permit advertisements to be targeted to a single constituency or neighbourhood). It is impossible to predict the exact pattern of new technologies, but the CRTC and the Canada Elections Commission should be alert to the opportunities and difficulties they may bring. They should work together, including holding joint public hearings, to ensure that the regulatory framework meets the needs of the electoral process.

Parliamentary Channels

Among the new specialty cable services are the Parliamentary Channels. Since the late 1970s, the House of Commons broadcasting service has been transmitting to cable companies French and English coverage of House sittings and committee meetings for distribution on the Parliamentary Channels. The channels normally shut down during election campaigns, but Elections Canada used them experimentally in 1988 to communicate information about enumeration and voting; the experiment was judged a success. (Desbarats 1991 RC) The Parliamentary Channels provide an opportunity for an innovative campaign information service, incorporating information on the electoral process and perhaps selected campaign programming. Use of the channels by the Canada Elections Commission to provide information on registration and voting is an important service. The text-only broadcasts reached many voters in 1988; that approach should be continued and expanded, using a wider range of programming styles with broader audience appeal, including full-scale documentaries.

The Parliamentary Channels offer considerable scope for enhancing campaign information as well. (Desbarats 1991 RC) For example, round-table discussions involving party spokespeople on specific issues could be taped for broadcast. The round-table format, with a neutral moderator, would not compromise the non-partisan role of the Parliamentary Channels if all registered parties were invited to participate. It would meet the demonstrated preference of voters for information programming that permits comparison among parties and would also respond to voters' complaints that important issues are being overlooked in national campaigns. When voters are asked to identify issues important to them, a long list of specific issues invariably emerges, in addition to the general issues that are the focus of campaign advertising and news coverage. (Canadian National Election Study 1984, 1988) Individual round-table broadcasts might not draw large audiences, but if the issues were chosen carefully, they would meet the information needs of specific segments of the electorate.

Programming and formats might best be developed by a working group of party representatives and experienced broadcast journalists, perhaps

under the sponsorship of a non-partisan body like the Canadian Journalism Foundation. We note that the League of Women Voters sponsors such discussions in the United States. (Green 1991)

In addition, the Parliamentary Channels should provide a second window for repeat broadcasts of campaign programming, such as leaders debates and free-time party broadcasts. To maintain the channels' impartiality, however, programming with any partisan content would have to adhere scrupulously to the canons of balanced and equitable treatment of all registered parties.

Although the Parliamentary Channels are carried by most cable systems (557 as of September 1990), carriage is optional and only about one-third present one of the Parliamentary Channels on the basic band, where it can be received without a converter. In addition, on some cable systems, the Parliamentary Channels share time with other specialty cable services, at the option of the cable operator. (CBC 1990b) In order to enhance the usefulness of these services as a source of election information, the Canada Elections Commission and the CRTC should consider mandatory carriage requirements during election periods to ensure that the information is available to as many voters as possible.

Recommendation 2.7.2

We recommend that

(a) the Parliamentary Channels be made available to the Canada Elections Commission for informational programming during election campaigns; and
(b) the Parliamentary Channels be given a mandate to repeat free-time political party broadcasts and leaders debates and be encouraged to broadcast other election debates.

In 1988, Elections Canada transmitted election information only in English on the English Parliamentary Channel and only in French on the French Channel. This led to complaints from members of official language minorities who were unable to receive information in their area in their own language. In future, the Canada Elections Commission should ensure that some of its election announcements on the two Parliamentary Channels are transmitted in the other official language, with the proportion depending on the region served.

Recommendation 2.7.3

We recommend that some of the voting information provided by the Canada Elections Commission on the English and French Parliamentary Channels be transmitted in the other official language.

CONSTITUENCY-LEVEL COMMUNICATION

The issue of the appropriate balance between national and local campaign information has been debated increasingly since the advent of election broadcasting, especially in parliamentary systems. It has often been suggested that there is an inherent tension between the nationalizing influence of the broadcast media, especially television, and the localized nature of representation in parliamentary systems. Despite parliamentary reforms providing increased influence for individual MPs and growing public sentiment in favour of a more visible representative role for them, there has been little research on political discourse during elections at the constituency level.

Interveners' concerns regarding campaign communication at the local level focused on the rules of access to local media. What rules should cable community channels and local broadcasters follow in providing free time to candidates? Should broadcasters be required to make time available to local candidates independent of party allocations? There were accusations of bias against minor parties on the part of the news media and, more generally, concerns about access to coverage. Some interveners noted with good reason that the poor fit between constituency boundaries and broadcasters' signal areas, especially in urban centres, made broadcast advertising too costly and inefficient for most candidates. As television stations, especially, expand their coverage areas, they incorporate too many constituencies for effective advertising by local candidates. News coverage is similarly affected.

In response to these concerns, we commissioned case studies of campaign communication in 10 constituencies and a specific study of media access for minor parties. (Fletcher and Bell 1991 RC; Hackett 1991 RC) Our researchers found that many of the local candidates, campaign managers and local journalists interviewed see the federal election as primarily a national event. "There are no local issues in federal elections," one campaign manager told our researchers. (Bell et al. 1991 RC) However, we noted considerable variation among constituencies regarding the importance of local candidates and some sentiment that local campaigns should at least communicate to voters the local and regional implications of national issues. (Bell et al. 1991 RC) In addition, the smaller parties were able to gain little coverage in the national media and, partly in consequence, the bulk of their campaign effort was focused at the constituency level, where in fact they received more equitable coverage. (Hackett 1991 RC)

For local campaigns, problems of cost and the poor fit between constituency boundaries and the areas covered by broadcast signals precluded extensive use of television, but radio was important in some constituencies, especially in rural areas. These campaigns also spent a great deal on the local print media. Although little work has been done on viewership for cable community channels and local campaigners have doubts about their effectiveness, use of these channels has been increasing. (Desbarats 1991 RC) An examination of campaign coverage and campaign materials revealed that the relevance of national issues to local interests is seldom explained. Yet

communication theorists argue that the most effective communication makes more abstract concerns relevant to individual interests. (McQuail 1987, 274–78) Both campaigners and the media cited available resources – time and money – as a major constraint on their ability to perform their campaign functions effectively. (Bell et al. 1991 RC)

The significance of local campaigns and local candidates remains a contested issue. In election surveys, between one-fifth and one-fourth of voters say that the local candidate is the most important factor in their vote. (Clarke et al. 1991, 115) However, practitioners and voting researchers ascribe much lower importance to local candidates in a federal election. (Clarke et al. 1991, 113) Yet there are indications that, in some constituencies, the personal vote of the candidate can sway the outcome. (Ferejohn and Gaines 1991 RC)

The fact that many voters cite the local candidate as an important factor in their voting decision indicates a concern for the MP as constituency representative. Other data suggest that many voters seem also to feel a sense of frustration that they are not being effectively "represented," because of "excessive" party discipline. (Price and Mancuso 1991, 217) Richard Price and Maureen Mancuso conclude from their examination of survey data that "the Canadian people clearly believe a member's first responsibility is to his or her constituents". (1991, 210) These conclusions are supported by our attitudinal survey (Blais and Gidengil 1991 RC), which found that most voters believe that the primary function of MPs is to represent constituency interests. Yet the pattern of communication in the major media during election campaigns emphasizes party leaders and ignores local candidates and issues. (Frizzell and Westell 1989, 75–90)

While it is not our role to try to alter the focus of election campaigns, we have looked carefully at the opportunities available to local candidates to state their cases more effectively to the voters. We also considered options that might assist them in communicating with voters.

As Table 7.1 shows, constituency association executives were fairly satisfied with the news coverage for local campaigns. In their assessment of the effectiveness of campaign techniques, these local activists ranked the traditional means of persuading voters – canvassing, newspaper advertising and coverage, and literature drops – highest, but also considered direct mail and television important in 1988 (see Table 7.2). All-candidates meetings and radio were ranked lower, and cable television lower still. Nevertheless, radio remains important in certain areas and the cable community channel is becoming increasingly important and can be used innovatively.

The problem of fit between broadcast signal areas and constituency boundaries noted elsewhere does not apply to the same degree to cable community channels. The licence areas of these channels correspond much more closely to constituency boundaries. Their increasing importance in delivering information at the community and constituency level is primarily a result of the widening boundaries of other media. Cable systems can fill the gap. Indeed, new technologies allow many cable systems to send signals to particular communities.

Table 7.1
Satisfaction with media coverage of local campaign
(percentages)

How satisfied were you with the media coverage of the local campaign in 1988?	
Very satisfied	8
Satisfied	32
Somewhat satisfied	29
Not very satisfied	31

Source: Carty 1991a RC.

Table 7.2
Ranking of importance of local campaign media to campaign
(percentages)

How would you rate the following methods of communication in terms of their importance to your local constituency association?		
	Very important	Somewhat important
Canvassing	73	20
Literature drops	45	41
Direct mail	34	41
All-candidates meetings	28	39
Newspapers	57	34
Television	34	26
Cable television	9	29
Radio	25	41

Source: Carty 1991a RC.

The community channels were active in providing coverage and access to local candidates in 1988. (Desbarats 1991 RC) Although local campaign organizers are still uncertain about their effectiveness, community channels could become, with proper promotion by the candidates themselves, a significant factor in local campaign communication. As noted by the Canadian Cable Television Association (CCTA), the fact that community channels are localized makes them "probably the most important single source of information about local candidates, and their electoral platforms". (Brief 1990, 4) The potential of the community channels is made clear in Table 7.3.

There are "approximately 275 community programming studios across Canada ..., more than four times as many as conventional broadcast stations". (CCTA, Brief 1990, 1) The community channels present a variety of public affairs programs, including phone-in shows, all-candidates meetings, debates among candidates for nomination, round tables on issues (with interest group representatives as well as candidates), reports from incumbents outside election periods, interview shows on community issues, and

others. We conclude that cable community channels should devote a minimum of one hour of prime time to local campaigns, plus some rebroadcast time. Many already meet this norm. (Desbarats 1991 RC)

Table 7.3
Why cable is a viable option

- 75 per cent of Canadian households have cable
- 87 per cent of cable licensees offered free time on the community channel to all candidates
- 46 per cent of cable systems initiated and produced an all-candidates debate in 1988
- 50 per cent covered locally such a debate
- many produced or covered two or more debates
- many repeated the debates (which averaged 95 minutes in length) two or three times (average repeat factor 2.66)

Source: Adapted from Desbarats 1991 RC, based on a survey by the Canadian Cable Television Association 1990; Ellis 1991, 46.

Recommendation 2.7.4

We recommend that

(a) cable companies that operate community channels be required to provide a minimum of 60 minutes of free time per day during the election advertising period in prime time for coverage of or broadcasts by candidates, to be allocated among them equitably; and
(b) coverage of all-candidates debates – whether organized by the cable service or others – be counted toward fulfilling the time requirement.

To broaden the potential audience of such electoral programming, these free-time political broadcasts should be aired more than once. As community channels do not rely on either ratings or commercial revenue, such repeat programming does not pose a burden to the cable television owners operating the community channels. Indeed, as the CCTA observed, the "program schedules [of the community channels] allow for programs to be repeated [thereby increasing] the opportunities for interested citizens to see election coverage at their convenience". (Brief 1990, 2)

Recommendation 2.7.5

We recommend that community channels be required to repeat these broadcasts at least once.

In considering the potential of community channels, we examined the fit between constituency boundaries and cable licence areas in one of the most difficult jurisdictions, Greater Toronto. As expected, we found that the fit was much better than for conventional broadcasters, though still far from perfect. The largest number of constituencies falling within a community channel licence area was 13; most community channels covered fewer constituencies, ranging from two to six.

In the longer term, community channels may well take advantage of the technical capacity to address signals to households in a particular constituency. Vidéotron, Quebec's largest cable operator, has been a pioneer in the development of this technology, called interactive capacity, but many cable systems do not have the necessary technology. While older cable technology can transmit the same signal to all, it is the newer technology, the hub system, that can transmit specific signals to separate neighbourhoods. Although this hub system can direct cable signals to constituents within specified regions, this new technology is still not widespread in Canada (owing, in part, to the current regulatory framework), but may become more common as pay-per-view or other interactive services are licensed. In the meantime, community channels can share coverage among the constituencies covered, allocating the required time equally among constituencies fully covered by the cable system and pro rata for those partially covered.

Recommendation 2.7.6

We recommend that

(a) cable companies whose community channels serve more than one constituency must allocate time in 30-minute segments equally among the constituencies in which they serve a majority of voters; and
(b) where more than one cable company serves a constituency, each must provide time in proportion to the percentage of voters served.

In 1988, most community channels divided time equally among candidates. Some 17 per cent, however, interpreted the CRTC requirement of equitable treatment to require application of the allocation formula in the *Canada Elections Act*. (Desbarats 1991 RC) It is our view that the allocation formula, based on the national standing and activities of the parties, is difficult to justify at the local level. We have suggested in our proposal for free time an allocation formula that gives a more meaningful and equitable voice to all registered parties. It is clear that any rule other than equality with respect to all-candidates debates and free time must consider local circumstances and the relative strength of the parties in the constituency.

In establishing these requirements, we do not intend to alter the public service nature of the community channel, but rather to enhance it. Therefore, we reject the request of a number of interveners that the community channels be permitted – or required – to sell paid time to candidates.

Recommendation 2.7.7

We recommend that no paid time be permitted on cable community channels as long as the current regulatory framework applies.

Notwithstanding the importance of broadcasting and cable in constituency communication, the print media remain important communication vehicles for local candidates and political parties in their attempts to persuade the electorate. The present *Canada Elections Act* prohibits the print media from charging a candidate or party a rate that exceeds the lowest rate charged others for an equal amount of equivalent advertising space in the same or other issue thereof made public during the electoral advertising period (section 321).[1] This provision should be retained in the new *Canada Elections Act* and will, along with the rate limit for broadcast advertising recommended in Volume 1, be fair to all candidates and parties, and help to control costs. The party paid-time rate that applies to broadcasters is justified by the obligation of broadcasters to serve the public interest in return for access to the public air waves and because the available time is, by necessity, limited. This rationale does not apply to the print media. However, some safeguards on advertising rates in the print media are required to ensure fairness among candidates and registered parties. Candidates, who rely more extensively than parties on print advertising, are not specifically eligible for discounted broadcast advertising (although a registered party might choose to allocate some of its broadcast time to a candidate or candidates). It is therefore essential that advertising rates be predictable and equitable for the competitors during campaigns. The rate limits for campaign advertising for broadcasting and for print ensure fairness both for parties and candidates and for the media.

