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THE FUNDING OF POLITICAL PARTIES IN ONTARIO

By KEITH D. EWING*

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I. THE ORIGINS OF THE LEGISLATION

Ontario's legislation relating to financing of political campaigns was enacted for several reasons, but perhaps the most important are the suspicions of corruption which followed Conservative party fund raisers. Canada is a country where allegations of corrupt practices by big business have never been far from the surface,\(^1\) and historically Ontario was no exception to this feature of national politics. In 1966 a member of the provincial legislature demanded an investigation into allegations that a Conservative party fund raiser gave the impression to representatives of Melchers Distillers Ltd that he might be able to influence the Liquor Control Board of Ontario on behalf of the Company.\(^2\) Not long after the 1963 election in relation to which the allegation was made, there was a general increase in liquor prices. It was alleged the Canadian distillers, including Melchers, who contributed to the Conservatives' election fund recovered their investment within a few months; as a result, Ontario consumers indirectly defrayed a part of the election expenses of the Conservatives.\(^3\) The provincial Premier denied that there was any truth in the allegations, and he rejected calls for an independent judicial inquiry. But the allegations clearly wounded the Tory establishment. The Premier gave an undertaking that a Select Committee would be appointed "to carry out a complete study of our electoral system."\(^4\)

It was over six years, however, before any serious investigation into campaign financing took place. The Conservative government only took action as a result of another charge of corruption. In 1972, it was claimed in the Legislature that a government contract to build a new Workman's Compensation Building was awarded to a corporation in return for a donation of


fifty thousand dollars to Conservative party funds. In response to this affair, the government referred the matter to the Camp Commission, which had been set up in June 1972 to study the functions of the Legislative Assembly, with particular reference to the role of private members and how their participation in the process of government could be enlarged. In referring this additional matter of party and election campaign financing to the Commission, the Premier said:

To the greatest extent possible, I would want to maintain a political system in which the various parties can function and campaign for public support freely and openly and ... in an atmosphere above and beyond public doubt, suspicion or cynicism. 

Whether or not there was any truth in the allegations which had been made was to some extent irrelevant:

... the Watergate scandal to the South, and some public questioning of relationships between the government and individuals in the private sector in Ontario had led to widespread concern regarding the morality of the political process, and the risk that large corporations which regularly donated major sums to governing parties, could be in a position to unduly influence government. In order to ensure in the ordinary citizen confidence that his participation in the political process was in fact meaningful, it was essential that Ontario election financing legislation be accepted and enforced.

A. The Camp Commission Recommendations

The Camp Commission made three general recommendations. First, it gave a muted attack on the traditional practice in the political system not to disclose either the source of party funds or the disposition of them. In a remarkable passage

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6 Ontario, Commission on the Legislature, Third Report (Toronto: The Commission, 1974) at 3 (Chairman: Dalton Camp) [hereinafter the Camp Report].

about the common practice in a modern liberal democracy, the Commission noted that "it would be difficult to make even an informed guess as to the total sums raised annually in Canada by politicians and parties."

Second, the Commission reiterated the need to ensure that the parties had sufficient funds: "In any system close to the ideal, a political party with a reasonable base of public support ought to have adequate funds so that it can maintain an efficient level of research, organization and communications capacity between elections, and campaign effectively during elections."

The third recommendation of the Commission was to reduce the dependence of the parties on institutional support and to extend the popular base of party financing:

... there is too little genuine incentive for the party to give proper emphasis to the smaller contributor, or to broaden the base of party financing. A free, open, and democratic political system ought to have a greater reliance upon general public support and ought not to depend, for its continuance, on the generosity of a segment of the community. Certainly, when political parties rightfully have their influence upon Members in the Legislature, the parties themselves cannot be deemed to be free of the risk of undue or disproportionate influence of those who pay their bills.

As a means to achieve these goals, the Commission considered but rejected two proposed methods, each of which has been adopted in Canada or elsewhere. The first proposal was for large scale public funding of political parties. The Commission rejected this method for three reasons: (1) if money was to be apportioned according to political success, it would discriminate in favour of the "ins" against the "outs;" (2) if all parties were to be treated in the same way, this would favour minority parties at the expense of major ones; (3) and finally, this method would present a dilemma in respect of independent candidates — they would either have to prohibited altogether or financed even if there was suspicion they were "seeking notoriety or self-aggrandizement ... at

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8 Camp Report, supra, note 6 at 2.
9 Ibid. at 5.
10 Ibid. at 6.
11 Ibid. at 9-11.
12 Ibid. at 10.
The Funding of Political Parties

The Commission instead recommended striking a balance between private contributions and public funding by encouraging the parties to broaden their base by going out to organize support. To facilitate this it recommended the introduction of a tax credit system for political donations. In addition, the Commission made the further recommendation that a limited reimbursement from public funds should be made to candidates for election in order to help ensure that credible candidates may mount credible campaigns. However, no public funding was recommended for the parties; the extent of the state’s contribution was limited to the encouragement of private political donations through the tax credit. The parties would have to work for funding and would be rewarded in a manner genuinely commensurate with their popular support.

The second method rejected by Camp was a limit on campaign expenditure. Such a step had been taken at the federal level in 1974, shortly before the Camp Commission reported. But the Commission was not tempted to follow the Federal Act and claimed to find serious flaws in it. First, Camp claimed that the absence of limits on the amount which individuals or corporations could donate to parties would "leave the method of political financing relatively unchanged, with the parties continuing their traditional dependence on the traditional sources for their funds." Second, Camp was concerned that spending limits were unenforceable and impracticable. One particular problem was how to assess the commercial value of services rendered to the party or...

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13 Ibid.
14 Ibid. at 11, 32-35.
15 Ibid. at 40.
17 Camp Report, supra, note 6 at 14-18.
18 It is to be noted, however, that one of the three Commissioners, Mr. Farquhar Oliver, wrote a note of dissent in which he expressed his "full agreement with the recommendations of this Report, with the qualification that there should have been a recommendation for ceilings on party and constituency expenditure in an election campaign. This would ... have added materially to the full effect of our proposals." Introductory letter to the Speaker of the Legislative Assembly, the Honourable Russell D. Rowe.
its candidates in a campaign. This was particularly troublesome in the case of volunteers who contribute some special expertise to the campaign:

No one who has had experience with campaigning will underestimate the value of such a contribution; on the other hand, the mind boggles at the task of those who must record the particulars of all this, and put a fair market price on it for the purpose of calculating campaign expenses.\(^{19}\)

A third problem with campaign expenses limits is that pure equality could never be achieved because of the inordinate advantage which governing parties have during election campaigns "in terms of being able to utilize the services of countless ministerial assistants, secretaries, researchers, and other public employees, to say nothing of the transportation and communications systems at their disposal."\(^{20}\)

But although critical of general campaign spending limits, the Camp Commission was nevertheless concerned that campaigns were becoming too costly.\(^{21}\) It claimed, however, that there were more effective ways of limiting spending and singled out two in particular.\(^{22}\) These were to shorten the length of election campaigns and to reduce the number of days on which the parties could campaign on the media. But the main recommendation of the Commission was for the introduction of limits on the size of contributions which could be made to the parties by individuals, trade unions, or corporations. In order to terminate "the substantial dependence of ... political parties upon the substantial contributions of a few"\(^{23}\) and "to remove from the political process the presence

\(^{19}\) Camp Report, supra, note 6 at 17.

\(^{20}\) Ibid. Camp also contended that there "are great difficulties with the enforcement of ceilings on expenditures...." The Report continues by contending that "margins of error must be allowed, leading inevitably to permissiveness and then to inevitable carelessness and indifference. The enforcement of spending ceilings requires exacting reporting standards and thorough auditing, and demands of constituency organizations, a competence that few of them in fact can be assumed to have." Ibid. at 43.

\(^{21}\) Ibid. at 19.

\(^{22}\) Ibid.

\(^{23}\) Ibid. at 31.
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of big money from large and powerful interests, the Committee recommended that a maximum of two thousand dollars could be donated by any individual, union, or corporation in any one year to a party. Small, additional sums could be donated to constituency associations, and in an election year the size of the contribution could be doubled. These provisions, it was claimed, would guarantee to the parties adequate means relative to the public support they enjoyed. Together with the public-funding proposals, they would further ensure that at least a minimum amount would be available to all candidates who managed to attract a fixed percentage of the popular vote — Camp recommended 15 percent. One further point of note is that Camp recommended that only parties registered with a specially created independent Commission would be legally able to solicit donations.

This last recommendation was an important one. Throughout, Camp had been aware of the difficulty of enforcing legislation of this kind. In fact, one of his objections to the federal legislation, in addition to those already discussed, was the total lack of enforcement machinery:

It seems to us that the totality of experience with legislation dealing with political parties and elections suggests that no satisfactory degree of compliance is possible if the parties are left to police one another, or where enforcement is the reluctant responsibility of the Chief Electoral Officer.

The Report continued by asserting that

no attempt at reform is possible ... unless the parties, contributors and supporters alike have reason to be convinced that the regulations governing their activities are certain to be enforced.

Camp consequently recommended that the proposed Commission should be clothed with power and authority to enforce legislation.

24 Ibid.
25 Ibid. at 33.
26 Ibid. at 40.
27 Ibid. at 28.
28 Ibid. at 15.
29 Ibid.
Registration of all parties, constituency associations, and candidates for election to the Provincial Legislature would be required. In addition, parties would have to disclose the source of their contributions, and annually file with the Commission audited statements of receipts and expenses.\(^{30}\)

II. THE ELECTION FINANCES REFORM ACT 1975

Legislation to give effect to the recommendations of the Camp Commission was introduced in 1975 with the *Election Finances Reform Act*.\(^{31}\) The Act introduced limits on contributions to political parties; limits on advertising by candidates and parties during an election campaign; a public subsidy for candidates in an election; and a system of registration of parties together with the reporting of contributions from individuals, corporations, and trade unions. The Act was to be enforced by a nine member Commission on Election Contributions and Expenses. Six members were to be nominated by the three major political parties, two by each party; the three other members were to be a bencher of the Law Society of Upper Canada appointed by the Lieutenant Governor, the Chief Election Officer for Ontario, and a chairman appointed by the Lieutenant Governor for up to ten years.\(^{32}\) All the members of the Commission were forbidden, during their tenure of office, to be members of the Assembly, candidates at an election, officers in a political party, or contributors to a political party.\(^{33}\) The Act, therefore, implemented all of the major recommendations of the Camp Commission.


\(^{31}\) R.S.O. 1975, c. 134.

\(^{32}\) *Ibid.*, s. 2.

\(^{33}\) *Ibid.*, s. 2(6).
A. Registration

Under the Act only registered political parties could accept contributions. The conditions of registration were very onerous and effectively excluded a number of organizations from full participation in the political life of the Province of Ontario. Registration was available only if one of the following conditions were satisfied: that the party held a minimum of four seats in the Legislative Assembly following the most recent election after the Act came into force; that the party nominated candidates in at least 50 percent of electoral districts in that election or in subsequent elections; or, at any time other than during a campaign period, the party provided the Commission with the names, addresses, and signatures of ten thousand persons who were both eligible to vote in an election and also attested to their registration in that political party. In 1985, there were eight registered parties, three being registered on the first of the methods outlined above (the Progressive Conservatives, the Ontario Liberal Party, and Ontario NDP); the remaining five parties were registered under the petitioning procedure. These were the Communist Party of Canada (Ontario), the Ontario Libertarian Party, the Northern Ontario Heritage Party, the Freedom Party of Ontario, and the Green Party of Ontario. There were another twenty-seven parties known to the Commission which had not been registered because they had not provided the necessary petition. One of these, the Nationalist

34 Ibid., s. 10.

35 Ibid., s. 10(2). When applying for registration a party must submit information required by s. 10(3). This relates to matters such as the leader's name, the address, the name of principal officers, and the name and address of the party's bank(s).


37 The other parties are: the Ontario Republican Party; Ontario Social Credit Party; Unity Canada Party; Progressive Environmental Party of Ontario; the Moral Political Party; Women's Party; The Detente Party of Canada; Feminist Party of Canada; The Enterprise Party; Political Science Consensus Party of Ontario; the United Party of Canada; National Unity Party; Self-Help Ontario Political Services; Christian Credit Party of Ontario; Multiculturalism Party of Canada; World Wide Disarmament Party of Canada; Christian
Party of Canada, submitted a petition in 1978, but the petition was rejected by the Commission following complaints that people had been improperly induced to sign it.\textsuperscript{38}

In addition to parties, constituency associations were also required to register with the Commission before they could accept contributions.\textsuperscript{39} Both parties and constituency associations could be deregistered by the Commission,\textsuperscript{40} though in the former case only on application by the party concerned,\textsuperscript{41} and in the latter case only on application by the party and the constituency association.\textsuperscript{42} This last provision imposed significant limitations on the power of the parties centrally to manage or regulate the affairs of local parties. It was not open to the party to use deregistration as a sanction and to then register a newly created and newly staffed organization. The Commission itself could initiate deregistration proceedings if either a party or a constituency association\textsuperscript{43} had failed to submit an annual statement of assets and liabilities, together with receipts and expenses.\textsuperscript{44} Deregistration might also be initiated where the party or the constituency association failed to submit details or receipts and expenses during an election campaign.\textsuperscript{45} On deregistration, the funds of the party of the constituency association would pass to the Commission,\textsuperscript{46} which would keep the funds to help defray its


\textsuperscript{39} Supra, note 31 at 5-11.

