

Poverty and Democracy

Limits on Third Party Election Spending

The Problem

It is becoming a generally accepted fact that the political party who can spend the most on an election does better. But this diminishes the fundamental principles of a democratic system. Furthermore, it means that the interests of the majority of people are not as important as the interests of the elite.

- According to the Chief Electoral Officer, under the current system 3% of donors account for 45% of all money raised by the political parties;
- Of the top 25 government contractors, two thirds are major donors to the governing party, and they donate to that party, versus all other parties combined, at a ratio of six-to-one (at the riding/candidate level, that ratio is 30-to-one);
- This is not direct proof of corruption in the political process, but it is a strong indicator that major donors give, not simply out of a sense of civic duty, but with the expectation that they will get something in return;
- Research in the United States shows that, for last three election cycles, 94% of the time, the highest spender in a Senate race won;
- Currently in Canada, the candidate who spends the most isn't always the winner – but it is moving in that direction;
- The Mayor of New York spent \$89 million – more than all candidates combined in federal elections in Canada or the United Kingdom;

- In the United Kingdom, there are relatively small amounts of money involved in campaigns and the debate tends to focus more on issues of policy;
- The United States voter turnout is less than 50% of eligible voters – people are giving up on the system as it becomes clear that only the rich can win; and
- The lack of access to wealth is fast becoming the way to exclude people from the democratic process.

History of Attempts to Limit Third Party Spending on Elections

There have been a number of attempts by the federal government to limit third party spending. Unfortunately, the federal government appeared to only offer lukewarm resistance to challenges presented by right wing organizations (notably the National Citizen's Coalition). This was demonstrated by repeated refusals to appeal court decisions.

- In the early 1990's, there were initial moves by the federal government to limit third party spending (money spent by non-party organizations during election campaigns);
- The first challenge was from the National Citizen's Coalition (NCC) on the grounds that it violated principles of free speech – the court decision which ruled in favour of the NCC was not challenged by the federal government;

- The federal government amended the Elections Act in the mid-1990's and that was challenged by the National Citizen's Coalition. Again, the court ruled in favour of the NCC and the federal government did not challenge; and
- The third challenge to the federal government's latest attempt to limit third party spending was brought forward by Stephen Harper (head of NCC at the time and currently leader of the Canadian Alliance) and is currently before the Supreme Court of Canada.

What the Right Has Against Third Party Limits

While historically opposed to the Canadian Charter of Rights and Freedoms, the National Citizen's Coalition successfully used it to appeal third party spending legislation in the Supreme Court on the issue. NCC's arguments have been:

- Limits on third party spending on elections, limits an individual's right to free speech;
- Elections are, by their nature, about free speech;
- The Charter allows only justified limits on free speech;
- There is no justification for limits as there is no Canadian social science evidence indicating that third party spending has an impact; therefore limits placed on spending are inappropriate.

Our Response

We argue that the NCC's position is essentially a question about corporate rights to free speech. The free speech envisioned in the

Charter is for individuals in a democratic society and not necessarily for legally created corporations. On the other hand, third party spending on elections appears to drown out individual voices in the election process thereby undermining an individual's ability to exercise the right to free speech.

- Corporations are not necessarily entitled to the same level of free speech given to individuals;
- Third party spending tends to drown out smaller, less funded, voices and thereby undermining their free speech rights;
- There is significant social scientific evidence from other countries that suggest that third party spending can have an effect on election outcomes – this should be accepted in Canadian courts; and
- Obviously third party spending has an impact otherwise why would so much money be spent on trying to keep it from being regulated.

The information in this Fact Sheet is based on a presentation by David Baker to the National Union's 2003 Equality Leadership School. David is the senior partner in bakerlaw. David also helped establish Canada's first legal aid clinic for persons with disabilities, the Advocacy Resource Centre for the Handicapped (ARCH) and became its founding Executive Director. David was active in securing the inclusion of persons with disabilities in human rights legislation and in the Charter of Rights and Freedoms. David is currently representing the National Anti-Poverty Organization and Democracy Watch—both organizations have joined forces as interveners to oppose the NCC case against third party spending in the Supreme Court.