Recommendation 2.7.8

We recommend that as now provided by the *Canada Elections Act*, during the period allowed for election advertising, the print media be prohibited from charging a candidate or political party a rate that exceeds the lowest rate charged for an equal amount of equivalent advertising space in the same or other issue thereof published or distributed during that period.

In addition to these recommendations, we have considered our research findings that journalists who covered local campaigns felt inadequately

prepared for the task. Local community newspapers and some smaller dailies have a great deal of staff turnover. Reporters therefore felt a need for further background information on the electoral process and past elections in the constituencies they were covering.

Recommendation 2.7.9

We recommend that

(a) a private organization such as the Canadian Daily Newspaper Association or the Canadian Journalism Foundation establish election workshops for smaller media; and
(b) the Canada Elections Commission expand existing programs for the media to prepare and distribute information packages on the electoral process, with specific information for each constituency.

CBC NORTHERN SERVICE

Unique Characteristics of the North

The immense geographical breadth of Canada's North heightens the role of the media in electoral communication. Space in the Northwest Territories, Yukon and northern Quebec totals more than one-third of Canada's landmass and covers four time zones. Because of high transportation costs and the impossibility of travel in poor weather, northern residents depend on the media to provide the necessary linkages among community residents and between communities situated far apart. During federal election campaigns, candidates in northern constituencies are forced to rely on the media to inform voters because of the prohibitive cost of travel and the amount of time required to visit just one small community in a constituency. (Roth 1991 RC; Alia 1991 RC) Communication difficulties in the North reduce the amount of information that reaches voters. It was in this context that we travelled to Yellowknife, Whitehorse, Iqaluit and Kuujjuaq to hear the views of the public on communication and other difficulties in the region. To encourage greater participation, we organized in Iqaluit a televised phone-in show in Inuktitut, hosted by the Inuit Broadcasting Corporation, and answered calls from many small northern communities about our electoral system.

About 100 000 people live in Canada's North, nestled in communities that range from a total population of 83 (Burwash Landing) to larger urban centres such as Yellowknife, whose population exceeds 13 500. Although 47 per cent of Canada's total population is under 30 years old, the population of the North is still younger, with 60 per cent not yet 30 years old. Many live in small communities and a high proportion are residents who travel much of the year, be they government or industry employees, hunters or trappers. (Roth 1991 RC; Alia 1991 RC) Without the media, northern voters

could easily miss an opportunity for involvement in the electoral process altogether.

Electoral communication in the North must take into account the region's social and linguistic make-up. The North has a unique social composition. While a majority of the 53 801 Northwest Territories residents are of Aboriginal origin, a majority of the 29 708 Yukon residents are not. The eastern part of the Northwest Territories has a substantial Inuit majority while the western part has a large Aboriginal minority consisting of Dene, Métis and Inuvialuktun (western Inuit). About 90 per cent of northern Quebec's population is Aboriginal. Linguistically, the region is complex, making electoral communication a challenge. Although Yukon residents speak English mostly, those living in the Yukon town of Old Crow speak Gwich'in. Three languages are spoken in northern Quebec: Inuktitut, Cree and Attikamek. The Northwest Territories are the most linguistically diverse, with nine official languages: Inuktitut, North and South Slavey, Chepewyan, Dogrib, Gwich'in, Inuvialuktun, English and French. (Canada, Statistics Canada 1987a, 1987b)

The region is usually considered to encompass five existing constituencies. The entire Yukon itself is a constituency (Yukon) while the Northwest Territories divides into the two constituencies of Western Arctic and Nunatsiaq. Nunatsiaq is Canada's largest constituency, encompassing 41 small communities and spanning a landmass of 2.6 million square kilometres. (Roth 1991 RC) Northern Quebec is divided into the two constituencies of Abitibi and Manicouagan. The unique nature and size of these constituencies prompted numerous submissions from the public and candidates on difficulties encountered in trying to run an election campaign.

In such constituencies, candidates need the media to "get the message" across to widely scattered and sometimes transient voters speaking several languages. In addition to the vital role of the CBC Northern Service, Canada's public broadcaster in the North, CANCOM serves 35 northern communities. Aboriginal communication organizations also play a potentially important role in electoral communication: Inuit Broadcasting Corporation, Northern Native Broadcasting (Yukon), Native Communications Society of the Western Northwest Territories, Inuvialuktun Native Communications Society, Taqramiut Nipingat Inc. (Quebec), James Bay Cree Native Communications Society (Mistinnini) and Société de Communications Attikamek Montagnais (SOCAM) (Huron Village). Subject to CRTC approval, in 1992 Television Northern Canada (TVNC) – a consortium of six Aboriginal communication societies, Yukon College and the Government of the Northwest Territories – will become a distribution network. Private broadcast undertakings exist in the western Arctic and the Yukon, along with Aboriginal community radio stations. Print media are also available. All these media complement the pivotal role played by the CBC Northern Service. The latter remains central, however, not only as the national public service, but also because it is the only medium available for some northern locations such

as the Eastern Arctic. Further, the CBC Northern Service is the only existing institution capable of fully reflecting the linguistic diversity of northern regions. It is therefore in this context that the CBC Northern Service remains central to our recommendations.

Public Concerns

During our public hearings, we heard much about electoral communication difficulties in the area. Views ranged from the critical to the complimentary. For example, interveners discussed the inflexibility of the CBC Northern Service. The seven minutes provided to one particular candidate to communicate with the voters were not enough to deliver the campaign message adequately in four dialects. On the other hand, the Inuit Broadcasting Corporation and CBC North were praised for being a real benefit to the people in Baffin Island by broadcasting in Inuktitut, a language understood by residents there.

We heard calls for greater access by the candidates to the voters. More free broadcast time would allow political parties and candidates (who are currently not entitled to free time) to reach more voters more effectively. This is perceived as especially important in the North where other means of contact – for example, door-to-door canvassing – are often simply not feasible. As interveners noted, if the media were more directly accessible, the candidates would not need to spend excessive amounts of money to contact voters in remote areas. Indeed, given the distances, the uncertain weather and the costs involved, candidates typically cannot afford to visit the majority of communities in their constituency. As a result, with only limited news and current affairs coverage available, many voters have little opportunity to see and judge the candidates for themselves. Interveners also felt that journalists and management had too much control over the format of programming provided to candidates.

Other media-related issues concern the difficulty the media themselves have in covering the activities of candidates. Sometimes the media did not know in which of the many small communities to find the travelling candidate. Further, even if the media knew where to locate the candidate, it was often too expensive and time-consuming for journalists to travel there to see the candidate in action. Organizations such as Nunatsiaq News and the Inuit Broadcasting Corporation therefore called for more all-candidates meetings. Beyond stimulating debate about the issues, all-candidates meetings (in Iqaluit, Rankin and elsewhere) and live Panarctic phone-in shows featuring the candidates would address the budgetary and time constraints of both the media and the candidates.

In summation, the public hearings in the North and subsequent media-related research done on our behalf (Alia 1991 RC; Roth 1991 RC) point to five main complaints: (1) lack of access by candidates to free and paid broadcast time; (2) lack of appropriate coverage of election issues in Aboriginal languages; (3) lack of access by independent candidates to broadcast time and coverage (in the North's "non-partisan" political culture,

Roth 1991 RC); (4) the limited opportunities provided by the CBC Northern Service for candidates to communicate their positions to voters through appropriate news and public affairs programming; and (5) application to the North of political broadcasting rules, which are designed largely for southern Canadian broadcasting practices and access arrangements.

CBC Northern Service

The CBC plays a very important role in helping Canadians communicate with one another. In its submission to us, the network commented that "as Canada's national public broadcaster, the CBC arguably bears a special responsibility to respond, with sensitivity and alacrity, to the expectations of its 'shareholders', the people of Canada". (Brief 1990, 1) In the North, this special responsibility is particularly significant. The CBC Northern Service consists of the CBC Northern Service Television and Northern Service Radio. It primarily serves an area covering the Yukon, the Northwest Territories and the James Bay and Arctic (Nunavik) regions of Quebec. As the CBC itself notes, the Northern Service, headquartered in Ottawa, is the primary source of news, information and broadcasting services for "most northerners". (Brief 1990) Northern Service radio stations are in Whitehorse, Yellowknife, Inuvik, Rankin Inlet and Iqaluit and have assistance from the Kuujjuaq, Montreal and Ottawa bureaus. About 100 of the 200 weekly hours of Northern Service radio programming are produced in seven Aboriginal languages. "In the Eastern Arctic, the CBC is the only radio outlet and therefore has the ... responsibility of assuring accurate and focused coverage across a very large territory." (Roth 1991 RC) With its Yellowknife production centre and field production bureaus in Whitehorse and Iqaluit, CBC North produces about 50 hours of original television programming each year in English and various Aboriginal languages. The three weekly Aboriginal language television programs total 62 minutes. Much of what is broadcast over CBC North is repeat programming. Each hour of original programming is repeated at least once. (Roth 1991 RC)

CBC Northern Service 1988 Federal Election Coverage

In addition to the national free-time allocations given to political parties, it is CBC broadcasting policy to consider offering limited local free time to candidates during an election campaign if the candidates are part of a community not adequately served by other media. (CBC 1985) During the 1988 election, this option was considered by the CBC but rejected for four reasons: (1) with only three constituencies in the full Northern Service coverage area, local candidates and issues tend to consume a greater proportion of news and current affairs programming than in more southern constituencies; (2) the Service organizes all-candidates special election broadcasts, involving interviews and debates, and a format allowing the candidates to make the rough equivalent of free-time "statements" on identified issues in the Aboriginal language of their choice; (3) the candidates can take advantage

of the "community access" capability of their local radio rebroadcast transmitters to make "statements" or participate in phone-in programs; and (4) paid time on radio and television at modest rates is available to political parties. (CBC 1990a)

We remain unpersuaded by these reasons. First, although the candidates may receive a greater share of news coverage during elections in the North, this access is mediated and does not respond to the need of the candidates and voters to give and hear more direct – that is, completely unmediated – communication. Second, for the all-candidates election specials, CBC television coverage consisted of a single half-hour election debate covering the three constituency races. The debate was not live but was taped in three different towns at different times. Key segments showing the response of each candidate to the same question in a highly controlled format were edited together for the program (Roth 1991 RC). Third, use of local rebroadcast transmitters is not an equivalent substitute for scheduled free time on CBC. Finally, as a result of poor internal party communication, most candidates did not know of the availability of paid time in the last election and, even if they did, the cost and logistical problems did not make it a practical option.

The CBC has, as a public broadcaster, special obligations in the North, and should provide additional services to candidates.

Recommendation 2.7.10

We recommend that with respect to the constituencies in its primary area of coverage, the CBC Northern Service:
(1) provide 60 minutes of free time for each candidate in each of these constituencies, with such allocations being in addition to those that the parties are entitled to on a national basis;
(2) make available up to 20 minutes of paid time to each candidate to be broadcast on a regional basis, with such paid-time allocations being in addition to those that the parties are entitled to on a national basis;
(3) inform the northern candidates of their right to free and paid time; and
(4) designate a representative to negotiate the times with the returning officer, the registered parties and the candidates for each of these constituencies.

In a difficult communication environment like the North, it is essential that the broadcasts reach voters as efficiently as possible. Therefore, the CBC Northern Service should cluster the free-time segments and announce when they will be broadcast.

We recognize and appreciate the efforts of the CBC Northern Service to date in providing election coverage that reflects the unique characteristics of the North. However, the CBC can do more.

Recommendation 2.7.11

We recommend that the CBC Northern Service

(a) provide more election campaign coverage in all of the languages used in the North, including English and French; and
(b) organize one televised all-candidates debate in each of the constituencies in the Service's primary area of coverage.

ELECTION INFORMATION PROGRAMS

Since 1972, Elections Canada has recognized an implicit obligation in its mandate to inform voters of their rights and to promote public confidence in the electoral process. This recognition led to a gradual expansion of its informational activities. The recognition of a constitutional right to vote and to be a candidate gave added impetus to this development. It was the view of Elections Canada that inherent in these rights is a right to receive full and timely information about them.

At present, Elections Canada does not have an explicit legal obligation to carry out these communication activities. Nevertheless, a number of interveners at our public hearings commented on the importance of non-partisan information in meeting the needs of voters. Many suggested new activities for Elections Canada that would help get its message to specific groups of voters, especially first-time voters and those facing communication difficulties. We commissioned two studies to look into the communications role of Elections Canada and have made recommendations regarding "hard-to-reach" voters. (Semple 1991; Green 1991 RC) The study that assessed the 1988 information program gave it high marks overall but noted weaknesses in reaching specific groups, such as the homeless, voters in the North and smaller ethno-cultural groups. (Semple 1991) The study recommends special programs for Aboriginal voters, persons with limited skills in the two official languages and the homeless. The Canada Elections Commission should consider increased use of radio in remote and rural areas, increased use of the ethno-cultural media, especially radio, in urban areas, and more direct communication through community groups. Special measures will be required to reach the homeless.

These measures would encourage participation and increase public confidence in the electoral process but the Canada Elections Commission also needs an explicit mandate for informational activities. The initiatives taken by Elections Canada in preparing information on the electoral process for journalists and others have been useful and should be expanded. Many journalists working for smaller news organizations expressed the need for additional information on the constituencies they were assigned to cover. (Bell et al. 1991 RC)

The new responsibilities of the Canada Elections Commission will require expanded information programs. The traditional responsibility of

the chief electoral officer to ensure compliance with all provisions of the *Canada Elections Act* requires that all those involved – candidates, constituency and party officers, and voters – be fully informed of their rights and obligations. For example, party organizations would need to know the new rules for constituency association finances and for nomination contests to adjust their practices in these areas.

