

(c) A party is considered to be represented in the House of Commons if it has twelve members. Such a party is not considered a new party and does not have to have fifty candidates officially nominated by the 28th day prior to polling day.

RECOMMENDATION 3

We recommend that political parties be made legal entities for purposes of prosecuting and being prosecuted and suing and being sued for offences under the Canada Elections Act and that they be given the powers to own and lease property, to sell and let property, to receive and make donations and to enter into contracts.

RECOMMENDATION 4

We further recommend that for the purposes of this recommendation, political parties should be defined as those entities which are registered under the present s.13 of the Canada Elections Act.

COMMENT

(a) On page 37 the Barbeau Committee states that its recommendations are based on seven main considerations, the first one of which is as follows: "Political parties should be legally recognized and, through the doctrine of agency, made legally responsible for their actions in raising and spending funds." The Progressive Conservative submission on page 4 recommends that parties become "legal entities capable of suing and being sued in the civil courts ..." The New Democratic Party submission on Page 2 states that it is in agreement with the Barbeau Commission proposals regarding registration of parties, the doctrine of agency, and the placing of the party name on the ballots. The Liberal Party brief is silent on this issue.

(b) The spending of money, after an election is called, by an unregistered group or individual on campaigning for or against a candidate or a registered party other than through an official agent would be a breach of recommendation 18(a) and thus a crime. (Such spending prior to the calling of an election would not be an offence.) But such provision in itself would be meaningless to prevent such spending during the critical election period. If this recommendation that parties become legal entities is adopted, and if the amended Act makes such spending a crime, as set out in Recommendation 18(d), and if, as an ancillary to its enforcement, an individual candidate or registered party could apply for a restraining injunction as set out in Recommendation 18(e), such campaigning by spending money could be restrained almost immediately.

These provisions would, as a result, prevent a provincial party or group from campaigning by spending money in a federal election except as they may spend money in campaigning through the official agent of a candidate or a party. In other words, these provisions are not intended to prevent such campaigning but

merely to control any expenditures arising out of such campaigning.

The Quebec and Nova Scotia Acts, while not making parties legal entities, already contain similar provisions whereby only recognized parties and nominated candidates can expend election funds.

(c) We considered, and rejected, the possibility of making parties corporations. Too many sections of the Canada Corporations Act are inapplicable.

(d) We have considered the effect on the provincial parties of making federal parties legal entities and have not been able to identify any insurmountable difficulty.

PART III. RESPONSIBILITY FOR ADMINISTRATION

RECOMMENDATION 5

We recommend that the Chief Electoral Officer be solely responsible for the administration of any legislation based upon the recommendations contained in this Report.

COMMENT

(a) We reject Barbeau Committee's recommendation for the establishment of an office called "Registrar of Election and Political Finances", separate from the office of the Chief Electoral Officer.

(b) We recognize that it would be difficult for the Chief Electoral Officer to maintain the appearance of impartiality to candidates and parties if at the same time he is called upon to police the accuracy of their financial reports. We suggest that this difficulty is overcome by requiring the parties and candidates to file their own audited reports, as we recommend in Recommendations 20 and 21.

RECOMMENDATION 6

We recommend that Section 5 of the Canada Elections Act be amended to read simply "The staff of the Chief Electoral Officer shall be appointed in the manner authorized by law." (i.e., governed by the Public Service Employment Act.)

COMMENT

Section 5(1) of the Canada Elections Act provides for the appointment by Order in Council of one Assistant Chief Electoral Officer. If the Chief Electoral Officer is to be responsible for this other aspect of the electoral process the present provision of Section 5(1) imposes an undue rigidity on his freedom to organize his own office on a properly functional basis.

RECOMMENDATION 7

We recommend that the Chief Electoral Officer, while not responsible for the veracity or accuracy of the reports, be required to enforce the filing of such reports by all candidates and parties as required by the Act.