\textsuperscript{40} Ibid., s. 14(1).

\textsuperscript{41} Ibid., s. 14(1)(a).

\textsuperscript{42} Ibid., s. 14(1)(b).

\textsuperscript{43} Ibid., s. 14(2).

\textsuperscript{44} Ibid., s. 42.

\textsuperscript{45} Ibid., s. 43.

\textsuperscript{46} Ibid., s. 14(7).
expenses under the Act.\textsuperscript{47} That was unless the party or the association was re-registered within a period of two years from deregistration, in which case the money would be returned. Finally, it is to be noted that candidates for election were also required to register as a condition of receiving funds for their respective campaigns.\textsuperscript{48}

B. \textit{Contributions}

By section 17 of the Act, contributions to registered political parties, constituency associations, and candidates could be made only by "persons individually, corporations and trade unions." The Act also imposed limits on the size of the contributions from each of these sources. No more than two thousand dollars could be donated by any person, corporation, or union to each registered party, and no more than five hundred dollars could be donated to any registered constituency association by each of these contributors, with a ceiling of two thousand dollars being set as an aggregate sum which a single contributor could donate to the constituency associations of a particular party.\textsuperscript{49} A single contributor, therefore, could donate up to four thousand dollars per annum to a party and constituency association of a party. In an election campaign a further two thousand dollars could be donated to a registered party, and a further five hundred dollars could be donated to a constituency association, again with a ceiling of two thousand dollars on such donations.\textsuperscript{50}

One weakness of any legal control of political contributions and campaign spending is the potential for abuse and evasion. The history of legal controls on party financing in both Canada and the

\textsuperscript{47} Ibid.
\textsuperscript{48} Ibid., s. 15.
\textsuperscript{49} Ibid., s. 19(1)(a).
\textsuperscript{50} Ibid., s. 19(1)(b).
United States is replete with examples of failure. The 1975 Act addressed some of the deficiencies of legislation enacted in other jurisdictions. First, steps were taken to ensure that the reforms were not undetermined by a wealthy candidate injecting vast amounts of private resources into the campaign, by a provision that any personal funds used by a candidate were to be deemed to be a contribution and therefore subject to the controls outlined above. Second, in order to prevent a wealthy individual dividing up a parcel of money to be laundered through the contributions of a large number of people, the Act provided that contributors were not to contribute money not actually belonging to them, nor were they to contribute funds that had been given or furnished for the purpose of making a contribution. This meant, for example, than an employer could not divide a sum of money amongst his employees so that they may then pass the money onto a political party. Third, in order to regulate non-monetary, substantial donations in kind to the political parties, the Act provided that the value of goods or services given to a party were to be regarded as a contribution as well as the value of any advertising undertaken to support a party or candidate with their approval. A fourth method of regulation was to ensure that fund-raising activities did not become a means whereby the contribution limits were seriously breached either by the anonymous collection of vast sums of money or by the imposition of unrealistically high prices of admission to fund-raising events. Through these provisions, the Act imposed a duty on parties, constituency associations, and candidates to record and report to the Commission the gross income from any fund-raising function. For this purpose, a fund-raising function was defined as

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51 For an account of Canadian developments, see Canada, Committee on Election Expenses, Report of the Committee on Election Expenses (Ottawa: Queen’s Printer, 1966) at 13-27 (Chairman: Alphonse Barbeau).

52 Supra, note 31, s. 19(3).

53 Ibid., s. 20.

54 Ibid., s. 22.

55 Ibid., s. 23.

56 Ibid., s. 24(2).
suppers, dances, garden parties, or any other social function held for the purpose of raising funds.\textsuperscript{57} In addition to the duty to report, the Act treated any charge for admission to a fund-raising function as a contribution.\textsuperscript{58} The party could deduct from the cost certain reasonable expenses, though the most that could be claimed as an expense for each individual was twenty-five dollars.\textsuperscript{59} Anything in excess of this was regarded as a contribution. Where money was collected at a political meeting by way of a general collection from those present, the Act provided that no one could donate more than five dollars.\textsuperscript{60} Such donations were not to be treated as contributions for the purpose of the Act, although the party, constituency association, or candidate on whose behalf the money was collected were under a duty to report to the Commission the gross amount so collected.\textsuperscript{61}

A final regulation concerned loans to the registered parties. If the parties were free to accept donations in the shape of forgiveable "loans," the contribution limits would quickly be rendered ineffective because individuals could actually contribute much more than the statutory limits. It was to deal with this that section 37 provided that no party, constituency association, or candidate could receive a loan from any person, corporation, or trade union. This wide rule was qualified in only two ways. First, a loan could be accepted from a registered political party or constituency association.\textsuperscript{62} This was designed to permit the transfer of money from central parties to constituency associations or candidates to help finance local campaigns. The other exception was that a party, constituency association, or candidate could borrow money

\textsuperscript{57} Ibid., s. 24(1).
\textsuperscript{58} Ibid., s. 24(3).
\textsuperscript{59} Ibid.
\textsuperscript{60} Ibid., s. 25.
\textsuperscript{61} Ibid.
\textsuperscript{62} Ibid., s. 37(2).
from a chartered bank or other lending institution provided that
details of all such loans were reported to the Commission.\textsuperscript{63}

C. Regulating Campaign Expenses

The only limitations on expenses which the \textit{Act} introduced
were contained in sections 38 and 39 and related wholly to
expenditure in an election campaign. This provided that advertising
conducted for the purpose of promoting or opposing any party or
candidate could only be conducted in the three-week period
immediately preceding polling day, excluding the day before polling
day itself.\textsuperscript{64} This was meant to reduce election costs by making the
campaign period very short. It should be noted, however, that this
did not stop independent advocacy on behalf of the party or
candidate outside these time limits. A crucial qualification to the
limit on campaign spending is that it applied only to expenditures
incurred by the party or candidate, or by a person acting with its
knowledge and consent.\textsuperscript{65} A number of minor qualifications were
also made to this prohibition on advertising. It did not apply, for
example, to the advertising of public meetings in constituencies or
to matters concerning the administrative function of constituency
associations such as announcements from association headquarters.\textsuperscript{66}

In addition to this control over the duration of the campaign
period, the \textit{Act} also introduced steps to ensure that different
candidates or parties were not denied effective access to the
electorate either because the broadcasting companies levied
discriminatory advertising charges or because one party was able to
dominate the election financially and so drown out the message of
the others. The first problem was dealt with by a requirement that
the broadcaster during the campaign period not charge any party or
candidate less than "the lowest rate charged by him ... for an equal

\textsuperscript{63} \textit{Ibid.}, s. 36.
\textsuperscript{64} \textit{Ibid.}, s. 38(1).
\textsuperscript{65} \textit{Ibid.}, s. 38(1).
\textsuperscript{66} \textit{Ibid.}
amount of equivalent time on the same facilities made available to any other person in that period. Similar provisions applied to advertisements in periodical publications. In other words, there was to be equal right of access to television, radio advertising, and the press. The second problem of election campaigns, that of unequal resources of the parties and candidates, was dealt with by ceilings on expenses. However, these were very limited and applied only to expenses incurred by way of broadcasting or "by publishing in any newspaper, magazine or other periodical publication or by display through the use of any outdoor advertising facility." Nationally, a party could spend twenty-five cents for every voter on the electoral list; locally, constituency associations and independent candidates could spend twenty-five cents for every voter on the list for their respective electoral districts.

It is to be noted that just as there was no limit on independent advocacy outside the official campaign period, neither was there any limit on such advocacy during the campaign period. It was thus open to a range of individuals or organizations to incur expenditure in support of a candidate or party provided that it was not done with the knowledge and consent of the party or candidate concerned. This would clearly allow the businesses, for example, to use their vast financial resources in an election campaign to support a particular party or candidate. The danger for the parties is, however, that they have no control over the groups which will identify with their cause and which by their very support may do as much to damage a party’s chances as strengthen them. In practice, however, this may not be a serious concern and may be outweighed by the sheer volume of "safe" support from the business community. One final point is worth noting about the promotional activities of independent third parties. The limits on broadcasting companies and the press did not apply here. This made it possible

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67 Ibid., s. 38(4)(a).
68 Ibid., s. 38(4)(b).
69 Ibid., s. 39.
70 A point made forcefully by the U.S. Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976).
for the media to charge prohibitively high fees for advertisements promoting a party or candidate which were not supported by those who owned or controlled the media service being used.

D. Public Funding

The Camp Commission had recommended the introduction of two forms of public subsidy for the political parties. The first was indirect in the sense that people who donated should be given tax advantages. The proposals on this question took two forms. First, the Commission recommended tax credits for donations by individuals. Camp recommended "a tax credit of 75% on the first $100, plus 50% on the next $450 plus 33 1/3% on the remainder to a maximum credit of $500."71 Second, the Commission proposed the more radical suggestion of a tax check off whereby "every individual whose provincial income tax liability for the taxable year is $2 or more" should "be allowed to designate $2 as a political contribution to any registered provincial political party of the individual's choice."72 This was proposed to increase the involvement of citizens in the political process. Thus, the Commission concluded in its Report:

If the process of political financing is no longer to be underwritten by large contributors, ways must be found to increase the number of individual contributors so that the parties may continue to function effectively, proportionate to their support. We believe a mix of the tax check off, tax credits, and limited public funding in campaigns can combine to achieve this.73

In the end the tax credit was adopted by the government,74 though the tax check off was not, Camp having rightly anticipated "bureaucratic resistance" on the basis that "the check off creates a further area for taxpayer confusion and makes further demands

71 Camp Report, supra, note 6 at 32.
72 Ibid. at 39.
73 Ibid.
74 Income Tax Act, R.S.O. 1980, c. 213, s. 7(6).
upon the computers. So far as tax credits for individual donations are concerned, the legislation made provision roughly along the lines proposed by Camp, that is to say,

(a) 75 per cent of the amount contributed if the amount contributed does not exceed $100;
(b) $75 plus 50 per cent of the amount by which the amount contributed exceeds $100 if the amount contributed exceeds $100 and does not exceed $550; or
(c) the lesser of,
   (i) $300 plus 33 1/3 per cent of the amount by which the amount contributed exceeds $550 if the amount contributed exceeds $550, and
   (ii) $500.

So far as corporations are concerned, the Corporation Tax Act was also amended broadly along lines proposed by Camp. Thus, in each tax year a corporation could deduct from its taxable income political donations which did not exceed the least of (i) the amount contributed, (ii) the corporation's taxable income computed without reference to this section, and (iii) $4,000. The legislation, however, departed from the Camp recommendation in one important respect. The amount deducted could not be doubled in an election year, although the corporation could in fact double the amount of its contributions.

In addition to facilitating donations through the tax system, a second form of public subsidy proposed by Camp was the making

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75 Camp Report, supra, note 6 at 39. It has been explained that "the check off was proposed and accepted by all parties in Ontario and accepted by the government of the day, and that when that was put to Revenue Canada, they said technically they could not do it. It is obvious, because of the householder tax credit and some of the other tax credits, that they can do that kind of counting now because they do it. It would seem that the impediment, which is the only impediment to the check off I have ever heard, does not exist today and we could implement such a check off." Ontario, Legislative Assembly, Standing Committee on Procedural Affairs. Evidence submitted by New Democratic Party at 27 (15 September 1982) (Afternoon Session) (Mr. J. Murray, Former Provincial Secretary).

76 Income Tax Act, supra, note 74.

77 Corporations Tax Act, R.S.O. 1980, c. 97, s. 20.

78 Camp Report, supra, note 6 at 33.
of payments directly to candidates in an election to meet election expenses. But although the 1975 Act embraced this policy, it did so by departing significantly from the Camp recommendations. Camp had suggested that some limited form of public funding was necessary
to help ensure that credible candidates may mount credible campaigns; to relieve the pressing needs upon parties and candidates for campaign funds; and, as well ... to give an incentive to candidates to manage their expenditures in the interests of effectiveness and economy and to provide some deterrent to over-expenditure.

In order to pursue this last goal, the Commission had recommended that the refund to each candidate should not exceed seven thousand five hundred dollars.

with the qualification that any candidate who spends more than the total of 80¢ for each of the first 20,000 electors in his constituency, and 25¢ for each of the remaining electors, shall have his subsidy reduced by $1 for each $2 by which he exceeds such total.