More than ever, ongoing information programs are required to promote the general acceptance and effective operation of the electoral system. Elections Canada research has found that Canadians, especially young Canadians, have a general lack of awareness of the electoral system. Many citizens were found to be unaware of such basic information as the enumeration process, their constituency and MP, and the voting age. Because of these findings, Elections Canada began to develop communication programs between elections, including a major travelling exhibition, election simulation packages for elementary and secondary schools, university visits, participation in citizenship ceremonies, and presentations to citizenship and adult literacy classes and community groups. These measures have been well received but are limited. There is a strong need to expand them, particularly to increase awareness within minority groups. In this regard, we agree with the recommendation of the Committee for Aboriginal Electoral Reform (Canada, Royal Commission 1991, Vol. 4) that a joint public education and awareness program be implemented by the Canada Elections Commission and Aboriginal organizations.

Our proposed shortened election period makes an ongoing information program even more imperative. The need for a continuing program is especially acute in the year before an election is expected. In the past, Elections Canada has experienced difficulty in reaching voters with important voter advisories during the election period because of competition for attention in the media. These difficulties are exacerbated when partisan advertising begins. A continuing program to promote awareness of the electoral process would offset these difficulties. In this context, working through established institutions and community groups will be particularly important. The network of returning officers could be used more effectively if a continuing program were established.

As new information technologies become available, especially interactive data bases, many new services will be possible. The Canada Elections Commission must remain abreast of these developments. Research is essential for the design and evaluation of information programs (Rice and Atkin 1989, 62–65) as well as for effective use of new technologies.

The *Commonwealth Electoral Act* of Australia provides a useful model for an information mandate and an ongoing communications program. Among the "functions and powers" of the Australian Commission are "to promote public awareness of electoral matters by means of the conduct of education and information programs and by other means" and "to publish materials on matters that relate to its functions". The Act also contains

a provision permitting it to co-operate with the electoral authorities of a state or territory. We understand these provisions have worked well in Australia.

If the informational activities of Elections Canada are to be enhanced, it is essential that the Canada Elections Commission be given a legislative mandate for these vital activities.

Recommendation 2.7.12

We recommend that the *Canada Elections Act* give the following mandate to the Canada Elections Commission:
(1) to promote public awareness of the electoral process through information programs; and
(2) to co-operate with provincial and territorial electoral authorities in the conduct of joint education and information programs on the electoral process, particularly for segments of Canadian society with special needs.

In carrying out its mandate, the Canada Elections Commission would benefit greatly from financial contributions and the assistance of the private sector. Some businesses have indicated their interest in promoting public education about the election process, while lamenting the lack of an effective vehicle to play a role in such programs. Because of its credibility, the Canada Elections Commission would be well positioned to draw on their interest in being involved in this area. Accordingly, the Commission should be authorized to establish specific programs, to which individual Canadians, business and voluntary organizations could make financial contributions; they could also be involved in overseeing the development and management of these programs. Such contributions should benefit from the same federal tax credit as now applies to those who make gifts to the Crown (which include gifts of money and can be assigned to a designated department or agency or one of its activities).

Recommendation 2.7.13

We recommend that

(a) the Canada Elections Commission establish specific public educational programs about the electoral process to which those interested in supporting these activities may make financial contributions;
(b) contributions to this fund be eligible for the same tax credit as applies to gifts to the Crown; and
(c) those who provide financial support be involved in overseeing the development and management of these programs.

VOTERS WITH SPECIAL INFORMATION NEEDS

Background

The objective of ensuring that the democratic rights of all citizens as voters are secured and strengthened can be accomplished only to the extent that all citizens, including those with special information needs, have the ability to exercise an informed right to vote. Many voters in this country, such as those with hearing, visual or reading disabilities, currently have difficulty exercising their right to vote on a fully informed basis. For example, of the more than 970 000 Canadians classified as hearing impaired, more than 200 000 are profoundly deaf. Further, about "65 per cent of deaf Canadians may be classified as functionally illiterate". (Canadian Association of the Deaf, Brief 1990, 2) With respect to visual impairments, there are approximately 446 000 blind and visually impaired people in Canada; 54 per cent of these individuals are over the age of 65. (Canada, Statistics Canada 1990) Illiteracy is the third barrier to an informed right to vote. Illiteracy is a major problem in Canada with an estimated 16 per cent of our population being unable to meet the demands of everyday reading. An additional 22 per cent of Canadian adults "can only use reading materials to carry out simple reading tasks within familiar contexts with materials that are clearly laid out". (Canada, Statistics Canada 1989)

These facts point to the need for more electoral information in audio and visual form. (Green 1991 RC) New communication technologies can be harnessed to widen the distribution network to these potential voters. Indeed, Elections Canada and community groups have already undertaken initiatives to better serve underrepresented groups facing communication barriers to full electoral participation and information. The free-time broadcasts we propose should assist many voters but initiatives aimed at these groups specifically are also needed.

New technologies are emerging that hold considerable promise for giving many groups better access to the mass media. These include closed-caption decoders and other special add-ons to conventional receivers, as well as interactive data bases that can bring election-related information to many groups through microcomputers. Increasingly the information from these sources can be delivered orally as well as visually. It has proved difficult to predict how such innovations will develop or how they will be used but it is important that election authorities and parties be prepared to assess these new services as they emerge. Many of them should make it possible to expand effective electoral participation.

Public Concerns

Many interveners stressed that accessibility to the electoral process includes the right to information. It is not limited to physical access to polling booths and meeting areas but rather extends to the information that is needed to assist or inform an individual in exercising the right to vote.

On this issue, many interveners, such as the Canadian Human Rights Commission (Brief 1990), suggested that all materials, information, ballots and posters designed by Elections Canada and the various political parties be 'user friendly' from the perspective of persons with disabilities. Political parties were also called on to have campaign material available in Braille, on audio cassettes or in plainly written form. Similarly, groups such as the Greater Moncton Literacy Council (Brief 1990) recommended that election materials contain simpler language and larger print. The Canadian Ethnocultural Council (Brief 1990) pointed out that voters who mainly use languages other than English or French require election material in these other languages. The Canadian Association of the Deaf (Brief 1990) suggested that election materials be accessible to deaf and hard-of-hearing voters via sign language interpretation, closed captioning or open captioning. Ontario now has an arrangement to provide election information to people with impaired hearing through Telecommunication Devices for the Deaf or TDD and other telephone services. Other recommendations were for greater use of posters and public transit advertisements to reach homeless people and other segments of the population that use the media only infrequently.

To address the needs of deaf and hard-of-hearing Canadians, interveners suggested that sign language interpreters and personal FM systems should be provided at nomination meetings, all-candidates meetings and public meetings. The other main suggestions were for captioning all televised political advertisements. The Canadian Association of the Deaf recommended that televised leaders debates should be made accessible in as many forms as possible, including both visible sign language and captioning. The Association prefers open captioning to avoid restricting reception to people who can afford a closed-caption decoding machine. To address the needs of visually impaired voters, we heard submissions on greater use of formats such as Braille and audio cassettes. Political parties could make increased use of taped campaign messages by automated telephone dialling equipment.

In the hearings, interveners suggested that the captioning of political advertisements would be helpful. In the 1988 election, the Progressive Conservative Party captioned its three French-language advertisements but none of its advertisements broadcast in English. The NDP captioned six of its nine television spots. Although the Liberal Party did not close caption any of its English-language advertising, it did do so for all its French-language advertising. (Green 1991 RC) Captioning is not expensive. Organizations such as the National Captioning Centre charge about $375 per 30-second commercial and have quick turnaround times to meet the pressing needs of parties in the heat of a campaign. (Green 1991 RC) Open captioning was suggested by some interveners (owing to the expense of decoders) and opposed by the broadcasting industry; a change in U.S. law requiring television manufacturers to have built-in decoder circuitry after 1993 will help address this problem over the long term. (Green 1991 RC)

Literacy and language skills are an important factor in limiting the access of many voters to campaign information and their capacity to contribute to the public debate. Many Canadians, for example, have limited reading skills. Two-thirds of Canadians have no formal education beyond high school and more than 3.7 million adults have only a grade 8 education. (Southam News 1987) Much political information could be poorly understood by the electorate if the documents are written at a university level. For example, the reading level score for the federal government's free trade kit issued in 1987 was at the second year university level. In contrast, the Pro-Canada Network pamphlet had a reading level of grade 7 to 8. Elections Canada pamphlets on voting rights and procedures from the 1984 and 1988 elections were at the grade 13 level, as were several party campaign documents. (Bunch 1991) These assessments are based on style, not content. Careful preparation of documents can broaden their readership with no loss of substance.

Many minority language groups also have difficulty gaining access to campaign information, as well as to the debate itself. According to Eileen Saunders, minority language groups often lack media skills and organizational resources, as well as language skills. (Saunders 1991 RC) The Canada Elections Commission should expand its links with ethno-cultural groups and make greater use of the ethno-cultural media. Moreover, the Canada Elections Commission could prepare posters, pamphlets and cards with information about the electoral process in different languages in advance. A good starting point is the leaflet on voting that Elections Canada prepared in 17 languages for the 1988 election.

Among other special needs brought to our attention were those of the voters in the five northern constituencies. We have already recommended some measures to meet their needs through the CBC Northern Service. These measures cannot, however, fill all the information gaps noted by our researchers. (Alia 1991 RC; Roth 1991 RC) There is a particular need for information packages designed specifically for candidates and voters in these constituencies. In addition, it would be desirable to encourage associations and educational institutions in the North to sponsor seminars and conferences for potential candidates and journalists.

Information from the returning officer and from the Canada Elections Commission should be available in remote constituencies, such as, but not limited to, those in the North, through an 800 number for both telephone and facsimile communications. This would put voters in remote areas on an equal footing with people in urban constituencies, who can make a local telephone call to contact their returning officer.

To avoid what amounts to disfranchisement of segments of the Canadian population unable to see, hear or read election-related news, all participants in the electoral process, particularly the Canada Elections Commission, must work more closely with non-partisan groups already active in the community.

Recommendation 2.7.14

We recommend that

(a) the Canada Elections Commission provide voters with special needs essential election information in other formats, including Braille and audio cassette, and establish special telephone services to provide election information to people with impaired hearing and reading difficulties;
(b) closed captions be used on all broadcasts and advertising by the parties and by the Canada Elections Commission during an election period, including material broadcast on the Parliamentary Channels;
(c) sign language be used for information provided by the Canada Elections Commission and broadcast on the Parliamentary Channels during an election period;
(d) broadcasters be encouraged to use closed captions and sign language for televised leaders debates and other election programming; and
(e) an 800 number for both telephone and facsimile be available for voters who wish to communicate with the returning officer.

COLLECTION OF ELECTION RESULTS

Rapid and accurate reporting of voting results on election night is important to many Canadians. Audiences are large, and newspapers, networks and individual broadcasting outlets devote substantial resources to the collection and interpretation of the results. The official returns, which must be carefully validated, do not appear until much later and, except in cases of controversy, make little impression on the public. It is the media reporting of the results that attracts public attention and provides the basis for public understanding of the election. The election night broadcasts are, as Elly Alboim of the CBC noted at the workshop for media practitioners, "a form of national validation". (Canada, Royal Commission 1991, Vol. 4) They play an important role in promoting public confidence in the process.

Like other aspects of election coverage, the rapid and accurate collection of election results from almost 300 constituencies across the country on election night is costly. Based on discussions with major news organizations, our researchers estimate that the total cost to the major news organizations was between $700 000 and $1 million for the 1988 election.

In a brief to us, the Association canadienne de la radio et de la télévision de langue française (ACRTF) (1990) proposed creating a single system to collect and distribute election results. At present, each network and news service must place representatives across the country to report the results as they come in. This involves considerable duplication of effort. The ACRTF

argued that the logical solution is a single system, with the costs shared among the networks and news services. The ACRTF proposal would make Elections Canada responsible for collecting and distributing election results to the media, but with the participating news organizations bearing the costs. The major benefit would be an improved quality of information for Canadians because the news media would be able to transfer resources from tallying the results to reporting and analysing them. The involvement of the Canada Elections Commission would be a logical extension of its mandate.

U.S. Experience

A system similar to that proposed by the ACRTF already exists in the United States, but is operated by a private organization. The News Election Service (NES) was founded in 1964 by the major television networks – ABC, CBS and NBC – and the two national news services, Associated Press (AP) and United Press (UP). The all-news television service, CNN, recently joined. The costs are shared equally by the six members. NES policies are set by a board with equal representation from the members.

The NES provides a running tally of voting results to its members for all major national and state elections. The complexity of voting procedures in the United States makes this task a substantial undertaking. The members have agreed on the form in which the tallies will be presented and receive both a hard copy and a computer feed of the results as they are compiled. The NES reporting system depends on the co-operation of local election officials, who provide the results from each polling place as they come in to representatives of the candidates and the media. (Smolka 1988; telephone interview with Robert Flaherty, Manager, NES, 6 September 1991)

Current Situation in Canada

The Canadian networks – the CBC, CTV and TVA – and the Canadian Press (CP) and its subsidiary, Broadcast News (BN), operate independent systems to collect the vote totals for their election night reports. Other large news organizations rely on CP/BN but may collect some voting data in their areas. The CBC has a single system for all of its networks, French and English, radio and television. The system will also serve Newsworld in future elections. These organizations compete for speed and accuracy, as well as for presentation and analysis.

Over the years, the news organizations have developed sophisticated systems for rapid reporting and verification, and they have considerable faith in these systems. To achieve the necessary speed and reliability, each major news organization must hire a reporter for every constituency and provide a communications infrastructure. This involves leasing telephones (installing lines or providing cellular phones) and sometimes other equipment for each reporter, as well as paying long distance charges. In addition, staff must be hired to ensure that the data are properly entered into the main computers.

The networks and CP/BN use a similar system for compiling the results of provincial elections. Newfoundland and Prince Edward Island are exceptions because their provincial election officials collect and compile the tallies from the constituency returning offices and make them available to the media at a central location. The news organizations appear to be satisfied with the service provided by the chief electoral officer in these provinces.