The 1975 Act did not in fact load the rebate against high spenders. Under the Act every candidate who received at least 15 percent of the popular vote was entitled to reimbursement for expenditure of up to an aggregate of sixteen cents for each of the first twenty-five thousand voters in his or her electoral district, and fourteen cents for each voter in excess of twenty-five thousand in his or her electoral district. This open-ended commitment to reimburse expenses met with some criticism. It was pointed out that the absence of effective spending limits permitted candidates to spend excessively and that high spenders were "being subsidized by the people of Ontario through the rebated scheme provided for in

79 Ibid. at 40.
80 Ibid.
81 Ibid.
82 Supra, note 31, s. 45.
83 Ibid., s. 45(1). The rebate determined under s. 45(1) is raised by $2,500 in six electoral districts (Cochrane North, Rainy River, Kenora, Lake Nipigon, Algoma, and Nickel Belt (s. 45(2)).
the Act." The Liberal party claimed that if this was permitted to continue, "only more and more cynicism about the political process will develop." This concern seems to have been fuelled by activities in one constituency in the 1981 provincial election where the Conservative candidate raised $142,786 and spent $90,552, compared with the second placed Liberal candidate who raised only $6,981. Both candidates, however, received a subsidy of $5,902, which it was considered to be highly inappropriate and irresponsible. It was charged that the money was being used to help the candidate build up a war chest and that it was offensive to subsidize people who were obviously "flush."

E. Enforcement

To encourage the parties, constituency associations, and candidates to keep proper account of the contributions made to them, the Act required that they all appoint a chief financial officer (CFO). The CFO's statutory duties were to ensure that proper records were kept of all receipts and expenditures; that an annual statement of assets, liabilities, receipts, and expenses was filed with the Commission; and that a statement of receipts and expenses in a campaign period was filed with the Commission. In addition, the CFO was under a duty to record all donations from a single source in any year which exceeded ten dollars. Where this exceeded one hundred dollars, the CFO was to record the name and address of the

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84 Ontario, Legislative Assembly, Standing Committee on Procedural Affairs. Evidence submitted by Mr. J. Evans, President of Ontario Liberal Party at 4 (15 September 1982).

85 Ibid.


87 Ibid.

88 Supra, note 84.

89 Supra, note 31, s. 34.

90 Ibid., s. 34(4).
contributor. This information was, in turn, to be filed with the Commission annually and was made available for public constituency by the Commission. If the CFO of a political party, constituency association, or candidate failed to submit an annual return or a campaign period return, he or she was guilty of an offence and on conviction could be fined one thousand dollars. Criminal penalty was in fact the normal sanction employed in the statute, it being provided that "every person, political party or constituency association that contravenes any of the provisions of this Act, for which contravention no penalty is otherwise provided, is guilty of an offence." Yet despite the use of the criminal law, the enforcement mechanism was a potential weakness in the Act. First, the penalties for any breach were very light. The maximum fine which could be imposed on a party was two thousand dollars; on a constituency association or candidate it was one thousand dollars; and on a corporation or trade union it was ten thousand dollars. Second, although prosecution was instituted only with the consent of the Commission, it could be done only after consultation with the Attorney-General's Office. This was rightly criticized, for it was a major threat to the independence of the Commission. In practice, however, the issue was not a live one, for no suggestion has been made of any serious or systematic abuses, nor is there any evidence

91 Ibid., s. 35(1).
92 Ibid., s. 35(3).
93 Ibid., s. 47(1). Where a C.F.O. is guilty, the party, association, or candidate is also guilty. A party may be fined $2,000, and in the case of an association or candidate, $1,000 (s. 47(2)).
94 Ibid., s. 49. If a corporation or trade union breaches any of the terms of the Act, the maximum fine on conviction is $10,000 (s. 48).
95 Ibid.
96 Ibid., s. 54.
97 Under the Act, the only relevant duty of the Commission in this area is to "report to the Attorney General any apparent contravention of this Act." Ibid., s. 4(1)(g).
The Funding of Political Parties

of such abuse. To some extent this is perhaps surprising in view of prior experience with legislation of this kind in both Canada and the United States.\(^9\) What that experience may suggest, however, is that legislation of this kind can operated effectively only in a political climate which is not hostile to the interests which are the targets of the control. In Ontario, corporations enjoy a very sympathetic political environment. The Progressive Conservative Party has been very successful politically, with the result that there is no need to step beyond the four corners of the legislation. In fact, any disclosed irregularities would far outweigh any benefits that they might bring with them. In that context, it is hardly surprising that there has been only one prosecution under the Act. This involved Mr. Vincent Corriero, a full-time student at York University, who was charged with accepting contributions of five dollars, two dollars, and one dollar while being an unregistered candidate for election to the Provincial legislature in 1981,\(^{100}\) for which he was fined one hundred and seventy-five dollars.\(^{101}\) By all accounts Mr. Corriero conducted a remarkable campaign. He had solicited contributions by misrepresenting himself as being the Official Liberal candidate; he opened a campaign office, the windows of which were covered with pictures of Liberal politicians; he adopted the Liberal Party logo; distributed party literature; and claimed he was the Liberal candidate.\(^{102}\) In addition, he failed to submit an audited statement of his receipts and expenses to the Commission, and further to his conviction under the 1975 Act in connection with the election, he was arrested on seventeen charges of false pretences; eight charges

\(^9\) See supra, note 51.

\(^{100}\) Information supplied by the Commission on Election Contributions and Expenses. See also Seventh Annual Report, supra, note 86 at 4-5.

\(^{101}\) "[I]n setting the amount of the [fine] the Judge first inquired into Mr. Corriero's financial position and apparently, the amount of the fines took into consideration the fact that Mr. Carriero is a full-time student at York University and his sole income is a student loan." Memorandum to Commission Members from Mr. D.A. Joynt, Executive Director, 2 December 1981.

of fraud, two charges of forgery, and one charge of spreading false views.\textsuperscript{103}

III. THE IMPACT OF THE LEGISLATION ON POLITICAL FUND-RAISING

A. New Fund-Raising Techniques

The 1975 \textit{Act} had a dramatic effect on the fund-raising activities of the parties. Although no figures are available for the period before 1975, it is acknowledged by officials of the Progressive Conservative Party that about 90 percent of its income was raised from big business.\textsuperscript{104} Obviously this could not continue after the \textit{Act} came into force, for the effect of the legislation was to seriously constrain the spending power of each of the party's traditional donors. The response of the Conservatives has been threefold. First, it has broadened its corporate base in the sense that it now solicits funding from a growing number of corporations. The number of corporate donors to the Conservatives has risen from 761 in 1975\textsuperscript{105} to 1,316 in 1980\textsuperscript{106} to 2,210 in 1984,\textsuperscript{107} though significantly the amount actually raised from these donors fell from $1,097,637 in 1975\textsuperscript{108} to $8,10,440 in 1980\textsuperscript{109} and rose only to $1,230,889 in 1984.\textsuperscript{110} Second, the party has cultivated a network of individual donors and now raises about as much from individuals

\begin{footnotesize}
\begin{enumerate}
\item[103] "Bogus Grit in Ontario Election Guilty," \textit{ibid}.
\item[104] \textit{Camp Report}, supra, note 6 at 6.
\item[106] \textit{Seventh Annual Report}, supra, note 86 at 37.
\item[107] \textit{Eleventh Annual Report}, supra, note 36 at 19.
\item[108] \textit{Second Annual Report}, supra, note 105 at 35.
\item[109] \textit{Seventh Annual Report}, supra, note 86 at 37.
\item[110] \textit{Eleventh Annual Report}, supra, note 36 at 19.
\end{enumerate}
\end{footnotesize}
as it does from corporations.\textsuperscript{111} This is done mainly by using a computerised Direct Mail programme whereby electors are contacted by the party and invited to contribute to its funds. To facilitate this process, lists of names are bought from "list brokers." These brokers buy from magazine publishers the lists of subscribers to the magazines, and the Conservative party buys the lists of those magazines whose readers it anticipates might be sympathetic to the party. The third response of the party has been to develop fund-raising social events, the most notable of which are dinners, that may be attended by the party leader and for which a high fee is charged to attend. Although these events do not yield as much money as either of the party’s other two sources, it is seeking to strengthen this aspect of fund-raising so that an equal amount is raised from each of the three different sources.\textsuperscript{112}

The Conservative party has perhaps been more responsive to the new legal regime than any other party in Ontario. Indeed so successful have its efforts been that it could afford to resist calls for the size of the maximum permitted donations to rise from its original two thousand dollars annually in order to keep pace with inflation.\textsuperscript{113} There can be little doubt, however, that had the need arisen when it was in government, such a step would in fact have been taken. The effect of the Act on the NDP has been much more indirect. It is true that the legislation did interfere with the internal affairs of the party. Before the passing of the Act the provincial party’s two main sources of income were individual members and affiliated unions.\textsuperscript{114} Because the party is a much more tightly structured national organization, a portion of the money raised in Ontario was passed to national party headquarters in Ottawa for use for federal purposes. By section 30 of the 1975 Act this was no longer possible, it being enacted that no registered party shall directly or indirectly contribute or transfer funds to any political

\begin{footnotes}
\item In 1984 the Party raised $1,230,889 from corporations and $982,897 from individuals. If the total of party and riding association income is considered, $2,024,076 was provided by corporations in contrast to $2,107,754 provided by individuals. \textit{Ibid.} at 19.
\item Information supplied to the author by the Progressive Conservative Party of Ontario.
\item \textit{Ibid.}
\item Information supplied to the author by the Ontario New Democratic Party.
\end{footnotes}
party not registered under that Act. If the provincial party was to keep all the money which was available in Ontario, the federal party would be starved of a substantial supply of income. What has happened is that by agreement, the federal party collects the donations from trade unions, while the provincial party retains all the income which it raises in membership fees.\(^{115}\) As a result, only a small amount comes to the provincial NDP from the local labour movement.\(^{116}\) So insofar as the Act had an effect on the NDP, it was indirect in the sense that the lack of any significant institutional support meant that the party had to work hard for individual donations. Another indirect effect of the Act on the NDP was that the party felt the need to respond to the fund-raising activities of the Conservatives. That party now raises more money than it did before 1975 and its accounts are published. The NDP is under some pressure to ensure that not too wide a gap exists between the parties.

One effect of the Act for the NDP, therefore, may have been to encourage the party to work harder for its money. However, it is true to say that the gulf between the NDP and the Conservatives remains wide despite these efforts and that the total income of the NDP is only slightly less than 50 percent that of the Conservatives.\(^{117}\) An interesting feature of NDP fund-raising from individuals is that the techniques of fund-raising have not changed much, though the party has certainly adopted a much more aggressive policy in pursuit of the dollar. The party relies more on personal contacts than on direct mail programmes.\(^{118}\) The party may organize blitzes of certain areas during which members visit the homes of people who, from canvassing returns, are thought to be sympathetic to the party. These people will be encouraged to join the party or to contribute to its funds. The party has spent some time training or advising activists on how to handle these visits, and some party members and

\(^{115}\) Ibid.

\(^{116}\) In 1984, a total of only $33,850 was contributed by unions to the party and its riding associations, compared to over $2 million contributed to the Progressive Conservative Party and its riding associations. *Eleventh Annual Report*, supra, note 36 at 19.

\(^{117}\) See *infra*, Table IV.

\(^{118}\) Information supplied to the author by the Ontario New Democratic Party.
workers complain that too much time is now devoted to fund-raising and too little to equally important matters such as formulation of policy and ensuring the accountability of the party leadership. Although the NDP does engage in a direct mail programme, this is by no means as extensive as that of the Conservatives and it brings in less than 10 percent of the party's income. In fact the NDP list of names is less than ten thousand, compared with the thirty thousand contributors who in 1982 appeared on the computer of the Conservative party.

The reason for the difference in the emphasis of direct mailing in the two parties lies mainly in the different types of people who typically support these parties. Direct mail depends for its success on two ingredients: the target audience must be likely to support the cause; and the targets must be people who are accustomed to giving money through the mail. These requirements present a difficulty for the NDP because it draws its support mainly from organized labour and because middle class groups are more likely to give money through the mail. Consequently there is a very small market for NDP direct mail programmes, and it has been difficult for the party to build up a mailing list. A very important feature of the party's direct mailing programme is a follow-up personal contact whereby the targets of the mailing will be telephoned or perhaps even visited at home to encourage them to support the party. Another fund-raising technique which the party is trying to develop is the creation of a network of canvassers who could exploit contacts with sympathetic middle class supporters and encourage them to make substantial donations in addition to their membership fee. The party will contact a member or supporter, such as a university professor, a lawyer, or doctor, and ask them to canvass financial support from colleagues at work. This is supplemented by the traditional events such as cocktail parties. But while in 1982 a good event of this kind might attract twenty thousand dollars for the NDP, the Conservatives were raising about 20 per cent of their considerable income from such sources. In

119 Ibid.
120 Ibid.
121 Information supplied to the author by the Progressive Conservative Party of Ontario.
truth, direct mail, canvassing, and other fund-raising events raise together only 10 per cent of the NDP's income,\textsuperscript{122} no more than a drop in the bucket by Conservative standards.

The 1975 Act also presented the Ontario Liberal Party with a serious fund-raising problem. Before the enactment of the legislation, the party looked to two hundred or so corporate donors for its finance.\textsuperscript{123} The Act has had the effect of reducing significantly the income from this source, with the result that the party has had to devise ways of raising money from individuals. However, the party has been slow to develop organized techniques of fund-raising and, as we will see, raises much less than either of the other two main-line parties in the province. The party has only recently started to think about direct mail, for the simple reason that its former leader had no interest in it and perhaps also because of the lack of encouragement from the federal party (which sat back and watched the Conservatives build up a large list of names before becoming interested).