The most obvious benefit of a single system would be reduced costs to the individual news organizations. These savings could be substantial. The NES estimates that the cost of collecting and distributing the results of the 1988 presidential election results was about $5.2 million (Cdn.). Therefore, the cost to each of the five participants was a little more than $1 million. Given the fact that the United States has 185 000 polling stations and complex election procedures, the cost savings for each participant in the NES are significant. Each would have to spend five to six times its contribution to NES to obtain comparable results. While the Canadian and U.S. situations are not directly comparable, it is reasonable to conclude that the potential for savings in Canada is substantial. CTV officials estimate that the cost of collecting and compiling the vote is about $200 000 or 20 per cent of total election night expenditures. Actual savings would depend on the organizational and financial arrangements developed.

There are other possible benefits from the establishment of an equivalent to NES in Canada. First, because such an organization specializes in one function, it is able to work continually to improve the accuracy and completeness of its reporting. Second, because the system would provide the data to each network simultaneously, the focus of competition might shift from speed to presentation and analysis. Third, the system would provide a continuing repository of machine-readable data for journalists and other analysts. Even if smaller news organizations were not given simultaneous access to the tallies, they could realize some savings in gaining access to data for later analysis.

Requirements for a Single System

To create an effective equivalent to the NES in Canada, an attractive alternative to current arrangements is required, offering certain guarantees. First, the news organizations that currently maintain their own systems would have to be convinced that there would be appreciable cost savings. Second, there would have to be guaranteed simultaneous access to the results for all members. Third, it would have to be accurate, fast and efficient. Fourth, backup systems would need to be in place to avoid the possibility of computer failure. Fifth, agreement on a standard protocol for reporting the count and methods for accessing the data by the computers of the news organizations would be needed. Sixth, agreement would be required on the allocation of costs and the general policies and decision-making processes of the organization. Finally, the system would have to permit subscribing news organizations to make requests for additional

information from the returning officers. To meet these requirements, the agency would have to have some permanence. Attempts to establish co-operative ventures for specific elections have foundered on several occasions because negotiations did not begin soon enough.

Positions of the Networks

In discussions with us and our researchers, some networks expressed doubt that the necessary conditions could be met. They argue that there are important advantages to maintaining their own systems to collect and compile the tallies from the returning offices. First, having a representative in each constituency allows them to obtain information and anecdotes that go beyond the raw voting data and add colour to their reports. Second, the representatives can put questions to a returning officer if necessary. Third, the duplication guards against a system failure, as occurred with the NES central computer on one occasion.

Both CBC and CTV have confidence in their own systems and would be reluctant to enter into any co-operative arrangement without being certain of substantial benefits. For some organizations, the most important costs are not for collecting the results but for computer systems needed to compile and present them. If they had to maintain these systems to cover provincial (and perhaps municipal) elections, the cost savings would be smaller.

The CBC expressed the most serious reservations. Senior journalists trust their own system and believe a single system would provide only minimal savings for the CBC. With five networks, they expect to have to bear a high proportion of the cost of a new system. More important, however, CBC journalists argue that a single system would reduce the competitive advantage they have developed, which they are loath to contemplate in the current circumstances when much of their revenue must come from commercial sales. The CBC and CP/BN are the only news organizations that maintain a permanent election unit and cover all federal and provincial elections. CTV sells its services to its affiliates for some provincial elections.

In discussions with us, Tim Kotcheff, vice-president of news for CTV, expressed support in principle for the idea but doubted that such a system would emerge in the near future without the direct involvement of Elections Canada. Both the CBC and CTV stated that a private system would likely emerge only when the networks were unable to afford their own systems any longer.

One model suggested to us involved the creation of a publicly funded system that would provide high-quality information simultaneously to all media, rather than one developed by or in co-operation with the networks. Once the system had proved itself, the networks could well abandon their own systems. Election officials in Newfoundland and Prince Edward Island provide such a service.

An alternative model would involve one of the three national organizations serving as the primary compiler of the results and selling the tallies to other news organizations. As an independent organization serving

all media, CP/BN believes that it is in the best position to fill this role. The CP/BN service is the only one in Canada that continues to collect results routinely until it has a complete count, as the NES does in the United States.

The most significant obstacle to agreement on a single agency is the desire among the major news organizations to maintain a competitive edge. Election night has been described as "the Olympics of political journalism" and the quality of election night coverage is viewed as critical in the competition among broadcast news organizations. The rivalry between the CBC and CTV is particularly acute, but CP/BN is also concerned about providing competitive information to its broadcast clients. The competition encompasses presentation and analysis, as well as speed and accuracy, but tends to focus on which news organizations can announce the winning party first.

Position of Elections Canada

Under the current Act, the chief electoral officer has no responsibility to communicate the results of an election to the public and does not release the official results until some weeks after the vote. By custom, Elections Canada, through the returning officers in each constituency, assists the news organizations by providing results to their representatives, as it does to the parties, but these results are unofficial. In addition, it is the policy of Elections Canada to require that every returning officer lease space that includes room for the media on election night, as well as electrical outlets for their equipment.

Elections Canada officials expressed concern that direct involvement in the compilation of unofficial returns would give the returns undue credibility, especially since the official returns are always marginally different.

However, news organizations do rely on returning officers for the tallies that they compile. At our workshop for media practitioners, it was noted that there is occasional inefficiency or lack of professionalism in the provision of information to the news media. Two examples were given: (1) information on nominated candidates has sometimes proved inaccurate; and (2) there were considerable delays in making voting results available at some returning offices. It was suggested that Elections Canada be given an explicit mandate to assist in meeting the needs of the news organizations.

Prospects for Change

The NES example indicates that a system to compile and distribute unofficial voting results on election night would have some important benefits. In addition to cost savings for the major news organizations, there is a reasonable expectation that the quality of information provided to citizens would improve. This conclusion assumes, however, that the news media would use the financial savings to improve reporting and analysis. This expectation would likely be met only if the agency had the support and co-operation of the news organizations that now operate their own systems. Not only would their expertise be needed to establish the new agency, but their involvement in the planning would be essential if the quality of information were to be improved.

Despite the reservations of the networks, noted above, the fact that the news budgets of most media organizations are being squeezed by increasing competition might lead to greater support for a co-operative arrangement in the future. The administrative difficulties they identified are by no means insurmountable. The prospects for more rapid communication through new computer technologies, the increasing professionalization of election administration, and the changing nature of network television all suggest that the proposal has merit.[2] It is not, however, a matter that can be legislated.

Nevertheless, because communication of election results to the electorate is important for public confidence in the system, the Canada Elections Commission should hold regular meetings with representatives of major news organizations to help their work. In addition to assisting with election night coverage, it should explore other possible arrangements for providing relevant information during elections, such as distributing to news organizations a regularly updated list of candidates nominated, with a final list on nomination night. We hope the news organizations that now compete in compiling these data will see the obvious benefits of a common agency and will collaborate with the Canada Elections Commission and provincial election officials to create such a system.

Recommendation 2.7.15

We recommend that

(a) the Canada Elections Commission explore with the networks and news services the possibility of creating a system for compiling and distributing, on a cost-recovery basis, unofficial voting results on election night; and

(b) the Canada Elections Commission meet annually with representatives of the networks and news services to discuss ways and means of facilitating the reporting of unofficial voting results on election night and other possible information services.

NOTES

1. A similar provision exists for candidates in U.S. federal elections: *Federal Election Campaign Act*, s. 441d(b).

2. Elections Canada's Returning Office Automation Project will eventually make it possible for returning officers to forward the results to Elections Canada headquarters for compilation on a central computer. This could be done by direct data transfer. This would make it possible for the raw tallies to be 'accessed' by the news organizations as they come in and transferred to their own computers.

8

Election Law Enforcement

THE CURRENT APPROACH to election law enforcement treats all violations as criminal offences, even when they are administrative or regulatory in nature. The current approach is problematic for two reasons.

First, the designation 'criminal offences' should be reserved for violations of society's most fundamental values. An individual should be convicted of a crime and subjected to the corresponding stigma and punishment only where it can be demonstrated beyond a reasonable doubt that the prohibited conduct was carried out intentionally, knowingly or purposively. Most election violations do not fall under this rubric. Rather, they are primarily administrative or regulatory in nature. Thus, it is inappropriate for these violations to be investigated and prosecuted as crimes. The adherence to criminal standards of proof means that investigations of election violations are treated as criminal investigations by the RCMP or other investigators used by Elections Canada. This process is costly, time-consuming and inefficient. It also limits unnecessarily the enforcement of regulatory or administrative election violations because it is not suited to the nature of the great majority of infractions.

Second, to prove under the current law that an election violation has been committed, it must be demonstrated to the courts that a candidate, official agent or other person *intended* beyond a reasonable doubt to commit the violation. In other words, *mens rea* must be proved. It is not enough to prove that the violation has taken place. For example, if a candidate or official agent exceeded the statutory spending limit in a constituency, the *mens rea* standard would require the prosecutor to convince a court that the candidate or official agent intended to exceed the spending limit. This is usually extremely difficult to prove.

A NEW APPROACH TO ELECTION VIOLATIONS

An effective system of election law enforcement must have two dimensions. First, those accused of an election violation must have every opportunity to defend themselves against the allegation. Second, the system must act decisively and quickly to stop or to prosecute election violations that will either influence the outcome of an election or undermine public confidence in the integrity of the electoral process. Election law enforcement must not be centred on strict procedures and the imposition of severe penalties that are difficult to enforce. The investigation and prosecution of election violations should not be limited to criminal standards of proof or *mens rea*.

Electoral law should follow other areas of regulatory enforcement by adopting flexibility in standards of proof based on the seriousness of the violation. Canadian law has three categories of offences, which are explained below.

> In an **absolute liability** offence, the Crown must establish merely that the accused committed the physical act of the offence; it need not be concerned with the question of fault. Where, however, it is determined that liability is not absolute, but is based on some notion of fault, it is not always clear whether the offence is one of *mens rea* or strict liability. In a *mens rea* offence, the prosecution must prove that, in committing the offence, the accused had an "aware" state of mind, that is, that [the person] did the wrongful act with, for example, intent, knowledge, recklessness, or wilful blindness. In a **strict liability** offence, the standard is objective, not subjective as in the case of *mens rea*, and is based on the conduct of the reasonable person in similar circumstances. The accused may raise as a defence that [she or he] exercised reasonable care and, therefore, was not negligent. (Ontario Law Reform Commission 1990, 3, emphasis added)

We propose that all violations under the *Canada Elections Act* be defined as either infractions or offences. Infractions would be either procedural, administrative or regulatory and would involve less severe penalties. They would be adjudicated exclusively by the Canada Elections Commission, with the possibility of judicial review by the Federal Court of Canada. The second category of violations would be the more serious, involving some element of wilful misconduct. These violations could result in severe penalties, including higher fines, imprisonment or the loss of certain rights under the *Canada Elections Act*. Election offences would be prosecuted before the provincial courts as summary conviction offences.

We conclude that a new approach to election law enforcement is required, one that provides for the timely investigation, prosecution and adjudication of election violations, whether regulatory, administrative or criminal. As we have argued in Volume 1, Chapter 7, this objective can be achieved by having the Canada Elections Commission – acting as a tribunal – adjudicate most violations of the *Canada Elections Act*.

With respect to infractions, electoral law should be based on strict liability standards of proof. For instance, under our proposal, if a candidate or an official agent exceeded the spending limit, the director of enforcement would need only to convince the Canada Elections Commission tribunal that the facts indicated the candidate or official agent had exceeded the limit. Based on this standard of proof, the onus would shift to the candidate or official agent to show due diligence was exercised, that is, that reasonable care was exercised to ensure an election violation had not occurred. The due diligence defence for strict liability standards of proof was recently upheld by the Supreme Court of Canada in *R.* v. *Wholesale Travel Group Inc.* (1989).[1] The treatment of election violations as absolute liability offences is not a

desirable alternative since those accused of such offences would not have the opportunity to present a defence.

The establishment of a strict liability offence procedure for administrative violations, however, does not mitigate the need for the investigation and prosecution of certain election violations based on the *mens rea* standard of proof. The possibility remains that a person may try to change the outcome of an election by deliberately violating the *Canada Elections Act*. Given the importance of maintaining the integrity of the electoral system, such behaviour should carry the risk of a severe penalty.

For election violations committed with intent, we propose to create a general offence category. Any person who wilfully contravenes any provisions under the Act with the intention of influencing the outcome of an election would be committing a general offence. The general offence category would be similar to the aiding and abetting and the conspiracy sections of the *Criminal Code* under which the accused is treated as if he or she committed another specified offence. This general offence would be prosecuted before the criminal courts and be punishable by up to two years' imprisonment or by loss of the right to sit in the House of Commons or to be a candidate at the next election. Prosecution of this general offence category would require proof of intent, as with conventional criminal offences, rather than being based on a strict liability standard of proof.

Recommendation 2.8.1

We recommend that

(a) most violations of the *Canada Elections Act* be classified as strict liability infractions, which do not require proof of intent but are subject to a due diligence defence, and that these infractions be prosecuted before the Canada Elections Commission; and

(b) persons who wilfully violate the *Canada Elections Act* to influence or vary the outcome of an election or commit other election offences be liable to penalties that include imprisonment, loss of the right to sit in the House of Commons or loss of the right to be a candidate at the next election, and that these offences be prosecuted before the provincial courts.

PROPOSED PENALTIES FOR ELECTION VIOLATIONS

There is little coherence in the list of violations and penalties contained in the current Act. Penalties vary from a maximum of $1000 or one year's imprisonment on summary conviction for most offences, to $5000 or five years' imprisonment on indictment. Many election fraud violations are now defined as 'illegal practices' and 'corrupt practices', and carry the additional penalty of loss of the right to vote. In addition, candidates or official agents

can be denied the right to be a candidate for a period of five or seven years. These violations include voting illegally, undue influence, 'treating' voters (that is, trying to influence their vote by buying them food or drink), and, for candidates and official agents, wilfully exceeding the spending limit.

The provisions of the *Canada Elections Act* for penalties should reflect the gravity of the infractions or offences. The relationship between penalties and violations must consistently encourage compliance with the Act. To achieve this objective, the Commission and the courts must have a range of available penalties. These should include penalties that relate fines to the gravity of the violations. For example, failure to file a post-election return by the prescribed deadline could be punished by a fine of $100 a day for candidates and $1000 a day for parties, and fines for violation of election spending limits could be established as a percentage (100 per cent, 200 per cent) of the excess spending. When there are justifiable reasons, the deadline for filing could be extended, but only by application to the Commission. We propose that, as an example of an administrative penalty, the Commission be empowered to withdraw the right of a registered party to issue tax receipts for political contributions if it has not filed its return by a certain period after the deadline; for the most serious cases, the Commission would be able to de-register a party.

In Volume 3 of our report, we propose a new Canada Elections Act that would extend the election law enforcement process to many dimensions of the electoral process, including financial disclosure requirements for constituency agents, financial agents of leadership contestants, and individuals seeking to be candidates. Further, we have set out requirements for the filing of annual reports and financial statements for registered political parties, constituency associations and party foundations. The enforcement of election law would also apply to individuals and groups who exceed the spending limit of $1000 for independent expenditures, as outlined in Volume 1, Chapter 6. In Volume 3 of our report, we recommend a distinction between election infractions and election offences and establish a more precise relationship between the severity of an election violation and the possible range of penalties.

Imprisonment

When the courts adjudicate election offences, they should be able to impose higher fines, imprisonment and deprivation of the right to candidacy or to sit in the House of Commons. These penalties exist in the current Act but are rarely invoked. They should be retained to affirm that serious election violations will be treated with corresponding penalties. Keeping these penalties in the Act would deter those seeking to wilfully affect the outcome of an election. Levying fines that are 200 per cent of the amount by which a candidate or party exceeds spending limits would also encourage compliance. Similarly, when more serious matters are prosecuted before

the courts, the available financial penalties should be substantially higher than the fines that can be levied by the Commission.

Generally, the punishment of imprisonment can be handed down only if the accused has all the protection associated with a conventional court trial. Therefore, offences that are punishable by imprisonment must be reserved for the courts.

Recommendation 2.8.2

We recommend that imprisonment be available as a penalty only for election offences that are prosecuted before the courts.

Loss of Fundamental Rights

The provisions for 'illegal practices' and 'corrupt practices' in the current Act are archaic and should be dropped, along with the automatic invoking of a loss of the right to vote or to be a candidate. Because these offences are narrowly defined, they expose candidates and official agents to greater penalties than other citizens who commit certain other election offences, without giving the courts any discretion to tailor penalties to suit particular circumstances. Although we would retain the penalty of loss of the right to candidacy for some offences, it is arbitrary to extend this penalty over five or seven years without considering the number of elections that may take place during that period. The loss of the right to candidacy as a result of an offence should be limited to the period up to and including the next general election only. This penalty should also be restricted to cases prosecuted before the courts. If a candidate is found guilty of an election offence, then the loss of the right to candidacy could be an appropriate penalty. The probability that this might occur would be an effective deterrent for most candidates.[2]

Losing the right to vote as a result of an election offence is no longer acceptable. In Volume 1, Chapter 2, we recommend that only prisoners convicted of an offence punishable by life imprisonment and sentenced to 10 years or more be denied the right to vote. However, denying the right to candidacy to those who wilfully attempt to influence or vary the outcome of an election represents a reasonable and demonstrable restriction in a free and democratic society, given that the penalty would apply to individuals who deliberately attempted to undermine the integrity of the electoral process.

Recommendation 2.8.3

We recommend that

(a) the concepts of illegal acts and of corrupt practices, and the corresponding penalties, be removed from the *Canada Elections Act*;

(b) the penalties of loss of candidacy and loss of the right to sit in the House of Commons be retained in the *Canada Elections Act*, but that these penalties apply only for one federal election and only for cases prosecuted before the courts; and

(c) no person lose the right to vote for having committed an election violation.

PROCEDURES FOR HANDLING INVESTIGATIONS

Time Limits for Complaints

At present, the *Canada Elections Act* requires that all complaints be received by Elections Canada within six months of the alleged violation being committed, and that prosecutions be initiated within 18 months of that date or of the date "on which the action ... might first have been brought or taken". This last clause is intended to cover situations where a violation does not come to light until some time after it is committed.

Since candidates are not required to file their election expense reports until four months after an election is held, the effect of the current law is that prosecutions arising from a particular election may be launched almost two years after that election, or half-way through a normal four-year election cycle. We consider the period allowed for complaints to be adequate; however, the period allowed for investigations is excessive and should be shortened to one year from the date of an initial complaint. This should not create any problems since the director of enforcement would have investigators on staff and could engage additional resources temporarily for investigation in the post-election period if necessary.

To instil public confidence in enforcement, it is also important that in each instance the complainant be notified whether the complaint will be prosecuted.

Recommendation 2.8.4

We recommend that

(a) the deadline for complaints of election violations remain at six months after the commission of the violation but the deadline for the commencement of prosecution of an election violation be shortened to one year after a complaint is filed or evidence of a violation becomes available; and

(b) the director of enforcement consider all complaints for activities regulated by the *Canada Elections Act*, decide whether to initiate an investigation, and if a complaint is not investigated, inform the complainant of the decision with reasons.

Investigations

We agree with the concerns expressed at our public hearings about the use of the RCMP to investigate election violations. The director of enforcement should have sufficient investigative powers so that she or he will need the assistance of law enforcement agencies only to investigate the most serious violations, which may require expertise not found at the Commission. One important investigative power is search and seizure. Police currently require a judge's warrant to use their power of search and seizure; in the case of the Canada Elections Commission investigations, the same requirements should apply.

Because of the adversarial nature of election campaigns, a number of unfounded allegations are often made against candidates or registered parties. To ensure credibility of the enforcement process, it is important that the director of enforcement not be required to act on anonymous complaints. At the same time, the director must have the discretion to investigate complaints based on reasonable information from staff and other sources.

The person against whom the complaint is filed may be notified before an investigation begins. However, the director of enforcement should have the discretion to begin an investigation without notifying that person if the director believes that notification would compromise or impede the investigation.

Once an investigation is complete, fairness demands that the director of enforcement notify the person being investigated of the investigation and its results before the matter proceeds further. A person accused of violating the Act must be given notice of all the information the director of enforcement intends to use before a prosecution is initiated before either the Commission or the courts.

Recommendation 2.8.5

We recommend that

(a) the director of enforcement be granted full powers to investigate violations of the *Canada Elections Act*, and investigators of the Canada Elections Commission be given powers of search and seizure, subject to prior authorization from a judge;

(b) the director of enforcement request assistance from a law enforcement agency only in investigations involving the most serious violations, where the director of enforcement may lack particular experience or expertise;

(c) the director of enforcement not be required to act on anonymous complaints but be permitted to initiate investigations based on reasonable information from staff and other sources;

(d) the subject of a complaint be notified before or during the investigation of the complaint, unless the director of enforcement believes that notification would compromise or impede the investigation; and

(e) a person or party who will be prosecuted before the Commission or the courts be notified of all information from the investigation that the director of enforcement intends to use before the matter proceeds before the Commission or the courts.

VOLUNTARY COMPLIANCE

We have argued that there is an alternative to having every election violation prosecuted in the traditional manner. Since most violations are essentially administrative, we propose that the primary jurisdiction for hearing these infractions be transferred from the courts to the Commission. To complement this, we propose that a mechanism for voluntary compliance be established.

In the United States, the Federal Election Commission (FEC) has developed a program of voluntary compliance for enforcing its rules for political finance disclosure. Many state election commissions have similar programs. When a violation occurs, FEC staff may negotiate an agreed settlement as an alternative to taking it to court, although any settlement must be approved by the Commission. These agreements are made public by the FEC both in Washington and in the area where the violation occurred, with details of the offender, the violation and the agreed penalty. Under the U.S. system, the FEC can only review proposed negotiated settlements; any cases where a settlement is not reached or approved by the Commission must be prosecuted before the courts. According to the FEC, less than 5 per cent of valid complaints reach the courts; 95 per cent of all valid complaints result in negotiated settlements.

Voluntary compliance gives the FEC two advantages: it provides greater certainty for resolving violations and it demands fewer resources for prosecuting offenders. It also allows a violation to be settled without going through lengthy adjudication processes. This procedure is not followed for criminal violations of U.S. election law because these are beyond the FEC's jurisdiction. We propose that the same rule apply in Canada.

At our public hearings, the former and current chief electoral officers both urged that enforcement procedures modelled on those of the *Canadian Human Rights Act* be used for election violations. In fact, the Canadian Human Rights Commission offers a good example of a voluntary compliance program at the federal level. As a normal part of its procedures, its investigators try to negotiate the settlement of most complaints before the Commission decides whether to send them to a human rights tribunal for adjudication. In 1989, of the complaints that were not dismissed, 60 per cent were resolved through this form of voluntary compliance.

A mechanism for voluntary compliance would permit the fair and efficient handling of election infractions as part of the enforcement process.

Once the director of enforcement was granted the authority to negotiate settlements of infractions under the *Canada Elections Act*, the process for voluntary compliance would work as follows:

1. The director of enforcement would notify anyone who is being investigated of the results of the investigation. When appropriate, the director of enforcement would indicate that it would be possible to enter into a voluntary compliance agreement. This agreement would set out the details of the investigation of the infraction and the penalty proposed by the director of enforcement, who would then seek to negotiate an agreement. Penalties in the voluntary compliance agreements could not exceed those available if the case was adjudicated by the Commission. Because of this limitation, this process would be restricted to election infractions.
2. If a settlement was reached, the agreement would be referred to a single commissioner, appointed by the chair. The commissioner would consider the agreement on a 'without prejudice' basis.
3. If the commissioner confirmed the agreement, it would be certified by the Commission. The name of the individual or party concerned, the nature of the infraction and the penalty would be published where applicable. This agreement would be enforced as if it were an order of the Commission.
4. If the commissioner rejected the agreement, the matter would proceed for determination before the Commission. The commissioner who considered the voluntary compliance agreement would not sit as a member of any panel considering the case.

Voluntary compliance agreements would eliminate the need to prosecute all violations and would make enforcement more efficient. At the same time, using these agreements would formally recognize that many election violations are administrative and result more from inexperience or carelessness than from an intention to break the law.

Recommendation 2.8.6

We recommend that

(a) for election infractions, the director of enforcement have the authority to negotiate an agreement in the form of a voluntary compliance agreement, which would be subject to the approval of one commissioner of the Canada Elections Commission;
(b) the person accused of the infraction be notified of the voluntary compliance procedure;
(c) the chair appoint a commissioner to review the proposed negotiated settlement;

(d) if the commissioner confirms the voluntary compliance agreement, the name of the individual and party concerned and the nature of the infraction and the penalty be published, where applicable; and the agreement be enforced as if it were an order of the Commission;
(e) if the commissioner rejects the agreement, it be referred to the Commission for adjudication; and
(f) any commissioner who assesses an agreement not be allowed to sit on any panel hearing the case.

PROSECUTION

As indicated in Volume 1, Chapter 7, the director of enforcement would have the authority to determine whether a complaint warranted further action either in the form of a voluntary compliance agreement or a prosecution before the Commission or the courts. The director of enforcement would determine that a matter should be prosecuted if a voluntary compliance agreement was not appropriate given the nature or gravity of the alleged violation or if an agreement could not be negotiated or confirmed. The director would then proceed with a prosecution before either the Commission or the courts, depending on whether the violation was being prosecuted as an infraction or as an offence. If it was prosecuted before the Commission, the chair of the Commission would appoint a panel. The panel would consist of at least one commissioner who would sit as a tribunal; if more than one commissioner were appointed, the chair of the tribunal would be appointed by the chair of the Canada Elections Commission.

Recommendation 2.8.7

We recommend that

(a) the director of enforcement have the authority to determine whether a complaint warrants further action, either in the form of a voluntary compliance agreement or prosecution before the Commission or the courts;
(b) when a voluntary compliance agreement cannot be reached or is not appropriate, the director of enforcement proceed with prosecution either before the Commission or the courts; and
(c) when the director of enforcement proceeds with prosecution before the Commission, the chair of the Commission appoint a panel of at least one commissioner to sit as a tribunal; and if more than one commissioner is appointed, the chair of the tribunal be appointed by the chair of the Canada Elections Commission.

CONFIDENTIALITY

The current policy of Elections Canada is to maintain strict confidentiality when it receives election-related complaints. This corresponds to the normal practice of police in dealing with suspected criminal cases: the identity of a suspect is normally not made public unless the person is charged. This policy should be continued for all election violations. Complaints and investigations should be kept confidential unless they have been referred to prosecution or resolved by an agreed penalty. There should be one exception: the director of enforcement should be required to disclose publicly information about a complaint when the person who was investigated requests a public statement that there was no substance to the complaint.

The policy of the U.S. Federal Election Commission is to put every complaint on the public record once it has been disposed of or adjudicated. The name of the complainant, the name of the person or party the complaint is filed against and the nature of the complaint are routinely made public at that time. Releasing the name of the complainant, in certain cases, could inhibit individuals from filing complaints about election violations. Publishing details of a complaint also runs contrary to the usual practice followed in legal investigations in Canada and for that reason should not be followed for election violations.

Recommendation 2.8.8

We recommend that complaints and investigations be kept confidential unless they have been brought before the Commission or courts for adjudication, resolved by a voluntary compliance agreement, or unless requested by the person or party that is the subject of the complaint.

NOTES

1. In 1978 the Supreme Court of Canada in *R.* v. *City of Sault Ste Marie* affirmed the distinction between regulatory and criminal offences; it also subdivided regulatory offences into categories of strict and absolute liability. More recently, in *R.* v. *Wholesale Travel Group Inc.* (1989) the Supreme Court stated that these categories did not violate the *Canadian Charter of Rights and Freedoms* and it reaffirmed the desirability of the distinctions among the offence and liability categories. Justice Cory of the Supreme Court of Canada stated:

> It follows that regulatory offences and crimes embody different concepts of fault. Since regulatory offences are directed primarily not to conduct itself but to the consequences of conduct, conviction of a regulatory offence may be thought to import a significantly lesser degree of culpability than conviction of a true crime. The concept of fault in regulatory offences is based upon a reasonable care standard and, as such, does not imply moral blameworthiness

> in the same manner as criminal fault. Conviction for breach of a regulatory offence suggests nothing more than that the defendant has failed to meet a prescribed standard of care. (1991, 14)

2. We recommend in Volume 1, Chapter 3 that a voter lose his or her right to sit in the House of Commons if, after the deadline, the voter has failed to file an elections financial report with the Commission, and that a voter be ineligible as a candidate if, at the close of nominations for an election, the voter has not filed an elections financial report for a prior election.