Direct mail campaigns are conducted, but only on a small scale because the party does not have a history or tradition of mass membership to raise income. The party does "sell" memberships, this tends to operate in a very disorganized and perfunctory manner. Memberships are sold by riding associations, and the money collected forms part of the income of the association. There is no fixed membership fee, and it is only recently that the party has sought to impose a uniform charge of ten dollars annually. In addition to trying to introduce this uniform fee for membership, the party introduced four field officers to help riding associations to raise money. The riding associations in turn were expected to adopt a much more aggressive approach to fund-raising, and those which failed to come up to the mark were to be placed in trusteeship with the provincial party. The central party would then appoint new officials who it felt would do the job. The central party has a great interest in the success of these endeavours, for it receives 25 percent of all fund-raising dollars paid to riding associations.\textsuperscript{124}

\textsuperscript{122} Information supplied to the author by Ontario New Democratic Party.

\textsuperscript{123} Information supplied to the author by the Ontario Liberal Party.

\textsuperscript{124} This information was supplied to the author by the Ontario Liberal Party.
B. Changing Patterns of Corporate Dependence

The published reports of the parties to the Commission show that Ontario's contribution limits have had three consequences for political fund-raising in the province. The first is the contribution which the Act has made to the dependence of the parties on institutional donors as a source of funding. The most profound development has taken place in the Progressive Conservative Party where in 1975 the provincial party and its riding associations together received $2,799,801 by way of contributions, of which some $2,135,468 was donated by corporations; in other words 76 percent of the party's money came from corporations.125 For the provincial headquarters, 91 percent was provided by corporations.126 By 1983 and 1984 this situation had considerably changed. This is shown in Table 1.127

Table I

Progressive Conservative Party Income Donated by Corporations

<table>
<thead>
<tr>
<th>(1) Total income $</th>
<th>(2) Total corporate donations $</th>
<th>(3) (2) as % of (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983 2,826,417</td>
<td>1,213,000</td>
<td>43%</td>
</tr>
<tr>
<td>1984 2,884,141</td>
<td>1,230,889</td>
<td>43%</td>
</tr>
</tbody>
</table>

125 Second Annual Report, supra, note 105 at 35. These figures relate to total income derived from donations in excess of one hundred dollars.

126 Ibid.

The dependence of the party on corporations, therefore, though still considerable at this level, has fallen. The nature of corporate dependence is even less when the income of the party and the riding associations combined are considered. The fall in corporate dependence (Table II)\(^{128}\) in such a short period of time suggests that in principle at least it should be possible for Ontario to move towards the Quebec system where donations are permitted only by private individuals.\(^{129}\)

### Table II

*Income of Progressive Conservative Party and Riding Associations Donated By Corporations*

<table>
<thead>
<tr>
<th></th>
<th>(1) Total income</th>
<th>(2) Total corporate donations</th>
<th>(3) (2) as % of (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>5,181,445</td>
<td>1,817,592</td>
<td>35%</td>
</tr>
<tr>
<td>1984</td>
<td>6,101,390</td>
<td>2,024,076</td>
<td>33%</td>
</tr>
</tbody>
</table>

This method had been rejected by the Camp Commission which wrote in 1974:

> ... while constructing a model based upon disallowing corporate contributions, it becomes obvious that the shortfall in available funds would be severe. It also seems certain that the shortfall could not be made up by individual contributions unless corporate money is not simply to be re-routed. To do so would resolve nothing, but merely encourage deception and general cynicism, and make the political parties either conspirators or bankrupts.\(^{130}\)

However, the experience of the Conservative party indicates that this may have been too pessimistic a view. The fact remains that even without corporate money the Progressive Conservatives would still have more money to spend than either of their rivals.

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\(^{128}\) Ibid.

\(^{129}\) *Election Act*, S.Q. 1984, c. 51, s. 365.

\(^{130}\) *Camp Report*, supra, note 6 at 8.
Further evidence for the view that the parties could become institutionally independent is provided by the information made available by the NDP. Here the trend is not quite so dramatic because the party has never been as dependent on institutional finance as the Tories on corporate money. In addition, the Act effectively prevents the party from receiving substantial union donations, with the federal party having first call on these funds. However, in 1975, the party headquarters and ridings received $319,933 by way of donations, of which $36,786 was provided by the unions. By 1984 the income of the provincial party had risen considerably, yet union contributions had actually fallen. Thus, in 1984, the total income of the NDP (not including transfers from constituency associations) was $1,832,312 of which $25,660 was provided by trade unions. So while the total income of the party had increased almost sixfold, the total contributions from unions had fallen. In fact, only 1.4 percent of funds of the party are now donated by unions, in contrast with 40 percent reported by the Camp Commission in 1974. Indeed, the dependence of the Party is even less if the calculation is based on support for the party and its riding associations. In 1984 the total income of both combined was $3,247,912. The combined union and corporate donations meant that in 1984 around 1.1 percent of party funds was provided by institutional supporters. So successful has been the party in developing individual contributions that it has been seriously able to propose that Ontario adopt the Quebec system. In 1982 Mr. Jim Renwick, a senior provincial NDP politician, stated that this is a matter which his party would be discussing at length and claimed that there was "a lot to be said in the theory of democratic parliamentary government about ... eliminating contributions ... from corporations and trade unions." Renwick responded to a question

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131 Second Annual Report, supra, note 105 at 35.
132 Eleventh Annual Report, supra, note 36 at 19.
133 Camp Report, supra, note 6 at 6.
134 Eleventh Annual Report, supra, note 36 at 19.
135 Ontario, Legislative Assembly, Standing Committee on Procedural Affairs, supra, note 75 at 6.
which suggested that such a proposal would have a substantial effect on the contributions of his party by saying that "the contributions to other parties, perhaps from the corporate world, would offset any negative effect that would have on the NDP." \(^{136}\)

The evidence from party reports to the Commission indicates that in principle it would be possible to prohibit corporate donations. But there are two problems which might make it difficult to introduce such a change to the law of Ontario. The first problem relates to the structure of government within the political parties, and particularly within the Conservative and Liberal parties. In both parties, riding associations enjoy considerable autonomy from the central party organization. \(^{137}\) In both parties the riding associations now raise large sums of money. In fact, the combined income of the riding associations is greater than that of the central party. Yet party officials claim to see very little of the money raised locally, this being jealously protected by the local associations. It has to be said, however, that this claim is simply not supported by the evidence. The Liberals in particular have received regular annual subventions from local associations, this accounting for between 25 to 33 percent of total income nationally and about 35 percent of combined local expenditure. \(^{138}\)

A more serious obstacle to a movement in the Quebec direction is that the Ontario Liberal Party appears to be unable to shake its dependence on corporate money. In 1980 the Liberals at headquarters relied on corporations for 77 percent of their income while the provincial party together with the riding associations relied on corporations for 69 percent of the total income of the party. \(^{139}\)

And indeed, it may be significant that at a time when the NDP was beginning to question the role of corporate money, \(^{140}\) the Liberals in contrast were looking at devices for shaking the corporate "money

\(^{136}\) Ibid.

\(^{137}\) Information supplied to the author by officials of the Progressive Conservative Party of Ontario and the Ontario Liberal Party.

\(^{138}\) Eleventh Annual Report, supra, note 36 at 17-20.

\(^{139}\) Seventh Annual Report, supra, note 86 at 29.

\(^{140}\) Supra, note 135.
tree." In 1982, in a submission to the Legislature’s Standing Committee on Procedural Affairs, the following point was made by the party’s President:

... we are concerned about the ability of certain corporations doing business in Ontario to make contributions to parties which they support.

As you know, certain United States legislation has been used as an excuse by many companies not to participate in the political processes provided for under the Election Finances Reform Act. This, we believe, is an illegitimate application of the United States extraterritorial jurisdiction. As such, we believe it is unacceptable. The Ontario Liberal Party urges members of the committee to search the ways to encourage Canadian subsidiaries of foreign companies to participate in appropriate ways provided for under the acts. Furthermore, we suggest that the government of Ontario seek discussions with the Department of External Affairs and other relevant federal agencies to seek ways to rectify this situation.141

Since then the level of corporate dependence has fallen, but it remains true that in both 1983 and 1984 at least 48 percent of the party’s income was donated by corporations.142

C. Financial Inequality

A third feature of party financing since 1975 is the considerable financial inequality which exists between the parties. This is reflected by both campaign income and expenditure, and by annual income and expenditure. At the Provincial election in 1981 the Conservatives collected receipts of 2.4 million dollars, compared with $909,396 raised by the O.L.P. and $224,271 raised by the NDP. Expenditure in turn amounted to 3.3 million dollars, 1.1 million dollars, and $624,599 respectively.143 In other words, the Conservatives spent almost double that spent by the other two parties combined. In 1985 the gap in spending levels narrowed, though it was still rather wide. Conservative campaign receipts in that year amounted to 2.6 million dollars, while those of the Liberals and the NDP amounted to 1.7 million dollars and $437,321

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141 Supra, note 84 at 7.

142 Based on figures made available in Tenth Annual Report, supra, note 127, and Eleventh Annual Report, supra, note 36 at 19.

143 Seventh Annual Report, supra, note 86 at 41.
respectively. Conservative spending, however, was an astonishing 4.2 million dollars, compared with only 1.6 million dollars by the Liberals and 1.3 million dollars by the NDP. In 1985, therefore, the Liberals and the NDP combined had risen to about 66 percent of the level of expenditure of the Conservatives. And it is to be noted that it is not only in the case of central party expenditure that this benefit is enjoyed. At the 1981 election, for example, the Conservative candidate was the highest spender in 103 of the 126 constituencies. In fact, in seventy-one of the seats, the Progressive Conservative candidate spend 50 percent or more of the total election expenditure in the riding. Indeed, in seventeen seats the Conservative candidate spent 66 percent or more of the total election expenditures incurred in the riding.

If we move from campaign activity to examine the annual income and expenditure of the three main parties, we also find a marked inequality of fortunes. The annual income of the parties is shown in Table III.

Table III

Income of the Political Parties

<table>
<thead>
<tr>
<th>Party</th>
<th>1983</th>
<th>1984</th>
</tr>
</thead>
<tbody>
<tr>
<td>Progressive Conservative Party</td>
<td>3,005,417</td>
<td>3,118,296</td>
</tr>
<tr>
<td>Liberal Party</td>
<td>972,623</td>
<td>918,835</td>
</tr>
<tr>
<td>New Democratic Party</td>
<td>2,226,531</td>
<td>3,010,710</td>
</tr>
</tbody>
</table>

144 Information supplied to the author by the Commission on Election Finances.
145 Information extracted from figures published in Seventh Annual Report, supra, note 86 at 56-69.
146 Ibid.
147 Supra, note 127.
The figures in Table III suggest that although the Liberals are a long way behind, there is nevertheless not a lot between the other two parties. This, however, is misleading. The reason why the NDP appears to do so well is because the party headquarters draws heavily on the revenue of local associations. In 1984 over one-third of the party’s income ($1,178,398) was provided by transfers from the local associations, compared with $234,155 received by the Progressive Conservatives from its riding associations.  

If the income of the riding associations is added to that of the central party organization, a rather different picture emerges. This is shown in Table IV.

<table>
<thead>
<tr>
<th></th>
<th>1983</th>
<th>1984</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Progressive Conservative Party</strong></td>
<td>5,181,445</td>
<td>6,101,390</td>
</tr>
<tr>
<td><strong>Liberal Party</strong></td>
<td>1,529,249</td>
<td>1,445,847</td>
</tr>
<tr>
<td><strong>New Democratic Party</strong></td>
<td>2,762,379</td>
<td>3,247,912</td>
</tr>
</tbody>
</table>

It is clear then that there is a wide gulf in the income of the parties. Inevitably this is reflected in the spending levels each year. In 1984, for example, Progressive Conservative headquarters spent $3,225,312, while the NDP spent less than half, $1,509,306, and the Liberals even less still, $775,854. A full measure of the different spending levels

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148 Eleventh Annual Report, supra, note 36 at 19.
149 Supra, note 127.
150 Ibid.
can be obtained by adding the expenses of the headquarters with that of each of the riding associations.\textsuperscript{151}

\textit{Table V}

\textbf{Expenditure of Central Party and Riding Associations}

\begin{tabular}{|c|c|c|}
\hline
 & 1983 & 1984 \\
\hline
Progressive Conservative Party & 4,332,358 & 5,758,283 \\
Liberal Party & 1,196,066 & 1,139,750 \\
New Democratic Party & 2,511,653 & 1,820,044 \\
\hline
\end{tabular}

An important question which arises is why there should be this wide gulf between the parties. An obvious possible reason is that the Conservatives raise and spend more money because a larger number of people contribute. This cannot be tested, however, from the published information. Details are given only about donations in excess of $100, so that the total number of donors is simply not known. What is known, however, is that the Progressive Conservatives appear to receive more large donations, that is to say, they receive considerably more donations of over $100 from persons than do the other parties. Thus, in 1984, the Conservatives received 8,248 such donations in contrast with 1,440 received by the Liberals and 4,679 by the NDP.\textsuperscript{152} It is also known that the Conservatives obtain a greater portion of their income than the other parties from donations in excess of $100. In 1984 donations to the Tories from all sources in excess of $100 amounted to 4.1 million dollars, some 68 percent of their income. This contrasted with $850,638 to the Liberals and $852,068 to the NDP, accounting for under 59 percent

\textsuperscript{151} Supra, note 127.