9

Direct Democracy in the Electoral Process

INTRODUCTION

The emergence of new political parties and the heightened prominence of special-interest groups suggest many Canadians are critical of their existing political institutions. Many are concerned that these institutions are not sufficiently responsive to their views and interests. The recommendations in Volume 1 and Volume 2 reaffirm the role of the individual citizen in Canada's representative democracy. They directly address many concerns about the electoral process and the credibility of political parties as the primary political institutions. Strengthening representative government will ensure that individual citizens are provided with political institutions that reconcile conflicting views and interests.

The alternative to strengthening the institutions of representative government in Canada is increased support for the instruments of what has been traditionally described as 'direct democracy'. Support for direct democracy is based on the assumption that recall, referendums and citizen initiatives can increase the role individual citizens have in how they are governed. This support draws in part on so-called populist sentiments that are critical of several institutional mechanisms and traditions in Canada's system of parliamentary government, especially the practice of party discipline in which cohesive political parties operate within the House of Commons. Party discipline has contributed to popular perceptions that individual MPs are, in fact, prevented from adequately representing the interests of their constituents. Although the instruments of direct democracy may provide citizens with more opportunities to express their policy preferences or to pass judgement on their elected representatives outside of general elections, they are far less suited to accommodating and representing the many different interests of citizens. Effective reconciliation of these interests is crucial for any democratic government.

Not since the 1920s and 1930s have populist pressures in Canada been so strong. In that period, labour and agrarian movements recorded electoral successes federally and provincially based on anti-party platforms, on assailing established patterns of political and economic power, and on promises to make citizens key participants in the governing process. Promises of direct democracy were bandied about freely. And although the early populist movements led to the restructuring of the Canadian party

system, their promises of a more direct approach to economic and political decision-making were not fulfilled. In the 1990s, populist sentiments have reappeared. Once again, the instruments of direct democracy are offered as antidotes to Canada's current form of representative government.

There are three instruments of direct democracy: recall, citizen initiative and referendum. The *recall* can be used by constituents to vote on the performance of elected officials before the end of a normal term of office. The *citizen initiative* or *citizen-initiated referendum*, also called the direct initiative, allows voters to propose legislation initiated through a citizen petition. If the required number of voters sign the petition, the proposed legislation is submitted directly to the voters for approval. The *referendum* can be one of two types: mandatory and advisory. In mandatory referendums, legislatures must submit legislation to voters for ratification. Presented with a specific question on a ballot, voters choose between two mutually exclusive propositions. Mandatory referendums are used in several jurisdictions to ratify constitutional amendments. Advisory referendums, or plebiscites, are used at the discretion of the legislature to measure popular opinion on controversial or extraordinary issues.

Although the practices of direct democracy provide citizens with opportunities to participate in the governing process, they do not necessarily involve electoral reform issues, which is our mandate. In this chapter, we focus on the use of the recall, as well as the practice of simultaneously holding referendums and general elections. The use of these instruments directly affects the electoral processes that underscore Canada's representative democracy.

THE HISTORY OF DIRECT DEMOCRACY IN CANADA

The instruments of direct democracy were first given serious attention in North America in the 1890s and early 1900s following the rise of the populist movement in the midwestern United States. The populists, led by agrarian and labour interests, were highly critical of state legislatures and legislators. American populists argued that the legislative process was dominated by big business and wealthy vested interests. Individual legislators were seen as beholden to monied interests and less concerned with representing their constituents. Populists promoted direct democracy as a way of giving individual citizens a greater role in how they were governed and as a way of correcting the perceived weaknesses of the legislative and representative processes. Specifically, the recall was seen as a device for removing corrupt politicians from office. Graft, corruption and bribery of elected officials in the midwestern states were widespread in this period, leading many citizens to question the integrity of representative government. (Cronin 1989) From 1890 to 1920, populist candidates won many seats in midwestern state legislatures. As a result of populist pressures, approximately half of the state legislatures passed legislation during that period approving the use of the recall, referendums and citizen initiatives.

The populist movement in the United States was received sympathetically by Canadian farmers' organizations and groups in the three Prairie provinces. In fact, the leadership of the farmers' organizations in western Canada was influenced by immigrants from the United States. But unlike the U.S. populists, Canadian populists initially channelled their reformist energies through the traditional party system. As historian W.L. Morton notes, the three provincial governments in the Prairie provinces "accepted most of the farmers' programme which came within provincial jurisdiction over the years between 1911 and 1919, and soon these governments were, in all but name and personnel, farmers' governments". (Morton 1967, 31) In Manitoba, the provincial Liberal party accepted, with very few exceptions, the programs of the farmers. "In Saskatchewan the grain growers dominated the economy and politics of the province, and government had the comparatively simple task of accommodating administration and legislation to the requirements of the organized farmers." (Morton 1967, 34–35) Farmers' groups in Alberta were less willing to accept the traditional party system and were more committed to independent political action.

In response to the populist pressures from the farmers' movements and their critique of the practice of party government, each of the western provinces enacted 'direct legislation' laws. Between 1913 and 1919, the provincial legislatures of British Columbia, Alberta, Saskatchewan and Manitoba passed legislation that allowed for referendums and citizen-initiated referendums. The direct legislation law of 1919 in British Columbia, however, was never proclaimed by the provincial cabinet. Similar legislation in Saskatchewan failed to win popular endorsement when it was submitted to voters as a referendum question in 1913. The Manitoba direct legislation law was declared unconstitutional by the Judicial Committee of the Privy Council in 1919. The Privy Council ruled that the law excluded the Lieutenant-Governor from the legislative process, since legislation from citizen-initiated referendums could be enacted without his consent. Section 92(1) of the *Constitution Act, 1867* (now s. 41 of the *Constitution Act, 1982*) prevents provincial legislatures from unilaterally changing the powers of the office of Lieutenant-Governor. Finally, the direct legislation law in Alberta was never used by voters. It was repealed by the Social Credit government of Premier E.C. Manning in 1958.

Despite their initial efforts, the traditional parties never fully adopted the progressive and often radical changes sought by the farmers' groups. The provincial Liberal and Conservative parties in the West were often dominated by their federal counterparts who were less receptive to the economic and political demands of farmers. Consequently, the Canadian agrarian movement organized itself into political groups – provincially, the United Farmers and, federally, the Progressive Party – to challenge the two traditional parties. Between 1919 and 1921, these groups won elections in Ontario and Alberta and formed the official opposition in several provinces. The Progressive Party won 65 seats in the 1921 federal general election, displacing the Conservatives as the second largest 'party' in Parliament.

Although these groups tapped into different populist strains, they shared a common dislike of political parties and the tradition of party discipline. (Laycock 1990) The populists argued that the Liberal and Conservative parties, and therefore the federal government, were controlled by large economic interests from eastern Canada and did not respond to the needs of farmers and workers.

Unlike American populists, the United Farmers and Progressives were less critical of representative democracy per se and far less committed to the traditional instruments of direct democracy. For them, the critical issue was how legislators represented their constituents. Canadian populists, in contrast to their American counterparts, favoured the concepts of 'group government' and 'delegate democracy'. They saw economic groups or classes, rather than political parties, as the basic political unit. Canadian populists argued that the party system could be replaced by political organizations of occupational or industrial groups. In turn, each group would nominate and elect its own representatives to the legislature. The occupational groups would meet in local communities to deliberate on public policy and then inform their elected representatives on what action to take. Members of the elected legislature would be directly responsible to their constituents, albeit through non-partisan community associations. The cabinet and party caucus would be secondary participants.

The United Farmers came to power in Alberta and Ontario in 1919. The United Farmers of Ontario were defeated in the following election; their counterparts in Alberta remained in power until 1935, when they were defeated by the Social Credit Party. The Social Credit Party, like the United Farmers of Alberta (UFA), came to power by campaigning on 'platforms' – as the parties' election promises were then called – against party and cabinet government.

Although populist movements appeared in Canada and the United States during the same period, the impact they had on their respective political processes was different. The U.S. populist movement appealed to the individualist values that have dominated U.S. political culture. American populists argued that individual citizens should be able to express their views directly on important public policy issues independent of the capacity of their governments to represent the public interest.

In contrast, Canadian populists adapted the theories and instruments of direct democracy to the more collectivist values that have been pre-eminent in Canada's political culture. Consequently, both the United Farmers and the Social Credit governments of Alberta remained committed to the essential characteristics of representative government. Their primary concern was whether political parties and cabinet government impeded the ability of legislators to represent directly their constituents. (Mac Donald 1991 RC)

Nonetheless, within two years of coming to power, the United Farmers and Social Credit governments each recognized that cabinet and party government provided them with the institutions they needed to implement

their programs and policies. According to C.B. Macpherson, the UFA's elected representatives recognized their movement needed

> to prove its ability to govern and to finance the province.... In order to make a success of independent political action they had to support their government; in order to support the government they had to dispense with those principles of group government which conflicted with the cabinet system. Specifically, the primary responsibility of the member to his constituency association had to give way to his responsibility for maintaining the government, that is, to his responsibility to the cabinet. (Macpherson 1962, 80)

Even when political movements come to power based on platforms supporting the instruments of direct democracy, history shows that the responsibilities and exigencies of governance cannot be easily met through the use of the recall, the citizen initiative or the referendum.

REFERENDUMS IN CANADA

During our public hearings a few interveners supported the use of national referendums and nation-wide citizen initiatives. Although the issue of using referendums outside of elections does not fall within our mandate, some interveners proposed that referendums be held on election day. This matter indirectly relates to our mandate, and hence we have addressed it.

A total of 44 advisory referendums or plebiscites have been held in Canadian provinces, 31 in the four western provinces. No province has held a mandatory referendum. New Brunswick is the only province not to have held at least one referendum. Most of the referendum questions involved either prohibiting liquor sales or adopting daylight savings time. Of the 44 referendums, 31 were held before 1945.

A few referendums have been held in the last 10 years. A provincial referendum in Quebec on sovereignty-association was held on 20 May 1980. The legislation that governed the referendum requires that referendums are managed and administered by a Referendum Council composed of three provincial court judges. Referendum questions are proposed by the cabinet and approved by the National Assembly. Individuals or groups wanting to participate in a referendum debate must do so through 'yes' and 'no' umbrella organizations. "With the ... exception of Britain in 1975 during the Common Market referendum, no other democracy has conducted referendums under a statutory framework of umbrellas." (Boyer 1982, 206) Political parties and pressure groups in Quebec are not allowed to spend money or actively campaign independent of an umbrella organization. The laws regulating referendum expenses and campaigning parallel those in Quebec provincial elections.

A referendum was held in the Northwest Territories in 1982 on whether the territories should be divided into regions, with one having a majority of Aboriginal people. In 1987, residents of northern Quebec, who were

mostly Inuit, were asked in a referendum what strategy should be used to draft a constitution for their regional assembly. The referendum campaign was organized by the chief electoral officer (CEO) of Quebec using the province's framework for referendums. In 1988, voters in Prince Edward Island voted on whether a fixed link between the Island and New Brunswick should be constructed.

Both British Columbia and Saskatchewan have recently enacted referendum acts. Referendums in the other provinces, except Prince Edward Island and Quebec, are held either under specific legislative statutes such as those relating to agriculture policy, or under the provincial electoral law. Most provinces have legislation that permits local and municipal level referendums and plebiscites.

Saskatchewan's *Referendum and Plebiscite Act* allows the provincial cabinet, at its discretion, to submit referendum and plebiscite questions to the electorate. If more than 60 per cent of voters vote 'yes' or 'no' on the specific referendum question, the results are binding on the government, as long as at least 50 per cent of those eligible to vote cast ballots. At least 15 per cent of registered voters in Saskatchewan's most recent general election can request, through a petition, that a particular policy question be put before the electorate in the form of a referendum question. Results from citizen-initiated referendums and plebiscites are not binding on the provincial cabinet. If a referendum or plebiscite campaign overlaps with a general election "all expenditures incurred by a registered political party or a candidate to promote or oppose a question put to electors ... are deemed to be election expenses". (Section 12, *Referendum and Plebiscite Act*)

In September 1991, the premier of Saskatchewan announced that three advisory plebiscite questions would be put on the ballot of the provincial election of 21 October 1991. The three questions were on balanced budget legislation, whether changes to the constitution should be approved by Saskatchewan voters through referendums, and whether the government of Saskatchewan should pay for abortions.[1]

Bill 55, the *Referendum Act*, was adopted by the British Columbia legislative assembly in July 1990. Referendum questions submitted to the electorate are determined by the provincial cabinet. If more than 50 per cent vote the same way on the referendum question, the results are 'binding' on the government that initiates the referendum, although the legislation merely requires that the provincial government take the necessary steps to ensure implementation "as soon as practicable". The *Referendum Act* allows the government to submit referendum questions to the electorate at any time; that is, referendums could be held simultaneously with a provincial general election. The legislation has no provisions for citizen-initiated referendums. In September 1991, the premier of British Columbia announced two referendum questions would be put before voters in the provincial election of 17 October 1991. The questions asked voters to consider the direct democracy instruments of the recall, and the citizen initiative; both were approved by a majority of voters.[2]

Canada has held two national referendums, although at the time the instruments were popularly known as plebiscites. The first was held in 1898 on the prohibition of liquor sales. The federal government took the unprecedented step of holding a national referendum on prohibition because previous efforts to resolve this volatile issue, including the use of a royal commission, had not worked. Although prohibition was endorsed by a small majority of Canadians, fewer than half of the registered voters voted in the referendum. Notwithstanding the results of the referendum, control over liquor laws became the responsibility of the provinces shortly after. The Mackenzie King government held a referendum in 1942 on imposing military conscription in Canada, although the wording of the question made no reference to conscription itself. Canadian voters were asked: "Are you in favour of releasing the government from any obligation arising out of any past commitments restricting the methods of raising men for military service?" The divisive outcome of the referendum has been well documented. (Boyer 1982; Lemieux 1985)

The issue of referendums in Canadian national politics, however, has not been limited to 1898 and 1942. For example, as leader of the Liberal opposition, Sir Wilfrid Laurier saw the referendum "as a possible way out of the pending collision between English-speaking Canada and Quebec over conscription for military service in World War I". (Boyer 1982, 52) In the mid-1960s, the use of the referendum was given cursory consideration during the negotiation of the Fulton-Favreau constitutional amending formula between the federal and provincial governments. Throughout the years, individual Members of Parliament have made periodic efforts to get a national referendum bill passed by introducing private member's bills, but they have not been successful. Most recently, in the fall of 1989, Patrick Boyer, MP, introduced a private member's bill on national referendums and plebiscites (Bill C-257). His draft bill prohibits holding referendums and federal elections at the same time.

The government of Prime Minister Pierre Elliott Trudeau introduced the *Canada Referendum Act* in 1978–79. When Parliament was dissolved for a general election in May 1979, Bill C-9 died on the order paper. The Trudeau government's initial 1980–81 constitutional reform package included provisions for the use of national referendums to ratify constitutional amendments. These measures were withdrawn as the result of opposition from several provincial governments.

Recent proposals have been made to use national referendums to ratify constitutional amendments. The Beaudoin–Edwards Special Joint Committee on the Process for Amending the Constitution of Canada argued, for example, that referendums should be used for such purposes. (Canada, Parliament 1991)

REFERENDUMS IN COMPARATIVE PERSPECTIVE

Advisory and mandatory referendums are not widely used as an instrument of decision-making by national governments. They are used frequently in

many countries at the state and municipal levels. Nevertheless, almost all western democracies have used referendums at least once since the Second World War to receive direct citizen input on important public policy issues. Britain held its only national referendum in 1975 when voters were asked whether Britain should remain a member of the European Economic Community (EEC). Sixty-seven per cent of British voters endorsed continued membership in the EEC. As noted, the referendum campaign was conducted through two 'umbrella organizations' which had primary responsibility for co-ordinating the 'yes' and 'no' campaigns. Each organization received public funding assistance to mobilize British voters, although the pro-European Community forces were better organized and financed. Perhaps the "most remarkable special aspect of the referendum was the government's agreement to differ: 16 members of the Cabinet campaigned for EEC membership and seven against. The normal rules of collective responsibility, by which all ministers must support government policy or resign, were relaxed for three months with respect to this one question." (Butler 1978, 214) Cabinet solidarity was relaxed, in part, to prevent "the Labour party from tearing itself asunder", given the internal divisions within the party on continued membership in the EEC. (Butler 1978, 214)

The president of France can call advisory referendums on important issues of the state. Results of French referendums are a test of the president's personal credibility. For example, President Charles de Gaulle resigned in 1969 after his plans to change the French Senate and to strengthen the role of regional governments were rejected by voters in a national referendum. The referendum is banned by the German constitution, the Basic Law. Before the Second World War, the referendum had been abused by the Nazi regime to establish public support for controversial policies. Based on this experience, the drafters of the German constitution after the war saw the referendum as authoritarian and subject to abuse, rather than as an instrument of popular democratic control. (Chandler and Siaroff 1991 RC) The United States, the Netherlands and Israel are the only three western nations never to have held a national advisory or mandatory referendum.

A few national legislatures are constitutionally required to hold mandatory referendums. Constitutional amendments in Australia, Austria, Japan and Ireland must be ratified by voters. In Australia, constitutional amendments must be ratified by a double majority; that is, a national majority of voters and a majority of voters in four out of the six states must vote 'yes' for the proposed amendments. Since the early 1900s, approximately 40 constitutional amendments have been submitted to Australian voters for ratification; only eight have received the necessary double majorities.

Very few countries have provisions for citizen-initiated referendums. Most referendums, whether advisory or mandatory, are initiated by the central or national government. Switzerland and Italy are notable exceptions. In Switzerland, 100 000 electors (who sign a petition) can request that legislation enacted by the federal legislature be submitted for popular ratification,

and the same procedure can be used to amend the national constitution. Constitutional amendments in Switzerland can vary from changes in the size of pensions to the scope of environmental protection laws. Italian voters can request that legislation passed by the national legislature be submitted for popular ratification before it comes into effect. Voters in Italy, however, seldom use the citizen initiative.

More referendums are held in U.S. states and Switzerland than in all other jurisdictions combined. In 49 U.S. states, constitutional amendments must be ratified by referendums. In 25 states, registered voters can petition their legislature to hold a referendum on a law that has been enacted. Filing of the required number of petition signatures suspends the legislation until the electorate determines whether it should be approved. Several states exempt financial appropriations and emergency measures from this referendum procedure. Citizen-initiated referendums can be used in 23 states to place proposed constitutional amendments before the electorate.

Although referendums and citizen-initiated referendums are used frequently in Arizona, California, Colorado, North Dakota, Oregon and Washington, they are used most in California. In California, "the institution [of the initiative] appears as firmly grounded in the political culture of the state as the legislature itself. Indeed, the initiative may be more widely employed and by more people in the state than in any other democratic society in the world." (Lee 1978, 88) In the November 1990 mid-term U.S. elections, there were 20 referendum questions on the California ballot. Each registered elector received a 144-page booklet to explain the various 'yes' and 'no' positions that came with each referendum question.

Switzerland conducts referendums at the national and canton (state) level. They are not held concurrently with elections. From 1848 to 1990 about 350 national referendums were held in Switzerland. Proposals submitted by the national parliament in mandatory referendums are normally accepted by voters. Legislation proposed by voters through a citizen initiative, which requires that 100 000 signatures be collected within 18 months for a referendum to be held, has usually been rejected by Swiss voters. Since 1891 when the federal initiative in Switzerland was introduced, only eight initiatives have been endorsed by Swiss voters. (Sigg 1987, 32; Aubert 1978)

Several salient features of the California and Swiss experiences with referendums and citizen-initiated referendums deserve attention. Voter turnout rates are very low in California, falling below 50 per cent in elections throughout the 1980s. In Switzerland, turnout rates for elections have declined to 47 per cent in recent years. (Sigg 1987, 28) Notwithstanding the widespread use of referendums, public attitude surveys have shown that non-voters in Switzerland have low levels of political efficacy. This widespread sense of "political helplessness" appears anomalous in a nation where the role of the individual citizen is the foremost concern of the governing process. (Sigg 1987, 25)

Political parties are weak in California and Switzerland. As a consequence, the referendum and initiative in California and Switzerland are dominated by highly organized interests committed to specific legislation and programs. Interest groups in California can spend as much money as they can raise. They play a key role in getting issues on the ballot, and with the help of paid professional organizers, they structure and manage the initiative campaigns. As Cronin (1989) has argued, the process of citizen-initiated referendums is "big business"; the so-called process of citizen-initiated referendums is dominated by public relations firms, media consultants, public opinion pollsters and direct mail specialists.

ADVANTAGES AND DISADVANTAGES OF REFERENDUMS

Referendums serve many purposes that can contribute to the effectiveness and credibility of representative democracy. As stated previously, governments can use referendums to allow citizens to directly express their views on important national issues. Governments may be seen to be more accountable if they receive the direct input of voters outside of a general election. One expert on the use of referendums has suggested that there is "considerable force in the case for referendum as a means of popular democratic control". (Johnson 1981, 26) The case for popular consultations, he says, "may also be reinforced by the growing complexity and remoteness of modern government, as a result of which many people feel alienated from their political institutions and suspicious of the decisions taken through them on their behalf". (Johnson 1981, 26)

Supporters of referendums also argue that legislation ratified by citizens directly enhances the legitimacy of public policies and, as a consequence, increases public confidence in the democratic process. Vincent Lemieux has argued that increased use of referendums in Canada would "promote a greater sense of attachment, on the part of Canadians, to the central institutions of the country, as well as a stronger feeling of participation in the decisions that concern us all". (Lemieux 1985, 138–39)

At the same time, however, referendums have disadvantages. First, the referendum can make governments reluctant decision makers. Rather than provide direction or leadership on controversial or volatile issues, governments may use the referendum to obfuscate or shun responsibility. Second, "the referendum is based on the unrealistic assumption there is a simple 'yes' or 'no' answer to complex questions, and sets up a confrontation between supporters and opponents of a proposition". (Zimmerman 1986, 57) Moreover, "there is no opportunity for continuing discussion of other alternatives, no way to search for the compromise that will draw the widest acceptance. Referendums by their very nature set up confrontations rather than encourage compromises. [Referendums] divide the populace into victors and vanquished." (Butler and Ranney 1978, 226) Third, in the absence of an appropriate framework, the referendum process can easily be dominated by wealthy special-interest groups.

REFERENDUMS AND FEDERAL GENERAL ELECTIONS IN CANADA

Notwithstanding the advantages and disadvantages, the use of referendums as an extension of the legislative and representative processes falls outside our terms of reference. The following discussion focuses only on the role of referendums as an issue of electoral reform.

Several interveners argued during our public hearings that holding national referendums on election day would be cost-effective. They noted that referendum campaigns would require large expenditures, similar to those incurred for general elections. Although reducing costs of referendum campaigns is a worthy objective, the savings from holding referendums and elections simultaneously should not be overstated. In previous chapters, we make recommendations that would reduce the administrative costs of a general election. Many of these reforms and changes could also extend to national referendums, even if they were held separately from elections. Accordingly, the costs incurred as a result of a national referendum would be less than envisaged by some, albeit they remain substantial.

Those who support simultaneous referendums and elections argue that joining the two processes would allow voters to register their approval or disapproval of specific policies and, consequently, that governments would be elected with explicit mandates. Individual citizens, they argue, could participate in the governing process in a more immediate and meaningful way. Several interveners suggested that the mandates governments receive from elections would be clearer if voters could also express their preferences on specific policy issues during election campaigns.

Much of the support for referendums on election day is based on the assumption that our political parties do not provide clear policy alternatives during elections. Referendums, it is argued, would formally indicate to parties the extent to which voters support or oppose specific policies. There is a further underlying assumption that if an important policy issue has not been put to a referendum vote, the government of the day does not have a mandate to take action. More specifically, many who support referendums on election day believe that our political parties do not give enough attention to the policy preferences expressed by most Canadians. In their submission to the Commission, the Reform Party of Canada (Brief 1990, 6) stated:

> The process of resolution of an issue is too often an accommodation to a particular region, pressure group or an attempt to gain the favour of a province. Referenda ensure that the resolution of an issue is public. The debate over issues is subject to the cleansing agent of public scrutiny. The doubts and concerns that many Canadians feel about the process of government would be allayed by a referendum or plebiscite.

The assumption that parties do not provide clear policy alternatives during election campaigns needs to be assessed in the context of the times.

The experience in recent elections, for instance, suggests that political parties have offered clear and precise policy choices to Canadians on many important policy issues. The distinctions among the Progressive Conservative, Liberal and New Democratic parties were most evident in the 1988 federal election on the implementation of a free trade agreement between Canada and the United States. Tom Kent (1989, 10) argues that "an election is not a referendum". He suggests:

> The 1988 election ... confirmed what has been apparent from many recent elections as well as public opinion surveys. A relatively educated public now has a firmer grasp of what an election is about than do many of our politicians. It is not to choose the politicians who will govern as they think best when in office. It is to choose the politicians whose declared policies and apparent capabilities best embody the direction of public policies as a whole that most Canadians favour for the next four years. (Kent 1989, 11)

The purpose of electoral competition in Canada's system of representative democracy is to provide political parties with periodic opportunities to demonstrate that they can present a broad package of policies and ideas that appeal to many voters in various regions throughout the country. Elections also allow voters to assess how well specific parties handle the complex and varied responsibilities of governance. During election campaigns political parties are required to address many diverse issues. A political party that restricts itself to supporting or opposing several referendum questions would not adequately indicate to voters the policies and ideas it would promote in government. In this respect, the presence of referendums at election time might contribute to confusing, rather than clarifying, the positions of political parties. Moreover, joining referendums and elections would actually undermine some of the benefits of referendums. There is an obvious tension between the argument that referendums on election day would require parties to stake out more precise positions on policy issues, and the suggestion that a party elected as the governing party should not take action on important issues unless it has received a mandate from a majority of voters as expressed through a referendum. (Mac Donald 1991 RC)

One of the benefits claimed for referendums is that they provide citizens with an unbiased, non-partisan instrument for input into government policies. This, however, is much less likely to occur when referendums and elections are held simultaneously. Recent experiences with referendums and elections held concurrently in Canada and in other nations suggest a paradox exists in the way referendum questions are treated by political parties and candidates. When referendum questions involve critical public issues and are extensively debated during election campaigns, voters are much more likely to vote on referendum questions based on partisan choice than they would in a period separate from the election. In Australia, party identification has been the most important determinant of voting

choice when referendums are held on election day. When referendum questions involve minor public policies or are not an integral part of the election platforms of political parties or candidates, however, it appears that they are not extensively debated or discussed during election campaigns. For example, with the exception of the question on whether the government should pay for abortions, the referendum questions presented to voters in the 1991 Saskatchewan provincial election were not a prominent feature of the campaign. The referendum issues received moderate attention from the political parties and their candidates. Deficit reduction and economic stability in the agricultural sector were the important campaign issues. The experience in the 1991 British Columbia election was similar. The referendum questions on the recall and the citizen initiative were not widely debated or promoted by either the candidates or leaders of the major political parties. The state of the provincial economy and the record of the incumbent government were the dominant issues of the election campaign.

As outlined in Volume 1, Chapter 6 of this report, a fundamental principle of our electoral process is fairness. Fairness is achieved, in part, through the presence of election spending limits. Reasonable spending limits allow for vigorous electoral competition, while ensuring that the conduct of federal election campaigns is not based solely on the ability to spend money.