\textsuperscript{152} Ibid.
and 26 percent then of their total income respectively.\textsuperscript{153} The size of the average donation is impossible to determine because only donations of more than $100 are reported. It is likely, however, that the size of the average Conservative donation will be larger than that of the other parties, in view of the fact that so much more of its income is provided by donations in excess of $100. It is to be noted that in 1984 the size of the average donation in excess of $100 was $315 in the case of the Conservatives, but only $178 in the case of the NDP.\textsuperscript{154} Again the reasons for this difference are unknown, though it may not be unrelated to the tax rules relating to tax credits. But it does appear that one reason for the large gulf between the parties is that the Tories receive larger donations than their rivals.

A second possible reason for the large gulf between the parties is the number and size of contributions from corporate sources. It is here that the Conservatives and the Liberals potentially have a great advantage over the NDP in view of the effective restriction on any significant union donations. The importance of institutional donations to each of the three parties is shown in Tables VI, VII, and VIII.\textsuperscript{155}

\textit{Table VI}

\textbf{Corporate Support of the Progressive Conservatives}

<table>
<thead>
<tr>
<th></th>
<th>(1) Total income</th>
<th>(2) No. of Contributions</th>
<th>(3) Value of Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>5,181,445</td>
<td>4,048</td>
<td>1,817,592</td>
</tr>
<tr>
<td>1984</td>
<td>6,101,390</td>
<td>4,863</td>
<td>2,024,076</td>
</tr>
</tbody>
</table>

\textsuperscript{153} Ibid.

\textsuperscript{154} Ibid.

\textsuperscript{155} Ibid.
IV. FURTHER REFORM OF THE LEGISLATION – BILL 103

A. Political Pressure in Ontario

The analysis in Part III of this article reveals an unacceptable state of affairs. Although the difference in the income of the parties
The Funding of Political Parties

may well be less than it was before 1975, it is still too high, and it is hardly an overstatement to claim that the wide gulf in the income and expenditure of the parties is an affront to the democratic process. In the parliamentary system, it is crucial to the effective operation of party government that the electors should have a choice in a competition between parties that articulate different policies and reflect different values and commitments. Clearly, in modern liberal democracies, the individual elector may not always have the option of voting for the party of his or her choice. Nevertheless, it is crucial to the operation of party government that the electorate should have some choice, even though it may not suit or satisfy everyone. The legitimacy of party government is based partly on the assumption that there will be more than one player in the game. One party states are the very antithesis of democracy. Methods which effectively produce one party rule in liberal democratic regimes are also undemocratic. No one would deny that party government would be meaningless if only one party was able to raise money and mount an effective campaign. By the same token, the values of party government are seriously threatened if no party is able to compete financially with the front runner. In other words, the values of parliamentary democracy are seriously threatened when one party is able to exploit financial resources as an electoral advantage by campaigning in a manner which is far beyond the means of any other party. Its message can be projected much more loudly, widely, and effectively.

It is clear that the 1975 Act was in need of reform to eliminate the impact of the wide differences in the income and expenditure of the parties. It is thus not surprising that these weaknesses in the law led to calls for change from the opposition parties in the Province. The first major development was the introduction of Bill 206 in 1981, a measure sponsored by Mr. Mancini, a Liberal member. The Bill contained a number of important proposals. First, and surprisingly in view of the problems of Liberal fund-raising, he proposed that political contributions were to be made only by individuals and not by corporations or trade

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Second, an attempt was made to encourage contributions by the use of the tax system. Thus, it was provided in the Bill that "an individual who is liable to pay tax may add an additional amount not exceeding five dollars to such tax and designate the additional amount as a contribution to a registered party." The provincial Treasurer would then be under a duty to transfer the funds so collected to the political parties in question. Third, the Bill proposed the introduction of spending limits on both candidates and parties. Candidate limits would be based on a figure calculated by multiplying the number of votes by ninety cents, and the party limit would be based on a formula of the number of voters multiplied by thirty-five cents. The last major proposal in the Bill related to government advertising, with clause 14 seeking to prohibit the government "during the period commencing with the issue of a writ for an election and terminating on polling day" from publishing "any information or particulars of the activities of the government body, except in the case of an emergency where the public interest requires such publication." It is to be noted, however, that the Bill was the final one of the session and received little discussion in the legislature. Although given a first reading on 17 December 1981, it made no further progress.

The political pressure was maintained, however, when in the following year the subject was considered by the Standing Committee on Procedural Affairs in September 1982. The NDP claimed that

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157 Ibid., cl. 1, 2, 3, 7 and 8.
158 Ibid., cl. 9.
159 Ibid.
160 Ibid., cl. 10. The limits would be adjusted to take account of inflation.
161 Ibid., cl. 14. A number of other Bills have been introduced addressing this particular issue. See Bill 80, An Act to Amend the Election Finances Reform Act, 3rd Sess., 32nd Leg., Ont., 1983; and Bill 5, An Act to Amend the Election Finances Reform Act, 3rd Sess., 33rd Leg., Ont., 1986.
spending limits were a "major concern" of the party and submitted that:

When we are trying to equalize the opportunities for the various parties to put their message before the public, and when the media have such an overwhelming effect on the way in which that message can be delivered ... it is most appropriate that consideration should be given to limiting total expenditures, limiting expenditures on the media, and apportioning the access to the media among the active participants in the election process.

The Liberals made a similar case. The party noted that some candidates for political office abused the fact that there were no spending limits. These abuses, contended the party, were "alarming in the extreme." The party also claimed that "if the views of many citizens today are negative about the political process and the participants in it at least one cause seems to be the excesses in spending of some candidates." Mr. Jim Evans, the party president, claimed that at each election the liberals received "literally hundreds of phone calls from people who are offended by the overkill of excessive campaigning by all parties." One of the dangers of the present system of almost unregulated expenditures was the development in Canada of the less acceptable features of American style campaigning. Mr. Evans could "foresee ten-million-dollar campaigns in this decade and that is outrageous." Of particular concern to the Liberals was the expenditure incurred by Mr. Larry Grossman in the riding of St. Andrew-St. Patrick at the 1981 election. The sum of $90,552 spent represented, in the view of the Liberals, "irresponsible opportunism." Mr. Evans continued:

[I]t is with these excesses in mind that we make the following recommendation: that the act be amended to include limits on campaign spending by each candidate of every registered party during the period of the campaign. This period would take

163 Supra, note 135 at 6.
164 Ibid. at 7.
165 Supra, note 84 at 3.
166 Ibid.
167 Ibid. at 11.
168 Ibid. at 22.
169 Ibid. at 4.
effect at the moment of the declaration of the writ of election and terminate with the closing of the polls.

During that time, we believe each candidate should be limited along the lines of approximately the following formula: 90 cents per elector for the first 25,000 electors and for each additional elector in a constituency, 50 cents per elector. We would recommend excepting intraparty transfers from these limits.

Using this formula, it is easy to see what the effect would be. In a small riding having only 30,000 electors, let us say, the campaign period limit would amount to $25,000. In a large riding such as the one I live in, which is Scarborough North, having approximately 90,000 electors, the campaign limit would be approximately $55,000.

These, we believe, are realistic limits that should be adjusted from time to time to account for inflation. To allow for that adjustment, the commission should be allowed some discretionary authority for periodic increases of the allowance.

One further point needs to be made about spending limits in campaign periods. It must be pointed out that candidates spending excessively are also being subsidized by the taxpayers of Ontario through the rebate scheme provided for in the act. We believe that if this is permitted to continue, only more and more cynicism about the political process will develop. We believe prompt action is necessary.

These recommendations were reinforced by claims that current spending levels were offensive to many non-partisan voters and were necessary to stem the rising tide of public disgust at what went on in some campaigns.

Unsurprisingly, the adoption of spending controls was not supported by the Ontario Conservatives. Three arguments in particular were raised by Tory members during the proceedings of the Standing Committee in 1982. First, it was argued that spending limits penalize success in the sense that a popular and well-organized party is disabled from spending what it can raise. Such parties are thereby constrained by the inefficiency and lack of support for their opponents. Thus, NDP witnesses were accused of "saying, in effect," that

for whatever reason, different people support your party than do my party or the Liberal Party, which is quite fair; but if you have a set of rules, then under those rules you say party A has more difficulty in raising money that party B, then you ought to change the rules. But in a free and democratic society each party, and

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170 Ibid.

171 Ibid. at 16.

172 Ibid. at 17.
each candidate from each riding in each party, has exactly the same right to go to exactly the same people to ask for exactly the same amount of money.\textsuperscript{173}

Second, it was claimed that spending limits would violate not only the rights of the party, but also those of individual citizens. Thus, it was argued ingeniously:

If by an accident of political philosophy or whatever, some of the people who support you for whatever reason do not want to give as much money, or not as much as the people who support me, why should I or my contributors have to suffer when you are in effect saying to the people who want to contribute to my campaign, "Your money can't be spent; but the money of the people who contributed to some other campaign, can be spent," because more people want to contribute to, say, someone else's campaign than to one of your campaigns.\textsuperscript{174}

And finally, it was contended that spending controls are unfair because they take no account of non-financial contributions which may be made to the parties.\textsuperscript{175} These contributions include labour time which may be of great value, yet which may not be as available to some parties as dollars. The point was also pursued by Mr. Rotenberg:

If I have a subdivision in my riding and I want to drop 200 pieces of literature, if it takes a campaign worker six hours to do it, in rough figures, some of his time will be worth $10 an hour but nobody is paying for it, he is donating to me what could be $60 worth of time if I had to pay a delivery service for someone to go and drop that literature to every house in the subdivision. Yet he voluntarily donates his time. It is not a contribution and not an expense. But if the same supporter of mine, or Jim's or any party, instead of donating that 10 hours of time which is not a donation for election expense purposes, gives me a cheque for $60 and I go and pay the postman $60 for 200 pieces of mail at 30 cents a stamp, that is a donation and that is an expense. The point I am trying to make is, in this whole problem of limiting campaign expenditures, which is really the fairness, as you say, of the campaign, the result to me as a candidate is better if my worker goes out and spends the time personally delivering that literature than his donating the cash and my paying the postman for doing exactly the same job.

Yet in your whole scenario, the money for stamps is part of the expenditure which should be limited, but the volunteer time of the worker who is, in effect, doing the same job in this analogy should not be limited. I see some unfairness in that.\textsuperscript{176}

\textsuperscript{173} Supra, note 135 at 19 (Mr. D. Rotenberg).
\textsuperscript{174} Ibid.
\textsuperscript{175} Supra, note 84 at 35 (Morning Sitting).
\textsuperscript{176} Supra, note 135 at 16.
He continued by elaborating his point in the following terms:

The point I am trying to make is that if you are having unlimited donations of time, which I agree with, and you are having limited donations of money, which I also agree with - maybe $500 is too much in your scenario - once you allow the person to collect all the workers he wants and all the $500 bills he wants, on which you seem to agree with me, it seems to me a little unfair to say, "I can spend all the donation time I've got, but I can't spend all the donated money I've got."177

B. Developments Elsewhere in Canada

The proposals for reform which were being made by the then opposition parties in Ontario were already operating in several Canadian jurisdictions. In 1974 the Canada Elections Act, the federal law on election financing, was radically amended by the Election Expenses Act.178 In contrast to the Ontario statute of 1975, this Act did not restrict the size of contributions to political parties179 though it did require disclosure.180 It also introduced limited public funding for candidates. More significantly, it imposed limits on campaign expenditures by both candidates and political parties181 The spending limits in the federal statute have given rise to considerable difficulty. A major problem has been how to protect the spending limits from being out flanked through campaigning by groups other than the political parties - the problem of so-called "third party expenditures." The legislature dealt with this by making it an offence for anyone other than a candidate or a party to incur election expenses in the campaign period.182 This offence was

177 Ibid. at 18.
178 Election Expenses Act 1973-74, supra, note 16.
179 It has been pointed out, however, that the parties imposed a voluntary ceiling on how much they would receive by way of donations from a single company. Initially, this was $50,000 for elections and $25,000 between elections. See J. Wearing, The L-Shaped Party: The Liberal Party of Canada 1958-1980 (Scarborough: McGraw Hill Ryerson, 1981) at 232.
181 Ibid., ss 4, 7, amending Canada Elections Act, ibid.
182 Election Expenses Act 1973-74, ibid., s. 12, inserting a new s. 70.1 to the Canada Elections Act, ibid.
qualified by an important exception; the Act would not apply if the accused established that he incurred election expenses

(a) for the purpose of gaining support for views held by him on an issue of public policy, or for the purpose of advancing the aims of any organization or association, other than a political party or an organization or association of a partisan political character, of which he was a member and on whose behalf the expenses were incurred; and

(b) in good faith and not for any purpose related to the provisions of this Act limiting the amount of election expenses that may be incurred by any other person on account of or in respect of the conduct or management of an election.  