If referendums were held simultaneously with elections, a separate administrative regime would have to be set up to allow those groups or individuals with a valid stake in the results of a referendum question to participate in the campaign and to ensure, at the same time, the integrity of election spending limits. The separation of the two campaigns could be achieved by the creation of 'umbrella organizations'. All groups and participants who want to spend money promoting the 'yes' or 'no' side of a referendum question would be required to channel their expenditures through a single national organization. Given the partisan nature of election campaigns it is not obvious that competing parties would want to associate under the same umbrella or that it is in the long-term interest of the electorate that they do so. Such a scheme could help affirm the intent of spending limits, although the logistical and administrative complexities would be far less if referendums were held separately from general elections. At a minimum, then, holding referendums at election time under one set of rules, and then conducting the election proper under another set of rules would be administratively and organizationally complex.

In Canada's system of parliamentary government, elections are about mandates to govern. All evidence suggests that the Canadian electoral process allows voters to assess the performance of their governments. The high level of legislative turnover demonstrates Canadian voters do not hesitate to defeat elected representatives who make poor use of their mandate to govern. (Blake 1991 RC; Young 1991a RC) As noted in Volume 1, Chapter 5, Canada has more legislative turnover than do other countries, including the United States and Great Britain.

Referendums held on election day would strip elections of their meaning and value. Elections must be about voters who trust their own ability to pick governors who can judge, reflect, deliberate, compromise, lead and respond. And elections must be about accepting the need for governance. (Mac Donald 1991 RC)

More importantly, the comparative evidence indicates that, no matter when referendums are held, they are dominated by political parties, pressure groups or both. In jurisdictions where referendums and initiatives have been traditionally held in conjunction with elections, voter turnout tends to be lower, and those who do vote represent a small cross-section of the general population.[3] The benefits and strengths of referendums would be compromised rather than enhanced if they were held concurrently with federal general elections.

Recommendation 2.9.1

We recommend that referendums not be held simultaneously with federal general elections.

THE RECALL

From 1908 to 1926, 11 American states adopted provisions for the recall of state and local politicians. Those who advocated the recall did not see it as a substitute for representative government; they merely hoped to make their representatives more responsive and honest. (Cronin 1989, 131) Currently, 15 states, the District of Columbia, Guam and the Virgin Islands provide for the recall of state-wide politicians, and at least 36 states permit the recall of various local politicians. The recall procedure in the United States, however, has never extended to senators, members of the House of Representatives, members of the cabinet or the president. Recall provisions have been enacted by three cantons in Switzerland, but the recall itself has never been used.

There are three basic recall procedures in the United States. The most commonly used requires two elections: first, there is a vote on whether to remove the elected official. If a majority of voters vote for a recall, a second election is held to replace him or her. The second procedure requires citizens to vote simultaneously on removal and replacement; this approach is used in two states. A third procedure, used in two states, requires the elected official to seek re-election if a recall petition has been properly filed.

Each of the three recall procedures requires a petition signed by a large number of voters eligible to cast ballots in the constituency represented by the elected official. The proportion of voters' signatures required for a petition varies from 10 per cent for state-wide elected officials in Montana to 40 per cent in Kansas. In most states 25 per cent of eligible voters for the office in question during the most recent election must sign a petition before a recall can be initiated. In three states the recall is a quasi-judicial procedure, limited to malfeasance, misconduct, incompetence or failure to perform legal duties.

In the other states an elected official can be recalled for any reason that voters think appropriate. (McCormick 1991 RC)

Notwithstanding the many states with recall provisions, the instrument has not been widely used at the state level. The recall is used more extensively and more successfully at the municipal level. The only successful use of the recall to remove state-wide elected officials "occurred in North Dakota in 1921, when the governor, attorney general, and secretary of agriculture were recalled." (Maddox and Fuquay 1966, 333) Although the recall procedure has existed in the United States for approximately 90 years, only a few "state legislators have been recalled, including two in California in 1913, two in Idaho in 1971, two in Michigan in 1983, and one in Oregon in 1988". (Cronin 1989, 127) The increased use of the recall in the 1980s can be attributed, in part, to the rise of special-interest groups that are highly critical of politicians. Recall campaigns dominated by interest groups have been directed at those accused of imprudently managing state budgets. (Cronin 1989)

The strength of the populist movement in Canada after the First World War led to pressures for a recall procedure for Members of Parliament. Many Progressive MPs elected in 1921 were requested by their constituency associations to sign undated resignations so that their constituents could recall them by dating and publishing the document. (Ward 1963, 9) The request for undated resignations was prohibited when the *Dominion Elections Act* was amended immediately after the First World War to disqualify any member who signed an advance resignation. The provision can now be found in the *Canada Elections Act*, section 327. It states:

> It is an illegal practice and an offence for any candidate for election as a member to sign any written document presented to him by way of demand or claim made on him by any person, persons or associations of persons, between the date of the issue of the writ of election and the date of polling, if the document requires the candidate to follow any course of action that will prevent him from exercising freedom of action in Parliament, if elected, or to resign as a member if called on to do so by any person, persons or associations of persons.

Contrary to the American experience, the United Farmers of Alberta, when they came to power in 1919, explicitly rejected the recall as an instrument for constituents to hold their members in the provincial legislature accountable between elections. The leaders and members of the United Farmers movement concluded that, as a method for allowing constituents to hold their elected representative accountable, the recall procedure was not an adequate alternative to group government.

A statutory recall procedure was not adopted anywhere in Canada until the Social Credit Party defeated the United Farmers government in Alberta in 1935. The Alberta *Recall Act* was passed in 1936. Ironically, the first recall

petition was initiated against Premier William Aberhart by his constituents in the same year. The recall petition was thwarted when the *Recall Act* was repealed by the Aberhart government in 1937. (McCormick 1991 RC)

ASSESSING THE RECALL

During our public hearings we heard from representatives of several political parties, such as the Reform Party, the Christian Heritage Party, the Green Party, the Communist Party and the Populist Party, who supported the use of the recall. We also heard from a handful of individuals who argued that constituents should have the right to recall MPs who do not vote on legislation in the House of Commons 'based on instructions' from their constituents. Some interveners supported the recall against MPs who do not implement their campaign promises. Recall was seen as a way of allowing citizens to remove from office representatives who had lost the confidence of their constituents. These interveners, however, provided very limited explanations as to how MPs would receive instructions from their constituents and how frequently, or how to determine precisely whether MPs had not acted on campaign promises.

The support for the recall has obviously struck a responsive chord. Many Canadians are concerned that MPs, because they belong to political parties, are unable to vote freely on legislation in the House of Commons. In a public attitudinal survey, respondents were asked whether MPs should vote on controversial issues in Parliament on the basis of what they believe to be in the public interest or what they deem to be the views of their constituents. Thirty-seven per cent of the respondents said MPs should follow their own interpretation of the public interest, and 63 per cent said MPs should follow the views of their constituents. (Blais and Gidengil 1991 RC)

The basic assumption underlying support for the recall is that it is a safety valve for citizens who no longer have confidence in their elected representatives. Proponents suggest that if voters had access to the recall, MPs would be more attentive to the concerns of their constituents. The presence of the recall, then, would deter MPs from neglecting their constituents' demands.

In Canada's system of parliamentary government, MPs are not elected as representatives who randomly come together in a national legislature simply to advance the views and interests of their constituents on matters of national policy. Rather, the House of Commons is a collective decision-making and representative institution that must weigh the competing interests of citizens against the national interest. The weakness in the argument that recall should be used against individual MPs who do not take direct instructions from their constituents is that MPs who isolate themselves from the collective deliberation of public policies will be less equipped to represent their constituents, not more so.

On occasion, MPs may be required to support policies that advance the national interest but that are not supported by their constituents. If MPs cannot support such policies, governments are unable to weigh the interests

of minorities against the interests of majorities, nor can they decide what values and ideas to promote. Our system of parliamentary government brings together MPs in a national legislature that strives collectively to affirm the ideas and values that advance the national public interest.

The concern expressed by supporters of the recall – that Canadians have few opportunities to hold their MPs accountable – is dubious when assessed against Canada's recent electoral history. Since 1945 Canadians have gone to the polls in 15 general elections; the results have created nine majority and six minority governments. Only twice have governments been re-elected to two consecutive majorities. From 1945 to 1988, the average term of a Parliament was 3.1 years.

Compared with the United States, there is high legislative turnover in Canada. From 1974 to 1988, a period that saw four general elections, on average 24.9 per cent of MPs seeking re-election were defeated. The comparable figure for the United States House of Representatives was 6 per cent. Moreover, although the rate of defeat for members in the House of Representatives has been dropping, in Canada the rates of defeat in the last two elections (39.7 and 26.6 per cent, respectively) were much higher than in the 1979 and 1980 elections (20.3 and 15.9 per cent, respectively). (Adapted from Atkinson and Docherty 1991) The high turnover demonstrates Canadian voters are able to hold their MPs accountable for what they do and for what their parties do. The evidence suggests voters regularly act when dissatisfied with their MPs. Placed in this context, the argument that the recall should be used against MPs who do not act on their campaign promises seems misplaced.

Studies on voting behaviour, furthermore, demonstrate that Canadian voters use several criteria to elect Members of Parliament. Clarke et al. (1991) show that voters assess the qualities and experience of the individual candidate. From 1974 to 1988, 21 to 27 per cent of respondents in national election surveys ranked the individual candidate as the most important factor in their voting choice. Candidates are also seen as standard bearers for their parties, and for the values and policies their parties promote. From 1974 to 1988, 40 to 53 per cent of Canadians ranked parties as the most important determinant of their voting decision. In fact, the percentage of Canadians ranking parties as the most important factor increased in the 1984 and 1988 elections. Further, Canadians consider the party leader to be a critical determinant in their voting choice. The impact of the party leader as the most important factor in voting choice has ranged from 33 per cent in 1974 to 20 per cent in 1988. The evidence shows, then, that MPs are seldom elected *by voters* solely to represent local interests.

The presence of both a multi-party system and a single-member plurality electoral system in Canada can mean that many MPs are elected to the House of Commons even if they receive less than a majority of votes in the constituency. For example, in a competitive constituency campaign among three political parties, the successful candidate can be elected if he or she

wins approximately one-third of the votes. The absence of an electoral majority, however, does not necessarily impair the ability of an MP to be a credible and effective representative of the constituency. The presence of the recall would be inconsistent with these primary characteristics of the electoral process in Canada. MPs subject to the recall would be required to sustain support from a majority of voters in the constituency, a requisite far beyond what the MP had to satisfy in a highly competitive general election. In short, the standards or criteria used to elect MPs at a general election or a by-election would not apply to MPs who have been recalled. The presence of both a recall and a single-member plurality system would lead to conflicting democratic principles in the electoral process, principles that could not be easily reconciled.

Our system of responsible government requires the prime minister and cabinet to have continuing support from a majority of MPs in the House of Commons. This ensures that the government's legislative program is only approved when there is majority support in the House of Commons. In this fashion, MPs can decide if the interests and values of their constituents are being addressed.

Under Canadian parliamentary government, the prime minister and almost all cabinet ministers seek election to the House of Commons as individual MPs from single-member constituencies. Even so, the prime minister and elected cabinet ministers have special responsibilities beyond those of their constituents. These responsibilities require them to consider the national interest when formulating public policies.

The prime minister and cabinet ministers would be particularly vulnerable to the use of the recall because vested interests or advocacy groups who are critical of a certain policy or decision could use it to serve their own ends. Although the recall petition could be signed only by constituents, and only constituents could vote in a recall election, both campaigns could be used by groups who were not constituents to exert an inordinate amount of pressure on the office holders. For example, pressure groups opposing abortion legislation could target the minister of justice, groups opposed to certain tax measures could seek to recall the minister of finance, and environmental activists could attempt to remove the minister of environment. In such circumstances, the value of the recall would be stripped away from constituents.

The recall is increasingly seen as a way to strengthen the ability of constituents to influence the actions of MPs. Although this is a laudable objective, the evidence from the United States indicates that the recall is not an effective instrument for this end. As a leading expert on the recall in the United States recently concluded, "the recall device ... has not significantly improved direct communication between leaders and led.... Neither has it produced better-qualified officeholders or noticeably enriched the quality of citizenship or democracy in those places permitting it. Whether it has strengthened representative government in any measurable way seems

doubtful." (Cronin 1989, 155) In Canada, the particular vulnerability of the prime minister and cabinet ministers to the use and abuse of the recall would make this instrument of direct democracy especially detrimental to our system of representative democracy.

Recommendation 2.9.2

We recommend that the statutory recall of Members of Parliament not be adopted.

NOTES

1. In the October 1991 provincial election a large majority of Saskatchewan voters supported legislation for balanced budgets and the ratification of proposed constitutional changes through plebiscites (79.6 and 79.2 per cent of voters respectively said yes to these measures). On the third plebiscite question, 62.7 per cent of voters agreed that the provincial government should not pay for abortions.

2. In the October 1991 British Columbia provincial election, the implementation of a statutory recall device was supported by 81 per cent of voters casting ballots on this question, and 83 per cent of voters endorsed the use of citizen-initiated referendums. The number of voters casting ballots on the referendum questions was approximately the same as the number of voters casting ballots to elect candidates to the provincial legislature.

3. Voter turnout rates are determined by a number of factors, including specific systems of voter registration and the flexibility provided by the administration of the voting process. For example, those nations that employ a large number of administrative devices, such as voting-day registration and mail-in ballots, tend to have the highest turnout rates. The importance assigned to voting as an act of civic participation is also a critical determinant of voter turnout rates.

   The voter turnout rate for the 1991 Saskatchewan election was 83 per cent, a level consistent with the average turnout for provincial elections of 83.1 per cent in the 1980s. Voter turnout in British Columbia, however, dropped to 71.2 per cent, compared with the provincial average in the 1980s of 77.4 per cent. In each election, the incumbent government was defeated. Although the reasons for the variations in provincial turnout rates cannot be identified precisely, what is clear is that referendum questions on the election ballot did not result in higher electoral participation rates in these provinces than when such questions have not been placed on the ballot.