This qualification proved to be inadequate because the defence was too widely drawn, permitting groups other than political parties to spend during election campaigns without restriction. Indeed, the Chief Electoral Officer was moved to comment

Election Expenses Incurred by Persons Other Than Candidates and Agents of Registered Parties - 70.1. As it now stands, the wording of this section permits any person or non-political organization or association to incur election expenses, between the date of the issue of the writ for an election and the day immediately following polling day, to directly promote or oppose a particular registered party or the election of a particular candidate. In defending any prosecution initiated under this section, these individuals or organizations may claim that they were "promoting an issue of public policy" or that they were "advancing the aims of their organization" even though they did not identify those issues and/or aims in their advertisement, provided they were able to show they were acting in good faith. It is a matter of record that a number of persons who were not acting on behalf of or with the knowledge and consent of candidates or registered agents of political parties have availed themselves of this provision of the Act during past elections. These people have spent unlimited sums of money to promote or oppose a particular candidate or registered party, sums which they do not have to account for in terms of sources or amount. 

The legislation was eventually amended by Bill C-169 on 25 October 1983 (by repealing the defence originally contained in section 70.1(4)). This provided that only candidates and registered political parties could incur election expenditures during a campaign

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183 Canada Elections Act, ibid., s. 70.1(4), as inserted by the Election Expenses Act 1973-74, ibid., s. 12.


186 An Act to Amend the Canada Election Act (No. 3), S.C. 1980-81-82-83, c. 164, s. 14.
period. In other words, the legislature responded to the problem of third party expenditures by prohibiting them altogether. The difficulty with this, however, was the Charter which purports to protect freedom of expression. The effect of Bill C-169 was to deny expression altogether during the campaign period. It took, in fact, less than a year for the Bill to be successfully challenged in the Alberta Court of Queens Bench. In National Citizens' Coalition Inc. v. Attorney-General for Canada,\textsuperscript{187} the Court accepted without much analysis that the disputed sections of Bill C-169 "on their face do limit the actions of anyone other than registered parties or candidates from incurring election expenses during the prescribed time and in this sense there is a restriction on freedom of expression."\textsuperscript{188} The argument consequently centered mainly on section 1, with the defence arguing that the limits imposed on the freedom of expression were "reasonable" and "demonstrably justified in a free and democratic society."\textsuperscript{189} The case for the defence was that the "change in the law made in 1983 was ... necessary to protect the interest of the legislation which had imposed spending restrictions on candidates and parties for the purpose of providing a system of fairness and equality of opportunity in the election of Members of Parliament."\textsuperscript{190}

The main argument was that the legislation was necessary to protect equality of opportunity in federal elections. In this connection reference was made to developments in the United States, and in particular the mischief caused by political action committees.\textsuperscript{191} Thus these organizations "have expended large sums of money in opposing the election of certain candidates to the U.S. Congress. This could happen in Canada, it was contended, if [Bill C-169] were not in effect and have a harmful effect on the system


\textsuperscript{188} ibid. at 487 (Medhurst J.).


\textsuperscript{190} Supra, note 187 at 491 (Medhurst J.).

\textsuperscript{191} For an account of the activities of PACs, see L.J. Sabato, PAC: Inside the World of Political Action Committees (New York: Norton, 1984).
which is now in place for conducting federal elections.\textsuperscript{192} The court was, however, strongly impressed by freedom of expression considerations "said by many to be one of the most significant of freedoms in a democratic society since the political structure depends on free debate of ideas and opinions."\textsuperscript{193} Medhurst J. relied heavily on Reference Re Alberta Legislation\textsuperscript{194} in the course of which Cannon J. stated:

Under the British system, which is ours, no political party can erect a prohibitory barrier to prevent the electors from getting information concerning the policy of the Government. Freedom of discussion is essential to enlighten public opinion in a democratic State; it cannot be curtailed without affecting the right of the people to be informed through sources independent of the Government concerning matters of public interest. There must be an untrammeled publication of the news and political opinions of the political parties contending for ascendancy.\textsuperscript{195}

\textsuperscript{192} Supra, note 187 at 495 (Medhurst J.).
\textsuperscript{193} Ibid. at 492 (Medhurst J.).
\textsuperscript{194} [1938] 2 D.L.R. 81.
\textsuperscript{195} Ibid. at 119. See also Chief Justice Duff who in the same case said:

There can be no controversy that such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack; from the freest and fullest analysis and examination from every point of view of political proposals. This is signally true in respect of the discharge by Ministers of the Crown of their responsibility to Parliament, by members of Parliament of their duty to the electors, and by the electors themselves of their responsibilities in the election of their representatives.

The right of public discussion is, of course, subject to legal restrictions; those based upon considerations of decency and public order, and others conceived for the protection of various private and public interests with which, for example, the laws of defamation and sedition are concerned. In a word, freedom of discussion means, to quote the words of Lord Wright in James v. Commonwealth of Australia, [1986] A.C. 578 at p. 627, "freedom governed by law."

Even with its legal limits, it is liable to abuse and grave abuse, and such abuse is constantly exemplified before our eyes; but it is axiomatic that the practice of this right of free public discussion of public affairs, notwithstanding its incidental mischiefs, is the breath of life for parliamentary institutions.

The Court concluded that a limit on freedom of expression "should be assessed on the basis that if it is not permitted then harm will be caused to other values in society."\textsuperscript{196} In this case it was pointed out, rightly it is submitted, that "there was very little actual evidence of the abuses of section 70(1) to support the recommendation that had been made by the Chief Electoral Officer."\textsuperscript{197} So section 1 failed the defence for want of evidence, with the result that the legislative measures under review violated the \textit{Charter} and were consequently "of no force or effect."\textsuperscript{198}

Despite problems raised by the \textit{Charter}, the federal jurisdiction is not the only one with spending limits. Similar provisions operate in Saskatchewan\textsuperscript{199} and New Brunswick,\textsuperscript{200} the

\textsuperscript{196} \textit{Supra}, note 187 at 496 (Medhurst J).

\textsuperscript{197} \textit{Ibid}. The evidence is not very fully considered in the judgment of the court. The attention of the court was drawn to the event leading to the decision in \textit{R. v. Roach, supra}, note 184 as an example of the mischief tackled by the \textit{Act}. The court continued:

It is argued that this change was necessary and justifiable. It is said that candidates and parties have spending limitations, are subject to regulations of reporting and advertising constraints and are therefore vulnerable to third parties who are outside of these controls.

Another example provided of the possible mischief of uncontrolled third party activities is the advertisement published by the Jewish Joint Public Relations Committee just before the 1980 election in opposition to the candidate Frank Epp in Kitchener-Waterloo at a time when no response was permitted. Counsel for the plaintiff notes that this advertisement was placed on the final day permitted for candidates and parties and this alleged flaw in the law could have been dealt with by extending this restriction to third parties.

Evidence was also given by Douglas Fisher, a present Member of Parliament and head of the Liberal caucus from Toronto. He stated that threats had been made by the anti-seal hunting organization to the effect that large sums of money would be spent in opposition to Liberal candidates in Toronto unless their policy respecting seal hunting activities on the east coast was changed. This is said to be unfair to such candidates who are subject to spending restrictions.

Further submission was made by the defendant concerning expenditures of large sums of money by organizations such as the plaintiff in this action during the 1979 and 1980 general elections in opposition to certain candidates.

\textit{Ibid}. at 491.

\textsuperscript{198} \textit{Ibid}. at 496.

\textsuperscript{199} \textit{The Election Act}, R.S.C. 1970, c. E-6, s. 208.
measures in each case pre-dating the Charter. In Manitoba\textsuperscript{201} and Quebec,\textsuperscript{202} however, legislation has been introduced since the Charter, although in the latter case the measure in question merely continues measures introduced in 1978.\textsuperscript{203} The legislation in Manitoba was assented to on 18 August 1983, and this repealed the \textit{Elections Finances Act 1980}\textsuperscript{204} which was similar in many respects to the Ontario \textit{Act} of 1975. In its place was enacted a new and comprehensive measure which included campaign spending limits. So far as the political parties are concerned, the \textit{Act} provides by section 50(1) that

Subject to section 52, the total election expenses incurred by or on behalf of a registered political party, including election expenses incurred by any person or organization acting on behalf of the registered political party with the knowledge and consent of the registered political party, shall not exceed

(a) in the case of a registered political party in relation to a general election, the amount determined by multiplying $80 by the number of names on the revised voters' lists for all the electoral divisions in which the registered political party endorses candidates.

Similar constraints are imposed on candidates.\textsuperscript{205} The \textit{Act} also imposes a limit on advertising expenses of parties\textsuperscript{206} and candidates,\textsuperscript{207} although these are included in, and are not in addition to, the total election expenses permitted under section 50. Apart from this important contrast with the federal legislation, there is another difference; there is no restriction whatsoever placed upon independent third party expenditures. The legislation, therefore, is not threatened by a Charter challenge of the type mounted in the \textit{National Citizen's Coalition} case. This is not to say that the


\textsuperscript{201} \textit{Elections Finances Act}, S.M. 1982-84, c. 45.

\textsuperscript{202} \textit{Election Act, supra}, note 129.

\textsuperscript{203} \textit{An Act to Govern the Financing of Political Parties}, R.S.Q. 1977, c. F-2.

\textsuperscript{204} \textit{Elections Finances Act}, S.M. 1980, c. 68.

\textsuperscript{205} \textit{Election Finances Act, supra}, note 201, s. 50(2).

\textsuperscript{206} \textit{Ibid.}, s. 51(1).

\textsuperscript{207} \textit{Ibid.}, s. 51(2).
spending controls will be immune from *Charter* challenge on other grounds. But this is a point to which we shall return.

C. The Liberal-NDP Coalition Government

The election of 2 May 1985 presented the opportunity for further reforms to be introduced in Ontario. The electors of the Province produced an outcome in which none of the parties had an overall majority. The Progressive Conservative Party has the largest party in the legislature with fifty-two seats, but the Liberals had forty-eight and the New Democrats twenty-five. The Lieutenant-Governor then called upon the leader of the Conservative party, Frank Miller, to form a government. On May 28, however, the leader of the Liberal Party, David Peterson, and the leader of the NDP, Bob Rae, signed an accord in which the NDP agreed to support the Liberals and to defeat the government in the Legislative Assembly. This was done on May 31, with a vote of non-confidence being passed in the House, following which Peterson was sworn in as Premier of Ontario. For the first time in forty-two years, Ontario had a government other than Progressive Conservative.\(^{209}\) Given the pressure for reform of the campaign finance legislation which both of the previous opposition parties had generated, there was thus now an opportunity to give some substance to their demands. The opportunity was quickly seized, and indeed the promise of legislation was one of the conditions of the May accord between the two parties. This provided for the introduction of "election financing reform to cover spending limits and rebates, at both the central and local campaign level."\(^{209}\)

A Bill to implement this commitment was introduced in the House on 7 July 1986\(^{210}\) and received Royal assent only three days

\(^{208}\) *Eleventh Annual Report*, supra, note 36 at 1-2.


later, on 10 July 1986.\footnote{Ibid., (10 July 1986) col. 2373.} A remarkable feature of the legislative process was the lack of any detailed consideration given to the measure by the legislature. Indeed the debates occupy only about twenty-one columns of Hansard, despite the apparently controversial nature of the Bill.\footnote{See Ontario, Legislative Assembly, Debates: Official Report 2nd Sess., 33rd Parl. (7 July 1986) cols. 2190-93; (8 July 1986) cols. 2232, 2237-40 (Second Reading), 2240-44; (9 July 1986) cols. 2270-71 (Committee).} The reason for this lack of detailed analysis by legislators is that the terms of the Bill had been exhaustively considered by an \textit{ad hoc} committee of party leaders, in the proceedings of which the Commission was invited to attend. But how could \textit{agreement} on these principles be secured given earlier Progressive Conservative resistance to the type of reform which has now been initiated? The answer may be found in the new political circumstances. Two factors in particular troubled the Conservatives. In the first place, "The General Election of 1985 had the highest cost in history,"\footnote{Eleventh Annual Report, supra, note 36 at 4.} and the Conservatives came out of the election with a deficit of five million dollars.\footnote{At the end of 1984 the party had a deficit of 2.8 million dollars. \textit{Ibid.} at 17. In the course of the 1985 campaign, the party's campaign receipts amounted to 2.6 million dollars while its campaign expenses amounted to 4.3 million dollars. Information supplied to the author by the Commission on Election Finances.} Secondly, it has been speculated that the Conservatives were much more willing to accommodate reform now that they were in opposition. It is a well established maxim that political money tends to follow political success. Since the election Liberal Party officials find, for example, that corporations are more ready to support their cause. So the Conservatives were now more willing to accept reforms proposed by the other parties as part of a package which contained a number of other measures to help alleviate their financial difficulties.

1. By any standards Bill 103 is a radical and comprehensive measure. It repeals the 1975 \textit{Act} and re-enacts many of its provisions to produce a clear and comprehensive code.\footnote{\textit{Election Finances Act}, S.O. 1986, c. 33.} Thus it retains, with modifications, the reporting requirement of the 1975
Act, contribution limits by individuals, corporations and unions, and the public subsidy for candidate’s election expenses. In addition the Act introduced four major reforms. First, the various limits which had been operating since 1975 were raised. So far as contributions are concerned, individual contributors may now give four thousand dollars annually to each registered party, and seven hundred and fifty dollars to a registered constituency association, with the permitted aggregate contributions to constituency associations being raised to three thousand dollars. In addition, similar amounts may be contributed during a campaign period, with the result that an individual corporation or a union may donate a maximum of twenty thousand dollars to a single party in each legislative cycle. Apart from thus raising the levels of permitted donations, the Act also raised the tax credit for political contributions to encourage electors to give more generously.

2. Apart from raising the tax credit allowed in the original Act, Bill 103 extends the public funding facility, which as introduced in 1975 was made available only to candidates to help meet campaign costs. In this respect Ontario contrasted rather unfavourably with other jurisdictions. The federal statute made provision for the public funding of political parties, though only to the extent of providing reimbursement of broadcasting expenses.

216 Ibid., ss 42-43.
217 Ibid., s. 19.
218 Ibid., s. 46.
219 Ibid., s. 19(1)(a)(i).
220 Ibid., s. 19(1)(a)(ii).
221 Ibid.
222 Ibid., s. 19(2).
223 Ibid., s. 58, substituting a new s. 7(6) of the Income Tax Act, supra, note 74.
224 Ibid., s. 46(6).
225 Election Finances Reform Act, R.S.O. 1980, c. 134, s. 45(1).
226 Election Expenses Act 1973-74, supra, note 16, inserting a new s. 99.1 to the Canada Elections Act, supra, note 180. Provision is also made for cash reimbursements to candidates. See also Election Expenses Act, s. 10, inserting a new s. 63.1 to the Canada Elections Act.
In Manitoba, the legislation introduced in 1983 provides for public funding of political parties to the extent that the parties are entitled to a reimbursement of up to 50 percent of the maximum permitted expenditure.\textsuperscript{227} And in Quebec the legislation goes further still by providing for the payment of an annual allowance to the parties,\textsuperscript{228} although it is to be noted that unlike either of the other jurisdictions, this is accompanied by a prohibition on contributions from any source other than individuals.\textsuperscript{229} Although Bill 103 has extended public funding along the Manitoba model, the manner of calculation is different:

> Every registered party that receives at least 15 per cent of the popular vote in any electoral district and that has filed its statement of income and expenses with the Commission in accordance with section 43, together with the auditor's report in accordance with the subsection 41(4), is entitled to be reimbursed by the Commission for the aggregate amount determined by multiplying 5 cents by the number of electors entitled to vote, as certified by the Chief Election Officer under the Election Act, 1984 in each electoral district in which the political party received 15 per cent of the popular vote and such moneys shall be payable to the political party's chief financial officer.\textsuperscript{230}

3. Bill 103 has revised and extended the provisions of the 1975 Act. The process of extension is continued in a third major area — campaign expenditures. As we have seen, the 1975 Act contained what are sometimes called "segmental" limits,\textsuperscript{231} in the sense that restrictions were imposed on the level of advertising expenses.\textsuperscript{232} The new Act now imposes a general limit on election expenses:

> The total campaign expenses incurred by a registered party and any person, corporation, trade union, unincorporated association or organization acting on behalf of that party during any campaign period shall not exceed the aggregate amount determined by multiplying 40 cents by,
Limits are also imposed on the level of permitted expenditures by candidates with the amount being calculated in accordance with the following formula:

- $2 for each of the first 15,000 electors entitled to vote in the constituency;
- $1 for each of the number of electors in excess of 15,000 but less than 25,000; and
- $0.25 for each of the number of electors in excess of 25,000.\(^{(234)}\)

In six named constituencies candidates are permitted to spend five thousand dollars in addition to the sum arrived at on the above calculation.\(^{(235)}\) This is presumably because of the extra expense involved in campaigning in what are often remote rural areas.

Bill 103 also differs from the Manitoba statute in the sense that it does not retain the separate advertising restrictions. It only imposes a general limit, with the parties being free to spend as much on advertising as they wish so long as they keep below the statutory ceiling. As a result, candidates and parties may in fact spend more on advertising under Bill 103 than was permitted under the 1975 Act. Bill 103 is, however, similar to the Manitoba Act to the extent that it contains no ban on third party expenditures. This continues the policy established in 1975: although the original Act imposed limits on advertising expenses in the campaign period, these applied only to expenditures by candidates and parties, or by individuals, corporations, and unions acting on behalf of parties and candidates. They did not apply to independent expenditures. Indeed, following the National Citizens' Coalition case,\(^{(236)}\) the Commission on Election Contributions and Expenses found it necessary to issue a bulletin advising that in Ontario there was no prohibition similar to the federal one attacked in that case. In its 1984 Annual Report the Commission pointed out:

\(^{(233)}\) Election Finances Act, supra, note 215, s. 39(1).
\(^{(234)}\) Ibid., s. 39(2).
\(^{(235)}\) Ibid., s. 39(3).
While limitations are placed on campaign advertising by a political party, a registered constituency association and a registered candidate, they do not apply to prohibit or limit advertising by unregistered persons or groups. On the surface, this appears unfair to the registered political parties and candidates, and this was the reason for the federal legislation. However, there has been no suggestion that anyone has made unreasonable use of the privilege, and there has been no move by anyone in Ontario to limit third party advertising during an election.\footnote{237}

The Commission also pointed out that, although the law in the Province was at that time "under revision," there was "no proposal to prevent 'third party advertising' during an election campaign."\footnote{238} No such restriction has been introduced, with the result that like the Manitoba legislation, the Ontario legislation also remains immune from the challenge raised against the federal statute in the \textit{National Citizen's Coalition} case.

The revision of the law on spending limits in Bill 103 may not however avoid another potential \textit{Charter} challenge. Under the \textit{1975 Act}, the law discriminated against candidates who had no party connection. Thus, in the event of a by-election, a limit of fifty cents per elector was imposed on the political party. In addition, the constituency association could spend an additional twenty-five cents per elector.\footnote{239} In effect, a party candidate could thus have seventy-five cents per elector spent on his or her behalf. So far as independent candidates are concerned, however, they were permitted to spend only twenty-five cents per elector. Not surprisingly, this gave rise to some resentment. In 1986 a by-election took place in Cochrane North, where one of the unsuccessful candidates, Dr. Bertrand, was an independent. Following the election, the Commission received the following telegram:

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\footnote{237}{\textit{Tenth Annual Report, supra}, note 127 at 10. It was also stated that:}

There are some limitations on advertising by third parties and unregistered groups in Ontario. They do not have any tax benefit on contributions they receive. They are subject to the Broadcasting Act (Canada) which prohibits advertising on election day or the day preceding. And if they are, in fact, acting with consent to assist a registered candidate, association or party, their costs must be included in the total campaign advertising of those on whose behalf they act.

\footnote{238}{\textit{Ibid.} at 10.}

\footnote{239}{\textit{Election Finances Reform Act, supra}, note 225, s. 39.}
I wish to protest the unfair unequal and discriminatory treatment of independent candidates in the Cochrane North by-election under section 39(c) of the Election Finance Reform Act. I am only allowed to spend on advertising $\frac{1}{3}$ of the amount that the Liberal Party candidates can spend. While this inequality was removed by the new Act which took effect on July 10 the new Act was explicitly made not applicable to this by-election. I believe that section 39(c) is contrary to section 15 of the Charter of Rights because all candidates are not treated equally under the law. I believe therefore that section 39(c) does not limit my spending in this by-election. I must ask for prompt written confirmation that I am not limited to any less amounts in my advertising expenses than is Mr Rene Fontaine.

At the time of writing no further steps in the matter had been taken. Although the objections were raised before the introduction of Bill 103, they appear equally valid now. Section 39 allows the party in a by-election to spend up to forty cents per elector in the constituency, while imposing a limit on candidates' expenses, which is the same for everyone in the constituency. The party candidates thus have an advantage in that they may spend an equivalent of forty cents per elector more than independent candidates. Despite an implication to the contrary in Dr. Proulx's telegram, the Charter point which he makes is as valid after the enactment of Bill 103 as it was before.

V. CONCLUSION: IS FURTHER REFORM POSSIBLE?

If the values of party democracy were to be upheld in Ontario, it is clear that the 1975 Act was in need of fairly radical reform to eliminate the impact of the wide differences in the income and expenditure of the different parties. The effect of the reforms in Bill 103 is to establish in Ontario "the most comprehensive system of control and accountability for election and political financing found in the western world."240 Ontario has effectively embraced in one statute all the potential methods of control which may be and which are employed in different jurisdictions throughout the globe. Thus, there is a comprehensive disclosure requirement; there are contribution limits; a ceiling is imposed on both candidate and party campaign expenditures; tax relief is given to stimulate private

funding and taxes are used publicly to fund the parties at local and national level; and the legislation is supervised and enforced by an independent commission. The question remains whether Ontario has reached the limits of law reform in this area. Clearly some minor changes will be necessary; for example, it may be expedient to raise the various financial limits on contributors, on expenditures, and on taxation. It may also be appropriate to amend the powers of the Commission.\footnote{Despite criticism of the 1975 Act, the Commission still does not have the power to initiate prosecutions, but must report violations to the Attorney-General. It has been suggested that}

\begin{quote}
[i]he greatest defect in Canadian political finance legislation is the enforcement procedure. The standard practice is to report contraventions to the Attorney-General, leaving him with the option to prosecute. Some jurisdictions require the consent of the CEO or Commission before prosecution may be instituted.

The result is a needlessly confusing and drawn out enforcement procedure that is susceptible to the influence of partisan interests. Every effort should be made to avoid the possibility of the Attorney-General of the day being influenced by political prejudice in giving an opinion as to whether prosecution should proceed.

To this end, the best solution would be to allow the Commission to initiate prosecution proceedings in its own name. Where the legislation stipulates that consent of the Commission is required, it appears that the Legislature may have intended to give the Commission unfettered prosecutorial discretion. To prosecute without reference to the Attorney-General would seem a natural exercise of such discretion. Four provinces, Alberta, Ontario, Quebec and Saskatchewan, have already given their Commission or CEO powers of investigation in accordance with the \textit{Public Inquiries Act} of the province. The power of independent prosecution is a logical extension. Indeed, this is the course followed by Quebec. There, proceedings for contraventions against the Act or guidelines are instituted by the Director General of Financing of Political Parties, or by his nominee.\footnote{But essentially these are changes which assume that the framework established by Bill 103 is sound. The real question is whether more fundamental changes are necessary.}
\end{quote}

\footnote{\textit{Election Finances Act, supra}, note 215, s. 4(1)(9). Section 55 requires the consent of the Commission to any prosecution under the \textit{Act}.}

A. A Ban on Corporate Contributions?

The most obvious area of concern related to the fact that corporate contributions are still permitted. Should corporate contributions be banned altogether, as in Quebec. Such a step could be justified on three grounds. The first relates to the legitimacy of such payments. In the liberal form of government, the legislator's primary duty is to the electorate. As was pointed out by the U.S. Supreme Court in Reynolds v. Sims, "legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." Corporate financing encourages and facilitates the representation of interests which are beyond the immediate duties of the legislator and the party. They become responsible to groups which clothe them with neither authority nor legitimacy, but only with money. It is true, of course, that the limits on corporate contributions will minimize the dangers of corruption and untoward influence. As long as the money is available, there will be an inevitable tendency to go after it, if only because some strategically placed corporations are likely to donate up to the legal maximum. As a result the business sector as a whole, if not individual segments within it, will have a disproportionate influence within the party or upon candidates; the party or the candidates will need to respond in some way to the business community if they are to continue to attract support. So long as a substantial contribution to party funds is made by institutional interests, there will always be doubts about the ability of the party in government to take steps which are hostile to these interests. Indeed, the need to respond to these interests may keep particular policy options from the table altogether. As the Royal Commission on Corporate Concentration remarked in a perceptive

\[243\] Election Act 1984, supra, note 129, s. 258.

\[244\] Much of what follows draws heavily on K.D. Ewing, "Campaign Funding: A Dilemma for Liberal Democracy," Osgoode Hall Law School of York University, Public Law Workshops (November 1982) [mimeo].

\[245\] 377 U.S. 533 at 562 (1964).

passage, "corporate contributions may lead to some sense of obligation and conflict of interest, as well as suspicion, even though the companies involved often contribute to two or more rival parties or candidates and neither ask nor expect any *quid pro quo.*"

A second factor which may justify banning corporate donations relates to the goal of equality. Bill 103 is important in that for the first time in Ontario the goal of equal electoral opportunity is formally recognized in legislation. It is done to the extent that limits are imposed on the spending levels of the parties and candidates. The goal is undermined, however, to the extent that no similar restrictions are imposed outside the official campaign period. One means of responding would be to adopt the New Brunswick solution of imposing an annual limit on expenditures by political parties. Another means of responding would be to ban corporate political contributions. As we have seen, a combination of legal requirements and the internal governing arrangements of the NDP have effectively prevented any substantial union donations to the provincial party. Arguably the demands of equity and parity of treatment would require that similar controls be imposed on the corporate financing of the other two parties. More importantly, a ban on corporate donations would go a long way towards levelling out the income of the parties. If not for corporate donations, the annual income of the Conservatives and the NDP would be about even. In 1983 the total income of the NDP (without institutional money) would be 86 percent that of the Progressive Conservatives (without corporate money) rather than 53 percent. The elimination of corporate donations, which in practice are not available to the NDP, would then be an indirect way of further equalizing the political process. There is nothing to suggest, as the Camp Commission predicted, that the Conservatives would be bankrupt without corporate support. This may have been true in

\[247\] Ibid. at 343.
\[248\] Political Process Financing Act, supra, note 200, s. 50(1).
\[249\] These figures are based on calculations derived from Tenth Annual Report, supra, note 127 at 29-31.
\[250\] Camp Report, supra, note 6 at 7-8.
the years immediately following the enactment of the 1975 Act, but it is hard to see why it would be the case at the time of writing. If the Conservatives were denied corporate support, it would still leave them with a higher income than the NDP. It is difficult to see why this would take the party anywhere near bankruptcy. This does not deny that drastic economies might have to be made although it is instructive that until the high-cost election of 1985, the Conservative government resisted proposals to raise the maximum permitted corporate donation, on the ground that at the time any such increase was not needed by the party.\(^{251}\)

A third justification for prohibiting corporate donations is that corporate money is used to finance political parties without any consultations with shareholders and regardless of whether or not individual shareholders wish their funds to be used in this way. It is true that one of the arguments in favour of pressure group pluralism is that such grounds "have become a fifth estate, the means by which many individuals contribute to politics."\(^{252}\) However, it is no part of the liberal vision that individuals should be compelled to contribute to a party to which they may be opposed:

A man who throughout desires to return of A., and yet wittingly and willingly assists to return B., by subscription or otherwise, stultifies himself and ranks in point of intelligence with the man who votes at the poll for both of the opposing candidates. To constrain a man to such imbecility is both to injure and to insult him, and is, besides, an injury to the community in preventing freedom of election. Unless freedom of choice is to be reduced to an absurdity it must extend to the whole conduct of the elector towards the candidate from beginning to end.\(^{253}\)

It might be argued of course that there is nothing to stop the member of a company selling his shares and moving to some other investment. But although superficially attractive, such reasoning is plainly unconvincing. It is based upon the assumption that there will always be someone ready to buy the shares at the price paid by the investor. In many cases that will probably not be difficult, but conceivably it need not always be so, particularly in times of

\(^{251}\) Information provided to the author by the Progressive Conservative Party of Ontario.

\(^{252}\) J. Stewart, *British Pressure Groups: Their Role in Relation to the House of Commons* (Oxford: Clarendon Press, 1958) at 244.

\(^{253}\) *Amalgamated Society of Railway Servants v. Osborne*, [1909] 1 Ch. 163 at 195 (Farwell L.J.).
recession. But even if such an option is available, "this could require a shareholder who wishes to avoid making a political contribution being forced to make a decision which, on commercial grounds, he may believe to be mistaken. Nor is such a choice available to a member of a pension fund which decides to purchase shares in a company making political donations." Further, the shareholder's remedy is not available to the employee of a donating company. The company is a structure in which the position of the employee demands consideration: "The coming of age of democracy in our society is a process that inevitably affects the whole of people's lives; it cannot be excluded from the workplace." Yet as things presently stand in Canada, however, company employees are required to hold back and watch as the profits which they helped to create go to finance a political party to which they may be opposed.

B. The Charter as a Limit to Further Reform

There are thus three considerations which suggest that the work of the legislature is not yet completed. On the other hand, it may well be counter-productive to go any further. While further reform must be justified in practice, it is effectively constrained both by practical considerations and by the limits imposed by the Charter. If corporate donations were banned, it does not follow that corporate money would be removed from the political system. It is likely that corporate money would be rerouted; it would go to the parties, but by less direct methods. The history of attempts to ban corporate donations in both Canada and the United States have been marked by failure. This, however, is not a persuasive argument. It is unconvincing to argue that because the policing of controls may be difficult, no steps should therefore be taken. But there is a second and more weighty consideration. Even if a ban


256 See supra, note 51.
was made effective, corporate money would be redirected; rather than donate directly to the political parties, the corporations would engage in independent expenditures on behalf of the parties and candidates. The result would be just the same, and perhaps even worse, the danger being the active involvement in Canada of high profile political action committees promoting a wide range of corporate interest. So if a ban on corporate political contributions was to be effective, it would have to be accompanied by a similar ban on corporate political expenditures. Otherwise the political process would be distorted through contests between high-spending special interest groups in which parties, candidates, and electors would be by-standers.

It is unlikely, however, that such a measure could successfully be introduced in Canada. Evidence from both the United States and Canada suggests that the arguments considered above are unlikely to persuade the court that corporate contributions are unjustified in a democracy. It is clear, despite the rhetoric in Reynolds v. Sims, that the courts have no doubts about the legitimacy of corporate involvement in the political process. The leading case is perhaps First National Bank of Boston v. Bellotti, where Massachusetts sought to prohibit corporations from taking part in state referenda unless the subject matter materially affected the business of the corporation. The question for the court was "whether the corporate identity of the speaker deprives this proposed speech of what otherwise would be its clear entitlement to protection." In answering in the negative, Mr. Justice Powell, for the majority, wrote:

If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decision-making in a democracy, and this is no less true because the speech comes

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257 The Canadian Charter of Rights and Freedoms, supra, note 189, provides by s. 33(1) that "Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter:"

258 Supra, note 245.


260 Ibid. at 778.
Corporate political influence is thus clothed with the legitimacy of the constitution, and the fact that its "advocacy may persuade the electorate is [no] reason to suppress it." The constitutional rights of corporations have also been recognized in Canada.

Not only do corporations have the right to participate in the political process, it also seems that the legislative branch has only a limited authority under constitutional government to intervene to regulate that participation. While it is true that the goal of equal access has been recognized by the U.S. Supreme Court in *Red Lion Broadcasting Co. Inc. v. Federal Communications Commission (F.C.C.)*, this was admittedly an exceptional case. The court upheld, in the face of a First Amendment challenge, the fairness doctrine of the F.C.C., which gave a right to reply to targets in political debate. In speaking for the majority, Mr Justice White said that the right of free speech of a broadcaster does not include a right to snuff out the free speech of others and that "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than countenance monopolization." Similar arguments have not, however, had any impact in the area of political contributions and expenditures. It is true that in *Buckley v. Valeo*, the U.S. Supreme Court upheld the constitutionality of contribution limits as a means of preventing the danger of corruption. It was not, however, willing to accept limits on expenditures by third party interest groups, a decision subsequently followed in *Federal Election

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266 424 U.S. 1 (1976).
Commission v. National Conservative PAC. In Buckley the legislation contained three major spending limits. The first was a limit of $1,000 on so-called independent expenditures, that is, expenditures, for example, by individuals, corporations, or unions "relative to a clearly identified candidate;" second, a restriction on the amount of private resources which candidates could use to finance their campaign; and third, a total spending ceiling on candidates for election to federal office. In reaching this decision the court was strongly influenced by First Amendment considerations and was concerned that the limits heavily burdened First Amendment expression. The court was not persuaded that the controls were necessary to equalize the relative ability of individuals and groups to influence the outcome of elections. In the case of the independent expenditures the court held that

the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure "the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

... The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion.

While in the case of the overall spending limits by candidates the court said:

on the size of outside contributions, the financial resources available to a candidate's campaign, like the number of volunteers recruited, will normally vary with the size and intensity of the candidate's support. There is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate.

So the goal of equality of opportunity between rival groups was not enough to justify the restrictions. If such considerations fail to persuade the court to maintain limits on corporate spending, much less likely are they to persuade the court to accept a ban on

267 84 L. Ed. 2d. 455 (1985).
268 Supra, note 266 at 48-49.
269 Ibid. at 56.
corporate spending. It is thus clear from the American jurisprudence that freedom of expression transcends equality of electoral opportunity. It is true, however, that the position in Canada is much less equivocal. Arguably the National Citizens' Coalition case turned on the evidence rather than the principle of equality which the government was seeking to defend. As a result, it does not follow that Buckley would be followed here, and it may be that better and fuller evidence would lead to a much different result in the Canadian courts. In any event, it has to be said that the banning of corporate contributions and expenditures as a means of promoting equality of electoral opportunity in Ontario is at best arguable. In 1984 the published information shows

i. the total income (headquarters and riding associations) of the NDP was only 53% that of the Conservatives;
ii. the total income of the OLP was only 24% that of the Conservatives;
iii. the total income of the OLP was only 44% that of the NDP. 270

If, however, the corporate and trade union contributions were prohibited, this would in fact lead to an equalization between the NDP and the Conservatives. The NDP income would then be as much as 80 percent that of the Conservatives. But on the other hand, it would extend the gulf between Liberals and the NDP mainly because the Liberals raise so little money from individual donors. Thus, to prohibit corporate donations would lead to a situation (on the basis of 1985 figures) whereby the central income of the OLP was only 24 percent that of the Conservatives and 30 percent that of the NDP. 271

Could restrictions be justified under the Charter to prevent the forced association of shareholders with political causes to which they are opposed? Some weight is lent to this argument by the decision in Lavigne v. O.P.S.E.U. 272 where it was held that trade union members in public employment cannot be compelled to pay agency fees which will then be used for political purposes. This is

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270 Figures derived from information provided in Eleventh Annual Report, supra, note 36 at 17-19.
271 Ibid.
272 Unreported at the time of writing.
because in situations where union security arrangements operate, the member will have no right to withdraw from the union, and, as a result, the court held that an arrangement must be devised whereby the individual in question must be relieved of those proportions of union dues which are not used to finance collective bargaining expenditures. This issue was raised in Bellotti, but was rejected because

> ultimately shareholders may decide, through the procedures of corporate democracy, whether their corporation should engage in debate on public issues. Acting through their power to elect the board of directors or to insist upon protective provisions in the corporation's charter, shareholders normally are presumed competent to protect their own interests.

The majority distinguished the labour union cases (Lavigne is paralleled by Street and Abood in the United States) on the ground that in the corporation cases "no shareholder has been 'compelled' to contribute anything. The shareholder invests in a corporation of his own volition and is free to withdraw his investment at any time and for any reason." This rather simplistic reasoning did not, however, satisfy Mr. Justice White who, in dissent, said

> it is no answer to respond, as the court does, that the dissenting "shareholder ... is free to withdraw his investment at any time and for any reason." The employees in Street and Abood were also free to seek other jobs where they would not be compelled to finance causes with which they disagreed, but we held in Abood that

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273 Under the Labour Relations Act, R.S.O. 1980, c. 228, employers and trade unions are able to negotiate union security arrangements that require membership of the union as a condition of employment (s. 46(1)(a)). It is to be noted, however, that no trade union shall require the employer to discharge an employee because he has been excluded or expelled from the union for the reason that the member was a member of another trade union; engaged in activity against the trade union; engaged in reasonable dissent within the trade union; discriminated against by the union in the application of its membership rules; or refused to pay initiation fees, dues or other assessments to the union which are unreasonable (s. 46(2)).

274 For an account of the impact of earlier developments in the U.S.A., see Adamany and Agree, supra, note 231.


278 First National Bank of Boston v. Bellotti, supra, note 275 at 794, n. 34.
First Amendment rights could not be so burdened. Clearly the state has a strong interest in assuring that its citizens are not forced to choose between supporting the propagation of views with which they disagree and passing up investment opportunities.\textsuperscript{279}

But even if such an argument were to succeed and unions and corporations were thus treated equally, it does not follow that a complete ban on corporate contributions could be justified on this ground. Such a ban is likely to fail on the ground that it is overbroad. The union in \textit{Lavigne} was not disabled from participating in political activity; it was required to do so in a manner which would not compromise the right to freedom of association of people like Lavigne. A similar result in the corporate context would not prevent corporations from creating "political action committees," financed by the "voluntary" contributions of shareholders and employees. Although this is a development which in the United States has been approved by the Supreme Court,\textsuperscript{280} it has also been strongly criticized.

\textsuperscript{279} \textit{Ibid.} Mr. Justice White also said at 806:

\begin{quote}
Although it is arguable that corporations make such expenditures because their managers believe that it is in the corporations' economic interest to do so, there is no basis whatsoever for concluding that these views are expressive of the heterogenous beliefs of their shareholders whose convictions on many political issues are undoubtedly shaped by considerations other than a desire to endorse any electoral or ideological cause which would tend to increase the value of a particular corporate investment. This is particularly true where, as in this case, whatever the belief of the corporate managers may be, they have not been able to demonstrate that the issue involved has any material connection with the corporate business. Thus when a profitmaking corporation contributes to a political candidate this does not further the self-expression or self-fulfillment of its shareholders in the way that expenditures from them as individuals would.
\end{quote}

\textsuperscript{280} \textit{Federal Election Commission v. National Conservative P.A.C., supra,} note 267 at 468.